

Northern Territory Licensing Commission

Reasons for Decision

Premises:	The Dustbowl
Licensee:	Cheap Charlie1 Pty Ltd
Licence Number:	80806440
Joint Nominees:	Greg Boaz Wayne Harwood
Proceeding:	Application for Variation of Licence Conditions
Heard Before:	Ms Brenda Monaghan (Presiding) Ms Annette Smith Mr Craig Spencer
Date of Hearing:	17 and 18 May 2005
Date of Decision:	18 May 2005
Appearances:	Mr Murray Preston, for the Licensee Superintendent Lance Godwin, for NT Police Mr Mark Blackburn, for Alice Springs Town Council Mr Jonathan Pilbrow, for Peoples Alcohol Action Coalition Ms Karen Avery, for Department of Health & Community Services Dr John Boffa and Ms Donna Ah Chee for Central Australian Aboriginal Congress Inc Ms Ann Tregoe, for Gap Youth Centre Aboriginal Corporation Ms Elena Hogan for Substance Misuse Action Group Ms Kathryn Broadbent, for Drug & Alcohol Services Association Alice Springs Inc

1. This is an application by Mr Greg Boaz, as Nominee for a variation to licence conditions for The Dustbowl. There are eight (8) objections received relating to this application.
2. The Dustbowl, which is situated in Gap Road, Alice Springs has been a well-known local venue for a considerable number of years and until recently, its sole focus was in providing a Ten Pin Bowling Centre to the Alice Springs community. The liquor licence granted in 1999 contained strict conditions to ensure that the sale of liquor was not open to the public but was restricted to bona fide spectators and bowlers. There were appropriate controls to ensure that minors' needs were protected including limiting licensed hours to after 6.00pm and requiring minors who attended after 6.00pm to be properly supervised or to be registered players of a minimum age of fourteen (14) years.
3. Recent material alterations to the premises have changed the basic concept of The Dustbowl in significant ways. Whilst the bowling alley has been upgraded, it essentially remains the same and this current application for a variation seeks no change to the conditions relating to that venue. The restaurant area, however, whilst being located in the same building and sharing the same entrance, is now structurally separate from the bowling alley. Patrons situated in the bowling alley cannot see into the restaurant or hear noise emanating from there and vice versa. This separation accords with the Licensee's proposal that the dining area be allowed to trade as a licensed restaurant open to the general public and able to service the needs of both the residents of Alice Springs and visiting tourists. The Licensee's further intention is to continue to service the needs of bowlers as they will

be able to use the restaurant in the same manner and under the same conditions as any other member of the public.

4. The application was advertised as follows:

“The dining facility at The Dustbowl is currently restricted to players and bona fide spectators of ten pin bowling, with liquor able to be served only as ancillary to a meal. Current trading hours are from 18:00 to 23:00 hours seven (7) days a week.

The requested variation is for the dining area, including the outside patio, to become a public restaurant to be known as Rudy’s Pizza and Pasta with trading hours from 11:00 hours to 01:00 hours (the next morning) seven (7) days a week.

Liquor is proposed to be available to the general public in the restaurant without the necessity of having to be in conjunction with a meal.”

5. The Director of Licensing received eight (8) objections to the application on behalf of the NT Police, Department of Health and Community Services, Alice Springs Town Council, the Gap Youth Centre and 4 other agencies dealing with indigenous and non-indigenous health and community issues and particularly alcohol and drug related issues. The major concerns expressed in these objections can be summarised as follows:

- Concerns about the impact of the licence variation sought upon the neighbouring community where a number of health and community support agencies are located – including Central Australian Aboriginal Congress (CAAC) who are located next door to The Dustbowl.
- Concerns about the possibility of intoxicated patrons leaving Rudy’s Pizza and Pasta and the resultant increase in criminal activity, social dysfunction, motor vehicle accidents and road safety issues.
- Concerns about condoning alcohol consumption in or near a sporting venue where children are significant users of the venue - and more particularly, a concern that the availability of alcohol during day time hours at Rudy’s Pizza and Pasta will have a negative impact on minors using the bowling alley.
- Concerns that allowing an increase in licensed hours in the restaurant to include daytime hours will remove from schools and service agencies one of the few “safe” venues where children/youths can be taken and not be exposed to alcohol consumption.
- a general concern that allowing liquor without a meal in the restaurant will “open the doors” to such drinking (ie as found in a bar or tavern) and that this variation is viewed by health and related agencies as being unacceptable in light of current research and recommendations regarding acceptable drinking behaviour.
- A general concern about the level of alcohol consumption by ordinary Alice Springs residents and the need to combat these issues at a community level.
- A view that there are enough liquor outlets in the neighbourhood.
- a submission by a number of objectors that this variation was so substantial that it should in effect be treated as a new application by the Commission.

6. Mr Boaz gave evidence as the Licensee and Co-nominee. His concept for Rudy’s Pizza and Pasta is to provide an “*upmarket family restaurant*” which will be run as a distinct and separate entity from the bowling alley. He hopes to attract both lunchtime and evening patrons and to this end seeks a liquor licence from 11.00 hours to 01:00 hours (the following day). Mr Boaz wants to be able to serve patrons liquor without a meal but he emphasised in his evidence that he in no way intended the restaurant to be run as a “tavern”. His idea is to ensure that a patron can join a group of seated diners for a drink if

they wish. Ms Laura Sabastiani, for the applicant gave a further example of a customer having a drink while awaiting a takeaway pizza.

7. Mr Preston, on behalf of the applicant, tendered the licences for *La Casalinga* and *The Lane Cafe* as examples of the type of licence that would suit his client's needs. He directed the Commission's attention towards the Special Conditions in the *La Casalinga* licence which include the following:
 - That the premises maintain the appearance of and trade predominantly as a restaurant.
 - That liquor may only be consumed by patrons seated at a table in the restaurant area.
 - That consumption of liquor without a meal must not be advertised or promoted.
 - That the Licensee refrain from using the words hotel, pub or bar in any advertising or signage.
8. Mr Boaz stated in evidence that he envisaged no more than ten percent (10%) of restaurant patrons ordering liquor without a meal. His evidence was supported by that of Ms Laura Sabastiani, Floor Manager but was challenged by a number of objectors who queried the basis for his reliance upon this percentage figure.
9. As regards the bowling alley Mr Harwood acknowledged the need for close supervision of the alcoholic intake of bowlers because of his concerns to protect patrons from injury. The Commission was impressed with the evidence he gave confirming the sound day to day management of these issues and those relating to the control of minors within the bowling alley.
10. After viewing the premises and hearing all submissions we make the following comments:
 - The Commission acknowledges that the improvements made to The Dustbowl both in the bowling alley and the restaurant are significant. These improvements have been the subject of favourable comment by several objectors.
 - The Commission accepts however the concerns expressed by several objectors that this licence variation is so substantial that it is more aligned to a fresh licence application. We are however satisfied that after hearing all the evidence, we are able to make an informed decision on this variation application without requiring further evidence to be provided to us.
 - In reaching this decision, we have had particular regard to the objects of the *Liquor Act* including those objects pertaining to new licence applications. We also widened the scope of our questioning to include issues such as the ongoing viability of the licensed premises. When considering this issue however, the Commission paid little regard to Mr Boaz's evidence that he needed the ability to serve liquor without a meal in order to remain viable. We noted that Mr Boaz produced no evidence to support such a proposition and in fact the overall tenor of the evidence from himself and his witnesses was that both the restaurant and bowling alley were doing well and that there was an untapped market in the neighbourhood that a variation would allow them to target. This market specifically includes tourists from several accommodation outlets in the area who would welcome a good restaurant close by.
 - The Commission accepts that the objectors' concerns regarding the service of liquor without a meal are legitimate concerns. Despite Mr Boaz's rough estimate that only 10% of patrons will be served liquor without a meal, we are unable to accept this figure on face value alone. We acknowledge that several restaurants in the Alice Springs CBD such as *La Casalinga* have a clause in their licence giving them the ability to serve liquor without a meal but we do not accept Mr Preston's suggestion that *Rudy's Pasta and Pizza* should necessarily be given the same level of indulgence. Account must be taken of the neighbourhood in which The Dustbowl is located which includes the fact

