

## NORTHERN TERRITORY LIQUOR COMMISSION

### REASONS FOR DECISION

Premises: DUSTBOWL, Alice Springs  
Applicant: DECKEON PTY LTD  
Proposed Nominee: BRIAN MICHAEL TOWELL  
Date of hearing: 13 and 16 December 1999  
Date of decision: 17 December 1999  
Heard before: Mr John Withnall (Presiding Member)  
Ms Mary Ridsdale  
Ms Shirley McKerrow  
Appearances: Mr John McBride, for the Applicant  
Supt. G. Moseley, for NT Police  
Mr P Tait personally.

The Dustbowl is a ten-pin bowling centre in Gap Road, Alice Springs. The property is owned by the Trustee/s of Black Magic Superannuation Fund and managed by Deckeon Pty Ltd which entities form part of the financial structure of Mr Alan Towell and his family.

This application for a liquor licence was advertised as being for consumption of liquor on the Dustbowl premises only by players and bona fide spectators, between 11.30am and midnight Sunday to Friday, and between 11.30am and the following 2am on Saturdays.

At the outset of the hearing of the application, the requested trading times were amended to 6pm to midnight Sunday to Friday and 4pm to the following 2am on Saturdays. The variation being a reduction of the advertised trading hours, the hearing proceeded on the amended basis.

The advertising of the application was by way of the usual newspaper notice on two separate occasions, and by the prominent display at the front of the premises of the now standard bright green signage advising of the application for a liquor licence.

Three objections to the licence were lodged, one from the NT Police in Alice Springs (represented at the hearing by Superintendent G Moseley), one from Wendy and Peter Tait (Mr Tait appearing in person at the hearing), and one from Michael Prowse and Katie Yeowart who at the time resided in the proximity of the Dustbowl, but who have since moved to a different area and who, we were assured by Mr McBride, were content to have their letter of objection in the hearing brief remain the full extent of their pursuance of their objection to the proposed licence.

The hearing brief was admitted into evidence in its entirety in the face of an objection by Supt. Moseley in relation to folio 25, a letter of support signed by Michael Gunn as General Manager of the Central Australian Tourism Industry Association ("CATIA"). Mr Gunn had given evidence that in his view the Towells had done a tremendous job in turning the Dustbowl around "from its earlier life" and that a liquor licence would be appropriate. CATIA has 260 members, from all sections of the tourist industry, and it was Mr Gunn's evidence that CATIA supported the application. Supt. Moseley queried the actual authority of Mr Gunn to make such a representative statement of support, given part of Mr Gunn's evidence as it related to the Association's informed awareness of the letter. At that stage of the proceedings, the Commission ruled as follows:-

Folio 25 is receivable in any event, given that it is a document in relation to which the author has been called, but Superintendent Moseley objects to it being considered as, and being given weight as, the view of the Association as distinct from that of the General Manager personally. On the legal authorities, Mr Gunn had the apparent authority to express a view as being a view of his association. It seems to us that CATIA would be unable to deny that apparent authority, and consequently could not deny the expression of the corporate view in that letter.

If Mr Gunn had exceeded his authority (which we emphasize is not the evidence), that is a matter for disputation between CATIA and Mr Gunn. The recipient of the letter should remain entitled to rely on it.

We will therefore accept the letter in good faith, according to its face value.

At the end of the first day of the hearing Mr Tait announced that inasmuch as his concerns echoed those of the police, he believed that Supt. Moseley's pursuance of the police objection should cover his own concerns, and he would not thereafter be personally appearing.

The police concerns, as ably presented by Supt. Moseley, were essentially fivefold:

1. The area is substantially residential.

This submission appears to be at some odds with another of Supt. Moseley's submissions that emphasizes the number of liquor outlets already in the area. The applicant relies on submissions as to the absence of any objection from any person currently resident in the area, and the lack of objection

from any of the motels, clubs, sporting facilities or guest houses in the area, many of which were personally canvassed by Mr Brian Towell prior to submitting the application, including the aboriginal community organization whose premises adjoin the Dustbowl.

2. The consumption of liquor cannot be seen to be an integral part of the sport of ten-pin bowling.

The applicant does not disagree with this proposition, but characterizes the liquor licence as an adjunct to the sport according to its evaluation of the needs and wishes of its clientele, and insists that most sports include some level of social drinking. In confirmation that the application is sport driven and not profit driven, Mr Alan Towel undertook that all net profit from the sale of alcohol at the Dustbowl would be put back into the development of the sport, 66% of such profits to go into the support and development of youth sport. Mr Towell points out that there is already a level of alcohol consumption connected with the sport by way of the clientele being allowed to bring their own eskies of alcohol supplies onto the premises. He maintains that a licence would afford more control of liquor consumption than is presently the case (although Supt. Moseley makes the immediate point that the proprietor can prohibit the admission of eskies at any time).

3. The whole issue of liquor licences in Alice Springs is very much a live topic at the present time, and the granting of another new licence will continue the undue proliferation of liquor outlets in the town.

The applicant adduced evidence that the Dustbowl has existed for 20 years, and for 17 of those years it has been the subject of some form of liquor licence. The applicant maintains that the concept of a liquor licence at the Dustbowl is not new.

