

Northern Territory Licensing Commission

Reasons for Decision

Premises:	The NT Rock Bar
Applicant:	Blaxland Star Pty Ltd
Dual Nominee:	Mr Jolyon William George
Licence Number:	80818127
Proceeding:	Application for a Variation of Trading Hours Pursuant to Section 32A of the <i>Liquor Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Ms Helen Kilgariff
Date of Hearing:	30 January 2013
Appearances:	Mr Jolyon George, Nominee Dr John Boffa, People's Action Alcohol Coalition Ms Janine Parker on behalf of seven petitioners Senior Sergeant Wayne Jenkinson, Northern Territory Police

Background

- 1) Blaxland Star Pty Ltd, as Trustee for the Rock Bar Unit Trust, trading as The NT Rock Bar, made application under Section 32A of the *Northern Territory Liquor Act* ("the Act") to vary the operating hours of The NT Rock Bar to extend trading from 01:00am to 02:00am seven days per week.
- 2) Following advertisement of the application four objections were lodged. In a Decision of 21 December 2012 the Chairman of the Northern Territory Licensing Commission ("the Commission") determined that the objections were valid under Section 47F(2)(a) and (b) of the Act and required a Hearing pursuant to Section 47I(7) of the Act.
- 3) The four objections were lodged by:
 - Superintendent Catherine Bennett, Alice Springs Police
 - Ms Malissa Hodgson, nearby resident of Todd Street
 - Dr John Boffa, Spokesperson for PAAC
 - Ms Janine Parker, Spokesperson for seven petitioners from 72 Todd Street.

Hearing

- 4) The Hearing commenced with Mr George, the Nominee of The NT Rock Bar, outlining the background to and reasons for the application to extend trading hours until 02:00am each morning. He stated that he is not seeking to alter the nature of

the venue, only the extra hour trading which would give his venue parity with other licensed venues whose licences extended to 02:00am. He explained to the Commission that it was unlikely that he would trade until this early hour throughout the week and would likely exercise any licence extension, if granted, on late week nights and weekends, most likely Friday and Saturday nights.

- 5) He stated that he had sought and been granted a number of extensions to the trading hours to cater for events and activities and that on such occasions the extended trading occurred without incident or any complaint to the licensing authorities. His submission outlined that it would be burdensome to continually apply for temporary variations to cater for various occasions and events when a later trading licence approval was sought.
- 6) Mr George reiterated arguments presented in a written response to the objections of 31 October 2012. This included reference to The NT Rock Bar already having a noise limit imposed in its licence conditions which is monitored through a noise control device on the premises. He stated that the premises had traded since 2009 without any breach of its licence conditions, including when temporary variations to extend licence hours were in place.
- 7) He added that an extension to trading hours would cater for patrons whose only other avenue for a pub or on licence premises after 01:00am would be either Bojangles or Lasseters Casino. He also advised the Commission that Bojangles frequently closed early, leaving little option for his patrons wishing to continue with a social outing and drinks.
- 8) Senior Sergeant Wayne Jenkinson, on behalf of Northern Territory Police, questioned why temporary variation applications to extend trading hours would be a burden or cumbersome. Mr George responded that it takes time to apply for a temporary variation to increase hours and it would be easier not to have to continually make application. Mr George added that his venue "*needs an opportunity to make money*" and reiterated that only one venue, with a comparable licence, in Alice Springs generally trades beyond 01:00am.
- 9) The Senior Sergeant in cross examination, queried the business operation's viability depending on trading between the hours of 01:00am to 02:00am given that its licence condition required it to retain the appearance and trade as a restaurant. Mr George responded by advising that his premise did maintain the appearance and trade predominantly as a restaurant and advised that 80 – 140 meals were purchased per night. He added that the venue would not utilise the 02:00am extension, if approved, on every night but would like the opportunity to do so when there was a viable demand. Mr George advised that his venue always had the appearance of a restaurant with tables presenting pepper and salt shakers, cutlery with incoming patrons provided with a menu. In response to a question from the Commission it was established that the kitchen remained open until 10.00pm.
- 10) In response to a question from the Commission as to whether the granting of the variation for the late week nights only would be acceptable, Mr George responded that if he had to accept such a limitation he would, but added that he would prefer to have the flexibility of later trading throughout the week. Mr George stated that Mondays and Tuesdays were often busy nights due to return of tours they operate to Alice Springs which generally returned from the weekend with up to 88 tour passengers on Monday evenings and also his venue frequently catered for hospitality staff on Tuesday evenings. In total his associated tour company took 200 – 250 people on tours each week and that these clients often wished to

