

Northern Territory Licensing Commission

Reasons for Decision

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| Premises: | Gapview Resort Hotel |
| Applicant: | Gap View Holdings Pty Ltd |
| Dual nominees | Raymond and Diane Loechel |
| Licence Number: | 80102399 |
| Proceeding: | Material Alterations of the Premises and Variation of Licence Conditions to Allow for Extension of Trading Hours |
| Heard before: | Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Paul Fitzsimons |
| Appearances: | Mr John Stirk for the Licensee Dr John Boffa on behalf of the People's Alcohol Action Coalition Mr Steven Garland on behalf of the Alice Springs Airport Motel |

Background

- 1) On 29 September 2011 Gapview Holdings Pty Ltd as Licensee for the Gapview Resort Hotel ("the Resort") made application for material alterations under Section 32A of the *Liquor Act* ("the Act"), with the approval for the development works already obtained from the Development Consent Authority.
- 2) Also sought in the application was an extension of trading hours for the renamed areas within the venue, The Spot and The Front Bar, from midnight until 02:00am. The applicant at the time also sought to extend trading hours for the renamed areas, Reflections Bar & Grill and the Pool Bar, from 02:00am until 03:00am. Following receipt of objections, the 3.00am extension of trading hours was subsequently withdrawn, as an element of the application.
- 3) Advice of the application was forwarded to Northern Territory Fire & Rescue Services, Department of Health, Northern Territory Police and the Alice Springs Town Council. Following this, replies were received from Northern Territory Police and the Alice Springs Town Council, neither of whom objected to the application.
- 4) Two objections, however, were received following publication of the application in the *Centralian Advocate*, being DeWit Holdings Pty Ltd trading as Alice Springs Airport Motel ("the Motel") and Ms Vicki Gillett on behalf of the Peoples' Alcohol Action Coalition ("PAAC").
- 5) The Commission Legal Member, following consideration of the objections and their meeting the requirements of Section 47 of the Act, on 8 February 2012 determined that the objections of the Motel and PAAC were valid and thus were required to go to Hearing.

Hearing

- 6) The Hearing commenced at the Resort site for Commissioners and objectors to be briefed on the redevelopment plans on which the material alterations aspect of the application is based. Ms Loechel, assisted by Counsel Mr John Stirk, led a tour of the site and briefed

those in attendance on the redevelopment plans and how the extension of trading hours fitted in with the intended redevelopment.

- 7) Following this viewing the Hearing continued at the Westpoint Complex, 1 Stott Terrace. Mr Stirk, with the assistance of Ms Loechel, outlined the full scope of the development works proposed for the Resort which have received Development Consent Authority approval. In summary the Hearing was informed that the plans involve as Phase 1, internal works and upgrading at an estimated cost in excess of \$2 million. Phase 2 comprises the development of onsite accommodation, totalling up to thirty-seven individual cabin style units, with the investment estimated between \$3 - \$4 million.
- 8) It was explained to the Commission that the application for increased trading hours for the bar areas until 02:00am was to provide consistency of trading hours throughout the entire premises as two of the venues within the resort complex are already licensed until 02.00am.
- 9) The proposal for the proposed redevelopment of the bar and dining area of the Resort is to provide a new alfresco deck area and terrace which will provide a shaded area where smoking will be permitted. Other redevelopment and refurbishment works are designed to upgrade the standard and amenity of the entire premises.
- 10) The Commission was advised that if the application was approved it was proposed to commence the works mid-year with end of year completion. Following completion of Phase 1 the construction of up to thirty-seven cabins would then commence.
- 11) It was explained to the Commission that the current building was completed in 1982 with only minor modifications undertaken since that time. Mr Stirk outlined that the applicant had extensive history and experience with licensed hotels and properties and had purchased the Resort, both the business and the freehold, in 2007 and had identified a need to upgrade and the business opportunity in doing so.
- 12) At the time the applicant purchased the Resort it was reliant predominantly on Indigenous clientele together with bottleshop sales as being the major elements of trading revenue. Mr Stirk further outlined that the applicant wanted to bring the venue up to today's standards with the provision of a vastly improved premise amenity and the applicants have confidence in committing to such a large investment outlay and confidence in their own ability to manage the upgraded venue.
- 13) Mr Stirk tabled the second reading speeches of the *Liquor Amendment Act* for amendments to the Act passed in 2002 and 2004. In relation to the 2002 amendments he drew the Commission's attention to the grounds which qualify for objection:

