

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Tipperary Waters Eatery
Date of Decision:	28 August 2000
Date of Hearing:	5 July 2000
Application:	Application for Grant of Licence
Applicant:	Mr Phillip Bruce Doyle on Behalf of Jalip Pty Ltd
Heard Before:	Mr John Withnall (Presiding Member) Mrs Shirley McKerrow (Member) Mrs Annette Milikins (Member)
Appearances:	Mr Phillip Bruce Doyle for applicant Mr G McDonald for Northern Territory Police

Jalip Pty Ltd applied for a liquor licence for "Eatery 1" at the proposed Tipperary Waters Eatery at Frances Bay Drive, being part of a development of a proposed Lot 6866 Town of Darwin within a subdivision of Lot 5403. The proposal is part of the ongoing development of the Tipperary Waters Marina and surrounds.

Development Permit No. DP98/0475 of the Northern Territory Planning Authority encompasses the proposal as being in accord with the Central Darwin Land Use Objectives, an appropriate design for the climate and unlikely to have any adverse impact on present or future amenities of the surrounding area.

The liquor licence as applied for was for consumption on and away from the coffee shop which is to comprise Eatery 1. It was advertised however as a general "on-licence" for "Eatery 1, Lot 6866 (and all of the boardwalk and undercover breezeway contained in Lot 6866) Francis Bay Drive, Stuart Park", with no restriction by way of being ancillary to a meal. The only caveat in this respect in the advertisements was that snack food was to be available at all times.

No objection was received to the application as published in this broad form. The requisite large green notification sign was duly posted on the front of the facade of the partly constructed complex facing Frances Bay Drive, and on the personal observations of at least two members of the Commission was clearly visible from Tiger Brennan Drive.

The police, while not formally objecting to the application, requested a list of conditions be inserted in the licence. Their prime concern was that the premises should trade predominantly as an eatery and not as a bar.

No other interest in the application was notified to the Commission by any other person or group.

Despite the absence of objections, the Commission determined to hold a hearing into the application in order to be fully informed of the operation that was proposed and to be satisfied as to community needs and wishes. The Commission has consistently held that in the case of the more potentially impactful applications the absence of objections is not necessarily to be equated with community support, although certainly relevant in terms of the applicant's evidentiary hurdle in persuading the Commission to grant the licence applied for.

The applicant's case was presented by Mr Philip Doyle, the sole Director and shareholder of the applicant company. He is also the Managing Director of Lawnfern Pty Ltd, the owner and developer of the shopping centre, as transferee from Anjen Holdings Pty Ltd, the developer of the marina estate.

As shown in folio 30 of the Hearing Brief, it is envisaged that half a dozen “eateries” of various kinds will front a licensed boardwalk area shown hatched red in folio 30, which apart from Eatery 1 itself will be common property of the eventual body corporate of the relevant Units Plan, which at the time of the hearing had not been registered. What is envisaged by Jalip and Lawnfern is that instead of an otherwise anticipated multiplicity of liquor licence applications on the part of the other shops, Eatery 1 will be the only licensee and solely responsible in terms of the Liquor Act for the management of the common property licensed area. The other unit-titled shops will be sold with this arrangement a *fait accompli*. Whether or not the other eateries become joint lessees of the licensed area will be a matter for the eventual body corporate; regardless of an approval in principle from this Commission for a liquor licence as requested, it is the body corporate of the Units Plan that will have the determinative say in the arrangement. In practice this should not present any problem, as the Unit Titles Act provides that the moment the Units Plan is registered the body corporate comes into existence comprising the proprietors of all the unit titles so created, which at that point will all be in the name of Lawnfern Pty Ltd. For a short time that company will itself effectively comprise the body corporate and can formalise the necessary consent to the operation of the liquor licence upon the common property. Mr Doyle suggested that it may even be built in to the body corporate rules.

It should also be emphasised that even if the other shops take on any joint management responsibility for the licensed common area, it is the owner of Eatery 1 viz. Jalip Pty Ltd and Mr Doyle as licensee and nominee respectively, that must remain totally responsible for the licensed area under the terms of the Liquor Act. Mr Doyle demonstrated an appropriate awareness of such responsibility.

The Commission is satisfied as to the applicant’s financial and managerial capacity to conduct the business of the licence. In particular Mr Doyle’s management “cv” serves him in good stead. The issue of community needs and wishes is not as clear cut.

Mr Doyle is the marketing agent for Tipperary Waters as well as being the promoter of the “shopping village” there. He advised that he had spoken to every resident in the estate at the time of the application, about a dozen (owners and tenants), and all supported his concept. There was “no negativity”. Eight signed letters of support from this group are before us. Mr Doyle also attended a meeting of the Stuart Park Residents’ Association, at which Clare Martin MLA was present, and testified as to the acceptance at that meeting of his concept for a retail village with licensed eatery facilities. Darwin City Council has written advising of having no objection to the proposal subject to the provision of adequate toilet facilities.

