

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	<b>The Haven Backpacker Resort</b>
<b>Applicant:</b>	Alice Dreaming Pty Ltd
<b>Nominee</b>	Mr Ken Hart
<b>Licence Number:</b>	N/A
<b>Proceeding:</b>	Application for New Liquor Licence
<b>Heard before:</b>	Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Paul Fitzsimons
<b>Appearances:</b>	Mr John Stirk for the Licensee Mr Ken Hart, Director of Alice Dreaming Pty Ltd Ms Amanda Anderson, General Manager Mr Stuart Johnson, Objector Ms Rita Rose, Objector

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## Background

- 1) Mr Ken Hart, a Director of Alice Dreaming Pty Ltd, has made application for a new liquor licence for The Haven Backpacker Resort, ("the Resort") situated at 3 Larapinta Drive, Alice Springs.
- 2) The application was advertised as follows:

*I, Ken Hart, Director of Alice Dreaming Pty Ltd, **hereby give notice** that I have applied to the Northern Territory Licensing Commission for a Private Hotel Liquor Licence to sell liquor from the premises known as the Haven Backpacker Resort Located at 3 Larapinta Drive Alice Springs.*

*Proposed trading details for the sale of liquor are as follows:*

- *The business proposed to be conducted on the premises will be in the nature of Private Hotel.*
- *Liquor may be sold for consumption on the premises to bona-fide lodgers and their guests in the company of the lodger.*
- *Hours of trade shall be between the hours of 11.30am and 22.00 hours - seven (7) days a week.*
- *Liquor will be restricted to beer, pre-mix spirits and cider in container size no larger than 375mls and wine in plastic cups.*

*This is the first notice of application. The notice will be published again on Friday 9th December 2011.*

*The objection period is deemed to commence from 9th December 2011 (date of publication of second notice).*

*Pursuant to Section 47F (2) of the Liquor Act an objection may only be made on the ground that the grant of the licence may or will adversely affect:*

- (a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- (b) health, education, public safety or social conditions in the community.*

*Only those persons, organisations or groups described in Section 47F (3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.*

*For further information regarding this application contact the Deputy Director of Licensing (Sth) on telephone 8951 5128. Objections to this application should be lodged in writing with the Deputy Director of Licensing, Licensing, Regulation and Alcohol Strategy PO Box 8470 , Alice Springs, within thirty (30) days of the commence date of the objection period.*

*Dated this 6th Day of December 2011.*

- 3) Following advertising of the application objections were received from approximately twenty petitioners, Ms Rita Rose, Mr Joseph Breen and Mr Stuart Johnson. In a decision of 16 March 2012, the Chairman of the Licensing Commission ("the Commission") determined that these objections were valid and required a Hearing pursuant to Section 47I(7) of the *Liquor Act* ("the Act"). In giving the petition standing, the Chairman outlined in this Decision that he did not wish to hear from all petitioners, rather one or two spokespersons would be able to give evidence at the Hearing to represent the objection if so desired. No objections were received from Police, Alice Springs Town Council and Department of Lands and Planning.
- 4) The nature of the objections largely related to the Resort being located within a residential area and the fear that the disrupting behaviour, which led to previous complaints over noise disturbances, objectionable behaviour of resort guests and litter being thrown over the fence into neighbouring properties, would be repeated with the grant of a liquor licence.

## **Hearing**

- 5) The Hearing commenced with a viewing of the property and an outline of the location and manner of alcohol service at the Resort. The Commission, during this viewing, was able to familiarise itself with the location of the Resort and the proximity of neighbourhood residents, some of whom had been objectors to the application.
- 6) Objection raised the location and prominence of the liquor licence application signage which had been posted and displayed on the front entrance gate. The question raised during the site viewing by objectors was whether the Commission deemed the sign adequate for the purpose of informing residents of the application.
- 7) At the Hearing Mr Ken Hart outlined that he was a Director of Alice Springs Dreaming Pty Ltd, the lessor of the Resort property. He advised that he had a 90% ownership of the company and that in relation to the Resort he had long term tenure with an option to purchase.
- 8) He advised the Hearing that in his opinion it was in everyone's interest that the licence be granted. Currently guests could purchase alcohol from licensed outlets in Alice Springs, with the nearest requiring a walk of approximately 350 metres to purchase alcohol.
- 9) The General Manager of the Resort, Ms Amanda Anderson elaborated on the operations of the Resort and how the liquor licence applied for would be conducted. She outlined that she had been working as a General Manager at the Resort for just over two years and that she had previous employment experience in liquor sales.

