

# Northern Territory Licensing Commission

## Reasons for Decision

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| <b>Applicant:</b>       | Gapview Hotel  |
| <b>Licence Number:</b>  | 80102399   |
| <b>Licensee:</b>        | Gap View Holdings Pty Ltd  |
| <b>Nominees:</b>        | Mr P Loechel<br>Mrs D Loechel  |
| <b>Proceedings:</b>     | A Hearing, in Accordance with Section 29 of the <i>Northern Territory Licensing Commission Act</i> , to Review the Decision of the Chairman of the Licensing Commission on 11 September 2012 to Refuse an Extension of Takeaway Hours for the Gapview Hotel, Alice Springs |
| <b>Heard before:</b>    | Mrs Jane Large (Presiding Member)<br>Ms Cindy Bravos<br>Mr Paul Fitzsimons (via telephone hook up from Alice Springs)  |
| <b>Date of Hearing:</b> | 27 September 2012  |
| <b>Appearances:</b>     | Mrs D Loechel, Dual Nominee (via telephone hook up from Alice Springs)   |

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## Background

- 1) The Gapview Hotel ("the hotel") made an application on 28 August 2012 to temporarily vary its takeaway licence conditions from 13 October 2012 to 20 October 2012. The hotel sought to have the opening hours for the drive through bottle shop temporarily varied to enable trading from 10:00 hours to 21:00 hours each day during the above period to cater for the Masters Games.
- 2) The approved takeaway licence conditions for the Gapview Hotel allow 10.00 hours to 21:00 hours trading on Saturdays; 12:00 noon to 21:00 hours trading on Sundays and 14:00 hours to 21:00 hours trading Monday to Friday. Therefore the additional hours applied for were earlier opening times of 2 hours on Sunday 14 October 2012 and 4 hours for each of the days Monday 15 October 2012 through to Friday 19 October 2012.
- 3) In support of the application Mr Loechel submitted that the variation was to accommodate the needs and wishes of visitors and allow competitors at the Masters Games the luxury of purchasing alcohol over a longer period during the day. He stated that the Masters Games was very beneficial to the economy of Alice Springs but due to circumstances such as airline access to Alice Springs, the high Australian dollar and more competition from other venues it was hard to attract people to the games. This makes it important that the Masters Games this year are a success. There is a need to make everyone's visit and stay in Alice Springs as enjoyable and memorable as possible. Some sports have their competitions during the afternoon and evenings and this makes it difficult for them to be able to purchase alcohol during the trading hours. One way to alleviate the problem is to extend the trading hours of the takeaway liquor.
- 4) The Chairman, Northern Territory Licensing Commission, in accordance with Section 32A, of the *Liquor Act* ('the Act') decided not to hold a Hearing into the application or to require the applicant to cause notice of the application to be published. Comments were requested

from the Northern Territory Police and Department of Health who responded respectively on 29 August 2012 and 10 September 2012.

- 5) The Northern Territory Police response was that

*“Social Order issues will require monitoring, otherwise nil issues”:*

- 6) The Department of Health stated that they did not support the application for extended trading hours. Whilst they had supported several applications for extended trading hours during the Masters Games it was for applications from sporting clubs supporting the games through the use of sporting venues and with the provision of meals and entertainment in a controlled environment. The consumption of alcohol was seen as a secondary reason for people attending the games. This application for extended takeaway hours was not consistent with the overall approach to takeaway hours in Alice Springs

- 7) On 11 September 2012 the Chairman, Northern Territory Licensing Commission decided not to approve the temporary variation to the takeaway trading times for the Gapview Hotel. Reasons for the Decision were provided to the applicant on 17 September 2012. The reason provided for the refusal was:

*“An increase in takeaway hours as sought would enable the general public to purchase alcohol four hours earlier than it is currently able from Monday to Friday and two hours earlier than it is currently able on a Sunday. This extension of trading hours for practical reasons is not specific to participants at the Masters Games and it would be unreasonable to expect the hotel to determine who is or is not a participant or official at these games.*

*The application, if approved, would therefore have the effect of undermining the existing takeaway sales restrictions.”*

- 8) On 26 September 2012 Mr Loechel, Dual Nominee and General Manager Gapview Hotel notified the Manager, Southern Region, Licensing, Regulation and Alcohol Strategy that he wished to appeal the Chairman’s decision. In support of the appeal Mr Loechel reiterated the importance of the Masters Games to the economy of Alice Springs and the benefits to those visiting the town to be able to purchase takeaway liquor outside their competition hours. Mr Loechel suggested that it would be a great way to trial extended trading hours and gauge any effects that it may have.
- 9) The appeal request was accepted by the Licensing Commission as an application for a review of a decision under Section 28 the *Northern Territory Licensing Commission Act*.

## The Hearing

- 10) Section 29 of the *NT Licensing Commission Act* sets out the requirements for the conduct and determination of a review, namely:

(1) *“The Commission must conduct a review in a manner that is fair and expeditious and must give proper consideration to the issues.*

(2) *After determining the review, the Commission must, by notice in writing to the person affected by the decision or who requested the review, as the case may be:*

(a) *affirm the decision reviewed;*

(b) *revoke or vary the decision reviewed; or*

(c) *substitute a decision for that decision*

(3) *The Commission must specify its reasons for its decision in the notice”*

- 11) The Commission on Review (“the Commission”) is conducting this review as a Merits Review whereby the Commission “stands in the shoes of the original decision maker” and

the whole decision is made again on the facts. For this reason the Commission has examined all the documents pertaining to the application, made itself aware of the circumstances and reasons for the restricted takeaway trading hours in Alice Springs and the current situation pertaining to alcohol use and abuse in Alice Springs.

