

Northern Territory Licensing Commission

Reasons for Decision

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| Premises: | Skycity Darwin |
| Applicant: | Skycity Darwin Pty Ltd |
| Nominee: | Mr Bradley Keith Morgan |
| Licence Number: | 80100141 |
| Proceeding: | Application for Material Alteration Pursuant to Section 119 of the <i>Liquor Act</i> and Variation to Licence Conditions Pursuant to Section 32A of the <i>Liquor Act</i> |
| Heard before: | Mr Philip Timney (Presiding Member) Mrs Jane Large Mr John Brears |
| Date of hearing: | 25 October 2012 |
| Appearances: | Mr Alistair Wyvill SC Counsel for the Licensee Mr Lex Silvester Counsel for the Objectors Mr Ken Simpson, Chairman Body Corporate, 1 Burnett Place, Larrakeyah Mr Brad Morgan, General Manager, Skycity Darwin Pty Ltd |
| Date of Decision: | 22 November 2012 |

Background

- 1) On 11 May 2012, Mr Brad Morgan applied for approval for material alterations and ancillary variation of the licence conditions for the Skycity Darwin premises. Mr Morgan is the General Manager of Skycity Darwin Pty Ltd ("SCD"). The application sought approval for the erection of a permanent marquee to be named Skycity Beachside Marquee ("the Marquee") and for a variation of licence conditions to allow for the sale of alcohol from the Marquee ancillary to a meal and/or substantial entertainment. The variation of licence conditions also sought to restrict access to the Marquee for persons under eighteen years of age. The application does not propose an increase in the licensed area of the premises as the proposal is to locate the Marquee on an area that is already licensed.
- 2) In accordance with the requirements of the *Liquor Act* ("the Act") the application was advertised in the local newspaper. The advertisement attracted three objections which were assessed as requiring a Hearing. The objections were lodged by Mr Ken Simpson, Chairman Body Corporate of the Villas at 1 Burnett Place, Larrakeyah, on behalf of all owners and residents. Mr Chris Hoskin, Chairman, Body Corporate for Myilly Apartments and Ms Angela Lepore and Dr Michael Stacey who reside at 30/4 Myilly Terrance, Larrakeyah. All objectors reside at premises located approximately four hundred metres from the proposed site of the Marquee.
- 3) In general terms, the objections relate to the potential for noise emanating from entertainment, functions and activities conducted in the proposed Marquee to impact on the reasonable enjoyment of the amenity of their residences. Concerns were also raised in respect of additional noise disturbances and antisocial behaviour arising from increased pedestrian traffic from patrons exiting the Marquee and the SCD premises via the footbridge and Little Mindil Beach area and congregating in the overflow car park late in the

evening and early morning. Further concerns were raised regarding the potential for the Marquee structure to be inadequate in terms of containing noise emanations, particularly given the proposed trading hours for the Marquee being from 10.00 am until 4.00 am the following day.

- 4) By decision dated 14 September 2012 it was determined that the objections were valid in terms of the relevant provisions of the Act and should be referred to a Hearing. The Hearing was set down for 25 October 2012.

