

Northern Territory Licensing Commission

Reasons for Decision

| | |
|-------------------------|--|
| Premises: | Emerald Springs Roadhouse and Caravan Park |
| Applicant: | Dallukon Pty Ltd |
| Proceedings: | Hearing into New Liquor Licence Application and to Consider Objections Pursuant to Section 47F(2) of the <i>Liquor Act</i> (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. |
| Members: | Mr Richard O'Sullivan (Chairman) Mr Philip Timney Mr John Brears |
| Objectors: | Brevet Sergeant ES Mitchell, Northern Territory Police Mr Neil Wright, Department of Health and Family Services |
| Appearances: | Mr Ian Morris instructed by Mr Des Crow for the applicant Mr John Barry, Mr Robert Marshall and Mr Dallas Hoppe, Directors of Dallukon Pty Ltd Commander Greg Dowd for Commissioner of Police Licensing Inspector Bernard Kulda |
| Date of Hearing: | 14 October 2008 |

Background

- 1) Mr Robert Luke Marshall, on behalf of Dallukon Pty Ltd, has made an application for a liquor licence for the sale of liquor from premises situated at Emerald Springs Roadhouse ("the Application").
- 2) The Application was advertised in the Northern Territory News on 18 and 20 June 2008 pursuant to Section 27 of the *Liquor Act* ("the Act"). The Application states that the applicant applies for a Public Hotel licence for consumption of liquor on and away from the premises. The initial Application sought trading hours for the sale of liquor on the premises from 10:00am until 2:00am (the following day) seven (7) days a week, for the sale of take away liquor from 10:00am to 10:00pm seven (7) days a week and for sales to bona fide lodgers from 7.00am am to 9.00am via mini bar facilities.
- 3) Following advertising and placement of the advertising signage two (2) objections to the application were received. These were from:
 - Brevet Sergeant ES (Scotty) Mitchell, OIC / Senior Policy Advisor of the Drug & Alcohol Policy Unit of the Northern Territory Police
 - Mr Neil Wright, Senior Policy Adviser, Alcohol and Other Drugs Program, Department of Health and Families

Objection from Police

- 1) The grounds of the objections raised by Mr Mitchell included -

- a) Objection to the grant of a licence for take away consumption of liquor on the basis of the extension of the Moratorium on Takeaway Restrictions, published in a media release dated 23 May 2007, pending the implementation of a new *Liquor Act*.
- b) The extent of the trading hours applied for given the potential impact on drivers using the licensed premises and consuming alcohol.
- c) The proximity of the proposed licensed premises to existing licensed premises trading for similar periods.
- d) The lack of public transport in the vicinity of the proposed licensed premises.
- e) The location of the proposed licensed premises in respect of Prescribed Areas, namely Kybrook Farm and Pine Creek Compound.
- f) The frequency of alcohol related traffic accidents in the vicinity of the proposed licensed premises.

Objection from the Department of Health and Community Services

- 2) Mr Wright's "objection" raises a number of questions in respect of the licence Application rather than providing specific grounds of objection to the grant of the licence. Those questions relate to restrictions to be applicable to indigenous people, strategies to manage the sale of alcohol to residents, tourists and visitors to the proposed licensed premises and the management of driver fatigue.
- 3) A query was specifically raised in relation to the proximity of the proposed licensed premises to existing licensed premises and the benefit to the community in granting a further licence in the area.

Applicant's Response to Objections

- 4) Mr Des Crowe responded, on behalf of the applicant, to the objections received from Police by letter dated 6 August 2008. Mr Crowe responded specifically to the objections as follows:
 - (a) whilst there is no legislative impediment to the grant of a take away liquor licence, the applicant is prepared to adjourn consideration of the take away liquor licence conditions until the *Liquor Act* is amended;
 - (b) the Licensee is willing to abide by special measures to be inserted as conditions of the liquor licence at the request of the local indigenous community;
 - (c) the applicant is agreeable to amend the proposed trading as follows:

Sales to General Public:

Sunday - Thursday: 10:00am to 23:00am
Friday - Saturday: 10:00am to 01:00am (the following day)

Sales to Lodgers:

Seven (7) days a week 07:00 am to 09:00am

Sales to Lodgers and Invited Guests:

Sunday - Thursday: 23:00pm to 01:00am (the following day)
- 5) Mr Des Crowe responded, on behalf of the applicant, to the "objections" received from the DHF by letter dated 6 August 2008. Mr Crowe noted that DHF had not lodged objections but rather raised questions. Mr Crowe responded to the "comments" of DHF as follows:

- (a) Whilst there is no legislative impediment to the grant of a take away a liquor licence, the applicant is prepared to adjourn consideration of the take away liquor licence conditions until the *Liquor Act* is amended;
- (b) The Licensee is willing to abide by special measures to be inserted as conditions of the liquor licence at the request of the local indigenous community;
- (c) the applicant is agreeable to amend the proposed trading as follows:

Sales to General Public:

Sunday - Thursday: 10:00am to 23:00am

Friday - Saturday: 10:00am to 01:00am (the following day)

Sales to Lodgers:

Seven (7) days a week 07:00am to 09:00am

Sales to Lodgers and Invited Guests:

Sunday - Thursday: 23:00pm to 01:00am (the following day)

- 6) The Development Consent Authority had on 21 August 2008 granted a Development Permit for the land to be used for the purposes of a service station, caravan park, hostel and hotel, subject to the conditions annexed to the Permit.

Application

- 12) Mr Ian Morris, instructed by Mr Des Crowe appeared on behalf of the applicant. The three Directors of the applicant company Mr John Barry, Mr Robert Marshall and Mr Dallas Hoppe were also in attendance. Commander Greg Dowd appeared on behalf of the Commissioner of Police. Licensing Inspector Bernard Kulda appeared on behalf of the Director of Licensing and to assist the Commission as required.
- 13) At the outset the Chairman advised the parties that the hearing would be conducted in two (2) parts. Firstly, a public hearing in respect of the objections and secondly, a closed hearing in respect of probity and financial status of the company and its directors.
- 14) Mr Morris advised the Commission that the evidence in chief on behalf of the applicant would be provided through Mr Dallas Hoppe. Mr Morris referred the Commissioners to the statement of Mr Hoppe at the front of the materials provided by the applicant to the Commission. Mr Morris noted particularly that Mr Hoppe would be able to advise in respect of his negotiations with the Kybrook Community in addressing their concerns with respect to the grant of the licence.
- 15) Mr Hoppe entered the witness box and was sworn. He advised that he was a Director of the applicant company and the site manager at the Emerald Springs Roadhouse. He advised the Commission that the company had purchased the site around Christmas 2007 and had subsequently completed the first stage of the building works, including on site accommodation. The Roadhouse stage of the project, including demountable accommodation, is close to completion. Stage 2 will involve the construction of bungalows around the dam as well as fully furnished two (2) bedroom apartments.
- 16) Mr Hoppe advised that the accommodation, comprising demountable units, had been hired by the company and was intended to provide accommodation for local road construction crews and mine workers as well as the tourist trade. A caravan park comprising 10 sites, powered and equipped with black water dump, is included in the development proposal. A slide show was then presented to the Commission showing the state of the site at the time of acquisition by the current owners as well as an overview of the works completed on the Roadhouse and accommodation to date.

