

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	QC RESTAURANT
APPLICANT:	QC Restaurant Pty Ltd
PROCEEDINGS:	Hearing into Variation of Liquor Licence Conditions and to Consider Objections Pursuant to Section 47F(2) of the <i>Liquor Act</i> : (a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or (b) health, education, public safety or social conditions in the community.
MEMBERS:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Paul Fitzsimons
OBJECTORS:	Superintendent Sean Parnell, Alice Springs Police Station Mr Ron Thynne and Ms Lorri Thynne, Residents at Aurora, Alice Springs Mr Ian Drummond, Executive Chairman, Australian Property Projects, Adelaide
APPEARANCES:	Mr Glen Wallace for the applicant Superintendent Sean Parnell for Northern Territory Police Mr Ron Thynne Mr Tony Quatermass for Mr Ian Drummond, Australian Property Projects Deputy Director Chris McIntyre for Director of Licensing
DATE OF HEARING:	26 November 2008

BACKGROUND

- 1) QC Restaurant Pty Ltd ("the Applicant") has sought a variation of licence condition for the premises trading as QC Restaurant from that of a Restaurant Licence to that of an On Licence as provided for in Section 32A of the *Liquor Act* ("the Act").
- 2) Advertisements appeared in the Centralian Advocate as per Section 32A(1) of the Act on 5 and 8 August 2008.

3) Following advertising three (3) objections to the application were received. These were from:

- Superintendent Sean Parnell, Alice Springs Police Station;
- Mr Ron Thynne and Ms Lorrie Thynne, Residents at Aurora, Alice Springs;
- Mr Ian Drummond, Executive Chairman, Australian Property Projects, Adelaide

Objection from Superintendent Sean Parnell, Northern Territory Police

- 4) The grounds of the objections raised by Superintendent Parnell included -
- a) General concerns for the safety of patrons and members of the public in and around the venue.
 - b) Restricted access to the venue for Police.
 - c) Limited parking near the venue and safety issues for patrons departing the venue late in the evening.
 - d) The proximity of the proposed licensed premises to existing licensed premises trading for similar periods and the impact on Police resourcing.

Objection from Mr Ron Thynne and Ms Lorri Thynne

- 5) The grounds of the objections raised by Mr and Mrs Thynne included –
- a) Additional sale of alcohol resulting in unwanted anti social, offensive and noisy behaviour at late hours in the Todd Mall,
 - b) Traffic of alcohol affected people between QC Restaurant and other late trading licensed premises.

Objection from Mr Ian Drummond, Australian Property Projects

- 6) The grounds of the objections raised by Mr Ian Drummond included –
- a) The amenity of the neighbourhood where the premises the subject of the application will be located; and
 - b) The public safety and social conditions of the community.

Applicant's Response to Objections

7) Mr Wallace responded, on behalf of the applicant, as follows:

Northern Territory Police

- (a) The provision of entertainment and music at QC will not affect the sobriety of patrons;

- (b) The variation of licence will not compromise the public safety of patrons;
- (c) Access to QC, by Police and others, is available from 4 directions and CCTV cameras operate in the Mall outside the premises;
- (d) Adequate car parking is available at the ANZ car park, Parsons Street, Leichhardt Terrace and the Post Office car park; and
- (e) The application is not for a new licence but rather variation of a licence that has operated for 16 years without any history of problems with Licensing or the Police. The variation will not result on an additional burden on Police resources.

Mr and Mrs Thynne

- (a) QC restaurant is located in an area zoned commercial use and it is widely accepted that the Todd Mall is a restaurant and bar strip;
- (b) More use of the Mall as an entertainment area will lead to more people in the Mall and a decrease in anti-social behaviour;
- (c) QC is currently able to trade until 2:00 am and none of its patrons have created any problems in the Mall. In addition, the variation will not attract unruly patrons nor will the variation increase the amount of alcohol available;

Mr Drummond

- (a) The variation will not attract increased numbers of patrons to the venue nor will the grant of an on licence allow the licensee to sell more alcohol. Also, the provision of entertainment and music at QC will not affect the sobriety of patrons;
 - (b) The variation of licence will not compromise the public safety of patrons;
 - (c) Licensed venues are not the source of anti-social behaviour in the Todd Mall. Licensed take away outlets are the predominant source.
- 8) The Legal Member in a decision dated 3 November 2008 determined that all three (3) objectors, including the substance of their objections, were valid and required hearing under Section 47F of the Act.