"The bill aims to bring certainty to the liquor licence application process by defining who can object to the granting of a liquor licence application and on what grounds an objection can be made. The bill will allow for objections to be made by persons who reside or work in the neighbourhood of premises the subject of the application; an owner or lessor of premises in that neighbourhood; a member of the police force; a member of the fire and rescue service; an agency or public authority that performs functions relating to public amenities; and community based organisations or groups carried on for purposes that are connected with the amenity of the neighbourhood.

The term 'neighbourhood' is a subjective one and should be taken to mean the area likely to be affected by the premises the subject of the application. The area affected will of course be determined by the type of licence applied for and the nature of the vicinity of the application. For example, the neighbourhood around a proposed city tavern will be at most a matter of a few city blocks whilst the neighbourhood surrounding a take-away liquor facility in a remote place may encompass an area of hundreds of kilometres. In each case, it will be a question of fact to be determined by the Licensing Commission."

He then referred the Commission to the following paragraph of the 2004 second reading speech:

“Another important feature of the objection section, the public interest. The public interest is included replacing the need and wishes criterion which is vague and uncertain. The public interest criterion is recognised as being appropriate, because the licensing approach based on competitive outcomes alone may significantly reduce the welfare and amenity of the community through negative health and social consequences. Hence, the bill proposes the public interest should be the standard against which applications including licence conditions variations are sought. By including the public interest in the objects, and further defining public interest later in the amendment bill, applications may be prepared in respect to the public interest and the need to minimise harm and uphold the amenity of community life.”

- 14) In drawing the Commission’s attention to the second reading speeches of amendments to the Act, Mr Stirk queried the status of PAAC as a community based organisation qualifying as an objector under the Act.
- 15) The Commission advised Mr Stirk that it would accord appropriate weight to the PAAC written objection and submission at the Hearing after reviewing the Legal Member’s determination of 8 February 2012, where that Member accepted the bona fides of PAAC which were given standing to object to the application under Section 47F(3)(f) of the Act.
- 16) Mr Stirk then drew the Commission’s attention to the Northern Territory Police response to the Resort application, following its withdrawal of the variation to trading hours until up to 03:00am, which states:

“Police feel that the alterations and extensions will only enhance the presentation of the premises and does not set out to attract a certain type of client, the alterations and extensions appear to open up the internal part of the premises and not hide or close off any particular area.”
- 17) Dr Boffa advised the Hearing that PAAC will continue to oppose extension of hours of late night premises. Dr Boffa cited academic research in relation to the density of late night trading premises correlating to harm and alcohol generated violence. He expressed concern that by extending the hours the premises could be in competition with other late night trading premises and operate in a similar fashion and attract a similar “nightclub” clientele. He submitted that evidence suggests if the four bars at the Resort are open until 02:00am, more harm will result as this constitutes up to fourteen hours of additional trading.
- 18) Dr Boffa submitted that the material alterations proposed would improve the amenity of the venue and in this regard it was a positive aspect of the application.
- 19) In cross examination, Mr Stirk queried the status of PAAC and queried why it was not an incorporated body to which Dr Boffa replied the reason PAAC was not incorporated was that it did not want the administrative burden associated with being an incorporated entity but that PAAC does have aims and objects. He outlined that PAAC conducted monthly meetings and was comprised of a core group of around fourteen individuals who represented various organisations in Alice Springs. Total membership was around sixty and he acted as the spokesperson for PAAC.
- 20) Mr Garland, Manager of and representing the Motel, expressed concern that the proposed redevelopment and the alfresco area could generate noise and drew the Commission’s attention to the original application which stated that the alfresco area was “to be used for live entertainment and functions”. He submitted to the Commission that he wanted some noise restrictions imposed to apply to the outside area.
- 21) Mr Garland also raised the issue of additional vehicular and pedestrian traffic to and from the Resort late at night and early morning, particularly with functions, causing disturbance to his guests in the motel rooms opposite the Resort.

