

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

---

<b>PREMISES:</b>	Darwin City Waterfront Ground Floor Medina Vibe Hotel Complex Kitchener Drive, DARWIN NT 0800
<b>APPLICANT:</b>	Craft Beer Australia Pty Ltd
<b>NOMINEE:</b>	N/A (Application by developers)
<b>OBJECTORS:</b>	Brevet Sergeant ES Mitchell (Northern Territory Police) Bridgeport Body Corporate Mr Frazer Henry, 19 The Esplanade L'Esperance Body Corporate Arkaba Bodies Corporate
<b>DECISION OF:</b>	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mr John Brears
<b>APPEARANCES:</b>	Mr A Harris for Applicant Mr R Bruxner for Police Mr A Wyvill for Bridgeport Body Corporate Mr A Wyvill for Arkaba Bodies Corporate Mr P Boyle for Director of Licensing
<b>DATE OF HEARING:</b>	13, 14 and 15 October 2009

---

## BACKGROUND

- 1) In mid October 2009, the Licensing Commission conducted a hearing into an application by a developer, namely Craft Beer Australia Pty Ltd for a "Tavern" Licence for the sale and consumption of liquor at proposed premises located on the ground floor of the Medina Hotel at Darwin City Waterfront. The application was made pursuant to Section 26(2) of the *Liquor Act*.
- 2) The objectors were principally comprised of residential groups and individuals within the neighbourhood who were concerned to ensure that important community amenity and public interest issues were taken into account in deciding whether a liquor licence should be granted, and if so, upon what

conditions. Northern Territory Police were also an objector.

- 3) The Hearing proceeded over three (3) days following which the Commission adjourned to consider the evidence tendered. Further enquiries were also made by the Director of Licensing at the Commission's request with respect to patron numbers and details of these enquiries have been provided to the Commission and all parties.
- 4) This is not the first application regarding this particular development site. A previous application for a conditional 'tavern' liquor licence was made by another developer in 2008 and was ultimately refused by the Commission following a hearing. The refusal was based on the grounds that the Commission could not sufficiently consider community amenity and public safety issues when the applicant was unable to advise with any precision the final patron numbers that the premises would be able to accommodate.
- 5) The current application differs in some important ways from the previous one. The size of the proposed tavern is significantly smaller which means fewer maximum patron numbers and the only entry/exit point from the establishment is on the opposite side of the building to the residential objectors which gives some comfort regarding noise concerns. Further, the current applicants have a clear vision regarding the proposed concept and style of management which allows the Commission to make a decision with more certainty.

## **HEARING**

- 6) At the Hearing, detailed evidence was tendered including all written objections, expert reports, oral statements and various documents covering all relevant issues together with oral evidence from the developers, residential objectors, Police, expert witnesses and the Chairman of the Darwin Waterfront Corporation (DWC).
- 7) A site inspection was also conducted before the Commission asked Mr Paul Tyrell, Chairman of the DWC to "set the scene" with respect to the concept and management of the Waterfront Precinct. Mr Tyrell emphasised the need for the DWC get the right balance between tourism, residential development and recreation. He advised that the Convention Centre was initially designed and constructed to ensure employment and growth during poor economic times. Consideration was then given to developing the twenty-five (25) hectares of surrounding industrial land to cater for tourism and Darwin's residential and recreational needs.
- 8) The overall vision was drawn from developments such as Southbank and Darling Harbour with the provision of a safe, attractive and well managed multi-use facility being the intrinsic aim of the DWC. The Precinct now includes the Convention Centre, the Cruise Ship Terminal, public spaces including the Wave Pool and the first of a large number of unit developments, retail and commercial outlets and licensed premises. The wave pool

development has added a clear family focus to the Precinct particularly during the daytime. Ultimately, the Precinct may house as many as four thousand (4,000) people.

