

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Mobil Elliot Renner Springs Desert Hotel/Motel
Licensees:	Keogh (NT) Family Pty Ltd Desert Inns International Pty Ltd
Licence Numbers:	80902117 81202669
Nominees:	Mr Alan Keogh Mr Alan Revell
Proceedings:	Request for Hearing Pursuant to Section 33(2) of the <i>Liquor Act</i> - Objection to Variation of Licence Conditions
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Paul Fitzsimons
Date of Hearing:	29 October 2009
Appearances:	Mr Des Crowe for the Licensee Mobil Elliott Mr Alan Revell for the Licensee Renner Springs Desert Hotel/Motel Ms Christine Paros, Manager Renner Springs Desert Hotel/Motel Deputy Director Chris McIntyre for the Director of Licensing

Background

- 1) A review of the Alcohol Supply Measures in the Elliott region was conducted by the Licensing Commission leading up to consultations and Hearing in Elliott on 3 and 4 March 2009. The review was also guided by a report "*Community Feedback Report on Managing Alcohol Problems in Elliott*" published by the Centre for Aboriginal Economic Policy Research Paper of the Australian National University.
- 2) The Decision following this review was handed down on 10 August 2009 as follows:
 5. The Commission intends to make the following changes to liquor supply into the Elliott Region by issuing Section 33(1) notices to Elliott Hotel, Elliott Mobil, Dunmarra Roadhouse and Renner Springs Roadhouse. Those premises then have the option to seek a hearing on the changes to their licence conditions or to simply accept the changes and allow them to come into force after twenty-eight (28) days of service of the Section 33(1) notice on them.

The Section 33(1) notices will address the following:

- a. *Takeaway alcohol sales from Elliott Mobil and Elliott Hotel shall be limited to six (6) cans of 375ml beer per person per day from each outlet. The purchaser must personally request the purchase and be assessed by the Licensee as to his or her age (ie 18 years and over) and sobriety. No other alcohol products shall be sold as takeaway. Each Licensee must retain a register of these sales in a form approved by the Director. The register shall include the date and time of purchase and the name of the customer to inform the Commission on buying*

patterns. This requirement (to maintain a register) shall be reviewed once an alcohol management plan for the region has been prepared and is in force.

- b. *The liquor licence of the Elliott Hotel shall be varied to clarify that on-premises sales of both beer and mixed spirits are able to be purchased by all.*
 - c. *Restrictions are to be placed on the liquor licences of Dunmarra Roadhouse and Renner Springs Roadhouse as follows:*
 - i) *No more than six (6) cans (375ml) of beer per person per day to be sold to Elliott and Marlinja residents.*
 - ii) *The Licensee is to maintain a register of takeaway sales to Elliott and Marlinja residents in a form approved by the Director.*
 - iii) *The purchaser must personally request the purchase and be assessed by the Licensee as to his or her age (ie 18 years and over) and sobriety.*
6. *These changes to licence conditions are considered as an interim measure and will be reviewed once an alcohol management plan for the Elliott region is prepared and in force.*
7. *Subsequent to the handing down of the decision the Commission sent Section 33(1) Notices to Mobil Elliott, Elliott Hotel, Renner Springs Desert Hotel/Motel (Renner Springs) and Dunmarra Roadhouse (Dunmarra).*
8. *In relation to Mobil Elliott the Section 33(1) Notice advised of the following conditions to be added to their licence, with deletion of previous conditions relating to takeaway restrictions and maintenance of records.*

Takeaway Restrictions: *No more than six (6) cans (375ml) of beer per person per day to be sold.*

No takeaway on Sunday, Christmas Day or Good Friday.

Purchase of Alcohol: *The purchaser must personally request the purchase and be assessed by the Licensee as to his or her age (ie 18 years and over) and sobriety.*

Sales Register: *The Licensee must retain a register of any sales in a form approved by the Director. The register shall include the date and time of purchase and the name of the customer to inform the Commission on buying patterns.*

The requirement to maintain this register shall be reviewed once an Alcohol Management Plan for the region is in force.

9. *In relation to the Renner Springs, the following new conditions as being added to the licence were advised under the Section 33(1) correspondence.*

Takeaway Restrictions: *No more than six (6) cans (375ml) of beer per person per day to be sold to Elliott and Marlinja residents.*

Purchase of Takeaway: *Individual purchasers must personally request the*

Alcohol: *purchase of takeaway alcohol and be assessed by the Licensee as to their age (ie 18 years and over) and sobriety.*

Sales Register: *The Licensee must retain a register of takeaway sales to Elliott and Marlinja residents in a form approved by the Director. The register shall include the date and time of purchase and the name of the customer to inform the Commission on buying patterns.*

The requirement to maintain this register shall be reviewed once an Alcohol Management Plan for the region is in force.