- 22) Mr Stirk responded by agreeing that noise problems could be addressed with the imposition of appropriate noise conditions in the Resort licence. In relation to potential disturbances for the Motel guests when functions were convened, Mr Stirk tendered that the Motel could be advised in advance of when evening functions were to be held.
- 23) In noting that the Motel had raised the potential for any approval of the application to be subject to review, the Commission put to Mr Stirk the comment provided by the Motel in correspondence of 27 December 2011: *"it is our opinion and proposal, that the new licence should be a provisional licence to be reviewed periodically, to ensure, that the hotel trades in a more responsible manner"*.
- 24) Mr Stirk responded by saying that the imposition of a noise condition would be self-fulfilling in this regard as a breach of a licence condition triggers the ability of the Commission to conduct a Hearing under Section 69 of the Act, following which it can vary licence conditions. Accordingly he submitted that, if the application is granted, a formal review process would be unnecessary.
- 25) The Commission then cleared the Hearing room to receive evidence on the financial standing of the applicants to gain an assurance that the \$6 million redevelopment as outlined was capable of being funded. In closed Hearing the Commission was provided with evidence which satisfied it as to the financial abilities of the applicant.

Consideration of the issues

- 26) Mr Stirk has raised the legality of PAAC having standing as an objector, notwithstanding the Legal Member's Determination on the matter. Mr Stirk questioned why PAAC was not an incorporated entity. Regardless of not being incorporated, the Commission accepts that PAAC is a loose but bona fide association of like-minded people and people representing organisations, with the aim of reducing personal and community harm attributable to alcohol abuse.
- 27) The Commission is of the view that PAAC is an eligible entity to make objection based on the second reading speech to amendments to the Act passed in 2002. The second reading speech made reference to: *"community based organisations or groups carried on for the purposes that are connected with the amenity of the neighbourhood"*. It is self-evident that PAAC is a community based organisation or group.
- 28) In relation to neighbourhood, Mr Stirk has drawn the Commission's attention to the defining of neighbourhood in the second reading speech. *"Neighbourhood around a proposed city tavern will be at most a matter of a few city blocks whilst the neighbourhood surrounding a take away liquor facility in a remote place may encompass an area of hundreds of kilometres."*
- 29) Mr Stirk submitted that as the application involved on premise trading, the use of the term neighbourhood would only qualify objections from persons or entities living or having an interest within *"a few city blocks"*. The Commission, however, notes that the Resort does have a takeaway licence which brings into applicability the wider neighbourhood definition above.
- 30) Furthermore, the charter under which PAAC operates covers alcohol harm in the wider Alice Springs area. Therefore the Commission re-affirms the Legal Member's Decision of 8 February 2011 that PAAC has standing to object under Section 47F(3)(f) of the Act, that is PAAC is *"a community based organisation or group (for example a local action group or charity)"*.
- 31) Dr Boffa, in his submission, had made reference to research in relation to increased harm with greater density of outlets and longer trading hours. As agreed to at the Hearing, the Commission and Counsel for the applicant were provided with a link to a research paper entitled *"Alcohol Related Crime in City of Sydney Local Government Area"*.

