

Northern Territory Licensing Commission

Reasons for Decision

Premises:	The Cavenagh Hotel 12-16 Cavenagh Hotel Darwin NT 0800
Licensee:	Malaguena Pty Ltd
Licence Number:	80101040
Nominees:	Mr Rickie Scott and; Mr Andrew John Chigwidden
Proceedings:	Hearing into an Application for a variation of Licence Conditions pursuant to Section 32A of the <i>Liquor Act</i>
Heard Before:	Ms Merran Short (Presiding Member) Mrs Kerri Williams Mr Wally Grimshaw
Date of Hearing:	18 March 2008
Appearances:	Mr D Crowe for Licensee Mr P Timney for Director of Licensing (for the return of subpoena only)

Background

1. On 10 October 2007 application was made by Mr Crowe on behalf of Malaguena Pty Ltd for a variation to licence Number 80101040 ("the Licence") conditions pursuant to Section 32 A of the *Liquor Act* ("the Act") to remove the exception contained within the Licence -

"No Trading of Good Friday or Christmas Day"

the effect of such removal would be to allow The Cavenagh Hotel ("the Hotel" to trade on Good Friday and Christmas Day ("the Application").

2. A similar application was made by the Mr Crowe on behalf of Minkie (NT) Pty Ltd; The Victoria Hotel, and the two (2) applications were heard together.
3. The Application is made pursuant to Section 32A of the Act. Section 23A requires the Commission when considering the Application to have regard to the Objects of the Act.

Section 32A Variation of conditions on application by licensee

(1) A licensee may apply to the Commission in a form approved by the Commission for a variation of the conditions of the licence held by the licensee and may request that the Commission conduct a hearing in relation to the application.

(2) to (7)

(8) Where a hearing is conducted in relation to an application, the Commission may, having regard to the objects of this Act –

(a) vary or refuse to vary the conditions of the licence; and

(b) make any other order it thinks fit.

(9)

(10)

Section 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)

4. In addition when the Commission has regard to the objects of the Act in considering or determining the conditions of a licence the Commission must take into account the Public Interest Criteria set out in Section 6 of the Act.

6 Public interest criteria in respect of licence or licensed premises

(1) When the Commission has regard to the objects of this Act in –

(b) determining the conditions of a licence,

the Commission must, when taking into account the public interest in the sale, provision, promotion and consumption of liquor, consider any of the criteria specified in subsection (2) that are relevant to the application or conditions.

(2) For subsection (1), the criteria are the following:

(a) harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;

(b) liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;

(c) public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;

(d) the safety, health and welfare of persons who use licensed premises must not be put at risk;

(e)- (i)

(k) (i) - (iv) the days on which and the times at which liquor may be sold;

(l)

(3) Also, the Commission must consider –

(a) any other matter the Commission believes is relevant to the public interest in the sale, provision, promotion and consumption of liquor in respect of the application or conditions under consideration; and

(b) any information or matter contained in an application, or otherwise provided or raised by the applicant, which is relevant to the public interest in the sale, provision, promotion and consumption of liquor.

5. Mr Crowe provided a detailed Application setting out the Public Interest Criteria as required under Section 6 (2) of the Act, the thrust of which included inter alia submissions that granting the Application would benefit the tourist industry, overcome unfair competitive advantage, and endeavour to ensure the safety of patrons via sufficient security and the responsible service of alcohol.
6. Section 32A Variation of conditions on application by licensee allows such an Application to be made and allows the Licensing Commission ("the Commission") to conduct a hearing into the Application. If the Commission determines to conduct a hearing then the Licensee is required to advertise the Application.
7. The Application was advertised on December 12 and 14 2007 in the Northern Territory News. The Application stated :

Liquor Act

Notice 9of Application for a Variation To

Liquor Licence Condition

The Cavenagh Hotel

Malaguena Pty Ltd, HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing Commission for a variation to the PUBLIC HOTEL Liquor Licence (Number 80101040) to sell liquor from the premises known as The Cavenagh Hotel located at 12 Cavenagh Street, Darwin.

Proposed variations are:

Remove the Condition:

- *No trading Good Friday and Christmas Day.*

The nett affect of this change is to allow normal trading on Good Friday and Christmas Day. Currently, normal trading hours are: 10:00 hour to 02:00 hours (the following day).

This is the first notice of application.

The objection period is deemed to commence from Friday, 14 December 2007 (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 variation of the licence conditions 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 Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, Licensing and Regulation, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

8. Prior to the hearing of the Application Mr Crowe issued a subpoena against the Director of Licensing (“the Director”) seeking various documents including all correspondence between Licensing and Regulation; and
 - the Darwin City Council (“DCC”); and
 - the Department of Health and Community Services (“the Department of Health”); and
 - the Police Fire and Emergency Services (“the Police”).