Hearing

- 5) At the commencement of the Hearing Mr Wyvill referred the Commission to a letter prepared by Ms Jill Morris, Business Development Manager for SCD, which sets out the purpose and nature of the Marquee. In summary, the purpose of the Marquee is to address a need for a suitable function venue capable of catering for more than 350 guests, particularly during the hotter and wetter months from September to April. The types of events proposed to be held in the Marquee include conferences and meetings, corporate and conference dinners, exhibitions and trade shows, weddings, award nights and balls and charity events.
- 6) Some of the events currently hosted on the SCD lawns (Oktoberfest, Winemaker Dinners etc.) would be transferred to the air conditioned Marquee. Most evening events would include an MC and entertainment (live band, disc jockey, entertainers and comedians or cabaret style performances). Dress code for evening events will be cocktail wear, dinner suit, formal or black tie. For day time events the dress code would be business attire. The types of customers likely to attend events in the Marquee are local and interstate business people attending conferences, meetings etc. that may include an evening function, local and interstate wedding guests, local residents attending balls, awards nights, winemaker dinners, Oktoberfest and the Corona Fiesta.
- 7) Mr Silvester informed the Commission that he had been engaged to represent all objectors however his instructions from Ms Lapore and Dr Stacy were limited and had come primarily from Mr Simpson and Mr Hosking. He advised further that he intended to call Mr Simpson to give evidence on behalf of all objectors.
- 8) At this point the Commission adjourned for the purpose of conducting a view of the SCD premises and the proposed site for the Marquee with the parties in attendance.
- 9) One of the concerns raised by the objectors was the possibility of patrons gaining access to and from the Marquee via the footbridge and Nurses' Walk and for that to elevate the potential for noise disturbances and anti-social behaviour to adversely affect the neighbouring residents. During the viewing Mr Morgan was able to demonstrate that the area surrounding the Marquee was effectively fenced which prevented direct access to or from the proposed Marquee and the footbridge and overflow car park. He advised that SCD intended that all patrons of the Marquee would access and leave the area via the main casino entrance and that security personnel would instruct patrons accordingly. It was conceded that patrons could leave the area via the direct access to the beach near the swimming pool however the distance to the footbridge would be further than exiting the premises via the main entrance.
- 10) Mr Simpson noted that the removal of the containers and equipment on the site where the Marquee will be located will result in a direct line of sight from the rear of the Marquee to his residence. He queried whether any vegetation would be planted to provide a buffer for noise from patrons and entertainment at the Marquee.

Evidence of Mr Ken Simpson

- 11) At the resumption of the hearing Mr Simpson was called to give evidence. He informed the Commission that the main areas of concern to the objectors were the potential for

increased noise emanations from patrons and entertainment held at the Marquee impacting on the residents, SCD's arrangements for acknowledging and dealing with complaints from the residents and the obtaining reassurances from SCD that any future complaints would be dealt with in a timely and effective manner.

- 12) Mr Simpson advised that he had been a resident of Burnett Place since 2003 and had experienced many events held on the SCD lawns in that time. He acknowledged that detriment to neighbours from activity at SCD varied depending on the nature of the activity or event, whether or not it was a musical event and the finishing time of the event. He advised that when an event was intrusive at his residence he was required to close up the unit and turn the air conditioning on to deaden the impact of noise disturbances. He also noted that the development of the overflow car park had resulted in groups of people congregating there and causing disturbances to the nearby residents. Mr Simpson acknowledged that SCD had addressed that concern through the intervention of security personnel. He noted also that on some occasions residents were required to call Police to complain about disturbances from groups congregating on the grassed area of Little Mindil late at night.
- 13) Mr Simpson stated that the Darwin Cup Ball was the major event conducted on the Little Mindil area and that the residents did not object to the event itself. He did note however that disturbances from the Ball were not limited to the night itself but that residents suffer from noise disturbances from construction and the like in the weeks leading up to an immediately after the Ball. He stated that in a general sense, disturbances from activities at SCD were a constant source of discussion between residents of the Burnett Place complex and the neighbouring Myilly Apartments. The issue was of sufficient concern to warrant the lodging of objections and the decision to do so was not taken lightly.
- 14) Mr Simpson expressed his concerns at the response from SCD to noise and disturbance complaints from residents in the past. He stated that he had contacted the duty manager to lodge complaints on occasion with no immediate response or rectification of the cause of concern. He noted that he had spoken to the General Manager following last year's Darwin Cup Ball regarding concerns over construction noise continuing well into the evening. He acknowledged that his concerns were noted and had been addressed to a significant extent for 2012 Ball and that whilst noise still continued into the evening the situation was vastly improved.
- 15) In response to his concerns regarding SCD management adequately and promptly addressing concerns of residents, Mr Simpson noted that he had recently been provided with contact details for key SCD personnel, including the General Manager, the Security Shift Manager and the Casino Shift Manager.
- 16) Mr Simpson stated that SCD had made no contact with residents prior to advertising the proposal for the Marquee in the newspaper. He conceded that SCD may have thought the proposal would not have impact on the amenity of the residents. He acknowledged that, since the objections had been lodged, the objectors and SCD management had been engaged in helpful negotiations which had been successful in resolving a number of the particular issues of concern.
- 17) Mr Simpson concluded by stating that it was not appropriate that SCD be given the right to conduct its operations in an unfettered manner and that the residents of nearby premises were entitled to the peaceful enjoyment of their homes. He submitted that the SCD premises should operate in a manner that takes account of the needs of neighbours and the appropriate means of achieving this is through the application of appropriate licence conditions.
- 18) In response to questions from Mr Wyvill Mr Simpson confirmed that he personally had not lodged many complaints with SCD regarding disturbances and that his wife had phoned to complain several times. He added that was largely due to the fact they "live with the disturbances" rather than lodge a complaint on every occasion.

