

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: MBARGO AT PARAP

LICENSEE: PUBCO Pty Ltd

NOMINEE: Mr D Dowling

APPLICATION: Transfer, Variation and Substitution of Liquor Licence Number 80315850

HEARD BEFORE: Mrs J M Large
Mr P Costigan
Mr J Brears

DATE OF HEARING: 30 January 2007
31 January 2007

DATE OF DECISION: 5 March 2007

APPEARANCES: Mr T Dowling (Director PUBCO Pty Ltd – Applicant)
Mr Daveniza (Agent for the Applicant)
Mr P Timney (Counsel assisting the Commission)
Mr D Moodie (Objector)
Ms C George (Parap Residents' Association Inc. - Objector)
Ms J Maddalozzo (Objector)
Mrs G Thornton (Objector)
Mr N Dicandilo (Witness for Objectors)
Dr M Myers (Principal Parap Primary School - Witness for the Objectors)

BACKGROUND

- 1) Application was made by NT Pubco Pty Ltd for the transfer and variation of licence and substitution of the premises from which liquor was sold under the Tavern Liquor Licence (Number 80315850), formerly known as Bogarts 25's located at 52 Gregory Street Parap to a premises to be known as Mbargo at Parap at Shop 14, 36 Parap Road, Parap.
- 2) The application was advertised on 9 August 2006 and 11 August 2006 in the Northern Territory News in the appropriate form. Objectors had thirty (30) days to lodge their objection and this period concluded on 11 September 2006. Seven (7) objections were received of which six (6) were found to be valid objections requiring a hearing under Section 47 I (c) (ii) of the *Liquor Act*. One objection was made on behalf of the Parap Residents' Association and others were in joint names, representing in total some 80 residents of the Parap neighbourhood.

HEARING

- 3) Mr T Dowling gave evidence at the commencement of the hearing explaining that Mbargo at Parap would be a boutique, up market hotel with a target market of 20-44 year old patrons in the high expenditure bracket coming from the neighbourhoods of Parap, Fannie Bay and City Valley suburbs. The primary target would be the supply of liquor, with an island bar a feature of the premises, or light dining and drinking. In addition there would be a restaurant and an upmarket gaming room. There would be no take-away sales of liquor and consumption of liquor on premises would be between the hours of 11:00 and 02:00 am (the following day).
- 4) In response to a specific question relating to the emphasis in the business plan for Mbargo on the sale of food and the restaurant business, Mr Dowling responded that the primary activity of the business would be the sale of alcohol albeit that to be successful the business would need to provide good quality food.
- 5) When asked whether the low tables and chairs seating arrangement in the restaurant would be available for patrons at all times, Mr Dowling stated that he would expect to arrange the seating in accordance with the type of service he was providing on any particular day, for example, there may be changes made when there was a special function.
- 6) Four (4) objectors attended the hearing and they all gave very articulate and often impassioned evidence of the current anti social problems in the neighbourhood resulting from the over consumption of alcohol. Mrs C George, representing the Parap Residents' Association, stated that the proposal for Mbargo at Parap had been discussed at meetings of the Association in September 2006 through to January 2007. The members of the Association opposed the extension of the licence into a full tavern licence as an additional drinking establishment in the area

would increase the problems residents were already experiencing. She also stated that there would be noise problems as patrons left the premises due to the late trading hours. Mrs George gave evidence that an additional liquor licence would add to the anti-social behaviour in the area and exacerbate current and regularly occurring problems in the neighbourhood.

