

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Comfort Inn Vitina 35 Gardens Hill Road Darwin NT 0800
Applicant:	Alaken Pty Ltd
Licensee:	Alaken Pty Ltd
Nominee:	Mr John Neill
Proceedings:	To undertake a hearing to consider an application for a variation of the Liquor Licence conditions for the Comfort Inn Vitina
Members:	Mr R O'Sullivan (Chairman) Mr W Grimshaw Mrs J M Large
Attendees:	Mr J Neill, Nominee Comfort Inn Vitina Mr G Tsirbus, Director, Alaken Pty Ltd
Date of Hearing:	16 June 2011

Background

- 1) Since 2005 the motel property at 35 Gardens Hill Road has been owned by Alaken Pty Ltd and was originally leased out to a second party under the then known name of Golf Links Motel. During 2005 and 2006 there were a series of complaints relating to noise, raucous behaviour and drunkenness in the outside bar of the Golf Links Motel which resulted in the Licensing Commission, on 5 March 2007, imposing Special Conditions on the liquor licence relating to the outside bistro area, namely:

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- (a) Subject to paragraph (b) hereof, liquor shall be sold at any time to bona fide lodgers of the premises or invited guests of the ledger, (in the presence of the lodger), for consumption on the premises.*
- (b) Liquor shall be sold for consumption away from the premises to bona fide lodgers only during the above hours through the provision of room service.*
- (c) Subject to paragraph (d) the outside bistro area is to be closed to all persons outside the hours of 07:30 and 22:00 Monday to Friday and 08:00 and 22:00 Saturday and Sunday.*
- (d) Staff access to the outside bistro area for cleaning, set-up, clean-up and maintenance purposes will be confined to the hours 07:00 to 22:30 Monday to Friday and 07:30 to 22:30 Saturday and Sunday save in an emergency.*
- (e) The roller door between the bar in the outside bistro area and the restaurant and the door from the restaurant to the outside bistro area, shall be closed between the hours 22:00 and 07:30 Monday to Friday and 22:00 and 08:00 Saturday and Sunday, subject to (d) above."*

- 2) During the past eighteen months the owners have spent some two million dollars (\$2,000,000) renovating and refurbishing the total premises in order to rebrand and re market the premises as a significant accommodation provider in the 3 ½ star market within Darwin with a licensed restaurant that opens to an outside bistro area and separate swimming pool. On 29 October 2010 the Commission approved the Transfer of Liquor Licence from Territory Early Brothers Pty Ltd to Alaken Pty Ltd and the subsequent name change from Golf Links Motel to Comfort Inn Vitina.
- 3) In line with the new management and concept of the motel, Alken Pty Ltd applied, pursuant to Section 32A of the *Liquor Act* ("the Act"), for a variation to the Comfort Inn Vitina Liquor Licence Special Conditions (from those at 1) above) as follows:
 - (c) *Subject to paragraph (d) the outside bistro area is to be closed to all persons outside the hours of 06:00 and 24:00 Monday to Friday and 06:00 and 24:00 Saturday and Sunday.*
 - (d) *Staff access to the outside bistro area for cleaning, set up, clean up and maintenance purposes will be confined to the hours 06:00 to 24:00 Monday to Friday and 06:00 to 24:00 Saturday and Sunday save in an emergency.*
 - (e) *The roller door between the bar in the outside bistro area and the restaurant shall be closed between the hours of 22:00 and 07:30 Monday to Sunday, subject to (d) above.*
- 4) The Application was advertised in the NT News on Wednesday 2 February and Friday 4 February 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 5) Five objections to the application were received within the thirty day period required by the Act. All objectors expressed unease and concern that the changes sought by the applicant to both the hours of operation of the outside bistro area and access between the bar, bistro and restaurant areas could result in increased noise and disturbance.
- 6) In answer to the objections the General Manager of the Comfort Inn Vitina submitted that the new focus of the premises would be on accommodation and the general public access to the outside bistro and swimming pool would be limited to the operating times of the Reception, namely 7.00 am to 7.00 pm. At present the restaurant and outside bistro area are only utilised for breakfast and dinner is only served at night for functions.
- 7) On 6 May 2011 the Commission determined that objections lodged by all five objectors namely:
 - Lee and Laurie Palfy
 - Sandy Blain
 - Ray and Susan Parry
 - B.G. and L.A. Barnes
 - Bill and Heather Prendergast
 were valid and required a Hearing pursuant to Section 47(7) of the Act.
- 8) A Hearing was set down for Tuesday 31 May 2011 but at the request of the applicant this was rescheduled for Thursday 16 June 2011. All parties were advised of the original and the revised dates for the Hearing.

