

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: THE LAZY LIZARD CARAVAN PARK

LICENSEE: KATT (NT) Pty Ltd

LICENCE NUMBER: 80316511

DUAL NOMINEES: Anthony Wayne Fraser
Anthony Bruce Jenkins

PROCEEDING: Application for Extension of Licensed Area and Variation to Licence Conditions Pursuant to Section 32A of the *Liquor Act*.

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Mr Philip Timney (Legal Member)
Mr Wally Grimshaw

DATE OF HEARING: 3 June 2010

DATE OF DECISION: 22 June 2010

APPEARANCES: Mr Anthony Fraser for the Applicant
Mr Mark Wood on behalf of the Director of Licensing
Mr Antony Downs, Counsel for the Objector,
Chris Mason, Director of Karinga Pty Ltd

BACKGROUND

- 1) KATT (NT) Pty Ltd, Licensee of the Lazy Lizard Caravan Park made an application on 9 November 2009 to vary the liquor licence and to extend the licensed area at the premises.
- 2) The application entails an extension of the licensed premises to incorporate a second point of sale for on premise consumption and take away liquor sales, operating from what is currently a café and mini store. The proposed extension includes the store itself and a grassed area adjacent to the front of the store, which is proposed to be an additional area utilised for on-premise consumption of alcohol and service of meals.

- 3) The second component of the application seeks a variation of the liquor licence condition that prohibits gaming on the premises. The Licensee has applied for the relaxation of that condition so as to allow for the operation of TAB and KENO facilities on the licensed premises. The application also indicated that the Licensee intended to offer internet facilities, also to be located in the current store.
- 4) The condition sought to be varied is included in the licence under the heading Trading Conditions and states:

“The premises shall at all times trade predominantly as a family-type bistro, with no poker machines and no TAB, gambling, gaming wagering or raffle facilities or events whatsoever.”
- 5) One objection was received in response to the application, that being from Mr Chris Mason, a Director of Karinga Pty Ltd (Pine Creek Hotel). The objection covered a wide range of issues including the history of the Lazy Lizard liquor licence, concerns about sales of fuel and liquor from the same outlet, the Kybrook Agreement, health issues and the proximity of the premises to the Pine Creek Primary School.
- 6) The objection was assessed by then Legal Member Ms Brenda Monaghan as a valid objection and, taking account of the response to the objection from the applicant, the application was referred to a hearing before the Commission.

THE HEARING

- 7) The hearing was conducted at the Pine Creek Town Council meeting room on 3 June 2010. Following the formal opening by the Chairman, the hearing was adjourned to allow the Commission and the parties to conduct a viewing of the premises and the specific areas affected by the application for extension of licensed premises and the variation of licence condition.
- 8) During the course of the viewing Mr Fraser noted that the addition of the second point of sale and the “beer garden” area would require fencing and the extent of that requirement would not be properly determined until the Commission’s decision on the extension was delivered. He also acknowledged that no toilet facilities existed in the proposed extension area and that none were proposed to be constructed should the application be successful.

SUBMISSIONS OF LICENSEE

- 9) Following the viewing, Mr Fraser informed the Commission that the application was client driven and the intent was to improve and expand the services provided to patrons. He stated that local clients, and not tourists, had shown an interest in the premises offering TAB and KENO facilities and that, if approved, those services would be offered from the store and not the existing licensed tavern.

- 10) Mr Fraser stated that the business operated at the Lazy Lizard was multi-faceted and that, in terms of the variations sought, the gaming facilities were of a higher priority than the extension of the licensed area. The area to which the extension of license applied was approximately 26 x 27 metres in area and, at this stage, no structural plans for the extension area had been prepared. He confirmed that the current patron capacity of the existing tavern was 206 patrons however it was rare for the tavern to reach that capacity and that patronage did not normally exceed 80 patrons at any one time.
- 11) The Commission was informed that the population of the Pine Creek area was approximately 600 with an estimated 340 people residing in the Pine Creek township. The township is currently serviced by 2 other premises licensed for in-house consumption of alcohol, being the Pine Creek Hotel and the Pine Creek Turf Club (Pussy Cat Flats), the latter of which operates on a very limited basis.
- 12) Mr Fraser confirmed that the Lazy Lizard is situated approximately 100 metres from the Pine Creek Primary School.
- 13) Mr Fraser submitted a bundle of documents comprising letters from members of the Pine Creek community supporting the application (Exhibit 1). The letters included those signed by 23 members of the local Aboriginal community and others signed by 26 local residents and 14 travellers. The bundle also included a letter of support from the Pine Creek Primary School. Mr Fraser conceded that he had drafted most of the letters and had requested the signatories support, with the exception of the letters of support from Holder Hunter and the Pine Creek Primary School. Several of the letters supported the internet café and second point of alcohol sales but not the addition of the gaming facilities. The Pine Creek Primary School letter supports the licensed internet café only.

