

# Northern Territory Licensing Commission

## Reasons for Decision

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| <b>Premises:</b>        | <b>Bathurst Island Lodge</b><br>Port Hurd<br>Bathurst Island   |
| <b>Applicant:</b>       | Tiwi Islands Adventures Pty Ltd  |
| <b>Proceedings:</b>     | To Undertake a Hearing on the Papers, in accordance with Section 471(7) of the <i>Liquor Act</i> , to consider an application for a Liquor Licence for the Bathurst Island Lodge |
| <b>Members:</b>         | Mrs J M Large (Presiding Member)<br>Mr W Grimshaw<br>Mr J Brears   |
| <b>Date of Hearing:</b> | 15 January 2013  |

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## Background

- 1) Mr Nigel Baxter, General Manager of Tiwi Islands Adventures Pty Ltd made an application pursuant to Section 26 of the *Liquor Act* ("the Act") for a new Liquor Licence for the Bathurst Island Lodge ("the Lodge"). The Lodge is to be located at the site of the former Barra Base which had a Liquor Licence up until its closure in 1999 when the licence was cancelled.
- 2) It is expected that the Lodge development will be complete in March 2013. Development works include restoration of the former Barra Base dining and bar area, together with the construction of new accommodation facilities for a maximum of twelve guests. The Licensing Commission ("the Commission") is advised that based on the new up market facilities, it will attract a daily tariff for clients of approximately \$1,300.00 per day.
- 3) The applicant advises that the Lodge will be operated similarly to a fishing lodge the company runs on Melville Island ("the Melville Island Lodge"). The proposed trading details for the sale of liquor are as follows:
  - The business proposed to be conducted on the premises will be in the nature of a fishing lodge.
  - Lodgers will receive a selection of foods for breakfast and lunch and a chef prepared meal for dinner.
  - The Lodge will stock a range of beers, wines, spirits and a small selection of liqueurs to cater for domestic and international guests.
  - Trading hours for alcohol will be from 12:00 hours until 23:59 hours, Sunday to Saturday, and alcohol shall only be sold to bona fide guests of the Lodge and Lodge staff.
  - Alcohol will only be consumed within the restaurant and bar area or by Lodge staff in their respective living quarters.

- 4) The Application was advertised in the Northern Territory News on Wednesday 3 October 2012 and Friday 5 October 2012 pursuant to Section 27(1) of the Act.
- 5) One objection was lodged in response to the application by Mr Mark Coffey, State Manager, Department of Families, Housing, Community Services and Indigenous Affairs ("FAHCSIA"). The applicant provided a response to that objection pursuant to Section 47G of the Act. Police and the Department of Health were asked to comment on the application and their responses indicated no concerns over the development.
- 6) On 18 December, 2012 Mr R O'Sullivan, Chairman of the Commission determined that the objection lodged by Mr Mark Coffey, of FAHCSIA was valid and required a Hearing pursuant to Section 47I(7) of the Act. He further noted that if FAHCSIA indicated that it did not wish to appear at a Public Hearing to make oral submissions in support of its objection, the Commission had the ability to rely on the written submission and under this circumstance it could determine whether a Public Hearing was required or whether the Hearing could take the form of consideration of the matter on the papers provided.
- 7) On 19 December 2012 FAHCSIA advised that:
 

*"it is not the department's intention to attend the hearing in person in this instance. The Department seeks the Commission's consideration in the matter taking account of the submission previously provided."*
- 8) Mr Nigel Baxter, General Manager, Tiwi Islands Adventure Pty Ltd advised the Commission that he would be available to attend any Hearing in person or by phone if any further information or clarification of the application was required.
- 9) On 15 January 2012 the Commission undertook a Hearing on the Papers in two parts, namely the objection to the application and the application itself.

