

NORTHERN TERRITORY LIQUOR COMMISSION

REASONS FOR DECISION

PREMISES (LICENSEES): Tilmouth Well Roadhouse

LICENSEE/APPLICANT: Tilmouth Roadhouse Pty Ltd

NOMINEE: Mr Roy Chisholm

DATE OF HEARING: 27 September 1999, 29 September 1999, 30 September 1999 and 1 October 1999

HEARD BEFORE: Mr Peter Allen (Chairman)
Mr John Withnall (Member)
Ms Mary Ridsdale (Member)

APPEARANCES: Mr Roy Chisholm, for Licensee/Applicant;
Mr Mark Hird, for Central Land Council, representing
the various objecting Communities;
Mr John Stirk, Counsel Assisting the Commission;
Superintendent Payne on behalf of NT Police

Tilmouth Well Roadhouse obtained its liquor licence on 19 December 1995, following a three-day hearing in October 1995. The Licensee is Mr Chisholm's family company, and he now seeks to vary the conditions of that licence.

A hearing of the application has been necessitated by objections to the proposed variation by the police and by a half dozen Aboriginal communities. The Tilmouth Roadhouse is located on the Tanami Highway about 197 kilometres west of Alice Springs.

A hearing of the original application for variation commenced on 10 June 1999, and continued into 11 June 1999 before being adjourned.

That hearing was before Mr Peter Allen, the Chairman of the Commission, with Commission members Ms Mary Ridsdale and Ms Jan Hardwick.

Following the adjournment of the hearing at that stage, Ms Hardwick resigned from the Liquor Commission, and Mr Chisholm amended the application.

A fresh hearing commenced in Alice Springs on 27 September 1999 before a differently constituted hearing panel of the Commission. With the unanimous consent of all parties represented at the new hearing, the transcript of evidence taken on 10 June 1999 was admitted into evidence in the new hearing, together with certain documentary exhibits. The hearing commenced in Alice Springs, shifted to Yuendumu to take evidence from witnesses there on 30 September 1999, and concluded in Alice Springs with final submissions. Further written submissions were accepted from Mr Hird and from Mr Chisholm in response.

A view was conducted of the licensed premises, and the Commission was also given a view of the Laramba Community, which is the nearest Aboriginal community to the roadhouse, some 40 kilometres or so away by good dirt road.

The amended trading conditions requested by Mr Chisholm for the licence, were set out by him as follows:

“Subject to the conditions below this licence authorises the sale of liquor

- 1) to bona fide lodgers for consumption on or at the licensed premises
- 2) to members of the public for consumption on or at the licensed premises ancillary to a substantial meal

Trading hours, Claytons Restaurant

(Seven days a week between the hours of 10:00 to 23:59 hours to members of the public ancillary to a substantial meal).

SPECIAL CONDITIONS:**Bona Fide Lodgers:**

Liquor shall be sold at any time to bona fide lodgers at the premises for consumption on the premises.

Guests of lodgers:

Liquor shall be sold at any time to the guests of a lodger at the premises providing that

1. the invited guest is in the presence of the lodger,
2. the invited guest is a member of a prebooked function,
3. consumption is on the premises.”

Mr Chisholm made it clear during the hearing that the three numbered conditions in relation to guests of lodgers were intended to be conjunctive, such that the word “and” should be deemed to follow the word “lodger”, and the word “and” should be deemed to follow the word “function”, and Superintendent Payne conceded that if the condition as to guests was to be treated as one single condition, with suitable staff instruction protocols in place, the police objection to the application as amended would be “satisfied”, provided always that Mr Chisholm adhered to his stated intention of never applying for any right whatsoever to sell takeaway liquor at the roadhouse.

There is undoubtedly an argument that the terms of Mr Chisholm’s existing licence already permit him to sell liquor to members of the public so long as they partake of a meal upon his premises, but Mr Chisholm has never operated the licence to permit access to liquor by any persons who were not bona fide lodgers or passengers in a registered tourist vehicle. To acknowledge the existence of an argument in favour of the proposition is to also acknowledge the existence of

some doubt as to the proper interpretation of the relevant provisions, and unfortunately this doubt is not resolved by reference to the Commission's written reasons for decision on granting the original licence on 19 December 1995.

We agree with Mr Stirk that the interpretative issue needs to be resolved, and that the present hearing presents an ideal opportunity for consequential orders to clearly and unequivocally fix the trading conditions for the future.

The Commission also agrees with Mr Stirk that the factors mandated by Section 31 of the *Liquor Act* for consideration in relation to a new application for a licence should equally be considered in relation to a variation of a licence, and that to treat a variation otherwise would be "an absurd shift in logic". The needs and wishes of the community in relation to the application therefore become of paramount importance.