continue conversations and get together following the return of such tours and therefore his venue would stay open late on the principle that *“you can’t sell a car if your yard is not open”*.

- 11) Mr George referred to his licence conditions that required security, CCTV coverage and sound monitoring equipment and yet notwithstanding what he referred to as these “bar” conditions, his licence currently limited trading to 01:00am.
- 12) Dr Boffa, on behalf of PAAC, outlined his organisation’s objection to the application with the qualification that PAAC was not objecting to the management nor did it wish to enter into the issue of parity or equity for the venue in seeking the trading extension. The central point of the PAAC objection is that late night trading increases alcohol consumption and harm. He submitted that a World Health Organisation evaluation in 2010 concluded the best way to limit alcohol consumption is to reduce trading hours.
- 13) Dr Boffa cited a number of studies into the association between alcohol and harm, including Brazil, King’s Cross, Newcastle and Geelong where the evaluation reports concluded that a reduction of trading hours contributed to a reduction of crime and harm generally.
- 14) Dr Boffa, with the consent of the Commission, tabled a further study *“Dealing With Alcohol-Related Harm and the Night Time Economy”*, a report funded by the National Drug Law Enforcement Research Fund. This study refers to the estimated cost of alcohol abuse in the Australian community at over \$15 billion, *“including crime, violence, treatment costs, loss of productivity and premature deaths in 2004 – 2005”*. The report deals with entertainment precincts and the physical availability of alcohol and the need to modify the drinking environment and the hours of sale. The data provided includes the evaluation of harm in both the Geelong and Newcastle area following the imposition of trading restrictions.
- 15) Mr Boffa’s evidence concluded with a submission seeking a consistent approach to trading hours which he advised should be based on harm minimisation and be applied through limiting licences to trade up until 12:00 midnight rather than granting extensions to 02:00am.
- 16) In response to the PAAC submission Mr George submitted that the issue of parity with other licensed premises was real and that the ability of Monte’s Lounge to trade after 01:00am affected The NT Rock Bar’s trade dramatically. The Bar Manager for The NT Rock Bar, Ms Corrine Whalen, advised the Hearing that many of their patrons looked to continue their social evening elsewhere when The NT Rock Bar closes at 01:00am.
- 17) Ms Parker represented the objection petition of seven residents at 72 Todd Street. She referred to the noise emanating from The NT Rock Bar and referred to experiences when music was at a level that disturbed or prevented her from reading. She outlined that there were three children residing in the units at 72 Todd Street that required sleep for proper attention at school. There were also shift workers residing at 72 Todd Street. All of these residents required peace and quiet during sleep times.
- 18) She advised the Commission that she had phoned The NT Rock Bar to complain over noise levels and had her message recorded and received no response. Ms Parker tabled as Exhibit 2 a chronology of her phone calls to The NT Rock Bar and

Police over noise issues. The Exhibit refers to *“the noise problem with the Rock Bar seems to be when they insist on having bands in the beer garden late at night”*.

- 19) Senior Sergeant Wayne Jenkinson addressed the Hearing on the Police objection submitted by Superintendent Catherine Bennett. He advised the Hearing that the Police objection was on principle and stated that Police would object to any extension of any licence hours in Alice Springs. He stated that it was inherent in any extension of trading hours that further alcohol consumption resulted. He suggested that 01:00am provides a sufficient trading period.
- 20) Mr George asked the Senior Sergeant if the Police have any concerns with his current trading management and hours and did they think the conditions would deteriorate if one extra hour was added to their trading, given that five recent temporary extensions had been granted and one in particular for eight consecutive days during the Masters Games. The Senior Sergeant responded that Police had not objected to these temporary variations but opposed the ongoing right to trade until 02:00am.
- 21) Objector Ms Malissa Hodgson did not attend the Hearing.