HEARING

- 9) Mr Glen Wallace for the Applicant summarised his proposal which he described as part of the ongoing development of the venue. He mentioned that QC Restaurant had been open for seventeen (17) months and on the basis of that trading he was seeking variation to his licence conditions. This variation to alter the premises from a Restaurant to an On Licence venue would give wider trading scope and enable the provision of live entertainment.

- 10) In response to a question from Mr McIntyre, Mr Wallace advised that whilst he had plans to develop the upstairs area of the premises, that would require a further variation of the liquor licence to cater for a function room and bar, those plans were not part of the current application for variation.

OBJECTORS

- 11) Superintendent Parnell, on behalf of Northern Territory Police outlined the basis for their objection which, to a degree, is premised on the amount of alcohol already consumed in Alice Springs and the concern for the creation of another "Nightclub" type premises.
- 12) Superintendent Parnell advised that excessive alcohol consumption generated eighty percent (80%) of Police work in Alice Springs and specifically referred to the safety of patrons leaving the premises. In reference to CCTV cameras in the Mall area, he stated that CCTV coverage was of "minimal assistance to NT Police".
- 13) Mr Tony Quatermass appeared on behalf of Mr Ian Drummond and Australian Property Projects and advanced the view that varying the licence to facilitate drinking without a meal would change the clientele. He also expressed concern over patrons who had consumed alcohol who could cause problems on leaving the premises, including noise and related anti social behaviour.
- 14) Mr Ron Thynne stated that his objection was largely over concerns that the variation in licence conditions would create a drinking venue rather than an eating venue leading to the potential for anti social behaviour. He was of the opinion that the Licensee was seeking to vary the licence conditions purely to sell more alcohol which could result in further anti social behaviour in the CBD area. Mr Thynne stated that patrons exiting QC's and moving on foot to other licensed premises would pass his residence. He advised that noise issues affecting his enjoyment of his residence usually occurred from midnight onwards.
- 15) The Commission sought the view of the Deputy Director for Licensing, Mr Chris McIntyre. He advised the Commission that if the Commission was inclined to vary the licence that the premises should have a condition requiring it to continue to have the appearance of a restaurant.
- 16) Mr McIntyre also sought that the issue of security needed to be addressed, should the licence be varied. He further noted that in relation to live entertainment, including karaoke that the existing and proposed licence conditions relating to noise "*Noise emanating from the premises shall not exceed an unadjusted level of 55dB for more than three percent (3%) of the representative time period*" was a very low noise threshold and not likely to cause disturbance in the neighbourhood. Mr McIntyre also suggested that the inclusion of a condition that entertainment involving live music cease by midnight may be appropriate.
- 17) The applicant responded to noise issues raised by advising that concerns over the noise levels / music volume coming from QC Restaurant were

unfounded as the 55dB level was low in comparison to restrictions on noise levels operating in other licensed outlets.

