

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **Stuart Tourist and Cabin Park**
Lot 2681 Larapinta Drive
ALICE SPRINGS NT 0870

APPLICANT: Stuart Tourist and Cabin Park Pty Ltd

NOMINEE: Mr Bernard Andrew Gwynne

PROCEEDING: Application for the Grant of a Liquor Licence

HEARD BEFORE: Mr J Flynn (Chairman)
Ms B Monaghan
Ms J Large

DATE OF HEARING: 5 and 6 September 2006

APPEARANCES AND WITNESSES: Mr M Preston (Solicitor for Applicant)
Mr R L Gwynne (Director)
Mr S R Edwards (Director)
Mr B Gwynne (Proposed Licensee via telephone)
Ms S Beames (Shop Manager)
Ms E Van Maarsveen (Objector)
Mr Gurney (Objector)
Ms W Collis (Objector)
Mr N Thomas (Objector)
Mr D Smark (Objector on behalf of Gillen Residents Assoc.)
Dr J Boffa (Objector on behalf of the People's Alcohol Action Coalition (PAAC))
Mr D Koch Alderman Alice Springs Council
Mr M Kraft
Mr W Heenan

BACKGROUND

- 1) An application for a new liquor licence for the Stuart Tourist and Cabin Park was made to the Licensing Commission on 16 December 2005. Upon the public advertising of the application, thirteen (13) written objections were received. Of these, eleven (11) were assessed as valid objections requiring a hearing.
- 2) A hearing into the application and the objections to the application was held on 5 and 6 September 2006 in Alice Springs.

THE HEARING

- 3) The details of the application are as follows:
 - a) The applicants seek a limited "off premises" licence for the Mini Mart situated at the front of the Stuart Tourist and Cabin Park (the Tourist Park) to allow registered adult guests the ability to obtain limited amounts of alcohol from the Mini Mart for consumption within the confines of the Tourist Park;
 - b) The applicants want the Mini Mart to be licensed to sell alcohol seven (7) days a week, between 12:00 and 20:00 hours;
 - c) The quantities to be sold to an individual registered adult guest in any one day are limited to a six (6) pack of beer or a six (6) pack of mixed spirits (375 mls) or a bottle of wine (750 mls);
 - d) There will be no advertising of the availability of alcohol outside the Mini Mart and advertising/display within the store will be discreet.
- 4) The applicants proposal is that upon arrival at the Tourist Park, the names of all adult guests will be noted at the Office. Should they later wish to obtain alcohol from the Mini Mart, then they will need to show their gate key. This key activates the boom gate, which allows guests access to the Tourist Park through a single entrance. A record of all sales will be maintained including the name of the purchasing guest and the amount of alcohol purchased.
- 5) The Tourist Park has a capacity for some 400 patrons. It has been under the control of Stuart Tourist and Cabin Park Pty Ltd since May 2003 and several improvements have been made during that time. The Mini Mart, Office, several cabins and "wet" areas have been refurbished, high quality family cabins constructed, the Internet installed and a playground created. Evidence was given that the granting of a limited liquor licence such as the one proposed would enable the Park to obtain a higher star rating albeit perhaps half a star. This would make it a more attractive tourist destination.
- 6) Currently, 10% to 15 % of the guests are international tourists arriving in Alice Springs by plane or the Ghan. They do not have their own transport. 70% of guests are over sixty (60) years of age and only 5% are younger than thirty (30). There are a dwindling

number of permanent residents (35 at present) who cause no problems and live quietly. There appears to be no antisocial behaviour within the Tourist Park and no evidence of the Park guests causing problems in the neighbourhood. The Park is well-maintained and appears to be well run.