Consideration of the Issues

- 22) Before the Commission is an application by a Licensee which seeks an extension of trading hours based on past management record and lack of alternatives for patrons in Alice Springs to go to venues after 01:00am.
- 23) Objections from PAAC and Police are not specific to the venue or the management of The NT Rock Bar but are based on the view that any increase in licence hours in Alice Springs will result in more alcohol consumption and more harm.
- 24) Objections submitted to the Commission from Ms Hodgson and from Ms Parker on behalf of seven petitioners relate largely to the adverse impact on the amenity of the neighbourhood, in particular noise disturbance.
- 25) The Commission, in any consideration of a licence application or licence variation, is required to turn its attention to the objects of the Act.

3 Objects

- (1) *The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:*
 - (a) *so as to minimise the harm associated with the consumption of liquor; and*
 - (b) *in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.*
- (2) *The further objects of this Act are:*
 - (a) *to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;*
 - (b) *to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and*

(c) *to facilitate a diversity of licensed premises and associated services for the benefit of the community.*

(3) *When the Commission exercises a power or performs a function under this Act, the Commission must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.*

26) The applicant has pointed to the good management of the venue since obtaining a licence in 2009. Furthermore the applicant drew the Commission's attention to a number of variations to the licence to extend trading hours which were approved and which resulted in no identifiable community harm. The most recent of these was an application to extend hours for the duration of the Masters Games for over eight days, during which there were no complaints or incidents.

27) The applicant also submits that currently in Alice Springs there is little opportunity for people to socialise late in the evening and early morning due to the closure of a number of venues recently and that a number of other venues are closing earlier than their licence permits. The applicant referred the Commission to another On Licence, Bojangles, generally ceasing trade before midnight, leaving the principal venue available for patrons after 01:00am being Lasseters Casino. He referred to Monte's Lounge trading until 02:00am but noted that was not the same category of licence but was a restaurant with later trading ability than his premises.

28) The applicant pointed to the cumbersome process involved in continually seeking temporary variations to cater for occasions when he may wish to trade beyond 01:00am. He referred to the need for extra trading opportunities to cater for demand to make the venue viable. He informed the Commission that his tour company had up to 88 clients returning from weekend tours who wished to dine at his place and continue socialising, principally on Mondays. He also appraised the Commission of hospitality staff using his venue on the Tuesday evenings. In addition he cited the normal weekend Friday and Saturday night patron demand for late night venues. The applicant's position with respect to patron demand as outlined was to argue against the prospect of the Commission only granting an extension of trading for the weekend.

29) In relation to there being few trading venues operating in the early hours of the morning, the Commission does note that under the objects of the Act there is reference to facilitating diversity of licensed outlets for the benefit of the community.

30) Both Police and PAAC have proffered argument against granting any extension to trading hours on the basis of potential harm in a community already exposed to high levels of harm and violence. PAAC in particular was able to cite examples of measures to restrict the availability of alcohol and the evaluation of outcomes, all of which indicated a reduction of harm.

31) Objector Ms Malissa Hodgson in her written objection of 19 October 2012 graphically states: *"I often sit on my balcony and witness intoxicated people urinating in Todd Street and in the car park of my units, kicking over the bins, spewing up in my car park"*. However, not all of this anti-social behaviour can be verifiably attributed to The NT Rock Bar. Ms Hodgson's written objection goes on to state that the music from the venue *"is excessively loud and it goes from Thursday through to Sunday night. That is four days out of seven that it affects the quality of my sleep."* The presenter of this submission was not able to be questioned or cross examined to test its validity or accurateness.

