

Northern Territory Licensing Commission

Reasons for Decision

Premises:	The Deck Bar (formerly Petty Sessions) 22 Mitchell St Darwin NT
Applicant:	Brewhouse Pty Ltd
Proceeding:	Section 32A application for variation of licence conditions
Nominee:	Mrs Karen Houlihan
Members:	Ms Brenda Monaghan (Presiding) Ms Jill Huck Mr Craig Spencer
Date of Hearing:	20 June 2005

- 1) Mrs Karen Houlihan, Nominee, has made application pursuant to section 32A of the *Liquor Act* to vary the current liquor licence conditions of The Deck Bar located at 22 Mitchell Street Darwin.
- 2) The variations to licence conditions relate to the General Bistro/Bar Area and the adjoining Alfresco Dining Area, which, for the purposes of this application has been divided into four separate and distinct trading areas. They are:
 - a) the Internal Bistro/Bar;
 - b) the Beer Garden;
 - c) the Alfresco Garden Deck Area; and
 - d) the Alfresco Walkway.

Further, the applicant hopes to commence trading and sell liquor to patrons on Sundays, which is prohibited under current trading conditions.

- 3) The variation application was properly advertised in the NT News on Saturday 16 April 2005 and Wednesday 20 April 2005. No objections were received in response to the advertisements. In these circumstances, the Commission elected to conduct a site inspection and meet with the Licensee's representatives to discuss the proposal before making a decision. The meeting on site took place on Monday 20 June 2005. Present were the Commission members, Licensing Inspectors Mr Paul Mitchener and Ms Giovanni D'Alessandro, Mr Justin Coleman and Mrs Karen Houlihan.
- 4) The applicant seeks a variation to the current trading hours of the **Internal Bistro/Bar Area** as follows:
 - a) Monday to Thursday, 10:00 to 02:30 hours (the following day).
 - b) Friday to Saturday, 10:00 to 04:00hours (the following day).

The variation application does not alter these hours in any way but seeks to extend the hours to cover Sunday trading as follows:

- c) Sunday to Thursday, 10:00 to 02:30 hours (the following day).
- d) Friday to Saturday, 10:00 to 04:00hours (the following day).

- 5) The current trading conditions for the areas now described as the **Alfresco Garden Deck Area, the Alfresco Walkway** and the **Beer Garden** are as follows:
- a) Trading hours shall be 10:00 to 02:00 hours (the following day) six (6) days a week from Monday to Saturday;
 - b) The area shall have the appearance of a dining area and meals and/or snack foods shall be readily available;
 - c) Patrons in the area are to be seated;
 - d) The area shall be clearly and physically delineated from the public footpath;
 - e) Table service shall be available in the area at all times.

Beer Garden

- 6) The applicant seeks a variation of the licensed hours, including Sunday trading, for the Beer Garden. The object is to bring them in line with the current trading hours for the Internal Bar/Bistro area. The basic premise for this particular variation is that the Beer Garden is currently only accessible through the Internal Bar/Bistro and should be viewed as an extension of the internal area rather than as an intrinsic part of the overall alfresco dining area. The Commission was advised that the moveable barriers of planters and lattice that enclose the Beer Garden are to be maintained and that the link between the internal bar/bistro and the Beer Garden would soon be strengthened by the installation of a sail cloth shade structure over the latter area.
- 7) The applicant also wants the patrons in the Beer Garden to be permitted to stand as under the current licence, they must all be seated.

Alfresco Garden Deck Area

- 8) The proposed variations for the **Alfresco Garden Deck Area** include the inclusion of Sunday trading from 10:00 to 02:00 hours (the following day). The applicant also wants the requirement that all patrons be seated on the Deck Area varied and replaced with a requirement for seating for at least eighty percent of the permitted patron capacity for the area at all times. The main motivation for the variation appears to be to allow versatility in the use of the various spaces within the overall licensed area in a manner not currently possible.
- 9) In line with this wish for versatility in the use of various spaces within the Deck Bar, the applicants also want patrons to be permitted to stand during booked Private Functions on the Deck Area. Currently, a special licence is required for each such function.

