

# NORTHERN TERRITORY LICENSING COMMISSION

## PRELIMINARY DECISION

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<b>PREMISES:</b>	Proposed Micro Brewery with Hotel/Tavern 375 Stuart Highway Coolalinga NT 0835
<b>APPLICANT:</b>	The Northern Territory Brewing Company Pty Ltd
<b>NOMINEE:</b>	N/A (Application by Developers)
<b>OBJECTORS:</b>	Dr Bree Hansell and Mr Damian O'Brien of Howard Springs Dowling Holdings Pty Ltd, Lessee of Howard Springs Tavern and NT Pubco Pty Ltd, Sublessee OMAD Pty Ltd, Lessee of Virginia Tavern Rayjo Nominees Pty Ltd, Lessee of Virginia Store Ms Carol Walker-Moffatt of Virginia Road
<b>DECISION OF:</b>	Ms Brenda Monaghan (Presiding Member) Mr Wally Grimshaw Mrs Jane Large
<b>APPEARANCES:</b>	Mr Des Crowe for Applicant Mr Ian Rowbottom for Objectors
<b>DATES OF HEARING:</b>	30 November 2009 1 December 2009 8 December 2009

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- 1) An application has been made by Mr Des Crowe on behalf of the Northern Territory Brewing Company Pty Ltd (the developer) for a liquor licence for the proposed Coolalinga Brewery situation at 375 Stuart Highway, Coolalinga - the site of a disused rice factory. The Application for a liquor licence is made pursuant to Section 26 and Section 31(3) of the *Liquor Act* (the Act) as the developer seeks some certainty that a liquor licence will be granted before proceeding with the development.
  - 2) The application was advertised on 10 and 12 December 2008 as follows:

*The Northern Territory Brewing Company Pty Ltd HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing Commission for an "in principle" 'PUBLIC HOTEL" Liquor Licence to sell liquor for consumption on the premises located at 375 Stuart Highway Coolalinga NT 0835.*

*PROPOSED TRADING DETAILS for the sale of liquor are as follows:*

*The business proposed to be conducted on the premises will be in the nature of a Public Hotel with a "micro brewery" operating.*

*Meals will be available on request between the hours of 12:00 and 14:00 and again between the hours of 18:00 and 22:00, seven days a week.*

*Snacks will be available at all times the premises are open for trade.*

*Liquor may be sold from 10:00 hours until 02:00 hours (the following day), seven days a week.*

*No trading Good Friday or Christmas Day.*

- 3) Following a long period of adjournment sought by the applicant and approved by the Licensing Commission, an assessment was made of the eight (8) written objections to the application. In its decision on 7 August 2009 the Licensing Commission found that five (5) of the objectors were valid and required a Hearing, namely:
  - a) Bree Hansell and Damien O'Brien
  - b) Dowling Holdings Pty Ltd
  - c) OMAD Pty Ltd
  - d) Rayjo Nominees Pty Ltd
  - e) Carol Walker-Moffatt
- 4) Prior to this Hearing, the applicants obtained an Exceptional Development permit for the purpose of constructing a microbrewery and hotel. The Permit has a number of conditions imposed including;
  - (i) conditions to ensure water and electricity supply, road works, drainage and removal of waste material are properly approved;
  - (ii) a prohibition against external sound amplification; and
  - (iii) a requirement that the hotel not operate independently of the microbrewery.
- 5) Litchfield Council was asked to comment on the liquor licence application. The proposal was discussed at the Council Meeting on 25 February 2009 and Council resolved that it had no objection to the application on the basis that it did not adversely affect the amenity of the neighbourhood.

- 6) NT Police also provided written comment upon request, although they elected not to be an objector. Their main concerns are based on public and road safety issues. Their concerns include the following:
- a) there are a number of licensed premises in close proximity to the proposed tavern and there is no “community amenity” requirement for another;
  - b) the proposed site is on a very busy section of the Stuart Highway and access to the service road for northbound traffic is difficult. For the period from 1-4-07 to 31-3-08, there were 881 drivers detected for speeding on that particular section of the Stuart Highway. In 2007, there were 23 traffic accidents in that region. The proposed development does not have the infrastructure available for safe and responsible traffic management at the site and although there is an acknowledgement from government that improvements in traffic management are required, there are no definite plans for an upgrade at this stage.

