

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Darwin City Waterfront Ground Floor Medina Vibe Hotel Complex Kitchener Drive Darwin NT 0800
Applicant:	Craft Beer Australia Pty Ltd
Proceedings:	Re-open the Hearing conducted 13-15 October 2009 in respect of the grant of an in-principle 'on premise' liquor licence.
Members:	Mr Philip Timney (Presiding Member) Ms Cynthia-Lee Bravos Mr John Brears
Appearances:	Mr John Tourish, Director Craft Beer Australia Pty Ltd Inspector Graham Tribe for the Director of Licensing
Date of Hearing:	11 October 2011

Background

- 1) On 17 December 2009, the Northern Territory Licensing Commission ('the Commission') determined to grant a conditional 'on premises' liquor licence to Craft Beer Australia Pty Ltd ('CBA') in order to enable it to develop the premises located on the ground floor of the Medina Vibe Hotel Complex ('the premises') as a tavern style establishment.
- 2) At the time of the decision, the Commission determined that the sale of liquor on the premises was not permitted until the approval in writing to do so was obtained from the Commission; with that approval not to be forthcoming until the refurbishment of the premises was complete and all necessary approvals had been obtained. In summary, the Commission indicated to CBA that should certain conditions be met, a liquor licence would be issued.
- 3) No time limitation was imposed at the time of the decision as submissions made to the Commission by the applicant during the Hearing indicated that CBA would proceed expeditiously with the fit out and opening of the premises.
- 4) In September 2011, some 21 months after the grant of the conditional licence, the Commission, at a full Commission meeting, expressed concerns regarding the apparent delay in the fit out of the premises and the commencement of the business under the licence. The Commission determined to re-open the Hearing and a 'Notice of Reopening of Hearing' was issued.

The Hearing

- 5) On 11 October 2011, the Commission re-opened the 2009 Hearing in order to conduct a review and hear submissions as to when the premises are likely to open for trade
- 6) Mr John Tourish, a Director of CBA appeared before the Commission on behalf of the applicant company whilst Mr Graham Tribe appeared on behalf of the Director of Licensing.

- 7) Mr Tourish provided the Commission with a written submission summarising events to date. In summary, Mr Tourish submitted that:
- statutory approvals for the tavern were originally anticipated to be issued by September 2010 and in order to expedite completion, CBA had agreed to undertake the work required to be undertaken by the lessor (the TOGA Group) concurrent with CBA's fit-out;
 - in December 2010, the Stage 1 building permit was issued allowing demolition, in-ground sanitary drainage, slab trenching and reinstatement to commence;
 - in January 2011, the Stage 2 building permit was approved allowing the remainder of works to commence.
- 8) It was submitted that unexpected delays in obtaining the appropriate building permits had primarily occurred due to the use of an architect not familiar with Northern Territory building requirements.
- 9) In addition, the agreement for CBA to undertake TOGA's work concurrent with CBA's fit-out fell through. TOGA advised CBA that they would undertake the Lessor's work, however, they would not do so until the fit-out of the premises was approved by them. Protracted negotiations then ensued with TOGA raising concerns regarding noise abatement measures.
- 10) On 27 September 2011, TOGA approved the fit-out of the premises subject to a number of issues. It was submitted that TOGA and CBA have agreed that the outstanding issues are minor matters and that they will not delay the commencement of TOGA's works.
- 11) Mr Tourish further advised the Commission that as at 10 October 2011, the following approvals from Darwin Waterfront Corporation were still outstanding:
- minor penetrations for air intakes and exhaust grills in an external wall abutting Kitchener Drive;
 - alterations requested by TOGA to the kerb alignment which would allow for a short term off-loading parking bay.
- Mr Tourish advised that these approvals were expected to be given shortly.
- 12) Mr Tourish submitted that the abovementioned approvals would not delay the commencement of TOGA's work or CBA's fit-out of the tavern.
- 13) Mr Tourish also submitted that the works to be undertaken are contingent upon:
- amendments to the lease regarding dates for completion of TOGA's works, CBA's fit-out work and a commencement date for trading (new lease expected to be executed within 1-2 weeks); and
 - appointment of a new builder to undertake CBA's fit-out work due to the withdrawal of the builder previously engaged (tenders currently under review).
- 14) Mr Tourish submitted that CBA shared the Commission's concerns with regards to the delays in the fit out of the premises and the commencement of trade.
- 15) However, until a completion date is agreed upon for TOGA's works, Mr Tourish submitted that he could only submit a provisional fit-out program that would see:
- commencement of TOGA's work in November 2011 (12 weeks program)
 - followed by commencement of CBA's fit-out (16 week program)
 - opening of the premises in mid June 2012.

- 16) Mr Tourish submitted that CBA would work with TOGA in order to achieve an earlier opening date, preferably April 2012 which would be more aligned with the dry season tourist trade.
- 17) Mr Tourish submitted that a combined program of works would be available to the Commission in mid-November 2011.
- 18) No submissions were made on behalf of the Director of Licensing.

Consideration of the Issues

- 19) Just under 22 months have passed since the Commission granted a conditional 'on premises' liquor licence to CBA. This period of time is clearly well beyond the timeframe expected by the Commission at the time of granting the licence as is evidenced by the full Commission decision in September 2011 to re-open the Hearing.
- 20) The Commission also notes from the submission of Mr Tourish, in that CBA shares the concerns of the Commission in this respect.
- 21) The Commission is also cognisant of the desire for the development of the Waterfront Development to include the provision of facilities for a myriad of clientele. As per the December 2009 Commission decision, the Commission notes that the Waterfront Development was always intended to include a range of venues including a tavern amongst other venues and the Commission remains of the view that a well-run establishment would be an asset to the precinct.
- 22) In saying so, however, the Commission is somewhat concerned that the development of the premises has not proceeded physically in any way, shape or form since the granting of an in-principle licence in December 2009.
- 23) The Commission also notes that there have been little if any, proactive efforts on the part of CBA to keep the Commission informed of delays to the project. Information provided to the Commission regarding the progression towards the opening of the premises has only come by way of inquiry by the Director Licensing at the request of the Commission.

Decision

- 24) The Commission has determined that the in-principle licence granted to CBA for the premises remains current subject to the following information being provided to the Commission no later than 30 November 2011:
 - copy of the renewed lease agreement between CBA and TOGA;
 - copy of correspondence from TOGA to CBA confirming the scope of building works that TOGA are to carry out to the tenancy before CBA is able to commence the fit-out – including the name of the building contractor engaged by TOGA to carry out the works and dates of when the work will start and finish;
 - name of the builder/contractor engaged by CBA to carry out the fit-out of the premises – including a detailed program of the fit-out works;
- 25) In addition, the Commission has determined that CBA is to proactively inform the Commission on a monthly basis, through the Director of Licensing of its progress towards opening of the premises including any possible delays to the timeframes submitted by CBA at this Hearing.
- 26) For the sake of absolute clarity, the Commission emphasises that the conditional licence issued to CBA is in jeopardy of being cancelled. The full Commission's deliberations in September and the content of this decision should be construed by CBA as withdrawing and limiting any reasonable expectation of a licence being issued unless the milestones set

out in this decision are met to the satisfaction of the Commission. In addition, the applicant is required to keep the Commission fully informed of progress with the development of the premises, including advice as to any change to the proposed commencement date of the business of the premises, as identified by the applicant during the course of this Hearing.

Philip Timney
Presiding Member
(Legal Member)

3 November 2011