

Northern Territory Licensing Commission

Directions Hearing

Premises:	Golf Links Motel
Licensee:	Territory Earley Brothers Pty Ltd
Proceeding:	Complaints Pursuant to Section 48(2) of the <i>Liquor Act</i> Alleging the Sale of Liquor to Intoxicated Persons, Intoxicated Persons being Allowed to Remain on Premises. Licensee is not a Fit and Proper Person and Excessive Noise
Heard Before:	Mrs Jane Large (Presiding Member) Mrs Veronica McClintic (Member) Mr Paul Costigan (Member)
Attendances:	Mr L Silvester, Counsel for the Licensee Mr W Priestly, Counsel for the Director of Licensing Mr G Lye, Senior Inspector Mr G Tribe, Inspector
Date of Hearing:	1 December 2006

- 1) At the previous Directions Hearing held on 24 October 2006, into the matter of complaints made which allege breaches of Section 48(2) of the *Liquor Act* by the Licensee of the Golf Links Motel, various issues were raised before the Commission.
- 2) The Commission set out these issues and the agreed action to be taken in a letter to all parties on 14 November 2006.
- 3) At the commencement of the Directions Hearing on 1 December the Presiding Member addressed each one of the issues and the outcomes that had been achieved.
- 4) The issues addressed were:

a) Objection to Hearing Brief

It was agreed by all present that the Hearing Brief was unwieldy and Counsel for the Director of Licensing undertook to review the Brief.

The Commission believes that there is now a revised Hearing Brief which clearly identifies the 5 complaints and is more user friendly.

b) The Licensing Commission's Authority to hear the complaints

Under s 48(6) of the *Liquor Act* – Complaints

Where a complaint is lodged with the Director under this section, he or she must, as soon as reasonably practicable –

- (a) *inform the licensee of the substance of the complaint and give the licensee an opportunity to comment in writing on the substance of the complaint;*
- (b) *conduct the investigations of the substance of the complaint as he or she considered appropriate; and*
- (c) *forward the comments (if any) he or she receives pursuant to paragraph (a) and the results of his or her investigations under paragraph (b) to the Commission.*

It is the Commission's opinion that the documents contained in the Hearing Brief show that the requirements under s48(6) of the *Liquor Act* have been met.

S 49 of the *Liquor Act* – Decision on consideration of complaint

- (1) *If the Commission is of the opinion that further investigations of a complaint are desirable, the Commission may direct the Director to conduct such further investigations as the Commission specifies and report the results of the investigation to the Commission;*
- (2) *The Commission must consider the complaint, the report or reports of the Director and any comments forwarded to the Commission under s 48(6) and must –*
 - (a) *if the Commission is of the opinion that the complaint is of a frivolous, irrelevant or malicious nature – dismiss the complaint and direct the Director to inform the person who made the complaint that the complaint has been dismissed;*
 - (b) *direct the Director to inform the person who made the complaint that the complaint has been investigated but no further action is warranted; or*
 - (c) *conduct a hearing in relation to the complaint.*

As agreed the Commission provided to all parties on 21 November 2006 Minutes of its Meetings on 13 September and 8 November 2006 and the papers considered at those meetings which were relevant to the Golf Links Motel.

The minutes and the attached documents show that the five complaints listed in the Hearing Brief and the reports from the Director of Licensing were considered by the Commission and that, in accordance with s49 (2) (c) of the *Liquor Act*, the Commission determined to conduct a hearing in relation to these complaints.

c) Quality of the complaints documentation

S 48 of the *Liquor Act* states:

- (3) *A complaint under this section shall-*
 - (a) *be in writing;*
 - (b) *be signed by the person by whom the complaint was made; and*
 - (c) *be lodged with the Director.*

A check of the Hearing Brief shows that all five (5) complaints accord with s48(3) (a)(b)(c) of the *Liquor Act* . Further under s 51 of the *Liquor Act* the Commission is given discretion as to the procedures to be followed at hearings. Precedent established by the Commission is that a complaint that is not judged to be frivolous, irrelevant or malicious; which meets the requirements of s 48 (3) set out above; and provides sufficient detail in itself to support a complaint is accepted as the basis for a hearing and formal affidavits are not required.