Alfresco Walkway

- 10) The walkway must currently be kept clear and accessible to the public until 17:30 Monday to Friday. The applicant proposes a variation to trading conditions for the Alfresco Walkway by once again including Sunday trading from 10:00 to 02:00 hours (the following day) and by removing the requirement that all patrons be seated in favour of a requirement that table seating for at least eighty percent of the permitted patron capacity for the area must be available at all times. The other existing conditions remain the same.

High Tables and Stools

- 11) Finally, in each of the areas, the applicant wants the right to use the furniture previously described as high tables and bar stools. These items of furniture are of good quality and the "bar stools" have back rests for support. The applicant argues that these specific items of furniture have various uses and that restricting their use to one area restricts their versatility. The greater height of the furniture means that patrons in the Walkway are elevated to a height similar to those patrons sitting on the Deck area and thus the use of

the high furniture in the Walkway prevents them from feeling like “second class citizens”. It is also hoped that the high tables can be used in all areas for the display and service of food as required.

Consideration of the Issues

- 12) The applicant’s intention is that “the concept” of the proposed variations to current trading conditions will maintain a clear theme of alfresco dining whilst allowing the licensees to cater for the many and varied private functions that sectors of the public have expressed interest in.
- 13) In reaching a decision on the proposed variations to the outside eating areas, the Commission has taken account of the fact that apart from a small area of the deck, the land is privately owned and the landlord has consented to the variations sought. Further, no doubt because of the relatively small portion of the licensed area that remains on land controlled by the Darwin City Council (the DCC), the DCC does not impose its normal requirement that patrons must be seated at all times in this area. This means that the Commission is able to consider the entire Alfresco Deck Area as if it were private land and simply direct its attention to concerns such as harm minimization and protection of the amenity of the neighbourhood. Further, the Development Consent Authority permits for all areas have been obtained.
- 14) The Commission has no issue with the variation of the licence to allow Sunday trading for the hours sought.
- 15) The question of whether or not to allow a lessening of the condition that all patrons in the alfresco dining areas including the Beer Garden be seated was carefully considered. It was noted that even if patrons are seated at the high tables and stools in the Beer Garden, the barrier of lattice and plants blocks a clear view of patrons from passers by. We also accept the problems faced by a licensee in attempting to ensure that patrons remain seating in the Beer Garden - especially when it is physically linked to the Internal Bar/Bistro area where no such rule applies. We consider that requiring the licensee to provide table seating for at least eighty percent of the permitted patron capacity in this area will sufficiently protect the alfresco atmosphere. We note the Licensee’s comments that they intend to keep the Beer Garden as a more secluded, enclosed space and a condition to that effect shall be included in the Licence.
- 16) As regards the Alfresco Walkway, we accept the argument that the use of high tables and stools in this area benefits patrons by raising their height to that of patrons on the Deck Area. We retain some concerns however about the use of these particular items of furniture for patrons seated on the Alfresco Deck Area. To allow patrons to sit at such an elevated height on the Deck is not compatible with the argument put forward for their use in the lower Walkway area. The disparity between the height of patrons would be increased if the high tables and chairs were used on the Deck area. For this reason and to avoid any impression of a bar on the deck area, there will be restrictions placed on the use of the high tables and stools for seating upon the Deck.
- 17) There are no restrictions however placed on the use of the high tables (without stools) for the display and service of food (e.g. buffets).
- 18) We do not accept that in the Walkway and Deck area, all patrons should be allowed to stand. Such a variation would in no way protect the concept of alfresco dining that the Licensee is at pains to promote. We do however accept the proposed variation that table seating for at least eighty percent of the permitted patron capacity for the area must be available at all times. We start from the premise that if tables and chairs are available, then patrons will most likely use them.
- 19) Finally, we accept the applicant’s request for a variation of the requirements that patrons be seated when attending a private function on the Licensed Premises. It may well be that a private function with all guests remaining standing can be well catered for in one area of the

licensed premises whilst alfresco dining and the eighty percent rule continues in another area. The Commission grants a variation to allow people to stand at private functions so long as the function is indeed a private function with a prior booking made with the Licensee.