- 19) Mr Simpson informed Commissioner Brears that he had been made aware of the acoustic report prepared for SCD however he had not been involved in the testing conducted by Sonus Pty Ltd. He did not recall if any events were held at SCD during the period the sound tests were conducted.
- 20) In respect of people travelling along Nurses' Walk causing disturbances, Mr Simpson advised that he could not be certain those people were patrons of the casino however he suspected at least a proportion of those people had come from areas controlled by SCD. He submitted that SCD has some responsibility in respect of managing patrons leaving the casino grounds. Mr Simpson added that generally people using Nurses' Walk were well behaved but they do occasionally cause disturbances which affect the neighbourhood adversely.
- 21) Mr Silvester informed the Commission that his clients were appreciative of the negotiations recently held with SCD management which had allayed the concerns of the resident objectors to the point of no longer taking an adversarial stance. As a result of those negotiations no substantive objection to the proposal to erect the Marquee remained.
- 22) In reaching that position Mr Silvester confirmed that the objectors relied on the materials contained in the brief of documents tendered to the Commission on behalf of SCD. He referred particularly to the summary of the resolutions reached at the meeting between the objectors and SCD senior management, refer to folios 62 and 63 of the brief of evidence submitted on behalf of SCD, and the assurances in the letter from Ward Keller of 19 October 2012, folios 67 to 70. Mr Silvester submitted that the objectors would prefer to see the major resolutions incorporated as licence conditions for the SCD premises.
- 23) In respect of the agreement reached between SCD and the objectors, Mr Silvester advised that the objectors were not now pressing for a 10.00 pm limitation on the closing time for the Marquee. That concession has been made on the basis of the assurances provided by SCD in terms of noise abatement measures. He advised that the objectors particularly relied on SCD submissions that, whilst events held in the Marquee would be able to trade until 2.00 am, most events (in excess of 80%) would conclude by 10.00 pm on week nights and by midnight on weekends. Refer to folio 68 and 69 of the SCD brief of documents.
- 24) Mr Silvester submitted that the objectors were also influenced to reconsider their objection on the basis of the assurances provided in the letter from Ms Jill Morris, SCD Business Development Manager.
- 25) Mr Silvester submitted that the evidence of Mr Simpson should be viewed by the Commission as a frank and honest assessment of the effect of disturbances from the SCD premises on residents in his neighbourhood. Given the effective withdrawal of the objections the proposed alterations may now proceed without objection. Mr Silvester noted that the parties had agreed to review the situation 6 months after the Marquee comes into operation.
- 26) On behalf of the objectors, Mr Silvester emphasised that a significant concern is the condition attached to SCD's liquor licence that authorises the sale of liquor for on-premise consumption for 24 hour per day and the impact that may have on nearby residents, especially after 2.00 am in the morning. He noted that those concerns had been significantly reduced on the basis of SCD's advice and assurances as to the actual hours the Marquee will be open for trade, as distinct from the hours that the liquor licence actually authorises the sale of liquor for on premise consumption. In conclusion, Mr Silvester thanked the SCD executives and Mr Wyvill for their part in the negotiation of an agreed position and for the assurances provided in respect of the minimisation of disturbances to the neighbours.
- 27) At this point, following his request, Mr Silvester was excused from further participation in the Hearing.

