

Northern Territory Licensing Commission

Decision

Premises:	Hog's Breath Cafe
Licensee:	Hoggies Darwin Pty Ltd
Licence Number:	80504717
Proceeding:	Variation to Liquor Licence from that of a Restaurant to an On Licence
Heard Before:	Mrs J M Large (Presiding Member) Mr J Brears Mr D Phillips
Date of Hearing:	21 November 2007
Appearances:	Mr Cormac MacCarthy, Nominee Mr D McConnel, Legal Representative for Licensee

Background

- 1) On 11 May 2007, Mr Damien Peterson, the then Nominee of Hog's Breath Café in Darwin (the premises) lodged an application pursuant to Section 32A of the *Liquor Act* (the Act) seeking approval to vary the premises liquor licence from a Restaurant to an On Licence.
- 2) Notice of the Application was published in the NT News on 6 and 8 June 2007. There were three (3) valid objections to the application, namely DNPW Pty Ltd signed by Mr Terry Dowling and Mr Michael Canaris; Ms Meredith Elliott the General Manager of DNPW Pty Ltd and the Darwin City Council. In a subsequent letter the Darwin City Council withdrew its objection.
- 3) On 22 July 2007, the premises were sold to Hoggies Darwin Pty Ltd who advised that they wanted to continue with the application. The matter was set down for hearing on 30 October 2007 but later adjourned for the new Licensee to obtain legal representation. At the adjourned hearing date of 21 November 2007 there was no appearance by any of the objectors.
- 4) The Commission was only able to contact one objector, Ms Elliott, who apologised for her non appearance due to having the date wrong in her diary. The following alternatives were outlined to Ms Elliott:
 - (a) the Commission could consider adjourning the matter to a later time or date if there was a substantial reason provided by the objectors for such an adjournment;
 - (b) the Commission could accept and consider the written objections and continue with the hearing in the absence of the objectors;
 - (c) the objections could be withdrawn.
- 5) Ms Elliott stated that she had now met the new owners of the premises and was satisfied that they would do a good job. She wished to withdraw her objection. She, further, stated that as General Manager of DNPW Pty Ltd she could advise the Commission that, whilst she was unaware of the reasons, the other objectors from DNWP Pty Ltd were unavailable to attend that day. She felt that she was not in a position to withdraw their objections but

requested that the Commission, in its deliberations on the matter, take into consideration the written objection. The Commission agreed to proceed with the hearing on that basis.

Consideration of the Issues

- 6) Mr McConnel, on behalf of the Licensee, addressed the Commission on the public interest criteria of the application and outlined the applicant's response to each item in the objections that had been received. He stressed that the main objective of the business will remain the provision of meals in a friendly, casual and family orientated atmosphere and the reason for the change in licence was to allow the café the flexibility to offer its patrons more choice. Examples given were of tourists visiting in the afternoon wishing to enjoy the ambiance of the café and have a quiet drink, groups dining in the café in celebration of an event who may be joined by others wishing only to have a drink or functions where "finger food" only is provided with drinks.
- 7) To allay concerns from objectors and the Commission Mr McConnel provided a proposal for additional conditions to be included in the premises licence. These included a premises concept, the non advertisement or promotion of liquor without a meal, no standing within one metre from the front fence and entrance and the appearance of the premises to always be a restaurant. These conditions were accepted by the Commission.
- 8) In response to the Commission's concerns the Licensee outlined the internal training that is undertaken by all staff and which included the responsible service of alcohol and accepted that a noise condition should also be added to the licence conditions.

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- 9) After considering the written statements from the objectors, the applicant's response to those objections and the detailed submission from the Licensee at the hearing the Commission approves the granting of an Authority - On Licence to Hog's Breath Café with the following additional conditions to be included in the liquor licence:

Premises Concept: The concept of the Licensee's premises is a themed Hog's Breath franchise venue with a predominant emphasis on meals and snacks in a relaxed fun, family friendly setting. The venue will not operate live music.

Advertising/Signage: Consumption of liquor without a meal will not be advertised or promoted.

Outside Dining Area: The outdoor dining area shall always have the appearance of a restaurant.

In the event of any complaint placed before and upheld by the Commission arising from the appearance of the outside dining area the Commission will consider the arrangement and appearance of the tables and chairs within that area, the availability of meals and/or snack foods, the ready availability of menus and the deployment of the Licensee's staff for the service of that area and any other relevant matters.

No standing by patrons to the premises will be allowed within one (1) metre of the front fence and entrance.

Noise: Noise levels emanating from the premises must be such as to not cause unreasonable disturbance to the businesses or ordinary comfort of lawful occupiers of neighbouring premises or to any other person in the vicinity.

Mrs J M Large
Presiding Member

30 November 2007