

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Lazy Lizard Caravan Park
Application:	Transfer of Liquor Licence to Mr Rod Haines
Licence Number:	80316511
Heard Before:	Brenda Monaghan (Acting Chairperson) John Brears Jane Large

1. An application has been received for the transfer of the liquor licence for Lazy Lizard Caravan Park from Ms Jan Bruce to her ex-husband Mr Rod Haines. The application is strongly opposed by the Director of Licensing and by the Police.

Background

2. The Lazy Lizard is comprised of a camping ground with a restaurant and bar facilities. Ms Bruce has held the liquor licence for the premises in her name since late 1999 and she commenced licensed trading in April 2000 under 'tavern-style' licence.
3. Following the hearing of an application to vary the licence to allow late trading, the Commission stated in its Reasons for Decision (dated 23 July 2002) that an important factor was the applicant's concept of a family orientated bistro-like environment without gaming machines, TAB or any gaming facilities to sully that atmosphere. There also appeared to be a concern expressed by the Commission as regards the role that the Licensee's husband, Mr Haines was to play in the conduct of the licensed premises.
4. At the time, Ms Bruce and Mr Haines were a couple and they had together planned and developed the Lazy Lizard Caravan Park. Both the title to the land and the liquor licence however, have always remained in Ms Bruce's name only. No doubt the reason for the liquor licence being in her name was the fact that Mr Haines had a conviction for 'Assault with Weapon' (recorded on 19 July 1995) and this conviction would have been an issue for the Commission if he made application solely or jointly for the liquor licence.
5. Mr Haines had two (2) further convictions entered 13 April 2001 and 30 December 2004 for failing to comply with restraining orders. He was sentenced to a mandatory seven (7) days imprisonment for the second breach. Sometime after the December 2004 conviction, Ms Bruce and Mr Haines separated and Ms Bruce moved permanently with their son to Darwin and commenced full time employment there. Mr Haines remained at the Lazy Lizard. On 27 July 2005 and 18 October 2005, a hearing was conducted into a complaint against the Licensee. Whilst the complaint itself was ultimately dismissed, it became clear to the Commission that Ms Bruce was not "conducting the business" of the Lazy Lizard as a Licensee is required to.
6. At the hearing, a proposal was put forward by Mr Davis, counsel for the Licensee, in order to buy some time for his client to organise her affairs. The proposal included restrictions on Mr Haines being involved in the liquor licence. It specifically stated: *"that from the date of this decision, Mr Rod Haines plays no part in the sale of liquor on or away from the licensed premises."* The decision further required an outside "fit and proper" person to assist Ms Bruce in the management of the licensed premises and required Ms Bruce to maintain close contact with that person.
7. It is fair to say that this proposal met with strong resistance from both the Director of Licensing and the Police who essentially did not trust Mr Haines to abide by these

conditions. For this reason, before making a decision, the Commission heard personally from both Mr Haines and Ms Bruce and whilst he was not happy with its terms, Mr Haines agreed to abide by them. On this basis, the Commission agreed to Mr Davis' proposal allowing joint management by Ms Bruce and Mr Winworth for a 3 month period only and requiring a review of the conditions after three (3) months.

8. The review hearing scheduled for early 2006 did not eventuate for various reasons and ultimately the Licensee came before the Commission in the next occasion in a complaints hearing held in August 2006. Various complaints related to purported breaches by the Licensee of the Kybrook Agreement (restricting the sale of takeaway liquor to the Kybrook Community). A further complaint was that Rod Haines on several occasions had personally served liquor to patrons in breach of the agreed amended licence condition.
9. When this matter came to hearing, a number of the Kybrook witnesses had apparently in writing withdrawn their complaints. All other complaints were withdrawn after a proposal was agreed between the Director of Licensing and the Licensee on the following terms:

The following decision was made by the Commission with the consent of both parties:

- 1) *All complaints currently before the Commission (as contained in the Hearing Brief dated 11 May 2006) are withdrawn.*
- 2) *Unless one of the following events occurs no later than 2 October 2006, Liquor Licence Number 80316511 shall be immediately suspended without the need for a further hearing:*
 - a) *The licence is successfully transferred to Mr Rod Haines or to another person;*
 - b) *The current Licensee, Ms Jan Bruce returns to the Lazy Lizard Caravan Park and takes direct and personal control of the licensed premises including being in attendance for at least six (6) days per week.*
10. At the end of October 2006, it was clear that no sale or transfer of the liquor licence had occurred and accordingly the licence was immediately suspended. The licence remained suspended until mid November 2006 when Ms Bruce returned to the Lazy Lizard to recommence business on the following agreed terms.