- 32) The Commission has considered this research and does not give it weight on its own accord. In doing so the Commission recognises that this research and countless other similar research forms background material for the formation of views expressed by Dr Boffa, however in this instance the Commission places reliance directly on the submission presented by Dr Boffa in his own words.
- 33) Having dealt with these procedural issues the Commission now turns its mind to directly consider the application and the submissions of the objectors. There has been no opposition to the material alterations proposed by the Resort and indeed Dr Boffa and Northern Territory Police have expressed a view that the redevelopment of the Resort will improve the social amenity of the venue.
- 34) The issue of increased trading hours for the bar areas is more contested. To increase the trading hours of the two bars would, in a mathematical sense, be an increase in the time alcohol is able to be sold and consumed. Taking the two bars separately, what is applied for is an additional fourteen hours trading in total. What the Commission needs to determine is the real impact this will have on harm and whether it is in the public interest.
- 35) Under current trading arrangements, on closure of the bars a patron could move into other areas of the complex where trading is available until 02.00am. What would be achieved under the application is a unification of the trading hours with consistency throughout the premises.
- 36) The ability to trade until 02.00am exists for most restaurants, taverns and hotels throughout the Territory. Many clubs also have trading until 02.00am on the latter nights of the week. Therefore in itself an extension of the trading hours for the two linked bars would not create a trading condition much different from most of the licensed venues in the Northern Territory.
- 37) In these other venues licensed until 02.00am, the Commission is aware that the ability to extend trade through until that closing time is rarely taken advantage of. Rather, Licensees usually determine to close earlier as the lack of patron numbers in the late night or early morning does not justify remaining open.
- 38) Without unifying the trading hours of the Resort, patrons could simply bar hop from one venue within the premises to another if they so wished. The Commission in this circumstance needs to evaluate what harm arises with the extension of trading hours of the bars from 12.00 midnight until 02.00am.
- 39) Given that the Resort is to undergo total investment of around \$6 million, including the construction of up to thirty-seven accommodation units / cabins, it needs all elements of this investment to be productive. The likelihood of the Licensee turning the Resort into a nightclub would seriously impact on the accommodation units and potentially jeopardise that aspect of the investment.
- 40) Additionally, the Motel immediately next door to the Resort has expressed fears over the potential noise emanating from the Resort when trading into the early hours. Legitimate complaints over issues such as noise are likely to result in Hearings with the Commission having the ability, following Hearing, to vary licence conditions, including trading hours. The potential for this to occur is obviously in the minds of the applicants as Mr Stirk drew the Commission's attention to the potential for it to exercise its powers conferred in the Act where noise complaints occur.
- 41) Based on the reasoning outlined above, the likelihood of extra harm arising from approval of the application is not significant. On the question of public interest, the Commission accepts that the upgrade of the premises bar areas and the standardising of hours are linked in the overall business plan. There has been considerable comment over the standard of and presentational aspects of certain bars in Alice Springs, with the current public bar area of the Gapview being included in this adverse public comment. The

upgrade, as submitted to the Commission, would result in a much improved social amenity, and this to the Commission's view seals that it is, on balance, in the public interest.

- 42) With all the factors mentioned above in mind the Commission is therefore disposed to grant the extension of trading hours for the bar areas from the current 12.00midnight closing to 02.00am. In doing so, the Commission is also aware for the potential for functions to be one of the purposes of the later night trading.
- 43) It notes in the Public Advertisement of the application, the stated justification for the trading hours extension included "to accommodate anticipated future functions". With activities such as functions and similar events likely to take place at the redeveloped Resort, the Commission considers it appropriate that a noise condition be placed on the Resort licence.
- 44) During the Hearing it was mooted that the Resort could in advance notify the Motel next door of any functions likely to continue into the later trading time period. This would be a sound arrangement which the Commission endorses.

Decision

45) The Commission approves:

- a) material alterations applied for by the Resort;
- b) extension of trading hours to the bar areas applied for to enable trading until 02.00am seven days a week;
- c) the imposition of the following noise control condition in the Resort 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.

Richard O'Sullivan
Chairman

9 March 2012