4. The term “bona fide spectator” is undefinable. It is Supt. Moseley’s contention that any persons coming in off the street can simply announce that they are there to watch the bowling, and therefore undeniably qualify as a bona fide spectator. The Commission does not disagree with this submission, but is confident that Brian Towell will actively promote his father’s pronouncement that today’s spectator is tomorrow’s player. We are of the view that the use of the term “bona fide” does impose some degree of restriction.
5. The licence conditions as requested will allow unaccompanied minors unrestricted access to licenced premises, and a mix of youth and alcohol is to be discouraged.

The Police see the licence as having the potential to change the nature of the premises into a sort of nightclub with bowling facilities, and very attractive (a “trouble magnet”) to Alice Springs youth conspicuously deprived of attractive venues at night.

Mr Alan Towell is at pains to assure the Commission that the nature of the sport is such that this scenario is extremely unlikely, and that had he wanted to invest in licensed premises per se his capital outlay would have been less than his investment in the Dustbowl. He insists that the premises will

continue to be operated strictly as a bowling centre, and that it's a matter of patrol, control, regulation and management.

The Liquor Commission shares Supt. Moseley's concern over the access of unaccompanied juveniles to licensed premises, even premises as dedicated to youth sport and as well managed as we have no hesitation in accepting is the situation with the Dustbowl. On the evidence, and with the advantages of an educative and informative view of the premises, we believe that the application distils down to the major issue of minors on licensed premises.

Reference was made to the lack of restrictions in relation to minors currently applicable to the Squash Courts in Alice Springs and to the Darwin Ten Pin Bowling Association. Supt. Moseley pointed out that the Squash Court licence is held by the Alice Springs Squash Association, a non-profit organisation, and includes a discrete licensed area as distinct from the large generalised area requested for the Dustbowl. There was no evidence as to the conduct of the Darwin Ten Pin Bowling premises, but we note that it is a "Special Extended" licence, renewable annually, again held by the resident sporting association itself.

We have no doubt as to the integrity of the Towells and of their vision for the future of the Dustbowl, but such confidence on the part of the Commission does not allay our concern at the prospect of unaccompanied children attending the premises at night for purposes other than actually competing in the sport. We can accept that the applicant's systemisation is such that any juvenile players would come under a continuing and computer-assisted surveillance, but in our view there is minimal rationale for juveniles

to be able to access licensed premises at night, unaccompanied, for purposes other than to actually play a game of ten-pin bowling and thereby to subject themselves to the disciplinary regimes that are in place for players. Even then, we do not accept that the younger juveniles should be able to visit the premises at all during licensed hours, unless accompanied by a parent or guardian.

We note Supt. Moseley's submission that he accepts that some form of a licence is appropriate, but that the nature of the licence as applied for is what is being objected to. We accept his submission that the mix of minors and alcohol is a matter for grave concern and careful consideration.

A licence is granted to the applicant subject to the following conditions.

- (a) Sale is permitted only in open containers, for consumption only on the premises by players of ten-pin bowling and bona fide spectators.
- (b) The licensed area will be as encompassed by yellow edging on the plan which forms Exhibit 6, but with the southern boundary confirmed as corresponding with the current boundary between the tiled area and the carpeted players' area.
- (c) Trading hours will be from 6pm to 11pm, seven days a week.

- (d) No minors within the meaning of the Liquor Act shall be permitted to enter or remain on the licensed premises unless accompanied by a parent (or person in loco parentis), guardian or adult spouse, or unless such minor shall
  - (i) be 14 years of age or older, AND
  - (ii) have his or her name recorded in the licensee's computerised scoring system as a player at that time.
- (e) Notwithstanding condition (d) (i) and (ii) above, the licensee shall not schedule either any junior league competition or any junior tournament for any time which would necessarily or probably result in the presence of minors on the premises during licensed hours.
- (f) The availability of liquor on the premises shall not be publicly advertised or promoted in any way whatsoever, and no signage for any alcohol product shall be exhibited on or within the licensed premises, other than on the product containers being offered for sale.

The above trading hours reflect the evidence of the applicant as to actual requirements in terms of the present operation, as distinct from any element of "ambit claim" for the future. Any organised function in respect of which late trading is required will need to be the subject of an individual late trading application as the need or desire may arise, and those will be dealt with on their merits on a case by case basis.

Pursuant to Section 104 (3) (g) of the Liquor Act, the Commission authorises any and all persons to enter the licensed premises at any time during daylight hours prior to 6pm. Similar authorisation is not given for any persons to remain on the licensed premises upon the expiry of a period of 30 minutes after the premises cease to be open for the sale of liquor, which is to say that the premises will need to be cleared by 11.30pm each night unless covered at any given time by a special licence or a special late-trading variation in respect of a particular organised function.

The Commission will monitor the operation of the licence to ensure that the licensee remains true to the concept presented to the Commission at this hearing, and we direct a transcript of the evidence taken at the hearing be placed on the Departmental file. The licence will also include a condition that any substantive deviation from such concept or any development of the operation of the licence to the Commission's dissatisfaction, will result in a licence review on the Commission's own initiative. Without in any way limiting the generality of this special condition, the licensee must expect to have to demonstrate to the Commission from time to time on request that all net profit from the sale of liquor upon the licensed premises continues to be put back into the promotion and development of ten-pin bowling in Alice Springs.

John Withnall  
(Presiding Member)