

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Headlines for Hair and Beauty
Proceeding:	Application for New On-premises Licence, and objection
Applicant:	Wenbridge Pty Ltd
Heard Before:	Mr Peter Allen (Chairman) Mr John Withnall Ms Jill Huck
Date of Hearing:	17 February 2004 17 March 2004
Date of Decision:	29 April 2004
Appearances:	Ms Ruth Morley, for Applicant Ms Anne Kemp, Objector in Person

1. This is an application for a quite limited liquor licence for the business premises "Headlines For Hair & Beauty" in Alice Springs. The application has attracted much media focus on the novelty of it being the first such application in the Northern Territory by a "hairdresser". The Centralian Advocate newspaper has headlined it as "Sips For Snips", the AHA(NT) went into print in the same newspaper to describe the application as "ridiculous", and many letters to the Editor of that paper variously claimed the writers to be either captivated by the concept or horrified.
2. Only three objections to the application were received, but as we observed in our earlier "Reasons For Interim Decision" handed down on 18 February 2004, given the quite limited basis on which the law currently allows objections to be lodged the absence of community objections cannot be taken as any indicator even of general public complacency, much less public support. The only ground of objection which was available was that the proposed licence may or will adversely affect the amenity of the neighbourhood of the premises. On that test, two of the three objections failed to survive the preliminary assessment of the objections under s.471(3) of the *Liquor Act* by the Commission member appointed by the Chairman for that purpose. The only objection determined by the investigating Member to go to a hearing was that of Anne Kemp on behalf of Diabetes Australia, an organisation whose premises in Alice Springs immediately adjoins the Headlines beauty salon in Parsons Street.
3. The applicant business is a large and long established beauty salon, employing some seventeen persons and offering various beauty treatments as well as the hairdressing facility. A viewing of the premises by the Commission during the hearing confirmed that Headlines is a sophisticated contemporary facility. The salon along with company proprietors Peter Tiller and Joanne Walter have been the recipients of various industry awards. Ms Walter was a finalist in 2003 for the Northern Territory Business Woman of the Year Award.
4. The salon currently provides a coffee, tea and light snack service to clients, the food being brought in from an outside provider. Mr Tiller and Ms Walter seek to "enhance the client experience" by offering a limited range of alcoholic beverages to clients as they are having their hair or beauty needs attended to.

5. At the first hearing of the matter the Commission felt that it was left insufficiently informed as to community needs and wishes. Our interim decision of 18 February 2004 in that respect said in part:

Without ruling at this stage on any other aspect or issue, we indicate that in our view the applicant has not yet sufficiently demonstrated the likelihood of the Alice Springs community being generally in favour of or reconciled to the application. We see the evidentiary hurdle as being something higher than does the applicant.

The novelty of the present application in the context of the sensitivity of the Alice Springs community to liquor issues leaves the Commission needing a more comprehensive body of evidence to be persuaded that the needs and wishes of the community can encompass the licensing of the hairdressing salon as applied for.

we need to feel an actual and positive persuasion as to general community acceptance, and the evidence as it stands does not put us in that required state of mind.

Rather than dismissing the application at this stage for want of appropriate evidence, and in all likelihood putting both applicant and objector to the expense and inconvenience of a second application re-tracing much of the same course as the present one to the present time, we are prepared to defer further consideration of the application and to adjourn the present hearing to 17 March 2004 at 09:30 am to enable the applicant to put such further material before us at that time as it may see fit in the light of our foregoing remarks.

This opportunity is not to be seen as in any way pre-emptive of the Commission's eventual decision on the application, on whatever grounds as may be the case at that time. We are simply indicating that we cannot further consider approving the application without receiving further evidence along the lines indicated.

It follows as a matter of procedural fairness that the objector shall also have the opportunity to present further evidence and submissions on 17 March 2004, albeit still needing to remain relevant to the limited basis of the objection.