- 7) At the hearing the Commission heard from several witnesses both for and against the granting of the liquor licence. Several objectors gave evidence opposing the application as follows:
- a) Many objectors expressed concerns about antisocial drinking/behaviour in public areas located near the Tourist Park. Ms Van Maarsveen, Mr Gurney, Mr Thomas and Ms Collits gave evidence at the hearing outlining the current problems associated with problem drinking in the area especially in the Frank McAllister Park which is directly opposite the Tourist Park. Whilst admitting that the Tourist Park was currently well run, they were all concerned that there would be a “slippage” from the Park residents to outsiders and cited examples where similar problems had arisen at the Caravan Park at Uluru. Ms Collits commented that improvements in anti social behaviour in the area were due to the action taken by residents and she “didn’t want to see this threatened”.
 - b) Several Objectors expressed the opinion that in view of the other liquor outlets in close proximity to the Tourist Park, another licence was not necessary. Mr Thomas provided some personal information on Tourist Parks around Australia and queried the need for a liquor licence at any Tourist Park. He stated his view that if a licence was granted to the applicants, it would be “no great service to travellers but a risk to the neighbourhood”.
 - c) Mr Smark, representing thirty (30) households and fifty (50) residents of the Gillen Residents Association, stated that the proposed licence would be difficult to police. He objected to the proposed trading hours of seven (7) days a week when every licensed store was closed on Sundays. He also objected to the commencement time of 12.00 noon when every other take-away selling to the public opens at 2.00pm. Mr Smark was concerned that the extended hours would make the Tourist Park a draw card for itinerant problem drinkers seeking an early supply of liquor.
 - d) Mr Smark also submitted that when the nearby Ayiparinya Hostel was full, it recommended family members to stay at the Tourist Park. As the hostel is “dry”, the grant of a liquor licence for guests would put pressure on family members to take advantage of the availability of alcohol and perhaps drink in the public park or cause problems for the neighbourhood or the Hostel. On being cross-examined, Mr Smark reaffirmed his belief that “convenience to a small number of tourists does not outweigh the possible risks to the community and community amenity from an additional take away licence.”
 - e) Ms Van Maarsveen and Mr Gurney both stated that they would be happy with the grant of the licence if they could be assured that sales would be limited to Tourist Park residents and that this was strictly enforced.

- f) Dr Boffa, Chairman and spokesman for the People's Alcohol Action Coalition, strongly asserted his objection to any additional takeaway liquor licence in Alice Springs. He stated that alcohol was a major problem in the town and any risk of on-selling or slippage from an additional licence, no matter how small, was too much. He advised that currently 70% of the assaults and homicides in the area were related to alcohol consumption. Dr Boffa submitted that effective ways to reduce alcohol consumption were by price and availability and he was concerned that another liquor outlet in the town would increase the competitive pressure on current liquor licences. The spread of profit on liquor sales could give rise to unacceptable practices such as discounting and the sale of cheap bulk alcohol, which would be detrimental to the community.
- g) In addition to the objectors appearing before the Commission written valid objections were received from:
- i) Department of Health and Community Services
 - ii) Ms Lorraine Braham, MLA
 - iii) Ms Nola Bayden
 - iv) Ms Robyn Van Dok and Mr Ian Wilson
 - v) Mr Timothy and Mrs Denise Coach
 - vi) Ms Jo-Ann Delahunty

These objections expressed similar concerns to those outlined above and were tendered in evidence.

- 8) The Commission also heard evidence from a number of witnesses in support of the liquor licence application including the following:
- a) Mr D Koch, Alderman, appeared on behalf of the Alice Springs Council. It was of some interest to the Commission to note that the Council supported the application. It is common knowledge that the Council has worked tirelessly with other stakeholders to introduce or support several initiatives to attempt to curb antisocial drinking. These initiatives include support for an Alcohol Management Plan including restrictions on liquor supply and an intention to have public areas within Alice Springs declared restricted areas to prevent people from consuming alcohol in those places. Mr Koch advised that the Council voted 9:1 in support of the current application. They were aware of the fact that MacDonnell Range Holiday Park had had a similar licence for Park guests for some years without any reported problems. They noted that the applicant was working hard to improve the Tourist Park to make it an upmarket venue and considered that the application was a suitable one for the Council to support. They did not believe it would impact adversely on the neighbourhood by causing antisocial behaviour issues.
 - b) Mr Kraft, a long term resident in Alice Springs with strong involvement in the liquor industry and in tourism also offered support for the application. He considered that the Commission should recognise that local tourism was a major employer and industry for the area and the needs of today's tourist (including convenient access to facilities) should not be overlooked. He did not consider that a limited licence such

as the one proposed would cause any antisocial issues.