Evidence of Mr Brad Morgan:

- 28) Mr Morgan informed the Commission that he has been the General Manager of SCD since October 2010. Prior to that he had held senior management positions with Lasseter's Casino in Alice Springs and with the Brisbane Broncos Rugby League team. He stated that he has not been subject to any complaints in respect of breaches of the Act. Mr Morgan stated that liquor sales amount to 5 to 8% of SCD's revenue and that major functions are a more significant source of revenue
- 29) Mr Morgan stated that the proposed Marquee was designed to allow SCD to compete with other function and event centres in Darwin. Currently SCD utilises the lawns at the rear of the premises for events and functions however this becomes unviable during the wet season and it is not practical to increase the footprint of the casino building itself to include a major function venue. He noted that all weather function venues in Darwin with a capacity to cater for more than 350 guests have a competitive advantage over SCD at present as that number cannot be accommodated for a function inside the casino building.
- 30) In respect of security arrangements, Mr Morgan stated that the security services provided to the Marquee when functions are held will be identical to those provided to all other areas of SCD's premises. He noted that SCD has its own in-house security personnel and that the security guards are required to deal with issues involving SCD patrons as well as itinerants who frequent the SCD grounds and surrounding areas.
- 31) Mr Morgan advised the Commission that SCD currently has noise complaint procedures in place and these will apply equally to the Marquee as for any other part of the premises. In addition, key contact details have been provided to the objectors, including Mr Morgan's mobile phone number, in an effort to ensure that residents' complaints are appropriately and expediently addressed should the need arise.
- 32) In respect to the sound monitoring tests conducted by Sonus Pty Ltd, Mr Morgan advised that the Oktoberfest and the AFL and NRL Grand Final functions were held on the rear lawns of the premises during the testing period without any significant impact on the readings taken from a neighbouring residential property. Mr Morgan confirmed that the speakers in the Marquee would be directed towards the harbour and away from the neighbouring residential area.
- 33) In conclusion, Mr Morgan stated that, if approved, the Marquee would be ready for use by mid-January 2013, subject to the resolution of some engineering issues.

Consideration of the Issues

- 34) The objections lodged by Mr Simpson, Mr Hoskin and Ms Lepore and Dr Stacey concerned the amenity of the neighbourhood in which the Marquee is proposed to be located and the public safety or social conditions in the community. As a result they fell within the provisions of the Act as being valid objections that must be referred to a Hearing, as was conceded in Mr Wyvill's written submissions.
- 35) During the course of the Hearing the objections were effectively withdrawn, no doubt as a result of genuine and effective negotiations conducted between the objectors and senior management of SCD since the objections were lodged. The Commission commends the parties and their respective counsel for their efforts in that regard and notes that the negotiated outcome has effectively resolved the issues that were identified as being in dispute prior to the commencement of the Hearing.
- 36) Mr Wyvill provided the Commission with written submissions in respect of the variations to licence conditions that would ensue should the application for the erection of the Marquee be approved, namely:

| Skycity Beachside Marquee | |
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| Trading Hours | (a) Trading Hours for the Skycity Beachside Marquee shall be: Seven days a week between the hours of 10.00 and 2.00 (the following day) |
| 24 Hour trading | (b) Trading is permitted at any hour ancillary to a light snack or meal or by table service. |
| Declaration pursuant to Section 106(1)(b) | (c) A person who has not attained the age of 16 years shall not enter or remain on or in the marquee between the hours of 24.00 and 4.00 when cabarets or private functions are held. |
| Declaration pursuant to Section 106(1)(b) | (d) A person who has not attained the age of 18 years shall not enter or remain on or in the marquee between the hours of 10.00 and 24.00 when cabarets and private functions are held, unless that person is in the company of his or her parent, guardian or spouse (who has attained the age of 18 years). |