- 7) Mr D Moodie pointed out that while he had no objection to the restaurant with a cocktail bar the focus on alcohol and entertainment at Mbargo would add to the high level of anti social behaviour in a family residential area. As a member of the Parap Primary School Council he was aware of the need to call Police to the school at least twenty (20) times per year to deal with anti-social behaviour associated with alcohol consumption. Mr Moodie also referred to "hooning" activity in the neighbourhood around closing time for licensed premises. He expressed his view this type of activity would increase with the grant of a further liquor licence in the area, more so as the applicant has advised that the premises will be geared towards the sale of alcohol and entertainment activities rather than operate as a restaurant.
- 8) Mrs G Thornton outlined problems that her family, especially her children, experienced walking in the Parap area, from drunken people and abusive language. She strongly opposed a variation to the licence which she said was licence creep and would increase the access to alcohol which would in turn increase the problems in the neighbourhood. Mrs Thornton expressed the opinion that the Parap area was already well catered for in terms of liquor availability from the Parap Tavern and take-away licences in the area. This was supported by the written objection received from Mr and Mrs Philip. Mrs Thornton also expressed her concerns at the potential for increased traffic in the residential precincts, both from delivery vehicle attending the premises and from patrons travelling to and leaving the premises late at night.
- 9) Mrs J Maddalozzo explained that So'nsies, the previous occupant of the premises at Shop 14, 36 Parap Road, was a family restaurant whilst the proposed new premises would be set out as a pub and not conducive to taking a family. In addition to the anti social problems associated with alcohol Mrs Maddalozzo was concerned about the increased traffic problems in the area. She said that already there were problems with hoons in the street at night time. She felt that having another tavern type establishment in the area would increase the traffic problems as patrons at other premises in town would be attracted to the area. Mrs Maddalozzo expressed her view that even if the premises were properly managed and problem patrons ejected, they would only be ejected on to the streets of the neighbourhood with the potential to increase the already existent anti-social behaviour in the area.

- 10) The objectors called two (2) witnesses to give further evidence on their behalf. Mr N Dicandilo provided evidence on the anti social behaviour which involved abusive language, fighting and he noted that there was an increase in hungry children in the area. The proposal for Mbargo was more an entertainment venue than an up market restaurant and this would attract people who wanted to stay out late drinking and it would put too much pressure on an already problematic neighbourhood. Mr Dicandilo was concerned with the impact of noise from the premises especially if there is music between midnight and 02:00 hours. Mr Dicandilo also raised concerns that the late trading hours would attract people who wanted to stay out late, adding to the anti-social behaviour in the neighbourhood in the early hours of the morning.
- 11) Dr M Myers, Principal Parap Primary School, stated that the school with 500 pupils was situated within 500 metres from the proposed tavern. There were continuing problems in the playground with people affected by alcohol. They walked through the grounds, were confrontational, and often remained on the school grounds camping, drinking and causing litter problems. Dr Myers tendered a photograph showing current litter problems. Whilst the people involved are often indigenous recently during a school day the children had to be evacuated from the playground and the Police called due to major problems caused by drunken non indigenous people. Dr Myers explained that his responsibility was for the safety of the pupils at the Primary School and he felt that another premises like a hotel within close proximity to the school would be likely to further endanger that safety. Dr Myers agreed that there was unlikely to be any additional problems if the premises operated like So'nsies or Bogarts, namely a high quality restaurant with an on-licence.

CONSIDERATION OF THE ISSUES

12) This application before the Commission is in three parts, namely:

- A transfer of a licence between Licensees;
- A substitution of premises to which the licence will apply; and
- A variation to the licence.

13) Section 3 of the *Liquor Act* clearly requires the Commission to have regard to the objects of the *Act* when it exercises a power or performs a function under the *Act*. These objects as set out under Section 3 (1) and (2) of the *Act* are:

(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.

14) Section 6 of the *Liquor Act* sets out the public interest criteria that the Commission must consider when determining an application under this *Act* in respect of a licence or licensed premises. In particular the Commission must consider the public order and safety of patrons and people who reside or work in the neighbourhood and the conduct of the premises.

15) Details of the agreement for the sale and transfer of Licence Number 80315850 between Big Chance Pty. Ltd and Pubco Pty. Ltd have been provided. The new Licensee is well known and respected in the hospitality industry in the Northern Territory; has a proven track record in managing licensed outlets and is financially sound.

16) The substitution of the premises from which liquor was sold under Licence Number 80315850 is from Bogarts 25s located at 52 Gregory Street, Parap to premises to be known as Mbargo-at-Parap located at Shop 14, 36 Parap Road. The new venue, which was previously a restaurant, is a smaller venue than Bogarts 25s with an estimated 100 – 130 less patron capacity in the same neighbourhood.