SUBMISSIONS OF BEHALF OF THE OBJECTOR

- 14) Mr Downs confirmed that his client, Mr Chris Mason, had no objection to the amendment to the licence conditions to allow for gaming facilities on the premises and that the substance of the objection related to the application for the second point of sale and extension of the licensed premises.
- 15) An issue of concern was the proximity of the Pine Creek Primary School to licensed premises. Mr Downs submitted that the shop at the Lazy Lizard would be the first port of call for many students when school finished and was likely to attract more students if the store offered internet services. He stated that, if licensed and including gaming facilities, the store would no longer be an appropriate environment on the basis that unsupervised primary school students would be exposed to alcohol consumption and gaming.
- 16) The Commission was advised by Licensing Inspector Barry that there were currently 40 to 45 children attending the Pine Creek Primary School and that 70 to 75% of the students were of Aboriginal or Torres Strait Islander background.

- 17) Mr Downs also raised the issue of the sale of alcohol from a point very close to where petrol was also sold and the potential for harm from drink driving. He suggested this should be an issue of concern for the Pine Creek community and the public at large.
- 18) Mr Downs noted that many of the letters of support submitted by the Licensee did not relate to the additional alcohol sale point but rather to the current “monopoly” on gaming in Pine Creek, with only the Pine Creek Hotel currently offering licensed gaming facilities. He reiterated that his client’s objection did not relate to the application for relaxation of the gaming condition but only to that seeking an additional point of sale and extension of the licensed premises.
- 19) Mr Downs tabled a report titled “A Review of Northern Territory Wayside Inns” dated April 2003 (Exhibit 2) and referred the Commission to a number of the recommendations contained in that report. He submitted that the sale of alcohol from premises also selling fuel would result in a detrimental impact on the community with reference to the Objects of the *Liquor Act* as prescribed by Section 6. He also tabled a letter of the Alcohol Policy Coalition (Victoria) dated 28 November 2008 relating to the dangers of the exposure of children to alcohol and gaming. He submitted that a premise offering internet facilities was likely to attract children, especially in circumstances where the children may not have access to the internet in their homes.
- 20) The Commission was referred by Mr Downs to the statement of the Licensee that there would be no toilet amenities provided at the store and that patrons using the proposed extension area would need to use the bathroom facilities of the tavern.
- 21) In summary, Mr Downs submitted that Mr Fraser had not demonstrated that the community needed another liquor outlet or that there is any public interest in granting the application to extend the licensed area. He stated that the *Liquor Act* requires the Commission to take those matters, as well as the question of whether the extension of the licensed area enhances the community amenity, into account in considering the application.
- 22) In conclusion, Mr Downs stated that the extension application before the Commission was more like one for a new licence and that the addition of the gaming facilities, if approved, could readily be accommodated within the existing licensed area, namely the tavern.

RESPONSE BY THE LICENSEE TO THE OBJECTION

- 23) Mr Fraser noted that the Pine Creek Primary School had not raised the concerns expressed by Mr Downs in respect of the potential exposure of its students to alcohol and gaming. Nor had the Department of Education lodged any objection or raised any concerns. He submitted that any such exposure would be no greater than that occurring at Ah Toy’s Store, being a general store that also included a take away liquor licence

- 24) In respect of Exhibit 2, Mr Fraser noted that the report did not recommend the banning of that sale of alcohol by wayside inns, nor had any significant action in that regard taken place since the report was published in 2003.
- 25) In closing Mr Fraser noted that the existing toilet facilities utilised by patrons of the tavern were located within reasonable proximity of the proposed extension area.