- 9) Of some importance to the Precinct is the walkway-link allowing a good pedestrian flow of people to and from the Waterfront and the CBD. Carparking is also available in a public carpark building next to the Medina Hotel. Mr Tyrell confirmed that the public lift and walkway are open twenty-four (24) hours per day. The public carpark building closes for new parking at 10.30pm but allows users to exit from the building in their vehicles at any time. He described the CCTV camera plan for the Precinct around the Wave Pool and walkway and advised that the Corporations security contractor is employed on site from 3.00pm to 7.00am Monday to Friday and from 12.00noon to 7.00am on Saturday and Sunday. The security presence is comprised of a single roving foot patrol in order to monitor unacceptable and unsafe behaviour and provide warnings and reference to police when necessary.
- 10) Mr Tyrell confirmed that a Tavern-style licence was always intended to be part of the development but that proper management was going to be vital to ensure that no anti social behaviour resulted. He saw management of broken glass around the wave pool area as a potential issue to be considered if a Tavern licence is granted.
- 11) Counsel for the applicant, Mr Harris, then called a number of witnesses to give evidence in support of the application. Witnesses included Mr Darren Lynch and Mr Geoff Booth, the Directors of the applicant company, Mr Dimitrov, Acoustic Engineer, Ms Sharyn Innes, Tourism Consultant and Mr Bradley Morgan, General Manager of Lasseters Casino and Alice Springs Convention Centre. This evidence is summarised as follows:
  - a) The concept is for the development of a sophisticated Tavern and not a nightclub. The target market during the day time will be families and at night time, principally the over twenty-five (25) age group. There is no intention to chase the youth market which is well catered for in the Mitchell Street Entertainment Precinct. The over twenty-five (25) market is under-catered for in Darwin and a sophisticated venue with an emphasis on Craft beer is long overdue.
  - b) The plan provides for sixteen (16) taps with half those taps being dedicated to Craft beers. Good food and a beer tasting plate will be two of the attractions for patrons. There will be a restaurant with a diverse menu (including a proposed children's menu), keno and large screen TV screens, alfresco dining and drinking areas overlooking the grassed public areas and wave pool. Whilst a very casual dress code will be imposed during the day when a family friendly atmosphere will be encouraged, a higher standard of dress will be required at other times.

- c) The concept and business plan is developed specifically for the Waterfront Precinct and will contribute to the diversity of licensed premises generally available. The developers visited and drew ideas from a number of successful craft beer venues interstate.
  - d) The developers intend to nurture a strong relationship with the nearby Convention Centre on the basis that the Tavern will provide an important networking and socialising venue for Convention Centre users.
  - e) Licensed hours are sought from 10.00am to 02.00am (the following day) seven (7) days a week with the alfresco area closing to drinkers (but not smokers) at 1.00am. These hours are necessary to service the Convention Centre market.
  - f) A site viewing in the company of the developers has provided the objectors and the Commission with a clear vision of the intended management, design and decor of the premises. Of central importance are the Licensee's management plans to control the escape of noise from the premises by linking window openings to the Night Life sound system.
  - g) There will be good security arrangement and it is envisaged that a Crowd Controller will be rostered on at 8.00pm on week nights with up to three (3) Crowd Controllers on premises on Friday and Saturday nights. The applicant intends to employ a further roving Security Officer to assist the DWC in maintaining public safety in the vicinity of the Tavern at night.
  - h) It is imagined that most patrons will use the public car parking available. If on foot, they are more likely use the lift and walkway to access the CBD rather than alternative routes. A mini bus service may be provided depending on need.
  - i) Acoustic Engineer, Mr Dimitrov's evidence is that if a licence is granted, a noise management strategy including appropriate noise conditions for the liquor licence will control any noise pollution issues directly emanating from the premises.
  - j) Mr Bradley Morgan from Lasseters Casino Alice Springs provided details of the manner in which the Juicy Rump Restaurant Bar and Nightclub supports the services provided by the Convention Centre by offering a venue for patrons between 10.00am and 04.00am (the following day). Mr Morgan confirmed that the Juicy Rump is now used as a selling point to sell conventions. He considered that the proposed new Tavern would play a similar role for the Darwin Convention Centre.
- 12) Oral evidence on behalf of the residential objectors was provided by Mr Bill Stuchbury, Chairman of Bridgeport Body Corporate and Mr Wal Walker, Chairman of the Body Corporate for 15 Arkaba House and Deputy Chair of the Body Corporate for 13 Arkaba House. Both Mr Stuchbury and Mr Walker confirmed that their respective Bodies Corporate have passed

resolutions opposing the Tavern on the grounds outlined in their written objections.