6. The hearing reconvened on 17 March 2004, at which time the applicant adduced further evidence on two fronts; firstly as to the premises having a Class 6 classification in accordance with the Building Code of Australia (ie. appropriate for the proposed use), and secondly as to community needs and wishes. The matter now stands for final determination of the application.
7. Consideration of managerial and financial capacity raises no issues for the Commission in relation to this application. On the contrary, it is our perception of the professionalism and standard of management of Mr Tiller and Ms Walter that distinguishes the particular outcome we have determined for the application.
8. In our view the application distills into a consideration of two main issues: community needs and wishes, and Ms Kemp's objection.
9. As regards community needs and wishes, the sensitivity of liquor issues in Alice Springs is such that the Commission sees the relevant community in terms of this application as the broader township rather than just the neighbourhood of the premises or the body of the salon's clientele. In this regard the placement of the applicant's blank forms of "petition" became critically relevant to our consideration of the value of the petition evidence.
10. Originally we were presented with five letters of support (as distinct from several business and personal references). One of those was from John Elferink MLA, the Member for the Parliamentary seat of MacDonnell, expressing the view that

"it borders on the absurd to suggest that what is being sought by the applicant in this instance will contribute to social disorder in our town".

11. When the hearing reconvened we received (inter alia) three further letters of support, one being from Jodeen Carney MLA, the Member for Araluen, stating that

“although alcohol in the electorate of Araluen and Alice Springs generally is a problem area, I do not believe that (the) proposal will have any effect on existing alcohol problems”.
12. Between the two hearings the applicant had compiled a petition-type survey which considerably augmented the letters of support.
13. The petition contained a lead-in paragraph describing the application, and was essentially in a simple agree/disagree format, with provision for registering not only support but also any negative or neutral responses. The inclusion of an invitation to record one’s opposition to the proposal, if such should be the case, has been a key element in the Commission’s evaluation of the petition, as has been the diversity of distribution of the forms.
14. The forms were distributed notably further afield than just the front counter of Headlines. Mr Tiller gave particularised evidence of their having been placed in three supermarkets, various different types of CDB and suburban stores, coffee shops, restaurants, gymnasiums - and even with a cab driver. Mr Tiller testified that it had been his deliberate strategy to ensure that the forms were placed in widespread locations and covered an eclectic mix of premises.
15. Also significant was Mr Tiller’s assurance that no screening of the responses had taken place and that *all* responses received had been put before us.
16. There were signed responses from 746 identified persons, surely a significant sample for a town the size of Alice Springs. Had it been a professional random survey, the Commission would have accepted 350 or 400 as being an optimal sample size. While the applicant’s sample was not random in the strict statistical sense, Mr Tiller certainly achieved a commendable spread of the blank form of petition beyond the salon, and we feel that 746 responses in the circumstances can be taken to be a meaningful sample of community feeling on the issue.
17. Of the 746 respondent signatories, 649 signified agreement with the application, 73 disagreed with it, and 24 registered a “don’t care” response. The latter group nevertheless cared enough to register that response, such that they can be safely taken not to oppose the proposal.
18. It seems safe then to record that 9.8% of signatories disagreed with the proposal, while 87% registered their agreement with the proposal.
19. We note that the description of the proposed service set out in the petition referred to the service of beer without indicating that the beer was to be light beer only, and referred to later closing times for several days of the week than was eventually sought. The licence being sought is thus a little more limited than may have been apprehended by those recording their disagreement with the proposal, a situation perhaps presaged by Jodeen Carney when she says in her letter to Mr Tiller:

“As you know, several constituents initially raised their concerns with me about your proposal, however now that I know the details, and have spoken with them, they now have a different view”.
20. However, taking the petition as it stands, we take the view that the size of the response is undeniably such that the above figures may be taken to be a broad indicator of public feeling on the issue.
21. Are there then, or should there be, any over-riding considerations of public policy militating against this application despite the evidence of public support? The combination of the very limited nature of the licence being considered and current competition principles would suggest not.