By consent:

- a) *On the proviso that Ms Bruce is present to conduct the business of the licensed premises, the suspension of the Lazy Lizard is lifted to allow trading to commence on Sunday 19 November 2006.*
- b) *That until further determination by the Commission, Mr Rod Haines to play no part in the sale or service of liquor on the licensed premises.*
- c) *Upon receipt by Commission of an affidavit from a Licensing Inspector or delegate alleging that Rod Haines is engaged in the activities related to the sale or service of alcohol at the licensed premises, then the liquor licence shall be suspended forthwith until such time as the Commission investigates the complaint.*
11. Our understanding from Ms Bruce is that she intends to remain at Lazy Lizard until the licence is transferred either to her ex-husband Rod Haines or to another 'fit and proper person'.

This Application

12. The matter before us today is the application by Rod Haines for a transfer of the liquor licence to him. An incomplete transfer application was lodged with the Director of Licensing on 8 August 2006. From the information before us, all information was not provided to the Director to complete his investigations for some time and the completed application and

Director's Report were received by the Commission in late October 2006. The Commission then provided Counsel for the applicant and the Director of Licensing time to consider all material tendered and to provide written submissions to the Commission. The application finally came before the Commission on Monday 4 December 2006 for consideration.

13. The licence transfer to Mr Haines is objected to by the Director on a number of grounds as follows:
 - a) That Rod Haines is not a fit and proper person to hold a licence because of his criminal history and his unwillingness to adhere to licence conditions.
 - b) That the application for transfer of liquor licence is defective as it attempts to install Mr Haines as a "de facto manager" when he has no right of tenure with respect the property and business.
 - c) That Mr Haines does not have the financial capital required to successfully operate a licensed premise.
 - d) That Mr Haines, in breach of current licence condition, has involved himself in the conduct of the licence and cannot be trusted to uphold licence conditions.
14. The Commission has considered all of these matters together with the written submission by both parties and make following comments. The application in its current form would never be accepted unconditionally by the Commission as it purports to transfer the licence to a person who has no legal right to remain on the property and conduct the licensed business. Whilst not denying Mr Haines' equitable interest, the land is registered in Ms Bruce's sole name. When asked about this issue, Mr Davis advised that, if required, a lease between Jan Bruce and Rod Haines would be in force within seven (7) days. If a licence were to be granted, it would be made conditional on such terms. Further, his limited financial capacity is also a concern but not a major deciding factor.
15. The issues referred to in paragraphs 13a) and 13d) are intrinsically linked and relate to the appropriateness of Mr Haines as a Licensee. Mr Haines' criminal history is relevant. We note that whilst the 1995 conviction was recorded as "Assault Weapon", the précis and transcript do not mention a weapon being used. If the 1995 conviction were the only conviction, then the Commission would be unlikely to place significant weight upon it. It is concerning however, that there have been two further convictions on two separate occasions for failing to comply with restraining orders. Both breaches appear to reinforce the concerns of both the Director and the Police that Mr Haines appears dismissive of authority and is therefore unwilling or unlikely to comply with the terms of any liquor licence. Our concerns about this issue also stems from Mr Haines' actions in late 2005 and early 2006. Over this period, there is considerable evidence from various sources that he was continuing to involve himself in the sale and supply of liquor both on and away from the licensed premises when he had specifically agreed not to do so and when his agreement had been enshrined in the licence conditions. As a result, the Commission is left with real concerns about Mr Haines' willingness to adhere to licence conditions and therefore his ability to act as a "fit and proper" Licensee.
16. In taking into account the above matters, the Commission does not consider that Rod Haines is an appropriate person to act as Licensee and his application for transfer of the liquor licence to him is refused.
17. The Director also seeks a review of the liquor licence for Lazy Lizard. We are not persuaded at this stage that a review is required. To our mind, most issues raised concerning the Lazy Lizard have been caused by a lack of good management and supervision. Whilst we fully acknowledge that it is unusual for a caravan park to have a tavern licence, we would like to see the impact of good management on the premises before we consider a review. We hope that Ms Bruce will provide that.

Brenda Monaghan
Acting Chairperson

18 December 2006