

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Pine Creek Hotel
<b>Licensee:</b>	Karinga Pty Ltd
<b>Licence Numbers:</b>	81301673
<b>Proceedings:</b>	Application for a Variation to Liquor Licence Conditions Pursuant to Section 32A of the <i>Liquor Act</i>
<b>Heard Before:</b>	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mr Wally Grimshaw
<b>Date of Hearing:</b>	30 June 2009
<b>Appearances:</b>	Mr Des Crowe for the Licensee Inspector Mark Wood for Director of Licensing

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## Background

- 1) A Section 32A *Liquor Act* application has been made by Karinga Pty Ltd, Licensee of Pine Creek Hotel (the Hotel), to vary the category of the current liquor licence. Despite being called a hotel, this premise in fact has a Roadhouse Licence and is one of only seven (7) roadhouses which are allowed to have gaming machines by virtue of the fact that they are the holders of a "Prescribed Liquor Licence." With the exception of these seven (7) roadhouses, only clubs or public hotels/ taverns are entitled to have gaming machines under the *Gaming Machine Act*.
- 2) The applicant wants to change to a Public Hotel licence principally because it wants to ensure that on any future sale of the business after 1 December 2011, the purchaser will have the capacity to apply for a gaming machine licence for the Hotel and to continue to maintain gaming machines on the premises. Gaming machine licences cannot be transferred and the *Gaming Machine Act* and related *Regulations* only grant prescribed roadhouses such as the Hotel, the right to apply for Gaming Machine licences until 1 December 2011. A further reason for the application is that the Nominee, Mr Chris Mason no longer wants to rely on a continuing arrangement with the service station across the road for the continuance of the Roadhouse Licence. This relationship has ensured to date that the Hotel complies with its requirements as a road house to offer extended hours of access to fuel, food and accommodation.
- 3) The normal opening hour for a public hotel is 10.00am. Mr Mason has for many years opened at 7.00am as allowable under a Roadhouse Licence and he asks for the continued right to open early for alcohol service. The basis of his request is that the Hotel has for many years acted as a "wet mess" canteen for miners on shift work and Mr Mason states he wants to be able to continue servicing the community in this way.
- 4) The application was advertised in the NT News on 1 and 3 October 2008. No responses were received from the public. Letters were also sent to Northern Territory Police and Territory Health and responses were received. These responses were not formal objections but were comments to be taken into account by the Commission in their decision-making.
- 5) A Directions Hearing was held in Darwin on 29 April 2009 and the applicant was advised that despite the fact that there were no formal objectors, the Commission wanted to be fully

informed on all issues before making a decision. The Commission was particularly interested in allowances previously made both within the Northern Territory and interstate to provide 'wet mess' canteens (or similar) for remote work sites and those that operated with early morning sale of alcohol for shift workers. To that end, the Commission convened a hearing in Pine Creek on 30 June 2009 which was attended by the Nominee Mr Mason and his Counsel, Mr Des Crowe and Inspector Mark Wood on behalf of the Director of Licensing.

## The Hearing

- 6) At the hearing, Mr Mason advised the Commission of the history of the Hotel and the reasons for the application. The Hotel wants to be entitled to continue its current opening hour which allows service of alcohol to both bona fide guest and the public from 7.00am. He advised that this early opening hour has never been a problem and that he sees it as a service to the local mines rather than a profit making proposal. Currently the only mine operating is Territory Resources which has around 170 employees working in three (3) shifts. The mine accommodation is located about thirty (30) minutes from Pine Creek and there is no 'wet mess' facility on site. There are proposals for other mines close to Pine Creek to reopen in the near future.
- 7) Mr Mason explained that there are a small number of miners who, after finishing their night shift, travel the half hour or so from their accommodation at the mine to have breakfast or a drink with their co-workers before they return home to bed. Mr Mason advised that senior management of the Territory Resources mine are supportive of the current arrangement. Further, the mine's zero alcohol policy on-site curbs the alcohol intake of mine workers and he has no alcohol-related problems as a result of opening early. Local Police appear to have no concerns about the current opening hour.
- 8) At the hearing, both Inspector Wood and Mr Crowe provided written and oral submissions to assist the Commission in its decision-making. The submission from Territory Health in relation to the issue of early trading hours referred to the needs of shift workers generally which could be used as a justification for extending hotel and tavern trading hours in major centres, with the Pine Creek Hotel being cited as a precedent. Their submission cautioned a careful approach to the application which it saw as having little validity.
- 9) It seems clear that in most States (eg WA and SA), application can be made for premises to open early where appropriate. The recent amendments to the Queensland liquor legislation places the onus on the applicant to show a demonstrated community need and generally restricts applications to community clubs or licences for special functions. Whether these States also have provision for a 'wet mess' canteen on more isolated work sites such as a mine is unknown.