20) The variation of the liquor licence is granted upon the following terms:

Concept

1. With the exception of private functions booked with the Licensee, the Alfresco Dining Areas shall at all times have the appearance of and be consistent with the concept of an up market alfresco dining venue in accordance with the application as presented to the Commission.
2. Should the Licensed premises, or the operation of the licence be considered by the Commission, a Licensing Inspector or Police Officers to be inconsistent with such concept, the Commission may of its own motion convene a hearing into the operation of the premises and, at the conclusion of the Hearing, may suspend, cancel or vary the licence if the Licensee in the opinion of the Commission shall have failed to show sufficient cause to the contrary.

General Bistro/Bar Area

The trading conditions for the General Bistro/Bar Area are varied to include Sunday trading as follows:

1. Sunday to Thursday, 10:00 to 02:30 hours (the following day).
2. Friday to Saturday, 10:00 to 04:00 hours (the following day).

Alfresco Dining Areas

The trading conditions specifically for the **Beer Garden** to read as follows:

1. Sunday to Thursday, 10:00 to 02:30 hours (the following day);
2. Friday to Saturday, 10:00 to 04:00 hours (the following day);
3. The area shall have the appearance of a dining area and meals and/or snack foods shall be readily available;
4. With the exclusion of privately booked functions, patrons are permitted to stand on the proviso that table seating for at least eighty percent of the permitted patron capacity for the area must be available at all times.
5. All patrons are permitted to stand during Private Functions which have been booked with the Licensee;
6. The area shall remain clearly and physically delineated from the public footpath, walkway and laneway by means of permanent and/or semi permanent installations including barriers, shade awnings, trees and shrubbery, and appropriate lighting to give it the appearance of being an extension of the General Bistro/Bar Area and separate from the proposed Alfresco Garden Deck and Walkway.
7. High tables are permitted to be used in this area either with stools for dining or without stools for the service and display of food.

The trading conditions specifically for the **Alfresco Garden Deck Area** to read as follows:

1. Licensed hours: Monday to Sunday 10:00 to 02:00 hours (the following day);

2. The area shall have the appearance of a dining area and meals and/or snack foods shall be readily available;
3. With the exclusion of privately booked functions, patrons are permitted to stand on the proviso that table seating for at least eighty percent of the permitted patron capacity for the area must be available at all times.
4. All patrons are permitted to stand during Private Functions which have been booked with the Licensee;
5. The area shall be clearly and physically delineated from the public footpath;
6. Table service shall be available in the area at all times.
7. High tables are permitted to be used in this area solely for the service and display of food.

The trading conditions for the **Alfresco Walkway** are to read as follows:

1. Licensed hours: Monday to Friday 17:30 to 02:00 hours (the following day). But excluding Public Holidays;
2. Unobstructed access will be provided to the public from the Mitchell Street footpath to NT House Monday to Friday prior to 17:30 hours;
3. Licensed hours: Saturdays, Sundays and Public Holidays 10:00 to 02:00 hours (the following day);
4. The area shall have the appearance of a dining area and meals and/or snack foods shall be readily available;
5. With the exclusion of privately booked functions, patrons are permitted to stand on the proviso that table seating for at least eighty percent of the permitted patron capacity for the area must be available at all times.
6. All patrons may be permitted to stand during Private Functions which have been booked with the Licensee
7. Table service shall be available in the area at all times.
8. High tables are permitted to be used in this area either with stools for dining or without stools for the service and display of food.

Brenda Monaghan
Presiding Member

4 July 2005