

NORTHERN TERRITORY LICENSING COMMISSION

Applicant: Brewhouse Pty Ltd

Premises: The Deck Bar
22 Mitchell Street
Darwin

Licence Number: 80304385

Proceeding: Hearing, Pursuant to Section 33 (2) of the *Liquor Act*, into the Conditions of the Liquor Licence

Commission Members: Jane Large (Presiding)
John Brears
Veronica McClintic

Date of Hearing: 1 February 2006
13 February 2006

REASONS FOR DECISION

BACKGROUND

- 1) Following the Licensing Commission Decision of 4 July 2005 the trading conditions for the Alfresco Garden Deck Area of the licensed premises known as The Deck Bar were:
 - “(a) *Trading hours for the Alfresco Garden Deck Area shall be between:*

Sunday 10:00 and Monday 02:00
Monday 10:00 and Tuesday 02:00
Tuesday 10:00 and Wednesday 02:00
Wednesday 10:00 and Thursday 02:00
Thursday 10:00 and Friday 02:00
Friday 10:00 and Saturday 02:00
Saturday 10:00 and Sunday 02:00
 - “(b) *The area shall have the appearance of a dining area and meals and/or snack foods shall be readily available.*

- (c) *With the exclusion of privately booked functions, patrons are permitted to stand on the proviso that table seating for at least eighty percent 80% of the permitted patron capacity for the area must be available at all times.*
 - (d) *All patrons are permitted to stand during Private Functions which have been booked with the Licensee.*
 - (e) *The area shall be clearly and physically delineated from the public footpath.*
 - (f) *Table service shall be available in the area at all times.*
 - (g) *High tables are permitted to be used in this area solely for the service and display of food.”*
- 2) On the evening of Friday 30 September 2005 Licensing Inspectors and Licensing Commissioners noted that on the Alfresco Garden Deck Area (The Deck) there were numerous beer barrels about which patrons were standing and drinking and that tables had been pushed to the edge of the deck with the effect of allowing patrons room to stand and drink. It was also observed that there were high tables placed on the deck at which patrons were both sitting and standing. The overall effect of the above was to give the appearance of a tavern rather than an alfresco dining area.
 - 3) Furthermore the Licensee advised the Inspectors that, at the conclusion of booked functions, the area is not returned to its original floor plan as the guests usually stay on and other outside patrons then move into the area and intermingle with the guests with the high tables, chairs and barrels remaining on the deck until closing time.
 - 4) On 2 November 2005 Licensing Inspectors again noted that barrels were being used in the Alfresco Garden Deck Area.
 - 5) Section 33 of the *Liquor Act*, provides that:

“(1) Subject to this section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a licensee:

(2) A licensee may, within 28 days of the date on which the licensee receives a notice of a description referred to in subsection (1) by notice in writing lodged with the Director, request that the Commission conduct a hearing in relation to the conditions of his licence.”
 - 6) A Special Meeting of the Licensing Commission in December determined, in accordance with Section 33 (1) of the *Liquor Act*, that one of the current conditions, namely (g), of the “Alfresco Garden Deck Area” at The Deck Bar, be changed.
 - 7) The revised conditions are:

High tables and any form of high tables are permitted to be used in this area solely for the service and display of food.

At the conclusion of a private function, the area is to be returned to the original floor plan of an Alfresco Dining area within half an hour.

The placement of high tables and other forms of support for patrons to place ashtrays or glassware is not permitted other than for their immediate use solely for the service and display of food.

No barrels permitted.

- 8) Notification of the Commission's determination was given in writing to the Licensee on 1 December 2005.
- 9) On 16 December 2005, Mr. Michael Coleman, Licensee of The Deck Bar, made an application, pursuant to section 33(2) of the *Liquor Act*, to object to the variation in the conditions to Liquor Licence number 80304385, for the Alfresco Garden Deck Area of The Deck Bar.