13) Mr Stuchbury's evidence outlined a number of concerns including the following:

- a) Noise is a primary concern. The traffic noise and in particular buses which runs along Kitchener Street directly below Bridgeport Apartments echoes upwards in a canyon effect and at times causes a nuisance to apartment owners and occupiers. Mr Stuchbury currently notes an increase in noise occurring between 4.30pm and 5.00pm and between 10.00pm and midnight. Tyre noise from the public car park and from Medina Vibe Hotel's air-conditioning unit is currently an issue. Noise after midnight, however, is rare. The concern is that if a tavern licence is granted allowing trading until 2.00am then residents' sleep will be interrupted.
- b) The residents of Bridgeport Apartments are satisfied with the type of complex that has been built at the Waterfront Precinct to date which they consider projects an appropriate style and sophistication. They support the family atmosphere created and oppose a tavern type licence.
- c) Public safety and in particular the proximity of the proposed tavern to the roundabout is also a concern. People even stop momentarily on the roundabout to allow passengers to alight.

14) Mr Walker gave evidence that he cannot hear members of the public who use the public walkway to access the CBD. The walkway is some two hundred (200) metres from his apartment. He anticipates, however that if noisy patrons use the walkway to access town then they will be heard.

15) He advised that any development must be considered with respect to its scale of operation and his view is that the proposed tavern is not a sophisticated facility by even Darwin standards. He was also sceptical about the intention to keep the concept as an over 25's venue at night.

16) Sergeant Antony Deutrom gave evidence as Acting OIC at Darwin Police Station. He expressed concerns about Police capacity if they are forced to manage another late night trading venue in the new Waterfront area. His concerns included the potential for anti social behaviour, assaults, noise pollution and increased traffic if a Waterfront Tavern is allowed. If granted, his main concern was the proposed 2.00am closing time and the need to ensure proper security and noise controls were in place. Sergeant Deutrom acknowledged that the provision by the applicants of additional security in the area around the Tavern was beneficial but he advised that a firm allocation of maximum patron numbers was preferred by Police.

17) In summary, Mr Wyvill's submissions on behalf of residential objectors included the following:

- a) The objections are based on the grounds of adverse impact on residents, a lack of any need within the area for such a licensed premise, the proximity of the roundabout, the potential nuisance caused by patrons leaving the premises at the end of trade, noise and anti social behaviour.
- b) The Waterfront Development was designed to provide a very safe and secure environment for users. It involves an extremely large investment of public and private money.
- c) The core reason for this establishment is drinking for its own sake; even the title "Craft Beer" supports such a view.
- d) The current problems caused by alcohol in the CBD should not be ignored. How can the Commission be comfortable that those problems will not leak into this highly sensitive area of the Waterfront?
- e) The proposed promotional material tendered as exhibits confirms that the Tavern's association with the Waterfront is a big selling point. There is reference made of the Wave Pool and the ambiance of the Waterfront and this advertising will inevitably draw persons to the Tavern to drink, including the "young and restless" who will combine the Wave Pool with the Tavern.
- f) The whole concept does not promote the Waterfront but in fact undermines it. The proposal does not deal with families but in fact excludes them as is noted by the lack of a draft children's menu. The proposal undermines the achievement of daytime objectives in the area. In the evening there are going to be problems where people are drinking.
- g) The applicants have failed to evaluate risk in circumstances where potential risk deserves rigorous consideration. They have no policy as to how to deal with broken glass and Mr Booth does not even see this as an issue.
- h) Security of women leaving the premises or the installation of extra CCTV cameras has not been considered.
- i) As regards risks surrounding traffic, the applicants have no suggestions regarding the reality of the roundabout becoming a "drop off" zone; neither have they considered the reality of squealing car tyres in the public car park.
- j) The applicants' brief to their acoustic engineer was to only consider noise created by music and patrons emanating from inside the premises. The noise of traffic and people leaving was simply not addressed.
- k) The risk of "concept creep" is highly relevant when the financial reality of the over twenty-five (25) market limitations are recognised.