17) No objections have been made to the transfer of the licence between the two companies. There are objections to the substitution of the premises in that objectors felt that a tavern licence was not appropriate at this location especially in such close proximity to the Parap Tavern. It is the Commission's assessment that the new premises are suitable for the grant of a liquor licence but the Commission needs to consider the type of licence that would be appropriate at this location to ensure there will not be any detrimental effect of the neighbourhood or community of Parap. Similarly, in regards to the transfer of the licence, under Section 41 (2) of the *Liquor Act*, it is incumbent upon the Commission to treat the application for a transfer as if it was an application for the grant of a licence under Section 24 and the provisions of Sections 25, 26A and 28 of the *Act* apply. In particular, under Section 28(2)(a) the Commission must make an assessment of:

“The suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the

sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose”.

- 18) The variation to the licence involves a change of name from Bogarts 25s to Mbargo at Parap, an extension of trading hours and a varied concept for the operation of the premises.
- 19) The name change is a formality, there have been no objections received in regards to the name and the Commission finds that the new name of Mbargo at Parap is not racist or offensive and will not cause any detriment to the neighbourhood or the community of Parap.
- 20) The trading hours in the advertised application notice was Monday to Sunday 10:00 hours to 02:00 hours the following day whereas previously the approved trading hours for Bogarts 25s under Licence Number 80315850 were Monday to Sunday 11:30 to 02:00 (the following day). However, when giving evidence Mr Dowling stated that the proposed trading hours for Mbargo at Parap will be 11:00 hours to 02:00 hours (the following day).
- 21) Several of the objectors opposed the 10:00 hours to 02:00 hours on the basis it would increase the availability of alcohol in the neighbourhood with a resultant increase in the anti social behaviour, particularly at closing time. The revised trading hours will only be an extra thirty (30) minutes in the morning and the Commission feels that the extension of the trading hours alone is unlikely to have any significant effect on the amenity and safety of the area.
- 22) The variation to the concept for the premises was clearly expressed by Mr G Tribe, Licensing Inspector, and Mr T Dowling in their evidence. Mr Tribe explained that Bogarts 25s operated in the manner of a restaurant with a large dining room and a small bar and Mr Dowling stated that the primary target at Mbargo at Parap was the supply of liquor. He described the premises as a Boutique Hotel and highlighted the Island Bar as the main feature of the premises.
- 23) The Commission notes that, in contrast to the evidence given by the applicant, in the application documents the primary activity proposed for Mbargo at Parap appears to be dining. The layout includes “ *three areas of the Restaurant*” namely, an upper dining area, a formal restaurant area and a casual dining area. Also, there will be a separate coffee lounge area. These areas were to cater for some 105 out of a maximum of 165 patrons. In addition, the emphasis throughout the documents relates to dining, for example:

“ ... providing an easily accessible and friendly establishment where residents, families, shoppers and tourists can dine and meet people within times suited to their exclusive needs and time restraints. Appealing meals will be prepared on site with alcoholic beverages provided to improve the patron’s dining experiences.”

“ ... *Liquor licence trading from 10.00 am until 2.00 am will increase the availability of dining facilities serving dinner with drinks within the local community*”.

“*all guests will feel comfortable to attend and enjoy a quiet drink with their meals*”

- 24) This variation in concept was the subject of most of the objections to the application. Several objectors were against what they saw as licence creep. All objectors expressed the belief that the establishment of another licensed premises in the area, with the focus on the supply of liquor, would increase the drinking of alcohol and exacerbate the anti social behaviour already existing in the area.
- 25) The Commission has before it a very strong community view that a boutique hotel with a primary focus on the sale of liquor will affect the amenity of the neighbourhood and jeopardise the health, public safety and social conditions of the community. The evidence given by Dr Myers, the Principal of Parap Primary School, of the problems currently being faced by the school and its pupils caused by problem drinkers is a major concern to the Commission. The applicant's suggestion that a large fence could be erected around the school and its grounds is not an acceptable solution and the Commission must ensure that any decision it makes does not exacerbate this problem.
- 26) In response to the objections the applicant has provided no evidence of support for the application from businesses, or residents working or living, in the neighbourhood. It relies on its years of experience, its good name in the industry and its commitment to zero tolerance for disorderly behaviour among patrons in any of its premises. Whilst the Commission accepts this submission the problems faced by the community occur after patrons leave premises where they have had access to alcohol.
- 27) In view of the overwhelming evidence of the problems affecting the neighbourhood and community of Parap arising from the availability of alcohol the Commission must ensure that any licence and the type of licence granted will meet the objects of the *Liquor Act*. We have strong representation from the community that a licence which primarily targets the supply of alcohol, as acknowledged by the applicant in evidence, will not enhance community amenity, social harmony and well being as required under section 3 (2) (a). The applicant's response is that the proposal is for an up market boutique hotel which will be well run, with zero tolerance for disorderly behavior among its patrons and will not have any harmful impact on the neighbourhood. The applicant questioned what proof had been provided by objectors that such an establishment would harm community amenity.
- 28) There is also before us the opinion from the objectors that the neighbourhood is already well catered for in terms of liquor availability and to have another tavern licence would not facilitate a diversity of licensed premises and services to the benefit of the community as required under section 3 (2) (c) of the *Liquor Act*. The