## **Objection Hearing**

- 10) The Commission considered the submission from FAHCSIA, the response from the applicant and a submission from the Tiwi Land Council in support of the application.
- 11) The FAHCSIA submission draws attention to the harm that alcohol abuse causes and advises the Commission that the reduction of harm to vulnerable people should be a predominant factor in assessing the merits of licensing applications. It states that the Lodge is located in relatively close proximity to the Aboriginal Communities of Wurankuwu and Wurrumiyanga and the establishment of another outlet for access to liquor on the island increased the risk of alcohol related harm and does not support the efforts of the Tiwi communities to reduce alcohol related harm.
- 12) The submission asserts that there is a need in these communities for clear and strong norms and values that are supported by the actions and decisions of governments and corporate social responsibility. It identifies a concern that:
 

*"A public debate is currently occurring in relation to the availability of alcohol and licensed social clubs on the Tiwi Islands including in the context of the SFNT Act (Stronger Futures in the Northern Territory) and the policies of the newly elected Northern Territory Government. The impact of the recent deactivation of the Banned Drinking Register is yet to be fully assessed creating another reason for caution."*

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*“FAHCSIA, on behalf of the Commonwealth, submits that the current application for a new liquor licence on Bathurst Island could potentially raise community expectation and concern about the liberalisation of drinking laws.”*

13) Despite the concerns outlined above FAHCSIA did acknowledge that the application seeks to provide alcohol in a manner which is low risk to the surrounding community members.

14) The response from the applicant points out its proven track record and its six year history in handling and managing alcohol within indigenous communities. It, also, addresses the possible impact on Aboriginal communities by stating both of the nearby communities are a considerable distance away and the Lodge itself is only accessible by boat or helicopter. There are no roads to the Lodge what so ever. Any alcohol served will be to guests and staff and there will be no “take away” alcohol. The Tiwi Islands Adventures Pty Ltd is 100% Tiwi owned and has invested \$3 million in the construction of the Lodge.

15) The submission from Mr J Hicks, Chief Executive of the Tiwi Land Council is very strong and forthright in its support of the application. He states that the Council *“has been offended by the patronage and numerous inaccuracies”* in the FAHCSIA objection. The submission then reiterates the distance between the Lodge and Aboriginal communities, the good record of the company in managing such premises and it disputes the concept put forward by FAHCSIA that if regulatory certainty exists then Aboriginal people can be free from harm.

16) In an explanation as to why the Council fully supports the application Mr Hicks states:

*“The Tiwi Land Council continues to work towards those objections encouraging the strength of our people through their participation in their own private economy. Tiwi Adventures Pty Ltd is a crucial and significant part of that strategy that already includes our Marine Rangers in the purpose of managing land and water for a Tiwi economy and for business outcomes. Similarly our Tiwi Plantation now with 17 of our workers regularly testing drug free because work demands that.”*

*Our business is providing purpose for our people. We believe it is these purposes that can and are ameliorating “the devastating impact of alcohol on many individuals.”*

17) Mr Nigel Baxter, General Manager, Tiwi Island Adventures Pty Ltd was contacted by phone and supplied the following additional information in support of the application:

- Alcohol will be allowed on the fishing boats but the supply to individual guests will be limited to 2-3 mid strength or light beers. No alcohol will be available to staff of the boat.
- All alcohol supplied at the Lodge will be purchased on an account basis as no cash is kept on premises.
- Guests can consume alcohol in the restaurant and/or bar but cannot take to rooms. Staff can only consume alcohol in quarters.
- Alcohol is stored in a special room of steel and corrugated iron construction which has vertical dead locks and no windows.

- The Lodge will be staffed on a 24hour/7 day a week basis at all times.

18) The Commission, having considered the submissions from all parties, agrees with FAHCSIA's concerns about the possible harm arising from alcohol abuse and that the reduction of harm to vulnerable people should be a predominant factor in assessing the merits of licensing applications. At all times the Commission undertakes its responsibilities and discharges its duty in accordance with the Act which under Section 3 states:

*(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) 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.*

19) The Commission has noted FAHCSIA's concerns about the possible future liberalisation of drinking laws in the Northern Territory. However, the Commission can only discharge its duty in accordance with the current Act and is unable to, act upon, predict or forecast any future changes to laws and regulations relating to the purchase and consumption of alcohol in the Territory and therefore cannot take this into consideration.