CONSIDERATION OF THE ISSUES

- 26) In considering the application for the extension of the licensed premises and the relaxation of the condition restricting the operation of gaming on the premises of the Lazy Lizard Caravan Park the Commission is required to consider the objects of the *Liquor Act* as prescribed by Section 6. In complying with those requirements the Commission must consider the public interest in respect of each particular application.
- 27) The Lazy Lizard is primarily a caravan park, providing the types of services and amenities normally associated with the operation of a business of that nature. Whilst the business has held a liquor licence, styled as a Tavern Licence, since 2000 the sale of liquor, both for consumption on and away from the premises, is not the primary or dominant purpose of the business as would be the case generally for a tavern licence.
- 28) The Commission agrees with the submission of the objector that the application in respect of the proposed extension of the licensed premises is in fact an application for an additional licence, albeit within an existing licensed premise. That application does not merely seek an extension of the existing area covered by the tavern licence but rather seeks approval for an additional point for the sale of alcohol that would, if approved, be conducted as separate and stand alone component of the existing licence.
- 29) The Commission is not satisfied that the applicant Licensee has satisfied the public interest criteria to the extent necessary for the grant of such an extension to the licensed area. The Licensee has not demonstrated, either through the application itself or via submissions made at the hearing, that there is any public interest in the granting of the extension requested so as to licence the store and the area proposed "beer garden" area. In reaching that conclusion the Commission notes that the existing tavern already provides the type of amenity and services proposed to be offered through the beer garden extension.
- 30) The submissions of the objector, in respect of the exposure of students of the Pine Creek Primary School to the sale and consumption of alcohol from what is currently a mixed service store are compelling. The submission by the Licensee in respect of the analogous sale of alcohol from the Ah Toy Store is not convincing. That store has a take away licence only and whilst students frequenting the store may be exposed to the sale of alcohol they could not be subjected to its consumption, given the nature of that licence.

31)The Licensee conceded at hearing that no separate toilet facilities would be provided in respect of the store or the beer garden should the extension be granted and that patrons would be required to access the amenities currently associated with the tavern. The Commission does not consider that to be a satisfactory proposal. When closely scrutinised, the proposed extension of licence is for the operation of a small beer garden with alcohol and gaming facilities provided from the current store. The Commission considers this to be an ill conceived proposal and one that will add little, if any, amenity to the public or the existing licensed premises.

32)The Commission is not inclined to vary the licence condition of the Lazy Lizard to offer gaming facilities, either through the proposed extension or in the existing tavern area. This position is consistent with that taken by the Commission on several occasions since the grant of the licence in 2000. The relevant condition on the licence states:

The premises at all times shall trade predominantly as a family-type bistro, with no poker machines and no TAB, gambling, gaming, wagering or raffling facilities or events whatsoever.

Further, in terms of fit out, facilities, signage and ambience, the premises must at all times maintain the appearance of trading predominantly as a family oriented bistro, and will have a range of meals available at all times that the premises shall be open for the sale and supply of any alcoholic beverage.

33)As noted by Mr Mason in his letter of objection, in a decision dated 23 July 2002, regarding an application by the Licensee to amend trading hours and to allow the conduct of raffles, Presiding Member Mr John Withnall observed:

An important factor in the Commission's decision at the time (of the original grant of the licence) was the applicant's presentation of a family oriented bistro-type environment without gaming machines, TAB or wagering facilities to sully the atmosphere.

34)In a decision, dated 30 August 2003 the Commission made the following consistent observation:

The core concept for the Lazy Lizard as presented to the Commission at the hearing of the original application for the liquor licence was instrumental in persuading the Commission to grant the licence and the Commission demands absolute faith in the Licensee's continued adherence to the resultant restrictive licence in that regard.

35)On 1 May 2009, at the time the current Licensee applied for transfer of the licence its solicitor, Mr Graham Cole, presented a bundle of documents to the Commission in support of the transfer application. Included amongst those documents was an outline of the "Details of the business to be conducted". That outline contained the following submission:

“The Lazy Lizard is a family orientated bistro-like environment without gaming machines, TAB or any wagering facilities to sully the environment. There is a focus on family operations and good neighbour relations with the wider Pine Creek community”.

- 36) The Licensee’s application for variation of the gaming condition was dated 31 December 2009, being only 8 months after the transfer of licence was approved. In the circumstances the Commission is entitled to treat the current application for variation of licence conditions, including the gaming condition, with a fair degree of scepticism given the relatively recent submissions in respect of the concept of the operations.
- 37) The Commission views this application for extension of the licensed area and a relaxation of the gaming condition as an attempt at “licence creep” which is not in accordance with the concept of the premises as originally envisaged. The view of the Commission, as currently comprised, is strengthened by the various comments made by the Commission in its various decisions since the grant of the licence in 2000.

DECISION

- 38) For the reasons outlined above, the application on behalf of the Lazy Lizard Caravan Park for an extension of its licensed area and for a relaxation of the condition of licence prohibiting the conduct of gaming on the premises is refused.

Richard O’Sullivan
CHAIRMAN

22 June 2010