## **THE HEARING**

- 7) As is the accepted practice with licence application Hearings, the Hearing of the application and objections proceeded together on 30 November 2009. The Hearing commenced with the applicant providing an overall outline of its proposal for the Micro Brewery and Tavern at Coolalinga. The Commission was advised that Northern Territory Brewing Company has three (3) directors namely Mr Dennis Durham Snr and his two (2) sons Mr Dennis Durham Jr and Mr Charles Durham. The family have been active in business in the NT for many years visiting often although they live and have business interests interstate. If successful with this application, they anticipate that a manager/nominee will be engaged to run the business whilst maintaining close contact with them.
- 8) At the commencement of the Hearing, the applicant presented a ‘virtual tour’ PowerPoint of the proposed development and Mr Charles Durham outlined the proposal in more detail. The property is owned by a related family company and leased to the applicant company. It is situated on the eastern side of the Stuart Highway and is most easily accessible to southward bound traffic from Darwin. (N B The larger shopping centre, including Woolworths supermarket, is on the opposite (western) side of the highway.) The shops and businesses on the eastern side including the applicant’s property are accessed by a narrow service road off the Stuart Highway near the controlled intersection of Henning Road and the Highway. There is a billboard in this area advertising a future shopping centre development in this area but no clear details are available of the likelihood of this development going ahead, its impact on the area and any time frame for construction.

- 9) The Commission is advised that following restoration and renovation of one of the Old Rice Mill sheds on the Coolalinga property, the proposal is to establish on-site a micro brewery and tavern. The applicant intends to preserve the 'rustic charm' and heritage value of the building as far as possible and advises that the upgrade works on the site are scheduled to finish by June 2010.
- 10) The renovated building will contain the brewing equipment along one side so that patrons visiting the premises can see the beer being brewed, taste the product and purchase the available merchandise. It will also contain an open plan kitchen, a bar and seating for one hundred and seventy (170) patrons. The inside will not be air-conditioned but cooled with the provision of ceiling fans. A beer garden catering for one hundred and ninety (190) patrons will be located along the eastern side of the building. An appropriate area for parking of cars and tour buses will also be provided.
- 11) At the outset, it is proposed that the brewery will be involved in the brewing of two (2) beers and a non-alcoholic ginger beer with the assistance of a brewmaster. Its main income will be derived from the wholesale purchases and on-premises consumption of its brewed beer together with the sale on the premises of a wide range of beer, wine and spirits and meals. It is hoped that the venue will cater for tour buses in the mid-late mornings and early afternoons. Mr Durham, as applicant, stressed that there will be a rustic Territory flavour to the food, drink and the merchandise sold to cater for both interstate and international tourists and locals.
- 12) When this application was advertised, the applicants were seeking a closing time of 2.00am. Noting concerns about noise late at night, the applicant has modified its hours and now seeks opening hours from 10.00am to Midnight (instead of 2.00am the following day). It is proposed that the café/restaurant on site will provide substantial meals between the hours of 12 noon and 2.00pm and 6.00pm and 10.00pm with more casual meals such as hamburgers and fish and chips provided at all times. They also propose to use the premises for private functions such as weddings and conferences.
- 13) Mr Durham stressed that they are not trying to create the atmosphere of many other taverns in that they do not intend to have gaming machines and pool tables. They support a tavern licence being granted which specifically states no gaming machines. The applicants advised that the main need for a 'tavern' licence is to allow patrons to either sample their beer or drink other types of alcohol on the premises without the need to purchase food. They also anticipate creating a venue for patrons to come on Sunday afternoons to enjoy themselves in the beer garden with music provided in accordance with any restrictions from the DCA and/or the Commission. Inside the renovated building, there will be background music only.

