

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Pine Creek Railway Resort
Applicant:	Driftfield Engineering Pty Ltd
Nominee:	Ms Sandra Robena Peters
Licence Number:	80218516
Proceeding:	Application for a Variation of Liquor Licence Pursuant to Section 32A of the <i>Liquor Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Cindy Bravos Mr Wally Grimshaw
Date of Hearing:	24 July 2013
Appearances:	Ms Sandra Peters Mr David Peters (Company Secretary) Mr Lance Martin (Business Advisor to Mr and Mrs Peters) Mr Antony Downs (Counsel for Mr Jenkins and Mr Mason) Mr Bruce Jenkins Mr Chris Mason Mr Mark Woods on behalf of the Director of Licensing

Background

- 1) Ms Sandra Peters, Nominee and Manager of the Pine Creek Railway Resort ("the Resort") situated at 1 Railway Terrace, Pine Creek made an application to the Director of Licensing to vary the licence conditions of the Resort pursuant to Section 32A of the *Liquor Act* ("the Act"). The Resort Licence was granted on 7 November 2012, following the development of the complex for the operation of a licensed restaurant in conjunction with the provision of seventeen cabins for visitor accommodation. The application is for the removal of a condition of the Licence requiring liquor sales to be ancillary to a meal for guests who are not bona fide residents of the premises.
- 2) Following advertisement of the application, four submissions were lodged. In a decision of 4 July 2013 the Chairman of the Northern Territory Licensing Commission ("the Commission") determined that three of the four submissions were valid objections under Section 47F(2)(a) and (b) of the Act and required a Hearing pursuant to Section 47I(7) of the Act.
- 3) The three objections were lodged by:
 - Northern Territory Police
 - The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)

- Mr Antony Downs on behalf of clients.

Hearing

- 4) The Hearing commenced with Licensing Inspector Wood tendering to the Commission, a letter received from FaHCSIA advising that they considered that the previously lodged written submission dated 18 April 2013 presented that Department's views adequately and advised that they would not attend the Hearing as a party to the proceedings.
- 5) The Commission also noted that no representatives from the Northern Territory Police were present at the Hearing.
- 6) Licensing Inspector Wood then tendered the Hearing Brief as evidence and advised the Commission that the application was not one of complexity. He advised the Commission that included within the licensed premises are accommodation, a restaurant and a pool area and that the application from the Nominee was for the removal of a condition of the Licence requiring liquor sales to be ancillary to a meal for guests who are not bona fide residents of the premises.
- 7) Ms Peters, the Nominee of the Resort, outlined the background to and reasons for the application to have the condition removed. Ms Peters stated that she is not seeking to alter the nature of the premises which is that of a restaurant and accommodation, and is simply seeking only to allow customers who do not wish to purchase food to be able to purchase an alcoholic drink at the premises. Ms Peters advised the Commission that a significant sum of money had been spent on the premises and on promotional material to attract visitors to The Resort and the Pine Creek area in general.
- 8) Ms Peters advised the Commission that the Resort was small and that the removal of the condition would allow those customers who did not want to purchase a meal but who were accompanying others that did, the ability to enjoy an alcoholic drink at the venue with their companions.
- 9) Ms Peters stated that she was not seeking an extension of trading hours nor does the Resort sell take-away alcohol. Ms Peters explained that she wished to retain the current business model and that the application had been submitted simply so that she would not have to turn customers away when they come into the premises and wish to purchase an alcoholic drink, without wanting a meal.
- 10) In support of the application, Ms Peters referred to a petition that was submitted with the application with over 170 signatories in support of the licence condition applied for.
- 11) Following Ms Peter's submissions, the Hearing was adjourned to allow the Commission and the parties to conduct a viewing of the premises and the specific areas affected by the application.
- 12) Mr Downs, in cross examination, queried Ms Peters as to whether she intended to change the operation of the business if the application was approved. Ms Peters stated that she did not wish to do so and that she did not want to obtain a take-away Licence nor did she wish to trade in the early hours. When queried further, Ms Peters stated that should the application be approved, she may look at putting more seating in the area, most likely in the beer garden area but this would remain within the venues currently licensed patron number capacity.