- 32) Ms Janine Parker, on behalf of seven petitioners, spoke to the objection which was principally relating to loud music and the inability of children living in the units and shift workers to be able to sleep soundly.
- 33) It is evident that noise emanating from The NT Rock Bar does create a disturbance for the nearby residents, particularly those residing in the nearby units in Todd Street. While it was not clear that all of the anti-social behaviour described emanated from The NT Rock Bar, it would be reasonable to assume that The NT Rock Bar patrons are contributors to this anti-social behaviour.
- 34) The issue of noise raised by the objectors needs to be carefully assessed as The NT Rock Bar, when using its alfresco area for music, has a noise governor which cuts out the music when it reaches a prescribed decibel level as determined by a Noise Control Officer of the former Department of Natural Resources, Environment, the Arts and Sport. Notwithstanding this, the disturbance from noise does, in the Commission's assessment, impact on the quality of life of nearby residents. Any decision of the Commission needs to take into account these valid concerns.
- 35) The issue raised by the applicant of there being few venues, which Mr George categorised as "*pubs*" trading into the late night / early morning, was presented as creating little choice for patrons wishing to continue socialising beyond 01:00am, other than that of moving onto Lasseters Casino. This, he advised, was compounded by the recent closure of Town and Country and the practice of Bojangles in generally closing at 10:30pm, even though its licence enabled part of the venue to trade up until 06:00am.
- 36) He also referred the Commission to the general trading environment in Alice Springs and made mention that he needed to be open when trading was profitable to ensure the viability of the venue. While viability is not a consideration prescribed under the Act, the Commission considers it an appropriate matter to take into some consideration. Also raised by the applicant was the absence of a level playing field with respect to hours of trading with venues such as Monte's Lounge having the ability to trade up until 02:00am.
- 37) The argument proffered by PAAC that there should be consistency of trading hours across the board is a wider issue and not under consideration in respect of this individual application. Mr Boffa's argument that all venues should cease sales at 12:00 midnight is not a matter entered into or considered by the Commission with respect to this application.
- 38) The NT Rock Bar is an On Licence and initially had its hours restricted due to concerns over management practices of the former Licensee. Since obtaining a licence in 2009, which was at the time restricted to 12:00 midnight trading, the licence on review in May 2010 had its licence extended to 01:00am seven days per week based on well managed trading compliance. The Licensee has again submitted that based on this compliance his venue should be able to have some parity with other venues such as Restaurants which are able to trade until 02:00am.
- 39) In carefully considering the issue of whether harm would arise if the application was granted, the Commission has concluded that a well-managed venue with judicious oversight of patron consumption and behaviour, can be presented to the wider public of Alice Springs and offer some opportunity for the venue's client base to stay and socialise and consume liquor in a responsible manner beyond 01:00am. While it may not be a key or pivotal consideration, the Commission does note the recent closure of venues able to trade until 02:00am, thereby providing few alternatives for

patrons wishing to go to licensed venues after 01:00pm. Of concern to the Commission in its consideration of extended trading is the potential impact on the immediate residential neighbours and their complaints of noise and disturbance.

- 40) The Commission has therefore determined to grant the application for an extension of trading hours until 02:00am, conditional on there being no live music played in any part of the premises or any broadcast of music in the alfresco area during the extra trading time granted. If there is any music broadcast in the internal area of the venue during this extra trading time, it is to be by way of piped or background music and is not to be audible or cause disturbance to nearby residents. It is expected that the Licensee will continue to manage the premises and provide oversight of patron behaviour in a manner which avoids the venue's extra trading hour becoming a cause of harm.

Decision

- 41) The Commission grants the application for an increase in trading hours of The NT Rock Bar from 01:00am to 02:00am seven days per week. This approval is conditional on there being no live music played in any part of the premises or any broadcast of music in the alfresco area during the extra hour granted, ie from 01:00am until 02:00am. Also, during this time any music broadcast in the internal area it is to be by way of piped or background music and is not to emanate from the premises and be audible to or cause disturbance to nearby residents.

Richard O'Sullivan
Chairman

March 2013