- 14) Upon cross examination by Mr Rowbottom for the objectors, Mr Durham asserted that they expected to produce 40 - 50 kegs of beer per week. He was confident that the noise and smell from the brewing process will be limited as the brewing takes place in sealed vats, the crushing of grains will occur before arrival at the brewery and the machinery will only be operated during normal business hours. Any future expansion of the brewery into bottled beer will be undertaken off site.
- 15) Mr T G Dowling, Company Director of Dowling Holdings Pty. Ltd, an objector to the application, outlined his extensive previous experience in the hospitality industry. This experience includes operating a micro brewery in Darwin for six – seven (6 - 7) years in the 1980's which produced about 1000 litres per week. The majority of the beer produced in the brewery was on-sold to licensed premises in which Mr Dowling had an interest. Mr Dowling's objection was based on the public safety aspect of the proposal; in particular he mentioned the management of the premises, alcohol density issues, noise, and traffic congestion. He was sceptical about some aspects of the applicant's proposal including the intention to rely on ceiling fans only for cooling and he considered that the smells from cleaning products and brewing will be greater than the applicants anticipate.
- 16) Mr D O'Brien, Nominee of Virginia Tavern stated that one of his principal objections was that there are nine (9) other liquor licensed premises in the area, including the Virginia Tavern which was a mere eight hundred (800) metres from the proposed site. He stressed that there was no public transport in the region and no close residential area so patrons would travel by vehicle to the proposed premises. Mr O'Brien advised that he takes responsibility for his patrons' safety by taking them home in the Tavern's bus if they are over the limit for driving and don't have other means of transport home.
- 17) Dr B Hansell, wife of Mr O'Brien and a local veterinarian with a clinic in the Coolalinga Shopping Centre, highlighted her concerns about increased traffic problems and density of liquor licences. Her view is that the majority of patrons would likely to be locals from Virginia Road and Humpty Doo.
- 18) In his final submission, Mr Rowbottom maintained that the location of the proposed venue across the highway from the closest residential living areas was likely to cause traffic safety issues. The Ampol Service Station is the only venue open twenty-four (24) hours a day and might well attract patrons leaving the brewery/tavern across the highway to use the public phone or get some food. That part of the Stuart Highway directly in front of the proposed brewery/tavern is not lit at all and the speed limit changes from 100kph to 80kph in that area. The safety of patrons leaving the premises late at night is a real concern and has not been addressed by the applicants.

- 19) Mr Rowbottom acknowledged that future improvements of the road system and future development in and around Coolalinga may alleviate the problem but he submitted that currently, establishing a tavern on such a challenging section of the highway was a public safety issue. If granted, Mr Rowbottom requested that strict conditions be applied to any liquor licence to take account of community amenity and public safety issues. He further submitted that any noise/entertainment condition should mirror the Darwin Consent Authority Development Approval condition, namely *“No external sound amplification equipment or loud speakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose.”*
- 20) Mr Rowbottom emphasised that the main concern of the objectors was the creation of a tavern on the proposed site. They have fewer concerns about the building of a microbrewery on site and recognise the tourism potential of a locally brewed beer. They have fewer concerns also as regards a licence being granted to allow people to sample the product brewed onsite or to purchase it as “takeaway”<sup>1</sup>. The objectors also do not object to a well run restaurant business operating from the premises catering for the general public, tourists and special functions. What they don’t support is a tavern.
- 21) Mr Crowe, in response, highlighted the fact that the majority of the objectors were a ‘cartel’ of business people holding liquor licences in the area and their intentions and objections were necessarily compromised by self interest. He also noted that most of the objections were submitted in identical formats, which the Commission should take into account when considering the value and weighting of the objections raised. He stressed the public benefits that would flow from the new development.
- 22) In support of the submission that the applicants are ‘fit and proper’ persons to be granted the licence sought, Mr Crowe tendered written evidence of the company, the concept, lease arrangements, brewery operations, company policies, licence and permit requirements, company finances and general costings for the development.
- 23) Mr C Durham provided further evidence on family background, business details, ownership of land and the proposed operational details for the brewery. These operational details included the toilet facilities to be installed, namely demountables, and the number of beer kegs estimated to be sold wholesale and on site. Mr Durham explained costings for the development and profit and loss projections over the next few years. He advised that it would take one – two (1 – 2) years for the project to be financially viable and he confirmed that financial forecasts were based on a ratio of drink to food of some 70:30. He stated that between the three (3) Directors of the company, he would expect them to make monthly visits to the site.

