

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Shenannigans Irish Pub 69 Mitchell Street Darwin NT 0800
Applicant:	Shenannigans Irish Pub Pty Ltd
Licensee:	Shenannigans Irish Pub Pty Ltd
Nominee:	Mr Steve Duggan
Licence Number:	80315480
Proceedings:	To Undertake a Hearing to Consider an Application for a Variation to the Liquor Licence Conditions for Shenannigans Irish Pub
Members:	Mr Richard O'Sullivan (Chairman) Mr Wally Grimshaw Mrs Jane Large
Attendees:	Mr Duncan McConnel instructed by Mr David De Silva for Licensee Mr Graeme Buckley for Darwin City Council Assistant Commissioner Grahame Kelly for Northern Territory Police Inspector Travis Te Whata for the Director of Licensing
Date of Hearing:	20 and 21 July 2011

Background

- 1) On 17 January 2011, Shenannigans Irish Pub Pty Ltd ("Shenannigans") applied pursuant to Section 32A of the *Liquor Act* ("the Act") for a permanent extension to the internal trading hours of Shenannigans from 02:00am (the following day) to 03:00am (the following day) seven days per week. The Application was advertised in the NT News on Friday 21 January 2011 and Wednesday 26 January 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 2) The advertisement was as follows:

Liquor Act and Gaming Machine Act

1st Notice of Application for a Variation to Liquor Licence

Condition and Gaming Machine Licence

Shenannigans Irish Pub

Shenannigans Irish Pub Pty Ltd, Hereby Give Notice that it has applied to the Northern Territory Licensing Commission for a variation to the Gaming and Liquor Licence trading hours at the premises known as "Shenannigans Irish Pub" located at 69 Mitchell Street, Darwin City NT 0800.

Proposed variations are:

Extend Liquor and Gaming trading hours of the Shenannigans Irish Pub (not inclusive of Alfresco Areas) from 02:00 hrs (the following day) seven days a week, to 03:00 hours (the following day) seven days a week.

The following conditions will be included in the liquor licence:

The Licensee shall take all measures necessary to ensure that noise from the premises does not cause undue disturbance or discomfort to residents of the neighbourhood.

No complimentary drinks shall be supplied between midnight and closing times.

The Licensee shall provide to the satisfaction of the Director:

- *An appropriate number of Licensed Crowd Controllers; and*
- *Adequate security within the premises and in the immediate area; and*
- *Effective illicit drug control measures; and*
- *Snack foods at all times; and*
- *Complimentary "Tap" water.*

This is the first notice of application. The notice will be published again on Wednesday, 26 January 2011. The objection period is deemed to commence from Wednesday, 26 January 2011 (date of publication of second notice).

- 3) Two objections to the application were received within the required time frame, namely from Northern Territory Police and Darwin City Council, and on 4 April 2011 both were found to be valid and referred to a Hearing before the Northern Territory Licensing Commission ("the Commission").

The Hearing

- 4) Mr McConnel, Counsel on behalf of Shenannigans, addressed the application stating that it was a modest extension of hours for the internal area, that the premises was not a trouble spot and had received an award for its food service. He advised that Mr Justin Coleman had been a Director of the company for fifteen years during which time he had adopted every strategy for harm minimization and was a party to the Liquor Accord which had reduced incidents in Mitchell Street.
- 5) He stated that the extension of one hour was in accordance with customers' wishes and the approval of the application would enable staggered closing hours to 3.00am in the area and result in reduced queuing problems at nightclubs and at taxi ranks. Currently CBD venues close trading at either 2.00am or 4.00am. Mr McConnel outlined the recent regulations which were impeding business and resulting in poor trading in the CBD, namely smoking, ID systems, and the 3.00am "lock out" requirements for premises with a 4.00am closing time. He said that good venues should not be disadvantaged by these requirements and the extension would alleviate the "lock out" factor.
- 6) Mr Justin Coleman gave evidence that the changes to legislation and regulations under which licensed premises operated in Mitchell Street had affected Shenannigans, in particular he mentioned the 3.00am "lock out" that is in place at nearby nightclubs, with licences to trade until 4.00am. Mr Coleman then provided a commentary on a series of sixteen photographs that were screened for the Commission. These photographs were taken in Mitchell Street from 1.46am through to 2.26am on 10 July 2011 showing the crowds outside Monsoons and The Hot Potato nightclubs and at the Mitchell Street taxi ranks.
- 7) He pointed out that people were leaving the safe environment of Shenannigans from 1.00am onwards to avoid the long line of patrons trying to go into places such as Monsoons

and the difficulty of obtaining a taxi at 2.00am. Mr Coleman maintained that by extending the hours of his licence by one hour, congestion on Mitchell Street and at the nightclubs would be alleviated. He stated that the Taxi Council supported the extension of trading hours to 3.00am.