10. Both Mobil Elliott and Renner Springs sought a Hearing pursuant to Section 33(2) of the *Liquor Act* (the Act) within the specified twenty-eight (28) days required under the Act.
11. Neither the Elliott Hotel nor Dunmarra sought a hearing or contested the proposed amendments to their licence conditions.
12. The matter therefore before the Commission at hearing on 20 October 2009 was in relation to the review of the decision sought by both Mobil Elliot and Renner Springs.

The Hearing

13. At hearing the reviews sought were treated separately with the matter of Mobil Elliot being heard first and Renner Springs being subsequently dealt with.

Mobil Elliott

14. Evidence presented by Mr Crowe on behalf of Mobil Elliott showed that the vast majority of alcohol sales for the 2008-2009 fiscal year related to the sales of beer to local residents.
15. Figures supplied showed some less significant sales of non beer products to locals with these sales in part being transacted due to a confusion over the licence entitlement to sell non beer alcoholic products to non Indigenous residents. The figures tendered also included sales to non locals or tourists which were not overly significant in relation to the total alcohol sales from the premises.
16. Mr Crowe submitted that his client was willing to accept the restriction entitling him to sell *"no more than six (6) cans (375ml) of beer per person per day to be sold"* to Elliott and Marlinja residents. His client was also willing to maintain a sales register in a form approved by the Director, to include the date and time of purchase and the name of customer.
17. He further submitted on behalf of his client that Mobil Elliott provides food, petrol, ice and other items for locals as well as tourists. While the tourist demand for alcoholic products is not overly significant, it is his contention that if they cannot provide tourists with a complete array of goods they require then the tourists will either leave dissatisfied or not provide custom for the Mobil Elliott business.
18. He advised that his client sought a variation to his licence to enable him to sell alcohol to bona fide travellers who could be identified as travellers by providing licence or similar ID as a condition of purchase of alcohol products.
19. A register of such purchases would be maintained by his client similar to that required for beer purchases by local Elliott residences.

Renner Springs

20. The Nominee, Mr Revell advised the Commission that the takeaway restrictions proposed for his licence would generate some discrimination with his client base and he cited instances where road gang workers could seek to purchase takeaway with non Elliott / Marlinja residents being entitled to purchase unlimited quantities whereas a local, (ie Elliott or Marlinja residents) could only purchase a six (6) pack of beer.
21. Mr Revell also presented to the hearing a series of photographs taken in Elliott including outside the hotel and in the Town Camps which showed empty alcohol containers of products which he did not sell or sold very limited quantities of over a twelve (12) month period.

22. He made the point that it is not his Roadside Inn that is responsible for the selling of these photographed products to locals and therefore the consequence of the Commission's proposed amendments to his licence conditions would adversely impact on his trading ability and do little or nothing to alleviate excessive consumption in Elliott and Marlinja.
23. He tendered that the drinking problem is community based and not related to surrounding Roadside Inns as they were only undertaking minor purchases from these establishments.
24. He further advised that there was no Indigenous community within one hundred (100) kilometres from Renner Springs and that there had been no history or record of problem drinking arising from purchases at Renner Springs.
25. In correspondence to the Commission of 22 August 2009 Mr Revell queried whether there would be any public benefit derived from the proposed amendments to Renner Springs liquor licence. This correspondence also queried "*whether the proposed amendments to liquor licence 81202669 are or are not discriminatory and contrary to public policy and the objects of the Act*".

Consideration of the Issues

26. It is overwhelming evident that there is a drinking problem in Elliott. Historically, restrictions were brought in due to expressed community concern over the problems of binge drinking and over consumption of alcohol and the resulting social and health consequences.
27. It is apparent from Police evidence at the initial Hearing on 3 and 4 March 2009 that there are regular grog runs occurring and causing general harm and violence in the Elliott community requiring considerable Police resourcing.
28. The review by the Licensing Commission including the consultations and Hearing at Elliott have evidenced that there were inconsistencies in the conditions of the licences such that Mobil Elliott was selling a limited amount of spirits and wine to some residents of the community.
29. Additionally the Elliott Hotel was also under the mistaken belief that spirits and spirit mixes could not be sold to local Indigenous community members for on premise consumption.
30. These inconsistencies need to be rectified to provide assuredly, certainty and clarity in the licence conditions and the obligations of Licensees.
31. The amendments to the licence conditions of both Elliott outlets, Mobil Elliott and Elliott Hotel in this regard have not been contested and will remain.