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<sup>1</sup> This application does not address any proposal for a “takeaway” component to the liquor licence. There is currently a Moratorium on the granting of new takeaway licences in the Territory which prevents such an application being made.

24) Mr Stephen Liebelt, a specialist hotel and resort broker with extensive experience in the hospitality industry, gave evidence in support of the application regarding the likely volume of beer sales, likely population growth and distances between other licensed premises. He mentioned the proposed expansions of various nearby caravan parks and the possible impact of major projects relating to oil and gas.

## **CONSIDERATION OF THE ISSUES**

25) Section 26(2) of the 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.*

26) Sections 3 and 6 of the 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 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.*

27) The principals behind the application are well known businessmen who have a sound reputation both interstate and in the Territory. They have demonstrated that they have the financial capacity to establish the project and have presented numerous references to support their application. The Commission's assessment is they meet the "fit and proper" criteria to hold a liquor licence in the Territory.

28) This is the developers' first venture into the hospitality arena in the Territory and for it to be a tourist success, we note Ms Innes comment that "*it must be a quality experience and venue*". This risk falls solely on the developers of the project. For the Licensing Commission, the risk is whether the type of licence to be granted is such that it minimises the harm associated with the consumption of alcohol, protects and enhances community amenity and facilitates a diversity of licensed premises and associated services for the benefit of the community.

29) In reaching its decision, the Commission has taken into account all of the oral and documentary evidence presented to it including all written objections. The members also visited Coolalinga for a site inspection. It is difficult when making an assessment of a licence for a future project to ensure that the type of licence granted and the conditions imposed will both be suitable for the licensed premises when completed and meet the objects of the Act. It is however up to the applicant to satisfy the Commission on the balance of probabilities that the tavern licence they seek should be granted in its entirety.

30) In this case, there is currently an old heritage shed/hanger on a block of rural land and a set of conceptual images which show this being converted to a micro brewery with ancillary dining and bar facilities. There are no documented plans outlining the conversion and evidence is limited to a

general estimate of costs to bring the framework up to code, for rewiring, replacing some of the corrugated iron roofing and fitting out the internal spaces. The costings provided appear to the Commission to be very conservative. Whilst an overrun on costs may not be a financial concern for the developers, the reservations of the Commission about the accuracy of these costings and the vague responses given to several questions on various matters makes them cautious about the application generally and more aware that the development is still very much at a conceptual stage.

- 31) In regards to the density of similar liquor licences in the area, the Commission notes that there are some nine (9) liquor licences within a ten (10) kilometre radius of which three (3) hold tavern licences. There are no population statistics for the area in question but the information before the Commission is that it is currently a commercial area, all proposed future development plans are for commercial premises and the nearest residential area is the camping/caravan park on the other side of the Stuart Highway 300 - 400 metres away. The area is expected to grow in coming years which means that although the amenity of the community may be adequately serviced by licensed outlets at present, this may well change as the population grows.
- 32) The Commission raised at the Hearing its concerns on traffic and road safety issues. The proposed site borders the Stuart Highway and there is no street lighting in the area. Vehicular entry to the site is via an internal access road with traffic lights at Henning Road some distance away. This means that pedestrian entry and egress is likely to be across an unlit road verge and pipeline. There has been mention of a Traffic Management Plan for the area and for additional access and traffic lights. These all appear to be in the future and subject to other developments at the location.
- 33) It is the task of the applicant to provide the Commission with sufficient evidence to satisfy it on the balance of probabilities that the proposal is in the best interests of the public taking account of the Objects in the Act. If the Commission has any lingering doubts, then it has to take a cautionary approach to the granting of any licence. When considering this current application, the Commission can only base its decision on the evidence before it, not what may happen in the future.