20) Further, the Commission agrees with the FAHCSIA's submission that in this matter the provision of alcohol to a maximum of twelve guests and eight staff at any one time and under very restricted conditions relating to purchase and consumption at a Lodge, which is isolated from any Aboriginal community, is a low risk to surrounding community members.

21) Despite being considered "low risk" the Commission still had a slight unease about the access to alcohol by outsiders either from the alcohol in store or from "secondary supply" from guests or staff. This unease was alleviated by Mr Baxter's description of the storage facilities, the fact that the Lodge would be staffed 24/7 and the proposed restrictions on the method of purchasing and consumption of alcohol on the boats and at the Lodge.

22) As an added assurance that the proposed restrictions are adhered to the Commission believes they should be included in the conditions of any licence

granted for the Tiwi Islands Adventures Pty Ltd for the Lodge and that both guests and staff are made fully away of the environment that the licence has been granted and the conditions imposed. In his conversation with the Commission Mr Baxter indicated that this would be acceptable.

23) The Commission was impressed by the submission from the Tiwi Land Council and its strategy to have the Tiwi people participate in their own private economy which will provide a purpose for the people and such purpose is hoped to ameliorate the impact of alcohol on many people. It is a strategy of independence and accepting of responsibility that should be endorsed by all Australians.

## **Application for a Licence**

24) In making the application for a licence for the premises known as the Lodge the applicant, Tiwi Island Adventures Pty Ltd, has provided the following documentation:

- Detailed Business Plan produced by KPMG IN June 2012.
- Criminal History Reports from Police for Directors of the company.
- Resumes and reference for Directors.
- Site location, floor plans and Pictures of the Lodge.
- Section 26A *Liquor Act* declarations – “Statement of Influence”.
- Public Interest Criteria.
- Company Extract and Business Name Registration.
- Company Balance Sheet – Profit and Loss Statement; Bank Balances; and five year financial projections.

25) An examination of the documents shows that the applicant has met all the requirements of Section 28 of the Act and is a company appropriate to hold a Liquor Licence.

26) Mr Lindsay Mutimer is nominated as the Manager at the Lodge. Mr Mutimer is a long term Territory resident, has four years experience of managing the Melville Island Lodge and has supplied a clean National Police Certificate and three references. The Commission finds Mr Mutimer to be a fit and proper person to be the manager.

## **Decision**

27) The Commission has made the following Determinations in regards to the application by Tiwi Islands Adventures Pty Ltd for a Liquor Licence for the premises, Bathurst Island Lodge, at Port Hurd, Bathurst Island:

- a) The objection to the issue of the licence by Mr Mark Coffey, State Manager, Department of Families, Housing, Community Services and Indigenous Affairs is dismissed.
- b) To grant an “On Licence” liquor licence, with trading hours for on premises consumption of alcohol from 12:00 hours until 23:59 hours, Sunday to

Saturday, is to be issued to Tiwi Islands Adventures Pty Ltd as Licensee of the Bathurst Island Lodge

c) That, under Section 31(1) of the Act, in addition to the standard licence conditions the licence is to include the following Special Conditions:

- Alcohol shall only be supplied to bona fide guests and staff.
- Alcohol shall only be consumed within the restaurant and bar area by bona fide guests or by Lodge staff in their respective living quarters There is to be no "Take Away" sales of alcohol for consumption outside the premises.
- Alcohol is allowed on the fishing boats but the supply to individual guests is be limited to 2-3 mid strength or light beers. No alcohol will be available to staff of the boat.
- All alcohol supplied at the Lodge is to be purchased on an account basis not a cash basis.

d) That, in accordance with Section 28(2)(h) of the Act, Mr Lindsay Mutimer is a fit and proper person to be the Manager of the licensed premises.

28)The Commission further recommends that all guests and staff at the Lodge are to be made fully aware of the restrictions in the conditions of the licence and the milieu in which the licence has been issued.

Mrs J M Large  
Presiding Member

21 January 2013