- 12) The applicant was provided with the opportunity to address the Commission on the application and Mrs Loechel, Dual Nominee of the Gap View Hotel accepted this opportunity via a telephone link up. Mrs Loechel stated that the extended hours were for visiting and competing visitors to avail themselves of early opening times and the application was supported by the Masters Games organisers and the NT Tourism. She explained that the competitions started and finished at different times giving examples for rugby and cricket commencing at 09:00 hours whilst netball commenced at 16:00 hours. When questioned by Commission members Mrs Loechel said that she was unable to provide details as to the likely increase in the volume of sales as in previous years, when the Masters Games was held in Alice Springs, there had been no change to takeaway hours. She admitted that although the hotel did not propose advertising the revised trading hours locals would be able to avail themselves of the additional hours to purchase alcohol. Mrs Loechel expressed her concern that there had been a press release from the Commission about the refusal to grant the application and based this on the fact that on 18 September 2012 the decision was reported on the ABC local radio and in various newspapers. The Commission advised her that they had not seen any media release but all decisions made by the Northern Territory Licensing Commission were published on its web site which was accessed by the media.

## Consideration of the Issues

- 13) Section 3(3) of the Act clearly dictates that when the Commission exercises a power or performs a function under the Act, the Commission must have regard to the objects of the Act and must exercise the power and perform the function in a way that is consistent with those objects. The objects of the *Liquor Act* are set out at section 3 as follows:

(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"*

The Commission is very aware of the economic benefits that accrue when the Masters Games are held in Alice Springs and this is particularly relevant as the town has suffered, in recent years, a drop in visitor numbers and businesses have closed and clubs gone into administration. In the conversation with Mrs Loechel, she presented as a genuine, honest person and the Commission accepts that both Mrs Loechel's and Mr Loechel's reason for the application to extend the takeaway trading hours is to make the visit to the town for competitors associated with the Masters Games more enjoyable and amenable. If the extended trading hours was strictly limited to one premise and Masters Games competitors

and visitors only then the Commission believes that there would be minimum harm and risk to community amenity and social harmony and wellbeing.

- 14) However, when assessing risk the Commission has to examine the wider ramifications of its decisions. The grant of this application for one hotel for a period of just over a week will result in an additional twenty-two hours of takeaway trading in Alice Springs. There are a further nine takeaway licences in the town and having established a precedence it is very probably that some or all of these licensees will apply and expect approval for similar extended trading hours.
- 15) The Gapview Hotel does not propose advertising this variation to licence conditions but Mrs Loechel accepts that persons other than Masters Games competitors and visitors will be able to avail themselves of the extended trading hours. The reality is that there would have to be some dissemination of information in order that Masters Games competitors and visitors are made aware of the extended hours: the media is likely to report the Commission's decision and Alice Springs is a small community so word would spread quickly amongst local residents who wish to purchase takeaway alcohol during the extended hours.
- 16) The original imposition of the restricted hours for takeaway alcohol in Alice Springs followed extensive consultation with community members, government agencies and the Council. The outcome of these consultations was a strong commitment to not only reducing the hours of takeaway but also to a later commencement time. The reviews undertaken on these measures by both the Menzies School of Health Research and the Northern Territory Licensing Commission involved further detailed consultation and then a recommendation that the current measures be maintained. No community consultation has been undertaken on this application and time now precludes it happening. However, the Commission has comment on the application from two government agencies which encounter the results of excessive alcohol consumption in Alice Springs. The Department of Health does not support the application. The Northern Police response is brief and refers to monitoring of Social Order issues which indicates some concern as to these issues.
- 17) Mr Loechel suggested in his submission for a review of the Chairman's decision:
- "that it would be a great way to trial extended trading hours and gauge any effects that it may have."*
- It is the Commission's opinion that eight days of extended takeaway trading is insufficient time to provide any meaningful data and information to allow a proper analysis and evaluation of the Alcohol Supply Restrictions in Alice Springs.*
- 18) On 17 September Mr Greg Cavenagh, SM, Coroner, brought down his findings into an inquest into the death of a person which involved excessive consumption of takeaway alcohol in Alice Springs. In his findings he stated:
- "A long term solution to excessive alcohol consumption in Alice Springs requires greater cooperation amongst stakeholders (including outlets that sell alcohol)."*
- and finally recommended that:
- "The NT Government convenes an urgent meeting with stakeholders in the Alice Springs Community, including the Licensing Commission, Police, the Department of Health and the People's Alcohol Action Coalition and commits to all available, reasonable measures to reduce the supply of excess alcohol from takeaway outlets."*
- 19) Having considered all of the likely consequences the Commission has determined that extending takeaway hours for the Gapview Hotel will not minimise the harm associated with the consumption of liquor; is counter to the Coroner's view that there should be a reduction in the supply of excess alcohol from takeaway outlets and the potential risk to community amenity, social harmony and wellbeing from the broadening of the extended hours beyond the Masters Games participants and one hotel is such that it outweighs the inconvenience

encountered by visitors and contestants to the Masters Games wishing to purchase takeaway alcohol. The Commission affirms the decision reviewed.

## **Decision**

- 20) The Commission in accordance with Section 29 (2)(a), affirms the decision taken by the Chairman of the Northern Territory Licensing Commission on 11 September 2012 not to approve the application for extended takeaway trading hours for the Gapview Hotel.

Jane Large  
Presiding Member

5 October 2012