

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: GREEN PARK TOURIST COMPLEX

PROCEEDING: Application for Variation of Liquor Licence Conditions, and Objections

APPLICANT: Ms DIANNE ROGERS

HEARD BEFORE: Mr John Flynn (Acting Chairman)
Ms Jill Huck
Ms Annette Smith

DATE OF HEARING: 19 April 2005

DATE OF DECISION: 19 April 2005

APPEARANCES: Ms Dianne Rogers, Applicant

Mr Graham Cole, for Objectors
Barry James Sharpe and Frances Hodgetts

Superintendent Matthew Hollamby, for Northern Territory Police

1. This application was for a variation of licence conditions to allow the sale of keg beer to have bar facilities and to allow the sale of liquor for consumption away from the premises to the general public. During the course of the hearing the applicant restricted her application for the variation to the sale of takeaway packaged beer and pre mixed alcohol in cans between the hours of 10:00am to 23:00pm on Monday to Saturday excluding Good Friday and Christmas Day.
2. The applicant, Ms Rogers gave evidence in support of the application that station people, tourists and fishermen passing though would benefit from the ability to obtain takeaway liquor from her premises. She said that the demand would not be great and she would expect to sell about 15 cartons of beer a week and these sales would increase the profitability of the business. She further said there were some 20 residents of Larrimah and the premises known as the Larrimah Wayside Inn had a takeaway provision in their Licence.

She put some emphasis on the fact that the Larrimah premises “Top of the Town” had a takeaway licence which had lapsed and her assumption that the provision in the lapsed licence for takeaway liquor could be transferred to her licence. Although not said in so many words she implied that if it was good enough once for two takeaway licences in Larrimah then it should still be good enough.

3. No evidence was called by Mr Cole for the objectors Barry James Sharpe and Frances Hodgetts.
4. Senior Constable Hand gave evidence for the objector, the Northern Territory Police. He had been stationed at Mataranka for nearly 4 years and Larrimah came within his area of responsibility. His evidence mainly related to the problem arising in Mataranka from excessive drinking by Aboriginals and the establishment of camps in that area because of the availability of alcohol. He was of the view that these problems could be transferred to Larrimah with the granting of a further takeaway licence, particularly if liquor restrictions are applied in Mataranka. He said in the event of trouble in Larrimah it would take police about three quarters to an hour to attend.

He put emphasis on his knowledge that Aboriginals would travel great distances for liquor and would use back tracks or roads to avoid detection by police. He knew Ms Rogers and had a good relationship with her and he was not aware of any complaints arising from her premises.

5. The Commission whenever it executes its powers must have regard to the objects of the *Liquor Act* (Section 3(3)). Having considered the evidence in this case, it was the view of the Commission that the sale of takeaway liquor by the Green Park Tourist Complex might marginally facilitate a diversity of licensed premises and associated services for the benefit of the community – (Section 3(2)(c)). The Commission is nevertheless not persuaded that the sale of takeaway liquor would meet the other objects of the Act such as: minimising harm associated with the consumption of liquor in a way that takes account of the public interest (Section 3(1)); protecting and enhancing community amenity (Section 3(2)(a)); or contributing to the responsible development of the sale of liquor in the Territory (Section 3(2)(b)). There is only a limited demand on the evidence of the applicant and the community amenity is already met with the existing premises and would not be enhanced by a further takeaway facility. The application therefore fails.
6. The applicant has been misguided by someone or has a misguided belief that the cancelled “Top of the Town” takeaway licence could be resurrected and added to the existing licence provisions of the Green Park Tourist Complex. Any licence is personal to the Licensee and upon its cancellation any granting of a new licence must be considered on its merits and must meet the objects of the Act as must this application.

7. The objectors both sought to cross examine the applicant on the suitability of the premises and the financial stability of the applicant. The objectors did not raise these matters in their original objections to the Commission. It was argued that the Commission must consider these matters as it must make such an assessment under Section 28 of the *Liquor Act*. It can be also argued that this section only relates to new licences and not to variations. This application for variation was advertised under Section 32A of the Act and the advertisement was approved by the Commission. As the application fails on other grounds this question does not have to be resolved.
8. The Commission was not totally convinced that the Mataranka alcohol problems will transfer to Larrimah if Mataranka liquor sales are restricted or prohibited on particular days.
9. The applicant can at anytime re-apply but should she do so she must demonstrate by a business plan, or other documentation that the objects of the Act, particularly in respect of enhancing community amenity are met.
10. The applicant on her own admission has had a financial struggle with a marginal business and to her credit she has improved the premises to meet reasonable standards. However it is a very basic operation and the existing licence conditions are more than favourable to service her core activities. The Licence allows sales of liquor to travellers or locals with or without a meal for consumption on the premises and the ability to make unlimited takeaway sales to those who take advantage of the caravan park. These licence conditions are more favourable than those pertaining to other similar premises.
11. The applicant indicated that she has some disquiet about having the liquor refrigerator where patrons can help themselves. It was deliberately not behind the counter so as to avoid the suggestion that the counter was a bar. The Commission has no objection to the relocation of the refrigerator behind the counter provided no stools or chairs are placed at the counter.

We wish the applicant continued success with her future endeavours.

John Flynn
ACTING CHAIRMAN