- 8) Mr Coleman said that it was his belief that a better quality venue which has higher standards will get a better quality of patrons. He outlined his involvement in various endeavours to improve the situation on Mitchell Street, namely the Liquor Accord and the Late Night Traders Group. He stated the proposal to extend the hours of Shenannigans would mean patrons would stay on the premises and there would be less people on the street.
- 9) He emphasised that problems could arise if venues were not viable with the inevitable pressure for cost cutting and he quoted the situation of other venues in the Darwin Central Business District which are currently under Administration or have recently been sold.
- 10) Ms Sharyn Innes, Business Consultant, addressed a report that she had prepared in relation to the extension of hours for Shenannigans in Mitchell Street. She explained that there was a need for a variety and range of premises in an Entertainment Area and she was of the opinion that in Mitchell Street a gap exists in the visitor and local market for a venue such as Shenannigans to provide a late night venue which meets customer requirements for a venue which is not a nightclub. She had concerns about the number of people who exit licensed premises between 1.45am and 2.30am to move to another premises and congregate in groups along Mitchell Street which caused safety and transport problems.
- 11) As part of her research into this application she had attended Mitchell Street premises in the early hours of the morning and, in addition to her on the ground observations of the situation, she had spoken to patrons, security staff, corporate business organizations and tourism organisations. During these visits she noticed increased numbers of people on the street between the hours 1.30am and 1.45am with numbers of people arriving in taxis and mini cabs and taxis were in demand at the rank opposite Shenannigans but only a minimal number at the Secure Taxi Rank. She observed that in some cases the people were in a state where they "*could not walk properly*" and should go home. It would be a better situation if there was a 3.00am closure when more taxis would be available to take them home.
- 12) Ms Innes drew the Commission's attention to the Survey of Shenannigans Patrons undertaken by Associated Advertising & Promotions Pty Ltd (AAP) taken on the 11, 15 and 17 June 2011. This showed that when Shenannigans closed at 2.00am:
 - 65% said they would go to another venue
 - 30% said they would go home
 - 5% said they would go to their hotel/accommodation

and if Shenannigans stayed open until 3.00 am 97% answered that they would stay at the venue past 2.00 am.

- 13) Ms Innes concluded that if patrons stayed at Shenannigans longer the influx of patrons onto Mitchell Street would be delayed and happen over the period of 2.30am to 3.30am. The impact of this would be less patrons on the street between 1.50am and 2.30am and the patron drift from Shenannigans to nightclubs or home would likely occur between 2.45am and 3.00am when there are minimal groups on the street and taxis are available.
- 14) Assistant Commissioner Graeme Kelly of the Northern Territory Police gave evidence on the Police objection to the extended hours. He prefaced his statement by saying that the objection was not related to this particular premises, as Shenannigans was not a "hot" spot in the area. He added that there had been improvements in the conduct of all patrons on

Mitchell Street and acknowledged the impact of the additional Police numbers under the City Safe program and the significant effort made by many Licensees. However, in his opinion the situation was “*not real flash*” and any alcohol provided by premises contributed to the alcohol related incidences. He said that Survey showed that if the hours were extended for Shenannigans then 97% of their clientele would continue drinking for an extra hour, whereas 30% of these in other circumstances would have gone home (and 5% returned to their commercial accommodation), which had the likelihood of adding to current problems.

15) Assistant Commissioner Kelly agreed that there was a strong need to build businesses around tourism and visitor need but said no type of licensed premises would be successful if there was a perception of crime and the area being unsafe. He felt that reducing the time that alcohol was available should be considered and in future the licence hours should be shorter, and together with the “lock outs’ times, be staggered to alleviate the congestion on the street and at the taxi ranks. He suggested that the current 2.00am closure in licences should be 1.00am and the 4.00am licence closures should be 3.00am with a “lock out” at 2.00am.

16) Mr Graeme Buckley for the Darwin City Council (“the Council”) tendered the Council’s submission to the Commission in November 2009 which included the recommendation:

“That all late night licenses be revoked and replaced with 2.00am late night licences”

17) He submitted that the Council interest was to enhance the amenity of the CBD and provide a safe environment and Council believed that any premises trading beyond 2.00am means additional consumption of alcohol which can impact on public safety in the area.