- c) Mr Heenan, owner of MacDonnell Range Holiday Park also gave evidence in support of the application. His evidence was significant because his Holiday Park, which has received many tourism awards for excellence, has similar conditions to those being proposed by the applicants. Mr Heenan advised that the in-house licence for guests was working very successfully without any problems to the community. He advised that many tourists arrive at the Park late in the day and only want a beer or two after setting up camp. His register of sales supported this statement and it was noted that there were very few sales made daily with only small amounts of alcohol purchased. Mr Heenan emphasised the need for quality tourist parks to cater for the needs of guests by providing Internet access and other facilities. He confirmed that it was not always wise to direct tourists to local liquor outlets to buy alcohol because they were sometimes appalled by antisocial behaviour they witnessed there. It is somewhat unusual in our experience that a competitor would support an applicant. This gives weight to the argument that a restricted licence is needed in the Park to enhance Northern Territory tourism.
- d) Mr S Edwards set out the improvements that his company had made which have turned around a run down Tourist Park. He explained that 10 – 15% of tourists arrived at the Park without vehicles and those with vehicles arrived between 4.00 pm and 7.00 pm. There were numerous requests for the purchase of alcohol for the evening. Although there were two (2) other take-away outlets within 1.7 km, he would not recommend one to his guests for night-time visiting due to the antisocial behaviour in the area and the directions to the other were difficult to follow for outsiders to the town. He asserted that the aim of the application for a liquor licence was solely to supply a service the Tourist Park residents and by introducing this service it would allow the Park to obtain a high star resort rating.
- e) Ms S Beames and Mr R Gwynne both outlined their considerable experience in the hospitality industry and their commitment to ensuring that the sale of alcohol at the Park would not cause problems for the local residents. Mr Gwynne told of other licensed premises in South Australian that he had interests in which had won tourism awards and his aims for achieving the same for the Stuart Tourist and Cabin Park. Mr B Gwynne, via telephone, endorsed the information given by the previous witnesses as to the need to provide a service to Park guests which was part of establishing the Tourist Park as a top rated resort. He agreed, under cross-examination, that licensing hours of 4.00 pm to 8.00 pm would be satisfactory to meet this need.
- f) Mr Preston tendered the Applicant's Brief, which outlined the financial capacity of and provided written references for the company. In addition to the support given in evidence there were letters of support from Friends of Araluen Inc, Todd Tavern, residents in the area, and a petition of support containing 191 signatures. There was evidence that with one exception all those who signed were guests who had enquired about liquor purchases.

- g) In his final submission, Mr Preston re-iterated the good financial and community standing of the applicants and stated that given the likely limited amount alcohol being sold, there was very little potential for harm. He emphasized the request of the applicant that the licence be granted for 8 hours, seven days a week as residents were in the Tourist Park at all times during the day.
- 9) Mr C McIntyre, representing Racing, Gaming and Licensing suggested that, if a licence was granted, the format of the Register of Alcohol Sales at the Tourist Park should be in a form approved by the Deputy Director Licensing (South). The applicants agreed to this. Mr McIntyre also submitted that if the licence was granted, the concerns raised by the objectors should be closely monitored by his department.
- 10) The Commission also undertook a site inspection of the Stuart Tourist and Cabin Park and the MacDonnell Range Holiday Park.

CONSIDERATION OF THE ISSUES

- 11) When considering a liquor licence under the *Liquor Act*, the Commission must deal with each application on its own merits and on a case by case basis but keeping in mind the Objects of the legislation. Sections 3 and 6 of the *Act* state:
- (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.*
6. *Public interest criteria in respect of licence or licensed premises*
- (1) *When the Commission has regard to the objects of this Act in –*
- (a) considering or determining an application under this Act in respect of a licence or licensed premises; or*

(b) determining the conditions of a licence, the Commission must, when taking into account the public interest in the sale, provision, promotion and consumption of liquor, consider any of the criteria specified in subsection (2) that are relevant to the application or conditions.

(2) For subsection (1), the criteria are the following:

- (a) harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;*
- (b) liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;*
- (c) public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;*
- (d) the safety, health and welfare of persons who use licensed premises must not be put at risk;*
- (e) noise emanations from licensed premises must not be excessive;*
- (f) business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;*
- (g) a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including –*
 - (i) by-laws made under the Local Government Act; and*
 - (ii) provisions of or under the Planning Act;*
- (h) each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;*
- (i) the use of credit in the sale of liquor must be controlled;*
- (j) practices which encourage irresponsible drinking must be prohibited;*
- (k) it may be necessary or desirable to limit any of the following:*
 - (i) the kinds of liquor that may be sold;*
 - (ii) the manner in which liquor may be sold;*
 - (iii) the containers, or number or types of containers, in which liquor may be sold;*
 - (iv) the days on which and the times at which liquor may be sold;*
- (l) it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;*
- (m) it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;*

(n) it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.