that it shares the same building and front entrance as the bowling alley. The neighbourhood also includes several support agencies for indigenous and non-indigenous people - including CAAC who are located next door. CAAC have a childcare centre and a health clinic and fully acknowledge that their premises are very busy with vehicles and people coming and going. Their concerns over the safety of their patrons on the busy streets and footpaths around the Congress are valid ones. Further, as a primary health care service for aboriginal people and with a focus on alcohol harm minimisation strategies, CAAC is of course concerned by the concept of liquor being served next door in the restaurant without a meal from 11.00am onwards.

- The Commission also accepts that several of the objectors have legitimate concerns about the extension of trading hours which allow the restaurant to serve patrons liquor with or without a meal from 11.00am onwards. Ms Tregae from the Gap Youth Centre gave evidence that apart from the movies and picnics, The Dustbowl was the main alcohol free venue that the Centre regularly uses during daytime hours as a safe entertainment venue for the minors in their care. She advised that under the guidelines controlling the Centre, she would feel unable to continue bringing minors from the Centre to the bowling alley if liquor was being offered without a meal in the adjoining restaurant.
11. After hearing all of the evidence, the Commission is concerned to ensure that as far as possible, the concept of the bowling alley as a safe place for minors to use during daytime hours is preserved. Some of the conditions we intend to impose take account of the fact that the new restaurant is still part of the bowling alley complex and both guests to the restaurant and bowlers - including junior players - gain access through the same entrance. For these reasons, the licence will not allow liquor to be served without a meal within the restaurant before 6.00pm and obvious evidence of alcohol consumption on the premises will be hidden. A condition will be included that the access gate to the outdoor eating area be screened to prevent minors having a clear view of diners eating and drinking in that area. Further, all glass windows and partitions on the wall containing the entrance to the restaurant are to remain screened - as they are at present. This means that only the glass entry doors will provide minors with a view into the inside eating area in the restaurant. Finally, the requirement that no alcoholic products be visible to minors using the bowling alley will be maintained. This means that any fridges containing alcoholic beverages for example, must be hidden from view until 6.00pm. Other conditions are detailed below and are included for the same purpose.
 12. The Commission's concerns regarding the night-time restaurant trade are not so strong. It is a reality that liquor is served without a meal in the bowling alley after 6.00pm to bona fide spectators and players. It would seem a nonsense therefore to prohibit the sale of alcohol without a meal in the restaurant after 6.00pm. At that time, the concerns regarding any adverse impact on minors is lessened and the main issue that remains is to ensure that the restaurant retains its flavour as an upmarket family restaurant. To that end, we intend to restrict sales of liquor without a meal by inserting a number of conditions in the licence. These conditions will allow the Licensee to cater for the needs of the occasional patron who joins a group of friends but does not want to eat but will hopefully allay the concerns of the objectors about the risk of a "bar" trade occurring.
 13. The application for variation of the liquor licence to the restaurant area is granted with the following Special Conditions.

Restaurant

- The dining area, including the outside patio, may function as a public restaurant to be known as Rudy's Pizza and Pasta seven (7) days a week.
- The trading hours for the restaurant shall be from 11:30 hours to 24:00 hours with liquor available with a meal during those hours.