18) Mr McConnel in his summary submission reiterated the written and oral evidence provided by the applicant and drew attention to following –

- The applicant, being an active participant in the mitigation of problems and establishment of a Liquor Accord for the area, was very aware of the environment in which the application had been made. Assistant Commissioner Kelly had acknowledged that there had been improvements in public safety in the CBD and alcohol related anti-social behaviour.
- The extra trading hour was minor and would not cause any detriment to the area.
- Recent Legislative and operational variations, such as “lock outs”, had an adverse effect on the premises.
- The staggered hours in Mitchell Street premises would relieve peak time congestion on the streets and at the taxi ranks.
- Any additional consumption of alcohol at Shenannigans during the extended hours would be undertaken in a safe environment.
- Approval for this application would not set a precedent for other premises to follow as it is not applicable to all premises and in each case they would need to establish, like Shenannigans have done, that it would achieve a positive benefit.

19) Mr McConnel concluded by saying that Shenannigans had been disadvantaged because of the rigid licence hours and this amendment provides an opportunity which allows them to overcome their disadvantages and at the same time alleviate congestion problems in Mitchell Street. He stated that if the Commission was concerned about any adverse reaction to the extended hours the granting of an approval could be subject to a review in eighteen months.

Consideration of the Issues

- 20) The Commission has considered in depth the submissions, both oral and written, and all documentation provided for and against the application for an extension of hours for the indoor area of Shenannigans Irish Pub.
- 21) On one side the applicant submits that Shenannigans is a licensed premises which is known to be well run and whose licensee has been at the forefront of implementing measures which will alleviate problems in the CBD entertainment precinct, centered on Mitchell Street. The applicant submits that the extension of one hour trading is minimal and could lead to less congestion on the streets and reduce the demand for taxis at 2.00am (and to a lesser extent 4.00am) by staggering patron departure times.
- 22) On the other side the Darwin City Council recommendation is for all liquor licences be limited to 2.00am closing as part of their proposal to address the adverse impact of alcohol upon the municipality.
- 23) The Police acknowledge the good reputation of the applicant and its premises but submit that any increase in trading hours, particularly from 2.00am to 3.00am, will see an increase in alcohol fueled violence which the Police cannot contain let alone condone. Police also believe that if this application is approved it will open doors for other premises to also apply for extensions in trading hours. Assistant Commissioner Kelly suggested that a more holistic approach should be taken, for example, all 2.00am licences to be brought back to 1.00am and all 4.00am licences brought back to 3.00am, with a 2.00am “lock out”.
- 24) In reaching any decision relating to liquor licences the Commission must look at the bigger picture and in particular must make decisions in accordance with Section 1(3) of the Act namely:

“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.”

- 25) These objects are:

(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.”

- 26) The Commission agrees that the applicant has a good reputation and the premises is well run. It also accepts that staggering of hours for closing and “lock out” of entertainment premises in Mitchell Street may ease the congestion in the area at certain times and that the request for an extension of one hour is minimal. However, the additional hour requested in this application is between 2.00am and 3.00 am. Evidence provided by Mr Coleman is that from 11.00pm the clientele in Shenannigans is static and as the licence requirement to

provide meals ends at 10.00pm, on the balance of probabilities, the time spent on the premises from 11.00pm will be based on consuming alcohol and the additional hour will be spent on consuming more alcohol.

- 27) The survey undertaken by AAP is just a snapshot in time but the applicant has placed weight on it to show that 97% of its patrons support the extension of hours and maintain that the extra drinking will be done in a safe and secure environment. This is true but the survey also shows that 35% of the patrons would have gone home or to their commercial accommodation when the premises closed at 2.00am. This means (based on indoor patron capacity) some sixty additional persons will continue drinking until 3.00am if the application is approved.
- 28) If the extension to trading hours is granted, the patrons who elect to stay in Shenannigans will leave this safe environment, having been drinking for the extra hour, and enter Mitchell Street. Although the Police have not provided any statistics on incidents and problems in Mitchell Street, Assistant Commissioner Kelly has given evidence that, whilst there have been improvements in behaviour on Mitchell Street, in his opinion it is “*not real flash*”. He advised this is demonstrated by the large alcohol fueled fight in Mitchell Street after the Darwin Cup on Monday 1 August 2011. Shenannigans had no involvement in this incident but it does highlight the volatility of the area late at night and that any increased service of alcohol would not be in the public interest.
- 29) Other options raised by the objectors to alleviate the situation in Mitchell Street and the volatility arising from the availability and consumption of alcohol are:
- The Darwin City Council proposed that all late night licences should have a 2.00am closure, thus limiting the sales hours and therefore the amount of alcohol consumed; and
 - Assistant Commissioner Kelly’s suggestion is for the times of closure of all licensed premises to be brought back by one hour, namely 2.00am licences would have closure at 1.00am, the 4.00am licences would have closure at 3.00am with a “lock out” provision at 2.00am.