(3) Also, the Commission must consider –

(a) any other matter the Commission believes is relevant to the public interest in the sale, provision, promotion and consumption of liquor in respect of the application or conditions under consideration; and

(b) any information or matter contained in an application, or otherwise provided or raised by the applicant, which is relevant to the public interest in the sale, provision, promotion and consumption of liquor.

- 12) This is not an easy decision. Despite the fact that the proposed licence is very restricted in its terms, the Commission is very aware of the level of genuine concern expressed by residents in the area at the thought of facing more problems with antisocial drinking than there is at present. For this reason, we have made considerable effort to ensure we obtain all relevant evidence before making a decision. It is a matter of weighing up the positive aspects of the new liquor licence to the applicant and future Tourist Park guests against any negative consequences of the grant of licence.
- 13) There are some good reasons to grant this licence. It is very restrictive in its terms and promotes responsible drinking by only allowing small quantities of liquor to be sold by a certain few on the applicant's private land only. We accept that tourists generally are expecting a higher level of service and convenience than they have in the past and acknowledge that the tourist industry is very important to Alice Springs. We also take account of the fact that 10 to 15% of the applicant's guests are international tourists without transport of their own to easily travel to obtain alcohol. The applicants have established their financial credibility. They present as highly responsible businessmen who have a long experience in the hospitality industry and who espouse good community values. We are satisfied that the applicants are fit and proper and we are confident that they will abide by their licence conditions should we grant one. We need to weigh up these matters against any concerns raised by the objectors to decide whether the licence should be granted.
- 14) The main concern of objectors was the possibility of the Tourist Park being the draw card for unwanted, antisocial behaviour by certain members of the public trying to buy alcohol at the Mini Mart or causing a nuisance by drinking or gathering outside the Tourist Park or the Hostel or in the public park across the road. The Commission emphasises that it would never consider granting a liquor licence if the impact on the surrounding neighbourhood was going to be deterioration in community amenity. The question for us in this case however is whether there is evidence to support a conclusion that granting the licence with strict conditions will have a negative impact on the neighbourhood.
- 15) We were concerned by conflicting evidence put before us about the level of use of the Tourist Park accommodation facilities by family and friends of those patients staying at Ayiparinya Hostel. For that reason, we asked Mr Chris McIntyre, Deputy Director South conduct further enquiries for us. Mr McIntyre spoke to Ms Tresna Appo, Acting Regional Manager of Aboriginals Hostels Ltd. Ms Appo advised that she had spoken to the Manager of Ayiparinya Hostel and they can only remember one occasion in

August 2005 and another instance just prior to Christmas when a family member stayed at the Tourist Park. It is not the role of the hostel to refer anyone to any particular commercial venture and in most instances, relatives stay at places like Larapinta Lodge. If a person does not have cash resources to find other accommodation, they will refer people to welfare agencies like Red Cross.