- 10) In relation to the guests of the Resort, she explained that the guest capacity was around 150 – 160 persons with most guests staying only two nights. These guests generally spent most of their time touring, often leaving early in the morning for these tours returning in the evening.
- 11) The issue of guest safety was one of the issues behind the liquor licence application as there were safety implications for the guests walking the street at night should they wish to purchase liquor. She outlined that the application was for the sale of:
  - Beer;
  - Premix spirits;
  - Cider (in containers no great than 375mls);
  - Wine in plastic cups.
- 12) The hours applied for were from 11.30am until 10.00pm seven days a week with the alcohol to be sold from the Reservation Office. Currently this Reservation Office is manned from 05.00am to cater for tours, closing at 8.00pm. After 8.00pm the Night Manager was on call to cater for guests' needs and emergencies, but it was not envisaged that the Night Manager would be involved in any way in the sale of alcohol beyond 8.00pm. In her submission Ms Anderson stated the hours of operation of the liquor licence were likely to be from 11.30am until 8.00pm.
- 13) In addressing issues raised by the objectors, Ms Anderson outlined that there had been only two noise complaints in her two years at the Resort. One of these related to loud music, and following the reporting of the complaint she had the speakers which had caused the noise and the resultant complaint, to be disconnected.
- 14) In response to one complaint in relation to people entering an adjoining resident yard, Ms Anderson explained that people could have climbed into the pool area from the front fence along Larapinta Drive. The Resort had plans to raise this fence to prevent people from climbing the front fence and Mr Hart later addressed the Commission on this matter as the raising of the front fence was part of general improvements to be undertaken to the pool area of the Resort.
- 15) In cross examination of Ms Anderson, Mr Johnson, an objector with standing at the Hearing, raised the issue of how the licensed area would be managed to prevent a recurrence of the behaviour which was evident under former management, particularly when the Resort traded as Larapinta Lodge.
- 16) Mr Hart sought leave of the Commission to address this matter and advised that he took over the Resort lease in 2007, when it was in a bad state of repair. The property required work to be done with the scope of works involving the gutting of much of the building and a spend of approximately \$600,000. Mr Hart had previously been involved with the ownership and management of Melanka Lodge in Alice Springs and was therefore familiar with the requirement for the successful and proper operation of backpacker accommodation.
- 17) He initially had a partner with the Resort but since September 2011 he had taken over control of the business entirely. He advised the Commission that he had twenty-five to thirty years experience in backpacker marketing, tours and accommodation. In evidence he stated that backpackers generally came to Alice Springs to undertake tours and he was familiar with their requirements as he was the former owner and operator of NT Adventure Tours, which has operated in the Northern Territory for twenty years. He further advised that this business had recently been sold.
- 18) Guests at backpacker lodge accommodation that he has had involvement with, including the Resort, generally start their tours very early and are therefore out of bed around 4.00am, returning between the hours of 5.00pm – 7.00pm for a meal. He tendered that this

market was not generally inclined, or disposed to, long or late night drinking bouts. He further outlined plans for a significant upgrade of the pool area and submitted these plans as Exhibits in the Hearing.

- 19) In relation to specific objector complaints he stated he was happy to leave his telephone number with objectors and he then advised the Hearing that he never turns his telephone off and so would be contactable at all times should there be issues of concern to neighbours arising from Resort operations or guest behaviour.
- 20) Mr Johnson asked a further question in relation to why no food was proposed to be sold at the premises in conjunction with the alcohol sales. Mr Hart responded that the Resort had preliminary plans for a food kiosk but these had not been fully developed.
- 21) In the conclusion of the evidence of Mr Hart and Ms Anderson, objector Mr Johnson advised the Commission that he accepted Ms Anderson was telling the truth when she advised in written submission and in evidence that she had received only two complaints of guest behaviour in her past two years of management of the Resort. Mr Johnson outlined his objection which was based on unruly guest behaviour, his children being exposed to foul language and garbage being thrown over his fence from the resort. He explained his fears were that such behaviour would increase with the ready availability of alcohol from the Resort. Mr Hart and Ms Anderson contended that this behaviour occurred under previous Management where the guest demographic was very different to the current backpacker market.