The Hearing

- 9) Mr Neill, Nominee and Manager of the premises, explained that the application was for two variations to the current Special Conditions in the Comfort Inn Vitina Liquor Licence:

- To allow earlier service of breakfast in the outside bistro area from the current time of 07.30am to the earlier time of 06.00am;
 - To extend the restaurant use of the outside bistro from current closure of 10.00pm to 12.00 midnight.
- 10) Mr Neill reiterated the points made in his submission in answer to the objections stating that the whole focus of the premises is on providing accommodation in a quiet and relaxing environment and there would be no general public access to the outside bistro area or the swimming pool after 7.00pm. The 6.00am opening of the outside bistro area and the opening of the door between the inside restaurant and the outside bistro area was to allow breakfast to be served in both the restaurant and the outside area at an earlier hour in order to meet the requirements of the motel's guests.
- 11) Mr Neill stated that the proposed later closing time was to allow the restaurant and the outside bistro to be utilized for functions where the service of dinner was required. He emphasized that the outside bar would be closed at 10.00pm and after that time the only alcohol service to the outside area would be through the restaurant.
- 12) Mr Neill, also, brought up the problem that has arisen with meeting the smoking laws as the outside area of the premises is the only suitable place to establish a smoking area and the inconsistency between the inside restaurant hours which were allowed to trade until 2.00am and the outside bistro area which closed at 10.00pm meant that customers in the restaurant could not access the smoking area after 10.00pm.
- 13) In answer to a question from the Commission Mr Neill provided details of his twenty years working in the hospitality industry. Further he advised that there were 60 rooms in the motel and the restaurant could cater for 60-70 people inside and 100 people outside.
- 14) Mr Tsirbus, a Director of the motel ownership company, Alaken Pty Ltd, advised that it was very difficult trying to run a restaurant where part of the premises closed earlier than the rest of the premises. It was unrealistic to try and move diners from the outside bistro area into the inner restaurant at 10.00pm when they may be part way through their dinner. He stressed that the premises would only be open for dinner for specific functions or group bookings.
- 15) Mr Prendergast, an objector, accepted that, having heard the details of the proposal, the part of his objection relating to the possible spill out from nightclubs as drinkers could access the premises at 6.00am purchase alcohol from 7.30am onwards was not valid (the applicant's licence provides for liquor trading hours commencing 11.30am). However, he stood by his objection that the extended hours would increase the traffic and parking in the area and would encourage the increased use of the premises for functions until 24:00 hours with resultant noise and disturbance problems.
- 16) When questioned by the Commission, Mr Prendergast stated that he had not received, from his tenants or the agent handling his properties in the area, any complaints about noise or rowdy behavior at the premises during the past twelve months.
- 17) Mrs Palfy, an objector, explained that the noise from the premises and surrounding areas rises up into the units of Raffles Apartments. She said that from her balcony she could hear music from as far afield as the amphitheatre in the Botanic Gardens and the Casino. Mrs Palfy stated that functions are not by their nature quiet and if allowed to continue to midnight in the outside area then there would be an increase in the noise and disturbance of the nearby residents. Mrs Palfy felt that Mr Tsirbus' argument about the difficulty of diners having to be moved from the outside area inside could be overcome by good management of the timing of the bookings for dinner. She also pointed out that fewer people were smoking these days and therefore less area needs to be set aside for smoking and suggested an area near the motel units could be used. Mr Neill rejected this suggestion as '*not appropriate*' as it would mean smokers congregating outside guests' bedrooms.

- 18) At the conclusion of the Hearing Mr Neill offered to allow a trial period of six or twelve months for the proposed variations. Mr Prendergast had no objection to this but Mrs Palfy expressed the view that everything would be well controlled during the trial period and then likely to slide thereafter.