- 17) Mr Hoppe informed the Commission that the development aimed to achieve an historical theme for the premises, including materials depicting mining artifacts and historical relics from the area. Mr Hoppe also advised the Commission of proposals to develop access to and knowledge of the tourist attractions in the near locality, including possible tours of nearby Butterfly Gorge.
- 18) Mr Hoppe conceded that even without a liquor licence the venture would proceed, with an emphasis on providing accommodation on a semi-permanent basis to local miners and road construction workers. Mr Hoppe tendered plans to the Commission depicting the location of current mines in the immediate vicinity of the Roadhouse (refer Exhibit 1). Mr Hoppe advised that, in his opinion, if the liquor licence was not granted for the premises, it was likely that resident workers would obtain alcohol from other licensed premises in the vicinity.
- 19) Mr Hoppe advised the Commission that he had been in negotiations with a number of mining and construction companies in respect of using the premises as a "base camp" for their employees. Those employees were shift workers who would require accommodation and meals as part of a package arrangement with the employers. The kitchen hours will cater for the workers requirements and crib lunches will be provided.
- 20) Mr Hoppe advised further that miners would be transported to and from the Roadhouse to the mine site by bus and that resident miners and workers would use the same restaurant area as the tourists. One of the reasons for the request for early opening hours for the sale of alcohol was to be able to provide miners finishing the night shift with an alcoholic drink at the end of their shifts. The sale of alcohol between 07.00 am and 09.00 am would be limited to workers who were bona fide lodgers of the premises and not available to other guests of the premises or the general public.
- 21) Mr Hoppe referred to his negotiations with the Kybrook Community and confirmed that, should a licence be granted, the company will agree to abide by and enforce the conditions set out in the Alcohol Restriction Notice issued by the Pine Creek Aboriginal Advancement Association. Mr Hoppe advised the Commission that the licensee would consent to a condition being placed on the licence to that effect and that staff would be specifically trained in regard to the Kybrook restrictions.
- 22) Mr Hoppe also referred the Commission to his letter to the OIC of the Pine Creek Police Station, Sergeant Chris O'Brien. In that letter he confirmed the agreement with the Kybrook Community in respect of restricted sales of alcohol to Kybrook Community members as well as the proposal to install CCTV equipment at the premises. Mr Hoppe, in response to a question from Commissioner Brears, confirmed that the CCTV equipment would comply with Licensing Commission guidelines and that he did not see maintenance of the system as a major issue. A camera surveillance plan was tendered into evidence as Exhibit 3.
- 23) Mr Hoppe advised that staff for the Roadhouse were successfully being sourced from Pine Creek, following the closure of a local mine, and from Darwin. A staff manual, including the requirements for the responsible service of alcohol, will be provided to all new staff, based on the manual in use at the Humpty Doo Tavern.
- 24) Mr Hoppe informed the Commission that the main target clients of the venture were the mine workers and road construction workers and that that would be the focus of the business. However, there were plans to develop the venue as a tourist venue including the Emerald Springs Gold Loop and other local scenic attractions. The provision of accommodation and meals to the coach market was also expected to be targeted.
- 25) The business also hopes to attract business from passing travellers, particularly members of the transport industry. Mr Hoppe indicated that they intended to provide an alternative stop for travellers and truck drivers providing a modern and friendly environment with truck parking not being an issue as it is at other road stops in the area.

- 26) Mr Hoppe indicated they are not expecting any significant number of patrons to travel from Pine Creek to the Roadhouse as there are adequate facilities in Pine Creek. Similarly, Mr Hoppe does not expect any significant patronage from members of the Kybrook Community for the same reasons.
- 27) In respect of road safety aspects, given the locality of the premises on the major NT highway, Mr Hoppe referred the report prepared on behalf of the applicant by Sharyn Innes of Consultancies Pty Ltd and included in the materials submitted to the Commission.
- 28) Mr Morris tendered the folder containing Mr Hoppe's statement and the attachments into evidence as Exhibit 4. Mr Hoppe was then excused from the witness box.

Objectors

Commander Greg Dowd

- 29) Mr Dowd appeared on behalf of the Commissioner of Police in respect of the letter of objection dated 21 July 2008 prepared by Brevet Sergeant Scotty Mitchell of the Police Drug and Alcohol Policy Unit of Northern Territory Police.
- 30) Mr Dowd informed the Commission that he was well aware of the locality of the proposed roadhouse, having served as OIC of the Katherine Command from 2005 until recently. He noted that whilst the local officers may not have any objections to the grant of a licence, Police Headquarters did have concerns about the grant of an additional licence in the region.
- 31) Mr Dowd emphasised that Police simply did not see any need for an additional liquor outlet in an area that is already well serviced with liquor licences, including wayside roadhouses. He also stressed Police concerns regarding the safety of road users and the safety issues associated with drink driving and the increased risk alcohol poses to passing travellers and other road users.
- 32) Mr Dowd submitted to the Commission that, should it determine to grant the licence, then the hours of service should be no longer than those provided at other venues in the region and certainly less than those originally applied for by the applicant.
- 33) In response to questions from Mr Morris, Mr Dowd agreed that he had no objection to miners and other workers staying at the premises and consuming alcohol, so long as sales were restricted to bona fide lodgers with no alcohol sales to the passing trade. Mr Dowd also conceded that the accident statistics included in Mr Mitchell's letter of objection indicated a relatively low number of alcohol-related accidents and offences in the region of Pine Creek.
- 34) In a candid response, Mr Dowd confirmed that the objection is of a general nature and not specific to this Application or any of the directors of the applicant company. The Police policy position is to try and limit the numbers of new licences granted so as to minimise the dangers and social issues that arise from the excessive consumption of alcohol.
- 35) Mr Dowd was then excused from the witness box and the objections part of the hearing concluded.
- 36) The hearing resumed in camera for the purpose of the Commission hearing evidence as to the probity of the applicant company and the persons who are able to influence the operation of the business proposed under the licence, including the directors and nominees. The Commission also heard evidence in respect of the financial viability of the company, the directors and the proposed business itself. No issues of significance arose in the course of hearing that evidence and the Commission noted the significant business experience of the directors generally and the specific experience of Mr Hoppe in the liquor industry.