THE HEARING

- 10) At the hearing, which commenced on 1 February 2006, Ms S Porter appeared for the applicant Brewhouse Pty Ltd and Ms G D'Alessandro represented Racing, Gaming and Licensing.
- 11) At the onset of the hearing Ms. Porter drew the Commission's attention to the lack of specific detail on what could be considered at a hearing under Section 33 and the general hearing provisions of Section 6 (3) of the *Liquor Act* which state:

*"(3) Also, the Commission must consider –
 (a) any other matter the Commission believes is relevant to the public interest..."*

In view of this Ms Porter believed that the Commission could address issues outside those mentioned in the Section 33 Determination.

- 12) Evidence for the applicant was given by Peter Adamson, Lord Mayor and Mr. Andrew Bruyn, General Manager of Territory Television Pty. Limited which generally supported the Deck Bar as a major asset in Darwin and in particular supported the use of high tables or other furniture as an amenity for patrons who were standing and drinking.

Mr. Adamson: *" the lack of high tables is an inconvenience to patrons and there is a greater risk of safety related issues"*

Mr. Bruyn: *"People like to stand outside and have a drink... there should be bar tables in one area and delineated for drinking... should allow high tables".*

- 13) Written statements were also tendered from Mr. Peter Linton, Senior Manager, TIO (landlord):

“believe the use of high tables and barrels for patron amenity is entirely appropriate”

and, Ms Sylvia Woolfe, Tourism and Marketing Consultant:

“moves to ban the use of high tables and barrels for patron amenity for those patrons who are lawfully standing is entirely inappropriate”.

- 14) Mr. Justin Coleman provided evidence on the history of The Deck Bar, the need to provide furniture to accommodate patrons who wished to stand whilst drinking in the Alfresco Garden Deck Area and the need for barrels due to problems associated with the use of high quality polished wooden tables and stools in the “Wet” season. There was some disparity in his evidence as to the number of high wooden tables he wished to place on the Deck Area. This was clarified after the hearing in that he would like to have complete flexibility in numbers but if a number has to be selected then it would be 8 high tables.
- 15) Mr. Coleman further disputed the information from the Licensing Inspector upon which the section 33 Determination had been based. He stated that on the evening of 30 September 2005 there were private function bookings which would have allowed the use of high tables and barrels. A copy of the page from the booking book for this date was tendered to corroborate this statement.
- 16) An advertisement, under the *Liquor Act*, for a variation to the licence conditions of the licensed premises known as The Deck Bar was published on 20 April 2005 was tendered. Mr. Coleman expressed disappointment that the Commission at its hearing on 20 June 2005 did not address the Licensee’s concept as outlined in the advertisement.
- 17) A petition (survey), signed by 489 persons, was tendered. This petition canvassed opposition to any condition placed on The Deck Bar and the restriction of barrels and high tables on the Alfresco Dining Area. The petition further stated that restrictions on types of furniture was an infringement on rights and preference is for choice of either standing or sitting in any area of a licensed tavern.

CONSIDERATION OF THE ISSUES

- 18) The Commission considered the following issues:
- a) the concept for The Deck Bar;
 - b) the use of high tables in the Alfresco Dining Area;
 - c) the requirement that, at the conclusion of a Private Function, the Alfresco Dining Area be returned to the original floor plan within half an hour;

- d) the prohibition of barrels in the Alfresco Dining Area.

THE CONCEPT

- 19) The Licensee's concept for all of the areas of The Deck Bar, namely the General Bistro/Bar Area, Beer Garden, Alfresco Garden Deck Area and Alfresco Walkway Area, were outlined in the tendered advertisement of 20 April 2005 as:

"To provide a venue which offers indoor and outdoor entertainment and dining facilities consistent with the theme of Mitchell Street that being Darwin's premier tourist and entertainment precinct, and to the expectations of the broader community. The proposed changes are designed to reflect our outdoor cosmopolitan lifestyle, where the licensee believes it is the community's desire to enjoy the same conditions outside as they do inside a venue."