Consideration of the Issues

- 19) When the terms of the operation of the Comfort Inn Vitina were explained there was little or no objection to the opening time, for the purpose of serving and consuming breakfast, be at 6.00am for the whole of the licensed premises. The Commission is mindful that many of the coach tours travelling outside the Darwin area leave between 7.00am and 8.00am. It is reasonable for guests at the Comfort Inn Vitina to be provided with breakfast prior to their departure on tours or for work.
- 20) The contentious issue is the extension of hours and the access to the outside bistro area in the evening. The Commission is very aware of the problems that residents in the area experienced through the years 2005 – 2007 and the reasons why the Special Conditions were inserted into the Liquor Licence. However, there was a different type of motel and management during those years and the Commission has to weigh up the information provided by the new Licensee and Nominee against the objections of the residents who are, rightly, concerned that the situation will revert to the past and result in major problems again.
- 21) The Licensee has demonstrated that a considerable sum of money has been expended to bring the motel up to a 3 ½ star grading and it is clear that the operators are planning on providing a very controlled environment for the use of the outside bistro area, for example, the area is closed to the general public from 7.00pm to 7.00am each day and the outside bar is closed from 10 pm.
- 22) Currently the Restaurant and the outside bistro area are used for serving breakfast and providing dinner for functions and group bookings. There have been five such functions since Mr Neill became Nominee but there must be an expectation that this number will increase over time. As well as functions there is also the possibility that in the future the restaurant will open for lunch and/or dinner for the general public. Both of these events could occur within the proposed Liquor Licence Conditions.
- 23) The question that arises is whether or not the closing time for the outside bistro area should be extended from 10.00 pm to 12 midnight. In examining this question the Commission has to take into account that most restaurants in the Darwin area have licences to 12 midnight or even 2.00am. The Comfort Inn Vitina's inside restaurant has a licence until 2.00am but the management have requested the earlier time of 12 midnight for the outside bistro area.
- 24) It is acknowledged that even in the best of circumstances there is noise emanating from any restaurant, for example, the clatter of cutlery and crockery and guests talking and it is especially noticeable when held in an outside area. Ms Palfy has given evidence that from her balcony she can hear music from the Amphitheatre and the Casino so it would be expected that residents on the other side of the Raffles Apartments can clearly hear the noise from the entertainment venues on Mitchell Street. This is part and parcel of living on the edge of a city which has a vibrant entertainment and dining culture. It is also noted that the motel development preceded the construction of the Raffles apartments.
- 25) One of the main complaints on noise in residential areas is when customers are leaving a premises. The Licensee has a responsibility to ensure such noise is not excessive and the Comfort Inn Vitina should be vigilant in advising customers that it is a residential area and to depart the premises as quietly as possible.
- 26) The suggestion that the early closing of the outside bistro area could be controlled through management of bookings is not possible for functions and group bookings and would be difficult for individual bookings. The Commission accepts the Licensee's submission on the

problems with providing a smoking area which has limited access for customers and a deleterious impact on people accommodated in the close-by motel units.

- 27) The Commission, on weighing up the pros and cons of approving the variations to the Liquor Licence, believes that the Licensee of the Comfort Inn Vitina has made a very plausible case for the opening and closing time variations for the outside bistro area and it is logical that the door accessing the outside bistro area from the restaurant should be open at the same times. The case put forward by the objectors is based on their prior experience with this premises which whilst understandable should not be held against the new operators.
- 28) The Commission has decided to take the unusually step of accepting the Licensee's offer to trial the new licence conditions. Such a trial to be until the end of May 2012 which will encompass the use of the outside bistro area during the "Dry" season when diners like to be outside and the Christmas and New Year periods when functions are prevalent. The Director of Licensing will be requested to monitor the situation and provide a report to the Commission at the end of the trial or at any other time prior to the end of May 2012 if the Director feels it is necessary.

Decision

- 29) The Commission has determined to approve the application for a variation to the Liquor Licence Conditions for the premises Comfort Inn Vitina. The revised Special Conditions are:

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- (c) Subject to paragraph (d) the outside bistro area is to be closed to all persons outside the hours of 06:00 and 24:00 Monday to Friday and 06:00 and 24:00 Saturday and Sunday.
- (d) Staff access to the outside bistro area for cleaning, set up, clean up and maintenance purposes will be confined to the hours 06:00 to 24:00 Monday to Friday and 06:00 to 24:00 Saturday and Sunday save in an emergency.
- (e) The roller door between the bar in the outside bistro area and the restaurant shall be closed between the hours of 8.00 pm and 7:30 am Monday to Sunday, subject to (d) above.

All other Conditions in the Liquor Licence remain the same.

- 30) The Commission has determined that there is to be a trial period until the 31 May 2012 to assess whether the revised times for the outside bistro area are causing excessive noise and disturbances to the nearby residents. The Director of Licensing is requested to monitor this situation and provide a report to the Commission at the end of the trial or at any other time prior to the end of May 2012 if the Director feels it necessary.

Richard O'Sullivan
Chairman

29 June 2011