- 16) It appears to us that the likelihood that the limited licence proposed will attract further business from the Hostel is slim. It would be different if there were no other liquor outlets in Alice Springs and the problems at Ayers Rock are good examples of this point. The Tourist Park is not the favoured accommodation of Hostel relatives at present and we would suggest is less likely to become so as the Tourist Park is further upgraded. Quite clearly, the applicants are attempting to attract a different clientele being interstate and international visitors and are aiming their services at a different market.
- 17) We note that in recognition of the apprehensions expressed by objectors regarding on-selling and slippage of alcohol to others outside the Tourist Park, the applicants undertake to make it a requirement that all alcohol products sold must be consumed on the premises and they further propose not to advertise, outside of the premises, the availability of alcohol. The Commission accepts the proposal as reasonable and responsible.
- 18) The Commission also considered carefully the submissions of Dr Boffa that the ways to reduce alcohol consumption were by availability and price strategies. We make the comment that a licence that restricts supply to a six (6) pack and limits those who can purchase and where they can drink is clearly employing sound "availability" strategies. The same can be said for price as the evidence before us is that the estimated cost of a single can of beer will be \$3.50, a six-pack around \$18 and a bottle of wine around \$20 minimum. Problem drinkers would be far more likely to purchase their alcohol from another outlet.
- 19) We note that the amount of alcohol sold by the Tourist Park is likely to be small and is intended to be purchased from other local retail outlets. The argument that a new licence would have a detrimental impact on the profit of existing licensees is unfounded.
- 20) Finally, we concur with a comment made by Dr Boffa that it is not the number of outlets per se that is an issue but rather the type of outlet and the conditions imposed. In the matter before us, the only persons who will gain access to alcohol are the paying guests at the Park. Anecdotal evidence suggests that they do not choose to drink alcohol in the public park across the road at present and it seems unlikely that this will change. In fact, with the upgrade of facilities at the Tourist Park, it seems less likely that this will happen in the future.
- 21) The Commission intends to grant the liquor licence in the form proposed but with some variations. The Commission is not persuaded that the proposed opening times for the sale of liquor at the Tourist Park is necessary to provide a service to the Tourist Park guests. The evidence placed before us supports a view that tourists visiting the town arrive late afternoon and early evening. During the daytime they are sightseeing or are

able to purchase the alcohol they require from the hotels and take away outlets in the town and surrounding areas. Therefore, as a further restriction on availability but without inconvenience to guests of the Park, the times for the sale of alcohol is to be from 4.00pm to 8.00pm.

- 22) The applicant asks for a licence for every day of the week. The objection was that Sunday should be excluded on the basis that stand-alone liquor stores and supermarkets cannot sell alcohol on a Sunday. The Commission has considered this issue at some length. Only the guests and not the public would be permitted to purchase alcohol from the Mini Mart. This makes the licence more akin to an in-house licence rather than a store. Further, tourists without vehicles will be more inconvenienced on a Sunday because the only liquor outlets that can sell them alcohol to drink in their accommodation are the Hotels in town. For this reason, we intend to allow the sale of liquor between 4.00pm and 8.00pm every day of the week.

DECISION

- 23) In reaching its decision in this matter, the Commission is mindful of the problems found in Alice Springs associated with the risky drinking of alcohol and the efforts by the Northern Territory Government, the Alice Springs Town Council and the Northern Territory Licensing Commission itself to address these problems. These measures include legislative change to allow public places to be declared restricted, an Alcohol Management Plan and a Liquor Supply Plan for the town and the recently imposed twelve (12) month Moratorium on the granting of new takeaway liquor licences.
- 24) It is important to note that this application predates the Moratorium and is not affected by it. It must be decided in accordance with the principles set out in the *Liquor Act*. With this background in mind, the Commission considers it is necessary to balance the requirements for restrictive control on the availability of alcohol in Alice Springs with the needs of the general law abiding community and, especially, visitors to the town as tourism is a major factor in the town's economic viability.
- 25) The Commission grants a liquor licence for consumption away from the premises to the Stuart Tourist and Cabin Park Pty Ltd with the following conditions:
- a. The Mini Mart at the Stuart Tourist and Cabin Park is licensed to sell liquor to registered adult guests only from Monday to Sunday, between 16:00 and 20:00 hours.
 - b. The daily maximum amount of liquor to be sold to a registered adult guest is a six (6) pack of beer OR a six (6) pack of mixed spirits (375 mls); OR a bottle of wine (750 mls)
 - c. All alcohol purchased from the Mini Mart is to be consumed at the Stuart Tourist and Cabin Park.

- d. The Licensee shall maintain a register of liquor sales in a format approved by the Director of Licensing. The register shall clearly show the date of purchase, the name and site number of the purchaser and the type and quantity of liquor purchased. The register is to be maintained and available for inspection upon request by any Licensing Inspector.
 - e. Registered guests purchasing liquor must produce identification such as their gate key to confirm that they are bone fide guests of the Tourist Park.
 - f. There shall be no external advertising of the available of liquor in the Tourist Park.
- 26) The Deputy Director Licensing (South) is requested to monitor the outcomes of this grant of a licence, to immediately notify the Commission of any problems that arise and provide a written report after a period of six (6) months from the grant of the licence.

John Flynn
Presiding Member
16 October 2006