Mobil Elliott

32. Mobil Elliott has raised the potential for selling a range of alcoholic beverages to travellers on the basis they are able to produce evidence that they reside outside Elliott and Marlinja and generally this would be through presentation of a driver's licence.
33. The Commission has carefully considered the issue of the needs and expectations of travellers. It has also given careful thought to the views of local residents who are unable to purchase non beer products, or more than six (6) cans of 375ml beer per person per day from each of the two (2) Elliott licensed outlets. This differentiating of local residents and bona fide travellers is a sensitive issue and is not readily reconciled.
34. The Commission considers that Licensees who have restrictions on purchases by locals as distinct from bona fide travellers do suffer from some embarrassment and potential

criticisms of discrimination. However, the Commission must take account of the history of harm being affected on the community members due to the excessive consumption of alcohol by some and considers it as an obligation to protect the interests of Elliott and Marlinja residents who wish to live peacefully and harmoniously.

35. One way to lessen Licensee and patron embarrassment or disquiet over treating “locals” differently from tourists is for there to be clear and prominent signage to be displayed advising:
 - a) that Elliott/Marlinja residents may only purchase six (6) cans of beer per person per day for takeaway consumption;
 - b) that these restriction measures apply in the interest of community harmony at Elliott and that restrictions were initially sought by that community.
36. The Commission is therefore persuaded that the Mobil Elliott licence will retain the restriction on Elliott and Marlinja residents but enable wider and greater purchases by bona fide travellers, subject to their providing supporting identification and subject to the Licensee maintaining a register of the purchaser’s identification, time and date of purchase and products sold.

Renner Springs

37. Mr Revell mounted a case in support of there being no evident or history of detriment resulting from sales from his premises at the Elliott and Marlinja communities. The issue he raised of the potential embarrassment where a local road gang worker is not able to purchase the same takeaway as his colleague who has a home address outside of Elliott can in part be addressed by the provision of clear signage over the takeaway policy for Elliott and Marlinja residents as outlined in Paragraph 35 above.
38. Another point raised by Mr Revell over the burden imposed on him in maintaining a register of takeaway sales for Elliott and Marlinja residents is not very persuasive in the eyes of the Hearing Commissioners. Mr Revell had already stated that he does not sell much alcohol product to Elliott and Marlinja residents and this in itself implies a minimum paper work burden.
39. Bona fide travellers would be identified through presentation of their driver’s licence or similar where they wished to purchase takeaway alcohol products. In this instance there will be no requirement to maintain a register except to accommodate the requirements imposed by the Federal Government under the *Northern Territory Emergency Response Act* legislation for a register to be kept of purchases over a certain volume of alcohol or costing in excess of \$100.00.
40. The Commission is able to readily respond to the matter of whether licence conditions or licence amendments determined in the Commission Decision of 10 August 2009 and subsequent Section 33(1) Notices are ultra vires or inconsistent with the Act. Under Objects of the Act, Section 31 (a) and (b) the Commission is required to consider the minimisation of “*harm associated with the consumption of liquor*” and to take “*into account the public interest in the sale, provision, promotion and consumption of liquor*”. The prime reasons the Commission has reviewed and conducted a Hearing into alcohol sales in and to Elliott and imposed licence amendments is to minimise harm and take into consideration community needs and public interest.

Other Matters

41. The matter of takeaway sales to pastoral properties was raised at Hearing. In this regard Licensees may apply for a variation in their licence to allow them to provide for bush orders. By taking advantage of the ability to supply pre-ordered alcohol products, Elliott Licensees can avoid unintended impacts on bona fide sales to pastoral properties.

42. The Commission notes that the widening of takeaway alcohol sales opportunity for Mobil Elliott could give it a competitive advantage over the Elliott Hotel in relation to sales to travellers. In this regard the Commission would be willing to consider an application by Elliott Hotel to review its sales restrictions to travellers.

Decision

Mobil Elliott

43. The takeaway limits advised on 19 August 2009 by a Section 33(1) Notice which restricted sales to no more than six (6) cans of beer per person per day, is to be retained for Elliott and Marlinja residents.
44. For non Elliott and Marlinja residents the takeaway conditions will be:
 - a) Alcohol products are able to be sold to bona fide travellers on the basis of presentation of ID to the Licensee proving that the customer is not an Elliott or Marlinja resident and the Licensee ensuring the currency and appropriateness of the ID and entering details in a register of the ID presented, along with the time, date and value of purchase and details of the products purchased.
 - b) This takeaway to bona fide travellers shall operate for the same hours and times as that currently apply to takeaway sales to Elliott and Marlinja residents.

Renner Springs

45. The Commission has not seen fit to vary the liquor licence conditions applying to Renner Springs as advised in the Section 33(1) Notice to the Licensee on 18 August 2009.

Review

46. The Commission is prepared to review takeaway licence conditions applying to Elliott Mobil, Elliot Hotel, Renner Springs and Dunmarra following twelve (12) months operation of the imposed conditions and taking into account any Alcohol Management Plan which may be developed for the area in the meantime.

Richard O'Sullivan
Chairman

1 December 2009