applicant offered no evidence or comment on this subject. The Commission notes that the Parap Tavern which has a full tavern licence is within 500 metres of the proposed Mbargo premises.

- 29) The Commission acknowledges that the objectors have provided opinion and not causal proof. However, most are long term Parap residents with a good knowledge of the area, they have experienced the alcohol related problems that have been occurring and the Commission accepts their evidence on that basis.
- 30) In assessing this application the Commission has to undertake a balancing act of weighing up the objectors' concerns that the grant of a tavern licence will increase the harm already being caused in the neighbourhood from those affected by alcohol against the applicant's assertion that the proposed premises will be of such high quality and well run that it will not impact detrimentally on the community.
- 31) The onus is on the applicant to demonstrate to the Commission, on the balance of probabilities, that it has satisfied the various legislative factors the Commission is required to consider. In *Briginshaw v Briginshaw* (1938) it is stated:
- ".... The petitioner carries the onus of persuading a judge to make up his mind in his favour. If he does not succeed in so persuading a judge, he fails in his petition and matter is at an end"*
- 32) In this case the Commission accepts that the applicant proposes to establish an up market venue at Mbargo at Parap and to have a policy of not tolerating unruly or disorderly behavior amongst its patrons in the venue. However, the concept for the premises has already changed from ' *dining facilities serving dinner with drinks within the local community*' to a venue where the "*primary target would be the supply of liquor, with an island bar a feature of the premises, for light dining and drinking. In addition there would be a restaurant*".
- 33) The applicant has not provided any evidence, or community backing, to support its claim that a venue catering for patrons aged twenty-two (22) years and above and focusing on the sale of liquor will not cause alcohol fuelled problems outside the premises and increase the anti social behavior problems in the residential neighbourhood. Without that evidence the Commission is left with the possibility that alcohol related anti-social problems could, in fact, occur. There is, also a lack of evidence from the applicant that the new licence concept will actually enhance the community amenity, social welfare and wellbeing or facilitate a diversity of licensed premises and associated services for the benefit of the community.
- 34) After careful consideration of all the evidence the Commission finds that it is not persuaded by the applicant that it should approve a variation to the operating concept for Liquor Licence Number 80315850. We find that after taking into account the fact that the location of the premises is in a residential area, and the

current anti social behavior problems already being experienced in the area, that the original concept proposed in the application documents for

“an easily accessible and friendly establishment where residents, families, shoppers and tourists can dine and meet people within times suited to their exclusive needs and time restraint. Appealing meals will be prepared on site with alcoholic beverages provided to improve the patron’s dining experience”

is more appropriate for Mbargo at Parap.