Mr Crowe also sought statistics –

- for Liquor Volume Purchase records for quarters in 2006 and 2007, for all premises within 5km of the Darwin Post Office, and
 - copies of all licences for premises within the same area, and
 - copies of agreements between DCC and Wisdom Café and the Deck Bar.
9. There was some argument regarding the process of the issuing of the subpoena. The Commission is of the view that the process is valid. However, a better option for a party seeking documents from the Director is for the party to request those documents from the Commission via a letter and the Commission will in turn seek the documents from the Director.
 10. The Commission ruled that the correspondence between Licensing and Regulation and the above listed agencies ought to be produced, that the request for liquor statistics had not been shown to be relevant, that the licence details as requested were available on the web and that the Director could not be expected to collate material freely available on the web and further the drafting of the clause regarding the licences was ambiguous and finally the agreements between DCC and Wisdom Café and DCC and The Deck Bar were not documents of the Director and therefore should not be produced.
 11. The subpoena having been met in full Mr Timney, at his request, was excused.
 12. Submissions regarding the Application were received from DCC, the Police and the Department of Health. Although earlier ruled as valid objections by the Legal Member of the Commission, due to subsequent correspondence and the non attendance of the agencies at the Hearing these submissions were treated at Hearing as submissions to assist the Commission, rather than objections to the Application.
 13. The substance of the submissions from the Police and the Department of Health were to the effect that allowing the Hotel to trade on two (2) additional days per year was not conducive to objects of the Act, namely to minimise the harm associated with the consumption of liquor, or to “protect and enhance the community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor.”
 14. In particular the Department of Health was concerned that should the Commission allow another licensed premises to trade on Good Friday and Christmas Day with extended hours or operation “would place extra demand on the Royal Darwin Hospital Accident and Emergency (A&E) resources”.

15. The Police submitted that "...one of the significant reasons why this application should not be approved on Good Friday and Christmas Day is that alcohol related incidents requiring police attention are significantly reduced on Good Friday and Christmas Day". In addition the Police asked that the Commission not be influenced by the 'tourist' needs but did take into account the fact that "it is standard around Australia that Licensed premises do not normally trade on Good Friday and Christmas Day except to provide Christmas lunches and dinners." The Commission did not receive any evidence of what was standard within Australia, however did form the view that we live in a predominantly Christian society and it is well recognised that both Good Friday and Christmas Day are considered significant days of celebration in a Christian society.
16. The DCC limited its comments to note that the "Council had supported applications in the past for licences on Good Friday and Christmas Day provided alcohol is consumed in conjunction with a meal". The DCC supported the Application "provided it is replaced with a condition that requires that alcohol will only be served in conjunction with a meal and that the hours of trade are restricted to 11.00 hours until 22.00 hours".
17. Mr Crowe after outlining his Application called Mr Michael John Burns Director of Malaguena Pty Ltd to give oral evidence. In addition to his oral evidence Mr Burns submitted a written statement to the Commission.

Consideration of the Issues

18. Mr Burns gave evidence on many issues including; security, availability of transport to get patrons home from licensed premises, the tourist market the Hotel enjoyed and the desire of the Hotel to provide their services to tourists on every day of the year including Good Friday and Christmas Day. In addition Mr Burns informed the Commission that the Hotel provides accommodation for in excess of 200 people and on his evidence the Hotel enjoys an average yearly occupancy rate of 90%. Further, the focus of the Hotel is on accommodating its guests.
19. That being the case Mr Crowe later advised the Commission that the Application for the Hotel was amended from the original Application to trading between 10.00AM and 10.00PM on Good Friday and Christmas Day ("the Application"). In support of the Application Mr Crowe submitted that given there were other licensed premises of a similar or comparable nature it was unreasonable for the Commission to deny the Application.
20. The Commission is persuaded and accepts Mr Burn's evidence that the Hotel caters for tourists, for the rest of the year in the form of offering accommodation, meals and a meeting place before and after tours. And as such, it is arguably reasonable that the Hotel be able to offer that service on Good Friday and Christmas Day. The Commission further agrees that possibly the Hotel ought to be allowed to trade on a competitive basis with other venues however that alone is not sufficient to meet the objects of the Act.
21. The issue of competition brings the Commission to another important point when it comes to trading on Good Friday and Christmas Day, it is an issue that Mr Crowe made submissions on. There seems to be no consistency among licensed premises as to who can trade and who can not. There does not appear to be any consistency in hours, conditions, i.e. whether alcohol is served ancillary to a meal or not, or whether licensed premises can trade at all.
22. The Hearing Commissioners are aware that the Chairman of the Commission, who is not a party to hearing and determining this Application, has also considered this issue and at his suggestion the Commission has agreed to undertake a full review to consider the issues of Good Friday and Christmas Day trading for all licensed premises. It cannot be ignored that we live in a society that is increasingly aware of the negative impact that alcohol can have on a community and the consequent cost to society. It is against this background that such a review of Good Friday and Christmas Day trading is opportune and timely.

23. In circumstances where this review has begun or is about to begin and as yet the outcome is unknown the Commission has determined to grant this Application limited to this Good Friday only and defer any further decision pending the outcome of the review.

Decision

24. In the meantime a licence is granted to the Hotel to trade this Good Friday (2008) on the conditions set out below, any decision regarding future trading on Food Friday and Christmas Day is deferred subject to the review which is to be undertaken by the Commission.
25. Trading Hours to be from 10.00AM to 10.00PM alcohol only to be served ancillary to a meal.
26. Any decision regarding Christmas Day 2008 and future Good Fridays and Christmas Days is deferred pending the outcome of the review to be conducted by the Commission.

Merran Short
Presiding Member

18 March 2008