- 20) The Commission when it sat on 20 June 2005 to deliberate on the Licensee's request for variations to the conditions, as set out in the above advertisement, stated:

"The applicant's intention is that "the concept" of the proposed variations to the current trading condition will maintain a clear theme of alfresco dining whilst allowing the licensees to cater for the many and varied private functions that sectors of the public have expressed interest in"

- 21) The Commission then set the conditions for the various areas of The Deck Bar as set out in (1) above.
- 22) It was felt that it was not appropriate for this hearing to further address the concept for all the areas of The Deck Bar. Apart from the tender of the advertisement published prior to the June hearing and Mr. Coleman expressing disappointment with the Commission at the previous hearing, no detailed evidence was provided. It was decided that this hearing of the Licensing Commission should focus on the Alfresco Garden Deck Area which by the licence condition (b) *"shall have the appearance of a dining area and meals and/or snack foods shall be readily"* If the licensee wishes to have any changes to the overall concept of The Deck Bar this should be the subject of a separate hearing

High Tables

- 23) The Commission accepted the responsibility under section 6 of the *Liquor Act* to re-examine the current condition (g), namely, the question of the use of high tables as it is an issue affecting the Alfresco Garden Deck Area and a revised version of (g) has been included in the notification of the conditions variation on 1 December 2005.
- 24) In previous decisions by the Licensing Commission the use of high tables in the alfresco dining area has been examined and prohibited for the following reasons:

Decision 12/4/05 – “*Bars and Stools were significantly higher than Tables and Chairs. The bars were similar to the type of furniture used in hotels and taverns for people to stand around. Neither Bars or Stools were consistent with furniture used in dining areas or alfresco dining areas of an (all) other alfresco dining areas*”

Decision 20/6/05 – “*to avoid any impression of a bar on the Deck Area, there will be restrictions placed on the use of the high tables and stools for seating upon the Deck*”.

- 25) The Commission strongly endorses the concept that the Alfresco Garden Deck Area shall have the appearance of an alfresco dining area. However, it must acknowledge that although low tables and chairs seating must be provided for 80% of the maximum capacity of patrons, not all patrons wish to be seated and some prefer to use high tables, where seating and/or standing can be accommodated. This is backed up by the evidence given at the hearing and the survey of patrons that has been tendered.
- 26) The challenge then is to ascertain how many high tables would provide suitable accommodation for standing patrons and those wishing to sit at high tables plus at the same time maintain the area as having the appearance of a dining area rather than being an extension of the inside bar. It was decided not to vary the 80% seating condition but to allow up to five (5) high tables at any one time to be placed on the Deck Area.
- 27) All five (5) tables can be used for food display/dining/ drinking seated or standing to meet patron requirements. However, of these high tables, three (3) tables must be accompanied by at least four (4) high stools each, which allows them to be suitable for dining and they can be considered within the 80% seating condition. The remaining two (2) tables may or may not be accompanied by high stools allowing the Licensee flexibility to meet patron need at a particular time. Because of the flexibility allowed for these two (2) tables they are outside the 80% seating condition, even if they have stools attached. It was felt by all members that this number would satisfy patrons' needs and at the same time still allow the Deck Area to maintain the appearance of a dining area.

The return of the area to the original floor plan within 30 minutes after the conclusion of private functions

- 28) There were three issues relative to this condition, namely
 - a) there is no set floor plan for the Deck Area. It is configured according to the needs at the time;
 - b) often private functions are extended by the organizers;
 - c) the time allowed to return the area to its original floor plan.

- 29) In regards to the first issue, this appears to be a pedantic reading of the condition and a reasonable interpretation is that after a private function has concluded the area in which the private function has been held should be restored so as to give the appearance of dining area open for the general public and it should accord with all the conditions on the licence for the Alfresco Garden Deck Area.
- 30) In the second issue, the extension of a function is an acceptable practice. However, there is a difference between some attendees at a private function “kicking on” when the function is over and the organizers requesting an extension of the function. The booked times for a private function and any formally requested extension could be easily incorporated in a record being kept for all private function bookings. The tendered copy of the current Booking Book was difficult to read and understand and did not contain any finish times.
- 31) The dispute between the Licensing Inspector’s report and Mr. Coleman’s evidence on whether a private function was still underway on the night of 30 September is understandable. There were three (3) functions booked – a birthday party for sixteen (16) persons starting at 5.30pm, a Paspaley Pearls function for twenty (20) commencing at 4.30pm and a booking for two (2) persons at 7.00 pm. It would be reasonable to imagine some or all functions would have finished when the Inspectors visited the premises after 10.00 pm but the records are incomplete and no clear conclusion can be drawn.
- 32) Subsequent to this hearing Mr. Coleman has agreed that a proper record of the private functions bookings would be maintained and available for the perusal of the Licensing Inspectors upon request. He, also, agreed to work with the Licensing Inspectors in regards to the content of this record. Racing, Gaming and Licensing have been asked to contact Mr. Coleman on this matter.
- 33) If the start and finish times (including any official extension by the organizers of the function) of a private function is clearly defined and recorded there should be no difficulty in restoring the seating on the Deck Area within thirty (30) minutes so that it has the appearance of a dining area and conforms to the licence conditions required for the area. Therefore this condition is upheld but reworded.