- 35) It is recognized that many patrons would appreciate being able attend an up market licensed premises to have an alcoholic drink, either pre or post dining or when meeting friends, without having to consume a meal. If Mbargo at Parap provides substantial meals in its restaurant and light meals are available in the other areas the Commission believes it is reasonable that some alcohol can be sold without the requirement that a meal is consumed and this would be within the proposed concept for the premises.
- 36) Although the licence, the subject of this transfer, is named "AUTHORITY-TAVERN" the current *Liquor Act* does not specifically define a tavern or outline the principal activities of a "tavern". A tavern is, however, clearly defined in dictionaries as *“an inn or public house”* or an *“establishment where alcoholic beverages are sold for consumption on the premises”* and in *Thesaurus* as *“inn”*; *“watering hole”* or *“pub”*: All common usage of the word tavern focuses on the sale and consumption of alcohol.
- 37) Licence Number 80315850 was issued some time ago but it does appear that the authority of the licence is an anomaly as evidence has been given that Bogarts 25s operated as a restaurant with an on-licence which, whilst the main focus was on dining and the provision of meals, did allow the sale of alcohol to patrons without a substantial meal being provided. The Commission has not been persuaded to vary the concept of the licence and believes that the anomaly in the licence authority needs to be rectified. The Commission determines that the appropriate liquor licence is an On Licence.
- 38) To ensure that the focus remains on dining and not drinking at the premises the Commission believes the concept outlined above in paragraph 34) should be included in the licence; that, as proposed in the application documents, the configuration of the premises should include a restaurant providing substantial, up market meals and table seating for a minimum of 60 patrons. In the remaining areas of the premises, including the Island Bar, casual dining and light meals should be available and table seating for at least eighty percent (80%) of the permitted patron capacity for those areas must be available at all times.
- 39) The traffic problems identified by objectors of hoon driving and rat running, particularly in Gregory Street and its subsidiary roads, has been on going for some

time. The Commission is not convinced that if Mbargo at Parap operates as a restaurant with an on-licence it will cause increased traffic problems in the area.

- 40) The Commission is aware that on occasions licensed premises are booked for private functions and this may involve the need to change the seating plan and availability for the whole or parts of the premises. A Special Condition in the licence can accommodate this situation and at the same time making it a requirement for the licensee to maintain a record of the private bookings and to restore the premises to its usual configuration within a reasonable period at the end of the period of the booking.

THE DECISION

- 41) The Commission has determined that:

the appropriate liquor licence to be granted for the proposed Mbargo at Parap premises located at Shop 14, 36 Parap Road, Parap is an On-Licence where the main focus is on dining and the provision of meals but does allow the sale of alcohol to patrons without a meal having to be consumed.

- 42) The Commission approves the following in relation to Liquor Licence Number 80315850:

- (a) the substitution of the premises from which liquor was sold under the licence from Bogarts 25s located at 52 Gregory Street to premises to be known as Mbargo at Parap located at Shop 14, 36 Parap Road, Parap;
- (b) the change of name on the licence from Bogarts 25s to Mbargo at Parap;
- (c) the licence hours for Monday to Sunday 11:00 hours to 0200 hours (the following day).

- 43) The Commission does not approve a variation to the concept whereby Mbargo at Parap will operate as a boutique hotel with its primary target being the supply of liquor with an island bar a main feature of the premises.

- 44) The Commission approves the transfer of Liquor Licence Number 80315850 between Big Chance Pty Ltd and Pubco Pty Ltd with the following amendments to the licence:

- (a) the licence is to be an Authority - On Licence which allows the sale of alcohol with or without meals and not an Authority – Tavern licence;
- (b) the licence is to include a concept which appropriately describes its focus on dining and not drinking at the premises, for example:

“an easily accessible and friendly establishment where residents, families, shoppers and tourists can dine and meet people within times suited to their exclusive needs and time restraint. Appealing meals will be prepared on site with alcoholic beverages provided to improve the patron’s dining experience”;

(c) Further conditions are to be added to licence:

- the configuration of the premises Mbargo at Parap should include a restaurant providing fine dining and seating for a minimum of sixty (60) patrons. Casual dining and light meals to be available in the remaining areas of the premises including the Island Bar.
- Except for privately booked functions, patrons in the restaurant are to be seated with table service provided at all times and in all other areas of the premises, table seating for at least eighty percent (80%) of the permitted patron capacity for those areas is to be available at all times.
- All patrons in the licensed premises are permitted to stand during private functions which have been booked with the Licensee. After a private function has concluded, the area in which the private function has been held should be restored to its normal configuration within thirty (30) minutes and it shall accord with all the conditions of the licence.
- Licensee must maintain a record of all private functions which is to be available for inspection by the Licensing Inspectors at all times. The record to include the name of the person/organisation making the booking; the date, commencement and concluding times of the booking and any extension of time requested by the person/organisation making the booking..

Mrs J M Large
PRESIDING MEMBER