- l) As regards what conditions might be imposed to minimise risk, Mr Wyvill suggested the following:
  - i) Reduced trading hours, for example, cease trading at 11.00pm during the week and midnight on weekends;
  - ii) Change the core concept from tavern to restaurant; and
  - iii) Add extra security measures - if later trading hours are granted, then additional security must be at the Licensee's cost.
- 18) In summing up Mr Bruxner, in his role as Counsel for Northern Territory Police adopted Mr Wyvill's submissions. He advised that there was no compelling evidence of the need for trade beyond midnight in order to service late night custom from the Convention Centre or from elsewhere.
- 19) He warned that the proposed Tavern, if granted, would become different in trading to the concept put forward and this is too much of a risk.
- 20) In response, Mr Harris on behalf of the applicant advised the following:
  - a) There is a clear acknowledgement that the predominant purpose of the proposed tavern is for the consumption of alcohol but a significant proportion of the area on the plan is also used for other things such as food. The proposal is consistent with the overall concept of creating a sophisticated premise with a smart minimalist upmarket appearance to target tourists, Convention Centre patrons and locals.
  - b) This Darwin Waterfront precinct needs a diversity of premises including a Tavern. It is noted that the DWC generally supports the application and in fact even gave in principle support for the previous unsuccessful application for an even bigger venue.
  - c) The four thousand (4000) people who will ultimately call the Darwin Waterfront Precinct home have expectations which include access to restaurants and a tavern. This is in accordance with the objects of the Act which contemplate diversity of outlets.
  - d) The evidence provided by Ms Innes supports the need for a Tavern licence for Convention patrons and Mr Lynch's evidence confirmed that families and other groups are the priority during the day.
  - e) The "elusive demographic" being the over twenty-fives (25s) does exist and that market has been identified as one that is not serviced in the CBD. It would be a tragedy if the Commission considered that Darwin is not capable of supporting a clientele of civilised people.
  - f) There are significant leasehold constraints that together with licence conditions will assist in controlling any potential or perceived risks such as noise.

- g) Further the willingness of the Licensee to provide a mobile foot patrol is a desirable initiative and affirms a coordinated approach between DWC and the applicants to deal with security.
- h) As regards concerns about traffic noise, a Tavern was always in the contemplation of DWC and the realities of traffic created by such an outlet were included in the traffic study tendered at Hearing.
- i) This is not a residential area for the purposes of planning and zoning, the Darwin Waterfront Corporation is part of the CBD.
- j) The developers have a commercial interest in ensuring that the Darwin Waterfront Precinct remains a quality area. Mr Lynch is in fact a part owner in the proposed Signature Restaurant on Wharf One.
- k) Whilst they cannot eliminate risk completely, there are many strategies available to minimise risk in accordance with the Act.

## **CONSIDERATION OF THE ISSUES**

21) Section 26(2) of the *Liquor Act* allows applications for a liquor licence to be made by developers for premises that are yet to be developed or in the process of being developed. Section 26(3) states:

*(3) The applicant for a licence must demonstrate in the application that the grant of the licence will be in the public interest:*

*(a) by providing information about any relevant criteria referred to in section 6(2); and*

*(b) by specifying any other matter relevant to the public interest in the sale, provision, promotion and consumption of liquor.*

22) Sections 3 and 6 of the *Liquor Act* outline the fundamental Objects which must guide the Commission in its decision-making. Those sections state:

### 3 Objects

*(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 to 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.*

23) In the light of the above Objects and Public Interest Criteria, the Commission has considered all evidence tendered and has taken it into account in reaching a decision. In particular, the Commission considered carefully evidence relating to the following issues:

- a) The intention of the Darwin Waterfront Corporation to cater for a myriad of client groups in developing this high quality facility with a mix of public and private spaces, food and entertainment outlets, apartment living, hotel accommodation, shops and both ‘family friendly’ and adult leisure activities;
- b) The need for the Commission at this early stage of development of the Waterfront complex to consider what sort of general guidelines it should follow in its decision making to protect the community investment in and the amenity of the neighbourhood;
- c) The location of the proposed tavern which borders a grassed public access route and picnic area beside the wave pool and the sorts of factors that should be considered to protect community amenity and public safety;
- d) The likely user groups of this part of the Waterfront Development at various times of the day and night and their particular needs;
- e) General security issues within the Waterfront Development – particularly in the vicinity of the proposed Tavern;
- f) Available access routes to other areas such as the CBD by foot or via public and private transport and the concerns of objectors regarding this issue;
- g) Noise concerns as expressed by objectors and whether they can be sufficiently resolved by licence conditions;
- h) Venue capacity and patron numbers as appropriate to facilitate responsible management of patrons;
- i) A consideration as to whether the developers are “fit and proper” persons to hold a liquor licence; and
- j) Whether it is in the public interest to grant this Tavern licence and, if so, the type of licence and the conditions that should be imposed to protect community amenity and to ensure public safety;

24) The vision of the DWC and the Commission’s objectives are in line on many issues. Both are mindful of the need to ensure a proposed use such as a tavern does not cause an increase in anti-social behaviour or detract from the

objective of providing a safe, attractive environment for the general public.