The evidence of needs and wishes is insufficient to support the grant of a general “on licence”, but Mr Doyle wisely indicates that he is prepared to accept a licence in the nature of a tailored restaurant licence, and this is what the Commission is prepared to grant. We share the primary concern of the police as to the facility becoming a *de facto* tavern, and we propose that the concession known as “liquor without a meal” which is available to qualifying restaurants shall not be available to the Tipperary Waters Eatery. The Commission is of the view that the evidence in relation to needs and wishes demonstrates sufficient localised support for a licensed eatery area, but no more than that, and we are accordingly persuaded in the absence of any objections (to even a general licence) that the limited form of licence should be approved.

Pursuant to the provisions of Section 26 (2) of the Liquor Act, an on-licence is granted in respect of the premises as proposed by the applicant, and shown hatched red at folio 30 of the Hearing Brief, and pursuant to Section 31(3) of the Act such grant of licence is subject to the condition that the sale of liquor from the premises is not permitted until the approval in writing to do so shall have been obtained from the Commission. Such approval will be given upon the Commission’s satisfaction that the premises have been completed in accordance with the applicant’s presentation to the Commission at the hearing and that the applicant is ready to trade in a manner consistent with the evidence and the concept that has been presented to the Commission at the hearing. The approval is also subject to the following requirements:

- (a) Prior to the issue of the written licence satisfactory evidence is to be produced of the applicant’s right to occupy “Eatery 1” as *licensed premises*;

- (b) Prior to the issue of the written licence satisfactory evidence is to be produced of the consent of the body corporate of the relevant Units Plan to the common property shown hatched red at folio 30 of the Hearing Brief being operated as licensed premises by the proprietor of the shop currently referred to as "Eatery 1".

The licence when issued will be subject to the following special conditions:-

- (1) Liquor shall be sold only to persons who have ordered food from any of the eateries in the village. "Food" in this context shall mean food other than pre-packaged snack foods, served on a plate, to a value of at least \$5.00.
- (2) In conjunction with participating eateries the licensee shall implement a ticketing system in aid of proof of purchase of food to the satisfaction of the Commission, and liquor may only be sold to the holders of meal tickets within the approved scheme.
- (3) All participating eateries shall hold the appropriate eating house certificate from the Department of Health.
- (4) Trading hours shall be from noon to midnight, seven days a week, or such shorter hours as may necessarily result from the earlier closure of all participating eateries.
- (5) Conditions applicable to the service of "liquor without a meal" shall NOT apply to this licence.
- (6) All liquor shall be served in open packages or containers. Wine may only be supplied by the glass or in opened bottles of capacity no larger than 750 mls, the only exception being champagne howsoever called, which may be served in open magnums. The licensee shall not keep beer or any liquor on tap.
- (7) The licensee shall ensure that there is table seating available for all persons to whom liquor is supplied.
- (8) No sale in excess of six beers, four mixed drinks or spirits, or two bottles of wine (whether by the bottle or by the glass) shall be made in exchange for any one ticket. Any mixed combination shall be permissible to a limit of four packages, eg. two beers and two bottles of wine.
- (9) The licensed premises at all times shall have the appearance of and shall trade predominantly as an eating area. The licensee shall not use nor permit to be used any of the words "pub", "bar" or "tavern" in any advertising, promotional material or signage. The licensee shall cause to be removed or withdrawn any signage, advertising or promotional material or hoarding which in the opinion of the Commission, notified to the licensee, shall be offensive, excessive, inconsistent with the approved concept of the premises or unacceptable to the Commission in any other way whatsoever.
- (10) All employees of the licensee and all other persons on behalf of the licensee directly involved in the service of liquor products to the public shall have successfully completed an approved patron care training course.
- (11) The licensee shall ensure the provision of such level of security services in and about the licensed premises as shall be perceived by the Commission to be reasonably adequate at any time.
- (12) Toilet facilities shall be provided and maintained to the satisfaction of the Darwin City Council.

The applicant now has what is often referred to as a licence in principle. In terms of its duration in this guise it is not open ended, and it is a further condition of its grant that it may be cancelled by the Commission if upon the expiration of a period of twelve calendar months from the date hereof the applicant shall have failed to obtain from the Commission either the approval to commence

trading or an extension of time within which to seek such approval. The allowance of any such extension of time shall be a matter entirely within the Commission's absolute discretion.

At the absolute discretion of the Commission the licence may not be assigned or transferred until after the Commission has approved the commencement of trading as aforesaid.

The licensee should liaise with the Director of Licensing in the event that any of the foregoing matters should give rise to any queries at any time.

John Withnall
Presiding Member

28 August 2000