- 13) Mr Downs further questioned Ms Peters, stating that the restaurant had a bar feel about it to which Ms Peters responded that the venue operated as a restaurant although there was the ability for customers to position themselves at the small bar area whilst they awaited to be seated for their meal.
- 14) Ms Peters further advised the Commission that currently the kitchen closes at approximately 8.30 pm although this was extended on Friday and Saturday evenings, with pizzas also available at later times.
- 15) Mr Downs then called Mr Mason who had objected to the application, to appear before the Commission. Mr Mason advised the Commission that he was the owner and Nominee of the Pine Creek Hotel. Mr Mason stated that the viewing of the Resort as part of the Hearing was the first time he had seen the premises and that it presented as a "*nice place*". Mr Mason advised the Commission that he was a long term resident of Pine Creek and that at the time of the original application for a licence he did not object as the Resort was focused on the provision of a restaurant service.
- 16) Mr Mason stated that given that Pine Creek already had one of every licence type, being a hotel, tavern, turf club, take-away and restaurant licence, that in his view Pine Creek was well covered hence his objection to the application before the Commission. Mr Mason also advised that in his opinion that due to the ratio of licences to population, that the Pine Creek area was one of the most licensed areas within the Northern Territory.
- 17) Mr Downs further stated that he was also concerned that the current licence did not refer to being required to be a party to the Kybrook Agreement as was required of other Licensees in the area.
- 18) In response, Licensing Inspector Wood advised the Commission that the Kybrook Agreement condition was not included in the current licence as the premise was operating as a restaurant and that the Kybrook Agreement was focused on casual drinkers. Additionally, Mr Wood advised that Ms Peters has advised that should the application be successful, the Resort would be willing to meet any such condition and be a party to the Kybrook Agreement.
- 19) The Commission noted that in the advice from FaHCSIA that it would not be represented at the Hearing, that it welcomed the applicant's advice that it would be willing to be a party to the Kybrook Agreement.
- 20) Mr Mason further advised that he felt that the premises had a feeling of a bar and that the largest item on advertising signage for the Resort was the availability of ice "cold beer". Mr Mason further stated that he was concerned about the premises being located next to a school and that the Pine Creek Post Office was located on the licensed premises.
- 21) Mr Downs then called Mr Jenkins to appear before the Commission. Mr Jenkins advised the Commission that he was the owner and Nominee of The Lazy Lizard Caravan Park, a licensed premises. Mr Jenkins advised the Commission that in his opinion the demographics of the Pine Creek population did not warrant "another bar in town". Mr Jenkins advised that his research indicated that there was a Licence in place for every 76 people in the area and that in his opinion, that was sufficient.
- 22) Mr Jenkins further advised that although The Lazy Lizard Caravan Park was also located near to the school, it was not situated next door as is the Resort. Mr

Jenkins also raised his concerns about the Pine Creek Post Office being located on a licensed premise and the non-party of the Resort to the Kybrook Agreement.

23) Mr Downs then submitted to the Commission that the objections of Mr Mason and Mr Jenkins were based on a concern that if the application was granted, the variation to the licence conditions may or will adversely affect the social conditions in the community. Mr Downs submitted that social conditions were a broad concept and entitled the Commission to turn its mind to the affect the variation to the licence conditions would have on the whole Pine Creek community, which was already serviced by five licensed premises. Mr Downs stressed to the Commission that his clients had not objected to the application based on the fact that they both had competing businesses, but they objected on the grounds that they believe in the need for a diversity of premises within the area for the benefit of the community.

24) Mr Downs referred the Commission to the objects of the Act, specifically Section 3(2)(c) which states that one of the objects of the Act is to:

(c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.

With that in mind, Mr Downs submitted that based on the petition presented there is a conflict between the public interest and diversity. He stated that the petition indicated that the public wanted a range and diversity of licensed outlets to choose from and submitted that this could be addressed by widening the definition of meal rather than approving the application.

25) In closing, Mr Downs submitted that the Resort's licence in its current form provides great scope for operating a business with a focus on food and therefore did not require amendment. Mr Downs reiterated that his clients did not object to the original application for the Licence but that they objected now as they have concerns that if approved, it may adversely affect the social conditions in the community.

26) Ms Peters submitted to the Commission that as the kitchen would remain open until 8.30 pm each night and 9.00 pm on a Friday evening, and given that the majority of revenue is generated from the sale of food, that the restaurant would remain as the focus of the licence should the application be granted. Ms Peters submitted that the provision of alcohol without a meal though would enhance tourism and that this was the general tenor of the submission and that increasing tourism was an overarching desire of the business in general.