22. We have deliberated on the potential for the success of this application to perhaps open floodgates for applications for liquor licences from a whole range of retailers of other services all claiming to have no less an argument to be able to give their customers an alcoholic drink. We firmly agree with Mr Tiller's response to questioning in this regard that in effect it has to be a question of particular services and standards, of the calibre of application and operator, and that keeping the hurdle high should forestall any dramatic change to the complexion of the liquor industry in the Territory.
23. Mr Tiller provides a premium personalised service to his clients. He and Ms Walter have presented a carefully considered and well documented application. Their professionalism and obvious commitment to the well-being of their industry is exceptional, and we are in no doubt that what they seek from the Commission will remain modestly ancillary to the primary business. The standard of the business premises, the application and the operators has been determinative in the Commission's decision in this matter. Any concern about possible future devolution of the licence to perhaps less impressive operators has been obviated by Mr Tiller volunteering to accept a licence conditioned to be untransferrable to anybody else.
24. Mr Tiller also made further concessions in relation to the licence being sought. Ms Kemp's presentation of her objection saw the applicant discard all outside areas from the proposed licensed area, and agree to have no signage anywhere (other than on menus) in any way indicating the availability to customers of alcoholic beverages. That being so, we are of the view that Ms Kemp's only reasonable apprehension for her office amenity is that of increased noise levels, and we agree that she and Diabetes Australia should be protected from any noise emanating from a licensed Headlines of a nature or volume not currently experienced, however unlikely we consider that eventuality. Inspection of both the Headlines and Diabetes Australia premises by the Commission revealed that the areas of Headlines that share a common wall with Diabetes Australia are the individual beauty treatment rooms, not the main hairdressing concourse area. We are convinced that the operation of Headlines with the addition of a limited alcohol service to customers will be no more noticeable in the Diabetes Australia premises than is currently the case.
25. After our on-site inspection, we do not envisage any significant increase in "traffic" in relation to the toilet area shared by Headlines and Diabetes Australia. It is Headlines that currently cleans and maintains these toilets for joint use. There are currently no usage pressures, and Ms Kemp concedes at least that it is "hard to judge" whether that situation may change. Given the very limited nature of the licence we are considering, we remain convinced that the noise issue is the only aspect of the licence in relation to which Ms Kemp's office amenity may need the Commission's protection.
26. With that in mind, we are prepared to offer the applicant a liquor licence which will be carefully crafted to embody the restrictions and limitations which follow. Such a licence in our view will provide a civilised, modest and non-problematic alcohol consumption environment that should have zero impact on any current liquor issues in Alice Springs. It is difficult to see such a licence having any relevance to social disorder problems, or fostering or constituting any encouragement to excessive drinking. The licence we intend to grant sits comfortably with current competition principles, and should sit comfortably with the newly articulated objects of the *Liquor Act* which are expected to come into operation on 5th May 2004, especially those which aim
- 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
- to facilitate a *diversity* of licensed premises and associated services for the benefit of the community. (*Liquor Amendment Act, No. 14 of 2004, s.5* – emphases added)
27. The licence will issue subject to a condition that it may only ever be operated by the applicant, and only while that company is controlled by Mr Peter Tiller and/or Ms Joanne Walter. What this means is that the licence will be untransferrable to any other entity or

persons, and will be cancelled upon Mr Tiller and Ms Walter ceasing to have control of the business or upon the business being transferred to other premises.

28. The licence will permit the sale and consumption of alcohol

- only within the interior of the premises
- only to patrons with an appointment for hair or beauty treatment
- only during the course of such treatment, and
- limited to the provision of champagne, red or white unfortified wine, and light beer only. Wine shall be sold only in the so-called "airline" sized bottles.

29. Trading hours shall be

Monday, Wednesday, Friday: 12:00 hours to 17:30 hours

Tuesday and Thursday: 12:00 hours to 20:00 hours

Saturday: 10:00 hours to 16:00 hours

30. At all times that liquor is available on the premises, there shall be present on the premises at least one person, either principal or employee, who has completed an approved course in the responsible service of alcohol.

31. The licensee shall be prohibited from

- displaying any signage, either externally or internally (other than by way of menus) in any way indicating the availability of alcoholic beverages on the premises
- storing liquor on or in the premises in any way which displays it for sale
- placing or causing to be placed paid advertising in any medium which promotes the availability of alcoholic beverages for patrons of Headlines
- permitting or suffering the emanation of noise from the premises of such nature or at such levels as to cause disturbance to the normal business operations or the ordinary comfort of lawful occupiers of any other premises

32. The licence shall also contain what is sometimes referred to as a "concept condition", which will enable the Commission on its own initiative to review the licence conditions, and indeed the licence's very existence, if the licensee should stray from the business concept which has been presented to the Commission in support of the application, or if our faith in the standard of management of the licence should prove misplaced.

33. It remains only to remind Ms Kemp and Diabetes Australia that should that organisation actually experience any of the problems apprehended within the terms of objection, or indeed any problems at all with the operation of the licence, they remain able under the *Liquor Act* to lodge a complaint with the Director of Licensing at any time.

Peter R Allen
Chairman

29 April 2004