## **DECISION**

- 34) When considering public safety issues, the Commission is not persuaded that there is currently the infrastructure available in the area to allow a tavern with beer garden to be run from the site in question on the border of a challenging stretch of highway. Given, the fact that there are few surrounding residents to be served then the majority of the three hundred and sixty (360) anticipated customers will be transported from other localities. Granting a licence which predominately is involved in the sales of alcohol when the site is just off the major highway and where there are currently entry and egress traffic

problems makes it difficult to satisfactorily minimize harm by way of licence conditions.

35) The Commission is however willing to grant a more conservative licence as follows:

- a) The applicant's proposal is to set up a micro brewery which will produce some 10 to 20 kegs of boutique beer (initially two beers and one ginger beer) per week commencing from June 2010. On the assumption that other government agencies are responsible for ensuring that health and environmental protection matters are properly regulated, the Commission is fully supportive of the establishment of a micro brewery on the Coolalinga site. Provided a wholesaler is register in accordance with Section 113A of the Act, the wholesaling of the product does not require a liquor licence and will immediately produce an income to the business once a market is sourced.
- b) The retail sale from the Coolalinga brewery via takeaway is not a matter for consideration by the Commission as there is a moratorium in place at present preventing consideration of new takeaway licences. Mr Crowe advises that enquiries are being made as to the possibility of legislative change to allow the applicant to conduct such retail sales direct to the public.
- c) The Commission is also fully supportive of a licence being granted that allows the public to visit the brewery and to sample the products brewed on site. Throughout Australia, breweries and vineyards include tasting of their product as part of their business plan and promote their product in this manner. The tasting of the brewery product can be accommodated with the granting of an On Licence which allows such tasting to be conducted in a specific area of the brewery or offered to customers seated at tables in the dining areas or the alfresco area without the need to provide a substantial meal.
- d) The Commission is also fully supportive of the applicant's plans to have a licensed restaurant /café in the renovated Rice Shed which will also house the brewery. Once again, vineyards and breweries throughout Australia provide good food to complement their product. It is the Commission's conclusion that a full restaurant licence for inside and outside alfresco dining areas which supplies substantial meals from 12 noon to 2.00pm and from 6.00pm to 10.00pm with light meals and snacks available at other times will enhance the amenity of the community and at the same time make the facility more marketable to the tourist industry. Closing time will be midnight unless a variation is sought for a special event. If the Licensee is willing to accept the normal restaurant conditions, then the Commission will allow the inclusion of a condition that liquor may be served to a patron without a meal but that this condition may not be

advertised. This indulgence allows for a patron to have a drink while waiting for a table.

- e) Finally, the Commission is supportive of functions such as weddings, promotions and various corporate entertainments being held at the premises. At the outset, these functions will be subject to any conditions imposed by the Director of Licensing. In the future, if these events form a more prominent part of the operation then a more permanent form of licence can be approved.

36) As the type of licence offered is not the type of licence sought, this is a preliminary decision. It indicates to the applicant the Commission's support for the grant of an 'on licence' to allow for a fully licensed restaurant and also for the sampling of beers brewed on site without a meal. This decision is provided to the applicant with the full knowledge that, if it is accepted, a further decision will be made granting the licence in the terms set out above and allowing for further consideration to be given to the appropriate conditions that should be imposed. A further site inspection by the Commission is anticipated when the building is completed and before the trading is permitted by the Commission pursuant to Section 31(3) of the Act.

37) It is noted that the issue of noise has been covered within the Exceptional Development Permit. The Commission is aware that the applicant intends to seek a variation of that decision and will await such advice before making a final determination regarding any condition that should be placed in a licence. In short, the Commission does not intend to overrule the condition imposed by another body but suggests that some comfort may be found in the more restricted liquor licence that will be granted.

38) Should the applicants accept the licence offered and establish a brewery/restaurant, then there is nothing to prevent them reapplying for a licence variation at some stage in the future when the current concerns outlined by the Commission decision above have been addressed.

Brenda Monaghan  
PRESIDING MEMBER

24 December 2009