- 37) Mr Silvester confirmed during the Hearing that the objectors were now satisfied with a condition limiting the trading hours for the Marquee to 2.00 am on the basis of the negotiations with SCD management and taking account of assurances provided. Those assurances included that events in the Marquee concluding at 2.00 am will not be the norm and, in the majority of cases, events will cease prior to 10.00 am on weekdays and prior to midnight on weekends. In respect of the 24 hour trading condition, Mr Morgan informed the Commission that it was not intended that guests would be able to use the Marquee, including for the consumption of alcohol, for 24 hours per day. The reason for the requirement for the 24 hour trading condition was to ensure consistency across the whole of the SCD venue and for the purpose of catering to the requirements of in-house guests.
- 38) The Commission acknowledges that the effective withdrawal of the objections was a result of the negotiations between the parties and the concessions and undertakings made by SCD to the resident objectors. The Commission is of the view that the concessions should be recorded in this decision for future reference should that be necessary.
- 39) In her letter dated 22 October 2012 Ms Morris, SCD Business Development Manager, informed the Commission that the purpose for the erection of the Marquee was primarily to cater for functions during the hotter and wetter months from September through to April. At present SCD cannot cater for more than 320 guests in the existing Grand Ballroom. She stated that the types of events that would be held in the Marquee were conferences, exhibitions and trade shows, corporate and conference dinners, weddings, awards nights and gala balls. Entertainment will be provided including live bands, disc jockeys and entertainers. Dress codes, at the higher end of the scale, will apply to the majority of those functions. Ms Morris added that the types of clients expected to frequent the Marquee were local and interstate business people, wedding guests and local residents attending balls and awards nights.
- 40) Further assurances in terms of SCD's response to the concerns of the objector residents were provided in a document titled "SKYCITY Beachside Marquee, Information for Myilly Residents", delivered to the residents by SCD's legal representative on 14 October 2012. That document informed residents that the Marquee is intended to be a world-class function venue positioned on the area currently occupied by the existing outside stage. There will be no increase in the existing licensed area of the premises.
- 41) Residents were also advised that SCD had reduced the trading hours requested to 2.00 am seven days per week from the 4.00 am closure notified in the public advertisement. In terms of noise containment, the residents were advised that the Marquee construction would include insulated panels and toughened glass in an air-conditioned venue with no openings facing the Myilly side of the Marquee. The advice reiterated the intended use of the Marquee and stated that it is not intended to serve as a permanent bar or nightclub.

Noise emanations were anticipated to be less than those from the existing outdoor stage area due to the structural design of the Marquee.

- 42) In addition, SCD engaged Mr Christopher Turnbull, Principal Acoustic Engineer with Sonus Pty Ltd, to conduct testing and provide a report on the likelihood of noise emanations from the proposed Marquee impacting on the amenity of the nearby residential properties. Mr Turnbull's report was prepared in accordance with the South Australian Environmental Protection Authority's Guidelines to assess potential music noise impacts, there being no equivalent Guidelines in place in the NT. The Guidelines provide that music from an entertainment venue when assessed at the nearest noise sensitive location should be:
- Less than 8 dB above the level of background noise in any octave band of the sound spectrum, and
 - Less than 5 dB(A) above the level of background noise for the overall (sum of all octave bands) A weighted levels in any octave band of the sound spectrum.
- 43) Testing was conducted from the closest residence to SCD at fifteen minute intervals between 27 September and 8 October 2012. Mr Turnbull concluded that with the proposed construction of the Marquee and typical function music levels, the music noise at the apartments can achieve the standards set by the South Australian and Victorian EPA's guidelines which are specifically designed for the assessment of the impact of noise from musical entertainment. Further, Mr Turnbull assessed that the noise from the Marquee's air conditioners and noise generated by patrons will be lower than the lowest background noise recorded at the apartments and therefore will have no significant impact on the amenity of the apartments.
- 44) The Commission also notes the content of a document titled "Resolution Proposal" prepared by Mr Silvester on behalf of the objectors and included in the brief of materials submitted by counsel for SCD. That document articulates the concerns of the objectors and the resolutions agreed by the parties during the course of their negotiations.
- 45) The Commission notes that the material alterations will not result in an increase in the hours within which SCD is authorised to trade in the sale of alcohol. Nor will the licensed area of the premises be increased as the Marquee will be erected on an area that is already licensed.

Decision

- 46) Following the effective withdrawal of the objections, the Commission approves the application for material alterations and authorises the erection of the Marquee as proposed in the SCD application. The Commission also approves the variation of licence conditions for the SCD premises, as set out in paragraph 38 above.
- 47) The Commission notes that the approval process for the erection of the Marquee and variation of licence conditions has been significantly simplified due to the effective negotiations between the parties and the concessions made on both sides. The Commission commends the parties for the conciliatory manner in which the Hearing was conducted and expects that the relationship established between SCD and the neighbouring residents will continue and that issues that may arise once the Marquee is operational will be dealt with expediently and to the satisfaction of those concerned.

Philip Timney
Legal Member

22 November 2012