## Matters taken into Consideration

- 10) The Commission's principal concern in considering this matter was the need to be satisfied that the early opening hours sought were for the benefit of the community and were not likely to cause any issues within the local community. In short, the Commission must be satisfied that it is in the public interest that this application be granted. In deciding this matter all written and oral submissions put before the Commission have been taken into account, including the following matters:
  - a) The applicant wants early opening in his new licence to allow the Hotel to continue to cater for workers on shift work at a mine (or in the future, mines) that do not have wet mess facilities. These are not men who sit and drink all day; rather they stay for an hour or two with workmates and then drive home to bed. The zero tolerance policy on the mine site ensures that they behave responsibly. The occasional local resident might avail themselves of the opportunity to have an early drink but this appear to be a minor issue.

- b) The applicant has been opening early for years to accommodate mine workers without a problem and there is no evidence of any antisocial behaviour or drunkenness that is caused by this early opening.
- c) In the Territory, there are currently a number of licences granted to companies to run a 'wet mess' in remote regions to enable their employees to relax and enjoy a drink in a responsible environment. These facilities seldom cause concern. Some have strict conditions imposed to ensure responsible drinking-particularly if they are located near Aboriginal communities. Others have no such restrictions but a zero tolerance policy on the work site is imposed. Further, the fact that Roadhouse Licences historically allow the supply of liquor on premises at any time means that these premises have been able to accommodate the needs of isolated work forces.
- d) There are a number of measures that impact on liquor supply in Pine Creek that seem to be working. The Kybrook Agreement entered into between the local Indigenous community and Pine Creek Licensees prevents them from selling more than a six (6) pack of light beer to a Kybrook community member. This agreement appears to be still working well and is seen as a positive local measure to protect the amenity and welfare of the local community.
- e) Further, the Territory Government introduced an electronic ID system for the Katherine Region, including Pine Creek, to assist in controlling problem drinking. In all recent consultations with stakeholders in the Pine Creek Community, the general opinion is that current alcohol initiatives are working well.
- f) Whilst the Commission has been necessarily cautious about setting a precedent regarding early opening hours that might sit uneasily at a later date, the hearing in Pine Creek largely satisfied the Commission's remaining concerns and queries. Pine Creek Hotel is in effect running a 'wet mess' for the mines and has done so for many years without a problem. It is for this reason that an early opening hour will be granted in the new licence. Whilst the Commission does not intend at this stage to place a requirement on the Licensee to formally and rigorously check that the persons served are mine workers on shift work, it may review this condition in the future if there is evidence placed before it that the client base has changed and that the majority of patrons being served are not from this group.

## Decision

- 11) The Pine Creek Hotel is granted approval by the Commission to surrender its current Roadhouse Licence and to obtain a Public Hotel style licence to include a special condition that liquor service may commence at 7.00am and continue until 9.00am. Normal public trading hours will commence at 10.00am and continue until close. Whilst the early session will not be restricted to mine shift workers, the Commission is satisfied that they are the customer base and that the early opening will not impact on community amenity.
- 12) For safety sake, the Commission impose the requirement that these early opening hours must not be publicised externally or through the media.
- 13) The Commission requests that the Director of Licensing provide the Commission with a review report in six (6) months on the 7.00am to 9.00am session - including comment from local Police.
- 14) This review will provide an opportunity for the Licensee to put forward options to the Commission on methods of identifying the mine staff who attend these sessions. If an appropriate identification system can be established to the Commission's satisfaction, then at the review the Commission will consider again the Licensee's preferred option of having liquor served only to mine staff but for the longer period of 7.00am to 10.00am.

Richard O'Sullivan  
Chairman

17 July 2009