It is noted that on 24 October 2006, to assist the smooth progression of the hearing, the counsel for the Director of Licensing undertook to provide an outline of the witnesses evidence. This was provided to the Commission and Counsel for the Licensee on 24 November 2006. The Commission express a hope that counsel for the licensee will provide a similar outline of the licensee's witnesses and evidence prior to the hearing of the matter.

d) Noise Conditions

The Commission had raised the question of whether a noise expert would be giving evidence at the hearing and had been requested to examine and produce a previous file relating to a similar breach against the former Metro Inn.

The Commission has examined the file pertaining to the Commission's hearing in November 2004 of a complaint against the Metro Inn and notes that the noise condition agreed by all parties at that hearing is the same condition that has been included in the Golf Links Motel Licence which is contained in the Hearing Brief. The Commission undertook to produce this file if its relevancy was a major issue during the hearing.

e) Time Delays

The time lag between lodgement of the first complaint on 6 October 2005 and the report of the complaint to the Commission (almost twelve months) appears at first glance excessive and not in accordance with the requirements made upon the Director of Licensing under s 48(6) of the *Liquor Act*.

However, an examination of the documents in the Hearing Brief shows that the Director, through his officers, had in the intervening months facilitated a meeting between parties in order to mediate a resolution. Following this, Licensing Inspectors reports in late 2005 and early 2006 indicated that after inspecting the premises there was no further problems with the Golf Links Motel. However, in August 2006 when a complaint was received from Mr Collins it became apparent that further action needed to be taken.

It is the opinion of this Commission that the time lag is acceptable as every effort was made by the Director to thoroughly investigate the complaint and to resolve the matter to the satisfaction of all parties. Only when these measures proved unsuccessful did the matter go to the Commission for a decision on further proceedings.

f) Licensed Plans

The Commission, itself, requested a map of the Golf Links licensed premises, together with documentation relating to the approval for the outside bar/pool area to be part of the licensed premises.

Advice has been received that there is no map of the licensed area under the current owner/name (Golf Links Motel) in existence. There are previous plans:

- (1) dated 1983 for the entire parcel of land and
- (2) dated 2003 for the internal building area only being licensed under the name Metro Inn.

This appears a problem as Licence Number 80201864 dated 1 June 2004 for the Golf Links Motel states at s.9 (b)

"the licensed premises means the area delineated as such on the plans initialled by the Director and kept by the Commission at its office"

There is mention in the Licence of an outdoor bistro area of the Golf Links Motel but that is only in relation to Light Entertainment. In addition, the Hearing Brief contains approval to construct a temporary bar in the outside pool area.

The Commission offered Counsel the opportunity to address on the issue of whether the pool /outside bar area are part of the licensed premises at the Directions Hearing or at a later date.

- 5) Mr Tribe explained that he had searched the files and was unable to locate the map for the Golf Links Motel licence. He offered to undertake a further search.
- 6) Both Counsel wished to consider the matter of the missing map and take instructions on whether to address the Commission on the issue at a later date.
- 7) In relation to the file on the Metro Inn, Mr Silvester requested that the file be made available to him. Mr Priestley queried the relevancy of a hearing held two years ago when the premises was under different management. The Commission agreed that if during the hearing there was some relevancy established then they would request the Director of Licensing to produce the file.
- 8) Following a request from Mr Silvester the Commission agreed to search for the recording of the previous hearing into complaints against the Metro Inn in November 2000.
- 9) Counsel for the Licensee agreed to provide an outline of witness evidence to the Counsel for the Director of Licensing by 26 February 2007.
- 10) The week of 5 March to 9 March 2007 is set aside for the Hearing into the complaints against the Golf Links Motel. The Hearing will commence at 9.30 am on 5 March with a site viewing to be undertaken immediately after the Hearing is opened by the Commission.

Jane Large
Presiding Member

15 December 2006