## **Consideration of the issues**

- 22) The Commission is mindful of the legitimate fear of nearby residents that the granting of a liquor licence could potentially result in additional guest noise and general conduct of annoyance to neighbours. However, the Commission notes that under the current operation of the Resort, guests could purchase their own alcohol and drink it in their rooms and surrounding areas at their leisure, i.e. the controls by Management over the consumption of alcohol purchased off premises by guests is minimal. Should the Resort have a liquor licence, Management has strict obligations over the responsible sale of alcohol and the control of guests or patron behaviour and the Commission has been advised at Hearing that four staff members would hold a Responsible Service of Alcohol Certificate or this purpose.
- 23) The Commission has also been informed that the liquor licence, if granted, would operate over the entire area of the Resort, covering guests consuming alcohol around the pool, barbecue areas, dining areas and other areas within the Resort boundary.
- 24) Last drinks under the licence applied for would be served at 10.00pm and, under general conditions allowing thirty minutes to consume last drinks purchased, those drinks are to be consumed by 10.30pm. The applicant has advised that in the near term, last drinks will be sold at 8.00pm with their consumption therefore to be completed by 8.30pm.
- 25) The granting of a liquor licence would better enable Management to remove clients from the licensed area should they be intoxicated. In essence it is likely that the Resort Management will have better control over the sale and consumption of alcohol and guest behaviour on their premises through the grant of a liquor licence.
- 26) The Commission notes the limited range of products to be sold which does not include straight spirits, shots or wine in glass containers.
- 27) Objectors have raised the issue of the display of the application notice on the boundary front gate of the premises and queried whether its prominence was adequate for the purpose. A Determination by the Commission on this issue was made in 1998 and simply reads:

*“All applications which are required to be advertised under the Liquor Act must now accompany a notice, similar to those posted by the Planning Authority, to be erected on the applicant premises.*

*All notices to display street number, name and lot number.*

*Signs that are posted on the premises must be bright lime green. Signs to be erected at the expense of the applicant.”*

- 28) This Determination does not prescribe the prominence of the sign, but the Commission has viewed the site and the gate on which the application sign was posted and rules that it meets the obligations required. Further, folios 81 to 87 of the Hearing Brief contain photographs of the signage during the display and advertising period and clearly provide evidence that the sign, while not in the most prominent of locations, was clearly visible from street level.
- 29) Mr Johnson has questioned why food is not proposed to be sold in conjunction with proposed alcohol sales. During the viewing the Commission evidence that there are two major food preparation and consumption areas; a barbeque area with food preparation facilities, refrigeration and tables / chairs for dining and an upstairs area with food storage, preparation and cooking areas, together with dining chairs / tables. Thus food would generally be available through self-catering, as applies at many backpacker lodges, with the consumption of alcohol. It is also noted that a food kiosk may form part of future developments of the Resort.
- 30) Following review of the Hearing Brief and all evidence and submissions at Hearing, the Commission is of the belief that the Resort, in former times, did create noise and disturbance to neighbours. Current Management, to its view, has improved the situation and better managed guest behaviour. The Commission gives credibility to the claim that there have only been two resident complaints over two years, and one of these has been conclusively dealt with through the disconnection of speakers which previously broadcast music at a noise level to cause disturbance.
- 31) The Commission also accepts that Mr Hart’s offer to provide neighbours with his personal phone number is a genuine attempt to address potential noise and related issues.
- 32) In relation to noise, the granting of a liquor licence enables the Commission to impose a noise condition which a Licensee must comply with. Therefore if unacceptable noise is generated from the licence premises, nearby residents are afforded the ability and indeed the right to make complaint, following which the Commission can determine to conduct a Hearing and impose appropriate remedy or penalty. If the complaint is made out.
- 33) In the circumstance the Commission will impose a Noise Condition on the licence as follows:

**Noise Control**

*The Licensee shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of surrounding residential and commercial accommodation property.*

- 34) During the Hearing the matter of non-guests climbing the front fence along Larapinta Drive was raised. It was apparent to the Commission that unauthorised entry to the pool area could be gained from climbing the front fence and that persons so entering the Resort premises could cause disturbance around the pool area or climb over a boundary fence into a neighbouring property. The grant of a liquor licence is therefore conditional on the applicant receiving development approval to raise the height of the Larapinta Drive front fence and completing the development works within six months of this Decision.

## Decision

- 35) The Commission has determined to grant the liquor licence over the entire Resort premises as advertised. The liquor licence will commence when development approval is obtained for the elevation of the front fence on Larapinta Drive as per plans submitted at Hearing. The Commission has also determined to impose a Noise Condition in the licence in acknowledgement that the licence will be operating in an otherwise residential neighbourhood.

Richard O'Sullivan  
Chairman

30 April 2012