Mr Chisholm demonstrated his awareness of the requirement to satisfy the Commission that the needs and wishes of the community were consonant with his application, and he adduced a body of evidence in that regard.

The thrust of the evidence on behalf of the applicant was that the Tilmouth Well Roadhouse was a very good facility, especially given the location, but that the operating restrictions on the service of alcoholic beverages are not compatible with the standards now expected by the travelling public.

We particularly noted the statistics proffered by Mr Bruce Hall, the manager of Britz Rentals in Alice Springs, and an executive member of the Central Australian Tourism Industry Association, as to the number of vehicles rented out at any one time by his firm in the Northern Territory, the average age of renters, the duration of the average rental, the percentage of that business which is from overseas, and the preferred routes.

Mr Hall testified as to the expansion of the self-drive market in the last seven consecutive years. He considers Tilmouth Well Roadhouse to be a modern and

quite important tourist facility in the area, given the “unreliability” of the facility at Rabbit Flat.

However, the Commission accepts as settled law at this time that in relation to a tourist facility in an outlying area in the Northern Territory, “community” for the purposes of Section 31(1) (d) of the *Liquor Act* is to include not only the travelling public but those groups and communities residing in the surrounding area whose lifestyle is such as to be likely to bring them into contact with the site of the licensed premises. Many persons from several of the Aboriginal communities in the surrounding area gave evidence, most being from Yuendumu. Without exception, these witnesses presented as sincerely concerned for their community and the impact of the availability of alcohol on their society.

However, the general thrust of the evidence taken at Yuendumu was that they were against *any* changes to the Tilmouth Well licence because it had not been any trouble for the four years it has been operating and they did not want to see that situation change.

Most of the witnesses at Yuendumu agreed that it was takeaway grog being brought into the “dry” community that creates most of the trouble, and several were even unaware that the changes proposed for Tilmouth Well did not comprise any takeaway element. Several obviously thought that the requisite meal need only be takeaway food. Several were entirely unaware of what changes were proposed at all. With only one exception, those witnesses who did understand that the public would have to sit down to a meal in order to get a drink agreed that sitting down to a meal to get a drink is not the Aboriginal way. Their fears for the future were obviously very real, but grounded very generally in the grog equals harm equation, and for the most part not focussed on the particulars of Mr Chisholm’s proposal.

One scenario particularised during the evidence taken at Yuendumu was that groups of young “strong” drinkers may set up camp around the roadhouse and apply sufficient pressure to the management to succeed in getting drunk there.

That particular fear strikes the Commission as by no means a remote possibility, if anybody who has booked into the camping ground is to become a lodger able to entertain an unlimited number of imbibing guests at all hours.

Admittedly Mr Chisholm reminds us of the requirement for a guest to be at a “prebooked function”, which must necessarily involve management decision making in terms of type of activity, clientele, numbers and “authenticity”, but the Commission feels that the application in relation to guests of lodgers, ie essentially guests of guests, does have a potential for a build-up over time of on-site managerial pressures amidst local unrest.

While the Commission is persuaded on the evidence that the availability of alcohol to booked-in lodgers or to persons sitting down to a meal ordered from a menu is unlikely to impact in any harmful way on any Aboriginal community, we are nevertheless left with concerns in relation to the proposal in relation to guests of lodgers.

We remain unpersuaded on this aspect of Mr Chisholm’s requested changes, nor have we been persuaded of any real requirement for lodgers to have twenty-four hour unrelieved access to alcohol as distinct from what the travelling public might reasonably anticipate in terms of trading times.

The Commission will vary the conditions of the licence but not to the extent sought by the licensee in its revised application dated 25 June 1999 and faxed to the Chairman on 28 June 1999.

The Commission’s determination is as follows:

- Liquor shall only be sold for consumption on or at the licensed premises unless otherwise approved by the Chairman pursuant to a special licence granted in respect of a specific occasion, function or event.

- Liquor may be sold to the public only for consumption on or at the licensed premises, and only as ancillary to a “substantial meal” between the hours of 10:00AM and Midnight, seven days a week.
- “Substantial meal” means a meal ordered from a menu.
- Liquor, other than ancillary to a substantial meal, may be sold only to bona fide lodgers and only between the hours of 10:00AM and Midnight, seven days a week, for consumption on or at the licensed premises.
- The status of bona fide lodgers shall be limited to persons registered as lodgers and residing within the fenced confines of the premises inclusive of the caravan and camping area.
- All liquor is to be served in open containers.
- Liquor shall not be sold to guests of bona fide lodgers, unless pursuant to a special licence approved by the Chairman in respect of a specific occasion, function or event.

Peter R. Allen
CHAIRMAN

13 December 1999