- 25) The Commission notes that the Waterfront Development was always intended to include a range of licensed venues including a tavern and sees that a well run establishment would be an asset to the precinct. So long as it is satisfied that proper controls can be imposed, the Commission is not against this concept. A sophisticated, well managed venue close to the Convention Centre and the Hotel would be an asset for tourists and convention goers but the proximity of the proposed site to public areas and in particular the wave pool means strong management and tight licence controls will be required. In short, the Commission is NOT supporting a 'drinking barn' with cheap promotions to attract a big-drinking but challenging clientele. It is supporting the sort of 'sophisticated venue' that the applicants have described with novel craft beer choices, a substantial food menu and a well controlled bar aimed at the over twenty-five (25) market at night and families and tourists by day.
- 26) Part of the Commission's deliberation has involved considering ways in which the licence conditions of this tavern and other licensed outlets can maintain the Waterfront precinct as a visually attractive, safe and family friendly location - particularly those venues close to the wave pool and similar public spaces. The decision has been made to ensure that all alfresco dining and drinking occurs at normal height tables and chairs. There will be no high bar tables and bar stools approved for use in alfresco areas. There will be no dry bars outside where people can stand and drink. It will be a requirement on Licensees to ensure their patrons are seated in the alfresco areas. Further, the alfresco area of this tavern will close at 1.00am for use by drinkers.
- 27) The Commission notes the concerns of residential objectors about noise and antisocial behaviour issues affecting their quality of life. Following the evidence of Mr Dimitrov and Mr Turner, however, there appears to be a consensus between the parties that the proposed noise controls should be sufficient protection to both Hotel guests and nearby residents from noise emanating from inside the premises or from the alfresco area. Additionally, the lease conditions imposed by the landlord at the proposed premises have significant conditions to prevent antisocial behaviour and noise issues and these conditions will support those found in the licence to ensure that the premises are well managed and true to the expressed concept. The offer of a roving security guard paid by the applicant to support the DWC's security will also assist in monitoring and managing noise issues as patrons exit the venue. The squeals of tyres in the public carpark are matters for residents to take up with the DWC.
- 28) The main vulnerability to noise for residential objectors is likely to be people leaving the premises and walking along Kitchener St rather than via the lift and public walkway. If they are walking to town, then their more likely route would be via the lift and public walkway – a route that is far less likely to cause noise disturbance to residents late at night. It may be however that some of these patrons reside nearby themselves or that they are walking to retrieve their vehicle from the public carpark building. Licence conditions will require the licensee and nominee to use their best endeavours to encourage

patrons to leave via the lift and walkway rather than via the roundabout and Kitchener Street.

- 29) In summary, the Commission is aware of the need to address both this potential nuisance issue and the risk of an increase in antisocial behaviour. It has carefully considered whether these risks can be controlled by licence conditions. It has formed the view that they can provided that :
- a) The proposed licensee and nominee are found to be fit and proper;
  - b) the concept of the tavern as a sophisticated venue aimed at the over twenty-five (25) market is maintained;
  - c) the provision of good food is made a priority;
  - d) the security, including the extra roving security guard is sufficient to detect and manage potential problems early;
  - e) the management of the premises is maintained at a high standard; and
  - f) the number of patrons is maintained at a level that the Commission considers manageable to ensure the responsible service of alcohol. Whilst the NTFES provide a maximum patron number to licensees based on the need for a safe evacuation in an emergency, the requirement for a minimum number of tables and chairs in the Restaurant, and Internal Bar areas and the requirement that patrons must be seated in the Alfresco area will ensure that patron numbers are maintained at a reduced but responsible and manageable level.
- 30) It is vital that this establishment develops as the sophisticated venue that has been proposed to the Commission and that it enhances the Waterfront Precinct. The licence conditions will be reviewed after twelve (12) months of operation to ensure that this is the case. The Licensee is warned that if the licence conditions imposed are not sufficient, then the Commission will not hesitate to review the licence and impose tighter controls within a shorter time frame.

## **DECISION**

- 31) Pursuant to Section 31(3) of the *Liquor Act*, a decision is made to grant an 'on premises' licence to the applicant company to enable it to develop the premises as a tavern style establishment at the Waterfront. There will be no takeaway liquor sales. The grant of the licence is subject to the condition that the sale of liquor on the premises is not permitted until the approval in writing to do so is obtained from the Commission. This approval will not be forthcoming until the refurbishment of the premises is complete and all necessary approvals have been obtained. In making this decision, the Commission accepts that Mr Booth and Mr Lynch are fit and proper persons and supports their proposal to be dual Nominees.