- 37) Inspector Kulda advised the Commission that the Director of Licensing had no adverse comments in respect of the licence application itself, the viability of the proposed enterprise or the integrity of the directors. The supporting letters from businesses, who may use the premises for accommodation for workers, referred to the benefits in their employees being able to purchase and consume alcohol at the premises where they were residing as opposed to travelling further distances to and from another venue to obtain alcohol.

Consideration of the Issues

- 38) The Commission noted that while there were valid objectors there were also supporters of the licence, particularly from local contractors and mining companies likely to use the facilities to be provided by the applicant.
- 39) The Commission considered in particular the submissions of the objectors in respect of the existing licensed premises in the vicinity of the Emerald Springs Roadhouse. However, the Commission was not persuaded that the grant of the licence applied for would have any significant impact in terms of increasing the volume of alcohol sales to travellers in the area or the frequency of alcohol related offences and incidents. The Commission is of the view that the additional licence would simply provide tourists, travellers and persons working in the locality with an alternative venue to those currently in existence as well as catering for the requirements of workers residing at the premises. Other than the broad consideration of community harm, the objects of the Act do not prescribe any limitation on the numbers of licences operating in a particular area.
- 40) The Commission accepts the applicant's submission that the premises would not be targeting patrons from Pine Creek, Darwin or the Kybrook Community and considers that the granting of the licence will not produce any community harm in that respect.
- 41) The Commission acknowledges and accepts the concerns raised in the objection by Police in respect of road safety issues arising from the consumption of alcohol by travellers and road users who may patronise the Roadhouse. The Commission notes however that the same concerns apply in respect of all licensed premises operating as roadhouses in isolated venues. The Commission also noted the submissions of the applicant that the sale of alcohol at the Roadhouses to lodgers (miners and road construction workers) would result in those persons consuming alcohol at the end of their shifts at their place of residence rather than travelling to a licensed venue and then travelling home.
- 42) The Commission shares the concerns expressed by Police in their objection to the grant of a licence with hours extended beyond those applicable to other Licensees in the area. The concessions of the applicant, both in the formal responses to the objections, and through Mr Hope's evidence, in respect of a reduction of operating hours for the sale of alcohol are noted as being in line with those of other similar venues in the locality. The applicant's response to those concerns was to reduce the trading hours applied for from 10.00am to 02.00am the following day seven (7) days a week to the reduced hours of 10.00am to 23.00pm Sunday to Thursday and 10.00am to 01.00am the following day for Friday and Saturday.
- 43) The applicant's responses to aspects of objections, with the withdrawal of the take away component of the application and the agreement to reduce the operating hours for the sale of alcohol, were noted by the Commission and, in effect, negated the requirement to hear evidence in respect of those aspects of the objections. Similarly, the concession by the applicant to include the Kybrook Community Alcohol Restrictions as a condition of licence significantly resolved the issues raised by the objectors in respect of sales of alcohol to Kybrook Community members.
- 44) The Commission noted the evidence given by Mr Hoppe in respect of the installation of a CCTV system and determined that the licence will be subject to a condition that the CCTV system be installed to the satisfaction of the Director of Licensing and is to comply with the usual conditions applicable for CCTV systems and their operation at licensed premises.

In deciding to impose such a condition the Commission particularly notes the agreement of the applicant, through Mr Hoppe, to comply with any such condition imposed.

Decision

45) The Commission grants to Dallukon Pty Ltd a Public Hotel liquor licence for the sale of alcohol for consumption on the premises for the following hours:

Sales to General Public:

Sunday - Thursday: 10:00am to 23:00am

Friday - Saturday: 10:00am to 01:00am (the following day)

Sales to Lodgers (being miners and workers residing at the Roadhouse):

Seven (7) days a week 07:00am to 09:00am

Sales to Lodgers and Invited Guests:

Sunday - Thursday: 23:00pm to 01:00am (the following day)

The licence is to issue on the applicant satisfying the Director that the necessary approvals for the operation of the business from the premises have been obtained.

Richard O'Sullivan
Chairman

30 October 2008