Also there are further options available to the Commission, namely:

- Extension of the current 2.00am closure for premises outside the CBD, for example Palmerston and Northern Suburbs, to be extended until 3.00am or 4.00am. This could lead to people drinking and staying closer to their homes which would lessen the congestion on Mitchell Street and overcome the difficulties of obtaining taxis in the area. The Commission is mindful that there are no such licence extension applications before it and is not advocating this course of action.
 - A refinement of the submission of Assistant Commissioner Kelly: there are ten licences with 4.00am trading conditions – reduce those not regularly used to 3.00am. Of the 2.00am premises – reduce those not regularly used to 1.00am. The Commission does not have this option under any active consideration.
- 30) The applicant maintains that approval of an extension of hours for its premises would not set any precedent for others to follow because either the other premises in the area were not operating at a viable level or are mostly outdoor premises. The Commission has for some time approved only a limited number of premises, mostly nightclubs providing entertainment, to trade to 4.00am. A check of the “*Licensed Premises In Darwin CBD and Immediate Surrounding Areas*”, provided by the Department of Justice, shows that of the forty current licences ten can trade to 4.00am and, with one exception, these are nightclubs or Public Hotels. The exception is the Deck Bar which in unusual circumstances had the long established 4.00am licence from Petty Sessions transferred to its premises. Not all venues able to trade until 4.00am do so.

- 31) Although the applicant has not emphasised the commercial advantage the extended hours will bring to the premises, on several occasions there has been mention of the disadvantage caused by regulation variations, such as “lock outs”. The applicant submits that the extension of hours until 3.00am will assist in overcoming these disadvantages. This principle could also apply to other licensed premises in the area. However, the only application currently before the Commission is that of Shenannigans. In the Commission’s opinion an approval of 3.00am closing will be moving the goal posts and other premises, not only in the CBD, but in the outer suburbs, would be expected to follow suit. This move would be unlikely to contribute to the responsible development of the liquor, and associated industries in the Territory.
- 32) In summary therefore, while the Commission agrees that extending trading hours until 3.00am would likely alleviate some of the congestion along Mitchell Street after 2.00am, granting an extension of trading hours will also likely increase the alcohol intake of patrons before they embark onto the streets.
- 33) The Commission has considered the applicant’s proposal to set a trial period of eighteen months for the extended hours at Shenannigans but believes that any approval to extend licence hours will be setting a precedent with obvious potential to become entrenched. There is a strong likelihood that any review of a trial licence extension would need to prove harm or other negative outcomes, and such an onus of proof could be difficult therefore adding to the likelihood that the trial hours would become entrenched. A strong causal and direct link between increased trading hours of a licence and to harm and increased problems in Mitchell Street, whether true or not, would be difficult to determine or establish. Additionally, such a decision, in the Commission’s view, would establish a climate where other Licensees would make similar applications for extended trading hours, albeit for trial periods. It is doubtful whether such a scenario is in the public interest.
- 34) The Commission is also cognisant that currently not all late night licensed venues are trading to their full licence hours. If such venues permanently reduced their extended trading hours, or were to downsize and reduce patron capacity, such an application could be reconsidered as in overall terms, this scenario would not give rise to increased liquor consumption in the CBD / Mitchell Street Precinct.

Decision

- 35) The Commission has determined that, despite the good reputation of the applicant and Shenannigans Irish Pub, any extension of closing hours is not, as the Act requires, in the public interest and will not contribute to the responsible development of the liquor and associated industries in the Territory. The application for a variation to the Gaming and Liquor Licence trading hours at the premises known as “Shenannigans Irish Pub” located at 69 Mitchell Street, Darwin City NT 0800 namely, to extend Liquor and Gaming trading hours of the Shenannigans Irish Pub (not inclusive of Alfresco Areas) from 02:00am (the following day) seven days a week, to 03:00am (the following day) seven days a week is not approved.

Richard. O’Sullivan
Chairman

2 September 2011