- 18) In regard to his experience as a Nominee and Operator Mr Wallace outlined that he had been operating restaurants in Alice Springs for over sixteen (16) years and prior to that he had operated a hotel in South Australia.
- 19) In relation to people exiting his premises he stated that in his experience the busier areas were likely to be safer. In his view the greater the number of people in the Mall late of an evening departing from restaurants, the more safer it was likely to be. Mr Wallace advised the Commission that on most nights QC trades until midnight and sometimes until 2.00pm and that patrons leaving the restaurant do not currently create problems. He confirmed that he did not agree that the variation of licence would result in a change of clientele.
- 20) Mr Wallace also outlined that his premises had access from a number of directions making Police work and visibility easier. He also stated that the Mall was well lit and that his property at the intersection of Parsons Street and the Mall provided clear lines of visibility. He also stressed to the Commission that he did not want to turn his venue into a Bojangles style nightclub.
- 21) Mr Wallace summarised by adding that he was seeking flexibility to trade as he saw fit within the boundaries of the licence variation he has made application for. He noted that the Alice Springs Town Council had not objected to the variation of licence as it has an interest in promoting the development of the Mall.
- 22) Mr Wallace submitted that given the nature of the premises he did not believe there was a requirement for a security presence at all times that QC was open for trade. He advised that he does not engage security officers at present however he would consider doing so for a major planned event or function. Mr Wallace emphasised that there were currently no issues with the premises or its patrons and that the argument that the clientele would change with the variation was merely hypothetical.
- 23) Mr Wallace stated that he did wish to be restricted by a condition requiring that the premises maintain the appearance of a restaurant as this had the potential to restrict his proposals for the future development of the premises.
- 24) Mr McIntyre confirmed that there had been no issues in respect of Mr Wallace's operation of the current and previous licensed premises, nor had there been any complaints or convictions in relation to the operation of the premises.

CONSIDERATION OF THE ISSUES

- 25) The Commission noted and had some empathy with concerns over the venue changing from a Restaurant to that of an On Licence venue and the attending issues of greater consumption of alcohol in isolation from meals, greater frequency of late hour trading and nightclub style music and entertainment.
- 26) In response to Mr Drummond's written objection, Mr Wallace had responded in part with; "... *the number of patrons that will attract will not be significantly more than what we currently enjoy*". The Commission does not necessarily concur with that view as the applicant has sought a licence variation on commercial grounds to increase sales, achievable by more patrons or patrons staying longer and consuming more alcohol.
- 27) The applicant did demonstrate to the Commission a sound knowledge of the hospitality industry and a sound knowledge of the likely market his premises could attract if the On Licence were to be granted. His ability to manage an On Licence premises and the consequences of any change to clientele numbers or clientele type was demonstrated to the satisfaction of the Commission.
- 28) The Commission was persuaded by Mr Wallace's assurance that he did not want his venue to become a nightclub and did not want to attract a nightclub clientele.
- 29) The applicant has operated restaurants for many years in Alice Springs and the Commission was of the view that the restaurant aspect of the business should be maintained as the major activity. To this end the Commission was not persuaded to remove the condition that "*the premises is at all times to have the appearance and trade predominantly as a restaurant*". Further, the Commission was not persuaded by the argument proffered by Mr Wallace that continuing to appear and trade as a restaurant would restrict proposals for the future development of the premises, as any future development was not the subject of the current application.
- 30) In relation to noise issues arising from Mr Wallace's proposal to have live entertainment as a key element of the activity within the premises, the Commission is satisfied that the retention of the noise levels at 55Db will prevent unacceptable levels of noise disrupting the neighbourhood. This relatively low noise level restriction also inclined the Commission not to impose a condition that any live music cease by 12.00midnight as referred to by the Deputy Director of Licensing.
- 31) In relation to security the Commission was persuaded by the Deputy Director that a security plan needed to be developed to his satisfaction.

DECISION

32) The Commission hereby approves the application for a variation of the licence for the premises trading as QC Restaurant to that of an On Licence on the following basis:

- a) The premises is to retain the appearance as a restaurant and is also to retain a significant proportion of the area for dining.
- b) Inclusion of the general conditions as per those advertised by the applicant.
- c) A security plan is to be developed and submitted to the Deputy Director Licensing for his approval.
- d) The existing licence noise condition is to be retained.
- e) The decision to grant an On Licence is to be reviewed after six (6) months of operation with the Commission to obtain the views of NT Police and the Deputy Director of Licensing as to its continued operation as an On Licence. The review is to include consideration of Police Incident Reports and other matters brought to the attention of the Police and the Deputy Director of Licensing.

Richard O'Sullivan
CHAIRMAN

27 January 2009