Barrels

- 34) The use of beer barrels in a dining area seems a complete anomaly. However, the limitation on seating is 80% of the maximum patron capacity which presumes a likelihood of some people standing and drinking. We have accepted that patrons who are standing should have suitable furniture to meet their needs. In the “Dry” season this could be the wooden high tables already in use in the Alfresco Walkway Area. As these tables are constructed of wood and extremely heavy they might not be suitable for use during the “Wet” season. It would be preferable to see the wooden high tables replaced with more durable high tables, similar in construction to the existing “all weather” tables and chairs, rather than beer barrels during the “Wet” season. In fact, Mr. Coleman in his evidence stated that he would prefer to see high tables rather than barrels on the Deck Area.

- 35) Realistically, the location and purchase of high tables which are suitable for the "Wet" season will take time. Therefore, we consider it is reasonable to allow the replacement of high tables with the same number of barrels during the 2005-2006 "Wet" season only. Unlike the high tables the barrels are not suitable for dining and should not be dispersed throughout the Deck Area but confined to the area immediately in front of the entrance steps. This will provide furniture for those standing and drinking whilst still allowing the majority of the Deck Area to be considered a dining area.

THE DECISION

- 36) The Commission confirms that the "Alfresco Garden Deck Area" is still to be considered primarily as an alfresco dining area, but with a limited number of patrons allowed to stand whilst eating and drinking, without restricting the majority from sitting down to eat and drink.
- 37) The Commission has decided to amend the current licence condition (g) and the determination relating to the licence conditions for the Alfresco Garden Deck Area, of The Deck Bar which was made, in accordance with Section 33 (1) of the *Liquor Act*, at a Special Meeting of the Licensing Commission held in December 2005.
- 38) Licence condition (g) for the Alfresco Garden Deck Area of The Deck Bar is amended to read:
- Five (5), wooden high tables are permitted to be placed on the Deck Area for patron use. All five (5) tables can be used for food display/dining/drinking seated or standing to meet patron requirements. However, of these five (5) high tables, three (3) tables must each be accompanied by four (4) high stools. This makes them suitable for dining and they can be considered within the 80% seating condition. The remaining two (2) tables may or may not be accompanied by high stools allowing the Licensee the flexibility to meet patron need at a particular time. Because of the flexibility allowed for these two (2) tables they are in addition to the 80% seating condition, even if they have chairs attached and patrons are using them for dining.
 - The wooden high tables may be substituted with the same number of beer barrels (5) during the 2005/2006 "Wet" season only. Other more durable high tables suitable for the "Wet" season may be used from September 2006 onwards. The conditions for the use of any substituted tables and stools are to be same as set out for the wooden tables and stools. Unlike the high tables the barrels are not to be dispersed throughout the Deck Area but confined to the area immediately in front of the entrance steps. This will provide furniture for those standing and drinking whilst still allowing the majority of the Deck Area to be considered a dining area.

- After a private function has concluded, the area in which the private function has been held should be restored within thirty (30) minutes so as to give the appearance of dining area open for the general public and it should accord with all the conditions on the licence for the Alfresco Garden Deck Area..
- 39) The Licensee shall develop with the Licensing Inspectors and submit for approval to the Commission, within twenty-eight (28) days, a format to record all private function bookings. These records shall be made available for inspection by Licensing Inspectors upon request.

Jane Large
Presiding Member

3 March 2006