Consideration of the issues

27) Before the Commission is an application by a Licensee which seeks to vary the licence conditions by removing the condition that requires liquor sales to be ancillary to a meal for guests who are not bona fide residents of the premises.

28) Objections from FaHCSIA and the Northern Territory Police were not supported by representation at the Hearing but can be summarised as:

FaHCSIA

- raises the issue of excessive consumption and alcohol harm and in particular risks involved with Aboriginal people and the wider Aboriginal community. It refers to potential improvements to the amenity of licensed premises where people drink in association with the consumption of good quality food;

- raises concerns that varying the licence without reference to the Kybrook Agreement would increase the risk of alcohol related harm to the community.

Northern Territory Police

- concern raised that there does not appear to be a sufficient population (380 residents according to 2011 census) to warrant the variation as there are already three other premises that provide an on premise service without the requirement of an accompanying meal;
- concern that if approved, in all likelihood will change the nature of the venue from a restaurant to that of a public bar.

29) The objections of Mr Mason and Mr Jenkins as outlined above relate largely to the adverse impact on the social conditions in the community and not facilitating a diversity of licensed premises for the benefit of the community. Additional concerns were raised about the proximity of the premises to the school and that the Post Office is located within the licensed premises.

30) The Commission, in any consideration of a licence application or licence variation, is required to turn its attention to the objects of the Act.

3 Objects

(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.

(3) When the Commission exercises a power or performs a function under this Act, the Commission must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.

31) In response to the objections, the Commission notes that the applicant has advised the Commission that the primary purpose of the business is that of a restaurant and not of a bar and should the application be approved, the applicant does not intend to change the focus of the business as it currently stands.

32) The Commission also notes that the applicant has indicated a willingness to be a party to the Kybrook Agreement.

- 33) In the Commission's view, the Resort presents as a quality premise with a clear focus on functioning as a licensed premises that focuses on the provision of food as a primary function of its day to day business.
- 34) The concerns raised by objectors regarding the potential for the Resort to have an adverse impact on the social conditions in the community are not well supported. There was no evidence put before the Commission as to how the social conditions of the community would be adversely affected should the application be granted other than the fact that possible patrons would have an additional choice of venue in the Pine Creek area to partake in an alcoholic beverage without the consumption of a meal. As with many licensed venues where this may occur, the Commission is of the view that the responsible service of alcohol provisions should alleviate if not prevent any adverse impact in this regard. Again, the Commission also notes the applicant's willingness to be a party to the Kybrook Agreement. Additionally, the Commission notes that the Resort is positioned next door to a school, however, there is no evidence before the Commission that this has had an adverse impact or been the subject of any complaint to the Commission. As such, the Commission is not minded to consider this issue further.
- 35) The Commission also notes the arguments put forth that should the application be approved that this would impact on community in that there would be a reduced benefit to the community as there would not be the diversity of premises that currently exist in the Pine Creek Area available to the general population. In this respect, the Commission notes that it is the intention of the applicant to retain the current focus of the business, being that of a restaurant and that they had no intention of increasing their current allowable trading hours. In this respect, it would appear to the Commission that should the application be approved, the community will retain the benefit of having a licensed restaurant facility available to it and therefore a reduction in diversity of premises available to it would not in fact occur.
- 36) With respect to concerns raised by the objectors regarding the Post Office currently being situated within a licensed premise, the Commission notes that there is a separate entrance available to members of the public to enter the Post Office and that the current application before it is not contingent upon whether the post office operates from the licensed premises or not and as such, the Commission for the purposes of the Hearing has not considered this issue further.

Decision

- 37) It is the view of the Commission that the removal of the condition that alcohol is only to be served ancillary to a meal would not change the primary purpose of the premise, being that of a restaurant.
- 38) The Commission therefore approves the removal of the licence condition that liquor shall only be sold for consumption ancillary to a meal.
- 39) In doing so, the Commission has determined that the licence conditions will now reflect that the premises should be advertised in no other way than that of a restaurant, including that of promotional signage, and that all persons being served alcohol must be seated.

40)As agreed the Licensee shall abide with the Kybrook Agreement which will be inserted in the liquor licence.

Richard Sullivan
Chairman

23 August 2013