- The availability of liquor without a meal is restricted to the indoor dining area between the hours of 18:00 hours and 23:00 hours . (This time restriction will prevent patrons from the bowling alley simply moving across to the restaurant to drink when the licensed hours in the bowling alley cease at 23:00 hours. The restriction stipulating the indoor area is to prevent the risk of the outdoor patio area from being used as a “bar” area.)
- A meal shall not consist of pre-packaged foods such as salted chips, peanuts or beer nuts or other finger food, served by wait staff either unopened or poured into a container or placed in a dish.
- The premises shall at all times have the appearance of and shall trade predominantly as a restaurant.
- Liquor may only be supplied by way of table service and be consumed by patrons who are seated at a table within the licensed restaurant area.
- There shall be no sale of beer or other alcoholic beverages supplied in jugs or carafes.
- All liquor supplied in the restaurant must be consumed in the restaurant.
- Consumption of liquor without a meal will not be advertised or promoted.
- The Licensee shall not use or permit to be used any of the words hotel, pub or bar in any description of the premises or in any advertising, promotional material or signage.
- During the licensed hours this area shall have a person specifically responsible in this area that is independent of the bowling alley area who has attended a recognised Responsible Service of Alcohol Course.
- Bar stools shall not be provided.
- No liquor shall be sold to patrons who attend the premises to collect takeaway food.
- No minors within the meaning of the *Liquor Act* shall be permitted to enter or remain on the licensed premises unless accompanied by a parent (or person in loco parentis), guardian or adult spouse.
- The Licensee shall operate the business at all times to standards consistent with the concept of an “upmarket family restaurant”. Should the standard or any aspect of the licensed operation deteriorate to a point considered by the Commissioner to be inconsistent with such a concept, then the Commission may on its own motion convene a hearing into the operational standards of the premises, and at the conclusion of such hearing may suspend, cancel or vary the conditions of the licence if in the opinion of the Commission the Licensee shall have failed to show sufficient cause to the contrary.

Any proposed transferee of the licence may be required by the Commission as a pre-requisite of its consent to transfer, to sign a written acknowledgement of the proposed transferee’s awareness of the conditions of the licence.

- The access gate to the outdoor eating area shall be screened at all times to prevent minors having a clear view of diners eating and drinking in that area.
- All glass windows and partitions on the wall containing the entrance to the restaurant are to remain screened as they are at present. This means that only the glass entry doors will provide minors with a view into the inside eating area in the restaurant.

Bowling Alley

- The trading hours for the bowling alley shall remain 18:00 hours to 23:00 hours.

- Sale or supply is permitted only in open containers, for consumption only on the premises by players of ten pin bowling and bona fide spectators.
- The licensed area will now be as encompassed by the red border on the plan signed by the Deputy Director and kept by the Commission. The border of the licensed area crossing the bowling alleys shall cease at the end of the seating of the bowling scoring consoles, ie no liquor is permitted from that point leading to the bowling alleys approach area.
- No minors within the meaning of the *Liquor Act* shall be permitted to enter or remain on the licensed premises unless accompanied by a parent (or person in loco parentis), guardian or adult spouse, or unless such minors shall:
 - (a) be fourteen (14) years of age or older AND
 - (b) have his or her name recorded in the Licensee's scoring system as a player at that time. Notwithstanding these conditions, the Licensee shall not schedule either any junior league competition or any junior tournament for any time which would necessarily or probably result in the presence of minors on the premises during licensed hours.
- The availability of liquor in the bowling alley shall not be publicly advertised or promoted in any way whatsoever, and no signage for any alcohol product shall be exhibited on or within the licensed premises, other than on the product containers being offered for sale.
- Light meals such as pies, hot chips, toasted sandwiches and pizzas shall be available for purchase during licensed hours.
- Outside authorised trading hours all liquor storage and display areas shall be screened off and secured in such a way that the public has no access to or view of such areas.
- All liquor supplied in the bowling areas must be consumed in the bowling areas.
- During the licensed hours this area shall have a person specifically responsible in this area that is independent of the restaurant area who has attended a recognised Responsible Service of Alcohol Course.

Brenda Monaghan
Presiding Member