- 32) Mindful of the intention of the WDC to provide a “family friendly atmosphere”, the proximity of the proposed tavern to the wave pool and public areas and the need to ensure responsible management of patrons, the licence is subject to a number of conditions (in addition to the usual conditions) as follows:

**Concept:**

- 33) The Premises shall operate in a manner that is consistent with the theme as presented to the Licensing Commission during the Hearing into the application. The theme being a blend of Classic and comfortable Aussie Pub” with a “craft beer theme” promoting boutique beers and good food. The licensed premises to remain “family friendly” during the day and evening until 9.30pm. The market groups are hotel guests, national and international tourists, conference attendees and customers from the Convention centre, family groups during the day and locals in the twenty-five (25) plus age group later in the evening.

**Advertising:**

- 34) No advertising or promotions of the venue or events predominantly aimed at the under twenty-fives (25's) market.

**Entertainment:**

- 35) Subject to compliance with the imposed noise conditions, the Licensee is permitted to provide entertainment in the internal areas by way of live or pre-recorded music. No speakers or live performances permitted in the Alfresco area.

**Noise:**

- 36) The noise condition agreed between the parties to be imposed as a licence condition. Should the parties be unable to agree on the wording of the condition, then the Commission will impose an appropriate condition.
- 37) The Licensee shall make its best endeavours to encourage patrons exiting the licensed premises after 22:00 hours not to exit immediately onto the roundabout of Kitchener Drive.

**Trading Hours:**

***Internal Areas***

- 38) The consumption of alcohol is permitted in the following areas during the following times:

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

***Alfresco Area***

Sunday 10:00 and Monday 01:00  
 Monday 10:00 and Tuesday 01:00  
 Tuesday 10:00 and Wednesday 01:00  
 Wednesday 10:00 and Thursday 01:00  
 Thursday 10:00 and Friday 01:00  
 Friday 10:00 and Saturday 01:00  
 Saturday 10:00 and Sunday 01:00

- 39) Smokers may utilise any designated smoking area within the Alfresco area after 1.00am provided that they do not possess alcohol in this area.

**Patron Management and Numbers:**

***Alfresco Area***

With the exception of those persons entering or exiting the venue through the Alfresco area (identified on the Plan at hearing), all patrons to be seated.

No high tables or bar stools permitted in the Alfresco Area.

No external "dry bar" permitted.

Smokers may utilise any designated smoking area within the Alfresco area after 1.00am provided that they do not possess alcohol in this area.

***Restaurant Area***

The Restaurant Area (identified on the Plan at Hearing) shall at all times have the appearance of and shall trade predominantly as a restaurant.

Liquor shall only be sold by way of wait staff to patrons who are seated at a table.

The Licensee shall provide for a minimum internal seating capacity for ninety-six (96) persons in the restaurant area.

No high tables or bar stools permitted in the Restaurant Area.

***Tavern Bar Table Seating***

The Licensee shall provide table seating for a minimum of one hundred (100) patrons in the Tavern Bar area (identified on the Plan at hearing). High tables and chairs may be used in this area.

**Meals and Snack Food:**

- 40) Full meals (including a children's menu) shall be available from 11.30 hours to 14:00 hours and again from 18:30 hours to 21:30 hours, for patrons in any part of the licensed area.
- 41) Light meals such as tapas plates and pizza and snack food shall be available at all times for consumption in all parts of the licensed premise where liquor is served.

**Water:**

- 42) Complimentary "tap" water will be readily available at all times from all service areas of the premises.

**Camera Surveillance Requirement:**

- 43) The Licensee shall comply with such requirements for and in relation to camera surveillance as the Commission shall at any time notify to the Licensee in writing as being thereafter applicable to the licensed premises.

**Security:**

- 44) The Licensee shall provide, to the satisfaction of the Director:
- i) An appropriate number of licensed crowd controllers;
  - ii) Adequate security throughout the premises and in the immediate vicinity thereof;
  - iii) An additional "roving security officer" to assist in the maintenance of a safe environment in and around the Hotel including Kitchener Drive and adjoining public spaces – particularly around closing time.

**Review:**

- 45) The Licensing Commission shall review the operation of the Licensed Premises after a period of twelve (12) months. At that time, the Director will be asked to prepare a report for the Commission on the operation of the premises and to advise whether there are any matters that require more detailed consideration by the Commission.

Richard O'Sullivan  
CHAIRMAN

17 December 2009