

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Golf Links Motel
Licensee:	Territory Earley Brothers Pty Ltd
Licence Number:	80201864
Nominee:	Mr Braedon Greer Earley
Proceedings:	Hearing to consider action pursuant to Section 120 of the <i>Liquor Act</i>
Heard Before:	Mrs J M Large (Presiding Member) Mrs K Williams Mr J Martin-Jard
Date of Hearing:	20 February 2008
Appearances:	Mr B Earley, Territory Earley Brothers Pty Ltd Mr G Tribe for Director of Licensing

Background

1. In 2004, the Golf Links Motel (“the premises”) requested and was given approval by the Licensing Commission (“the Commission”) to construct a temporary bar in the outside pool area. This bar was to be removed during the ‘wet’ season each year.
2. During investigations of other matters in 2006 it was discovered that the outside bar that had been erected was not a temporary structure and, therefore, exceeded the original approval provided in 2004. In fact the bar was of a permanent structure and had never been removed during the previous three ‘wet’ seasons.
3. On 4 June 2007 the Licensee was advised by the Director of Licensing that in order for the outside bar to be given retrospective approval as a permanent material alteration to the premises, and to avoid any action under Section 120 of the *Liquor Act* the following documents must be provided to the Licensing Commission by COB 2 July 2007:
 - a. A copy of the plans for the outside bar annotated as approved by the Development Consent Authority.
 - b. A copy of the Certificate of Occupancy for the Golf Links Motel issued by the building certifier after the constructions of the bar was completed.
4. Two extensions of time, until 1 October and then until 30 November 2007, were granted by the Licensing Commission and at its meeting on 6 February 2008 the Commission approved a hearing be scheduled at the earliest available date to consider action under section 120 of the *Liquor Act*.
5. Two days prior to the hearing, scheduled for 20 February 2008, the Licensee provided to the Commission the following documents:
 - Building Permit details; Building Inspection Reports from NT Fire and Rescue Service; Plumbers and Drainers; and Building Practitioners carried out in February 2008;
 - Engineering Report and Plans;

- Building Permit No 13 details – expired 24/11/2006;
- Occupancy Permit relating to the Bar Area dated 15 February 2008.

Whilst, many of these documents are dated 2008 they refer to the 2004 construction of the outside bar.

Hearing

6. Mr Lesh, Manager of Urban Planning, Department of Planning and Infrastructure, gave evidence at the hearing on the processes required under the Northern Territory Building regulations, namely:
 - Building permits are issued for variations or for full development. When a variation is for any building within the Central Business District (“the CBD”) then a full development permit is required;
 - A full development building permit requires Darwin Consent Authority (“DCA”) planning approval be obtained before a permit is issued;
 - Upon completion of construction, inspections and certifications of the building are required prior to the issue of an Occupancy Permit.
7. In the case of the Golf Links external bar it is a permanent material variation and within the CBD. It is considered that a full development and DCA approval was required before a Building Permit could be issued. There was no planning approval by the DCA and, therefore, despite the issue of a Building Permit, the building is a non compliant construction. In addition, as the premises is designated an ‘Hotel’, which is considered a discretionary use in the CBD Zone, the variation will require additional car parking bays and if the pool area, where the bar is located, is used as a ‘Beer Garden’ the need for further car parking bays needs to be assessed
8. Mr Lesh, also, commented that, even if the Building Permit had been issued legitimately, the permit had expired in 2006 and no inspections or certifications were done until February 2008 and the Occupancy Permit had not issued until 15 February 2008. Therefore, the operation of the external bar in 2007 would be a breach of building regulations.
9. Mr Lesh agreed that the documents for an application for a variation to premises had been submitted to the Department of Planning and Infrastructure, of behalf of the Golf Links Motel, in September/October 2007. After it has been investigated and assessed the application would be forwarded to DCA for approval. This was likely to be until May/June 2008.
10. Mr Earley, as Licensee, called no evidence at the hearing but stated that in 2004 he had engaged a builder and engineer to draw up the plans obtain the required approvals and undertake the construction of the outside bar. He was not advised that there was any problem with this construction or the occupancy permit until June 2007. At that time he engaged Mr Terry Nixon of Yellowcity Architecture to pursue the approval and information required by Department of Planning and Infrastructure. Mr Earley submitted a series of notes pertaining to the documents in the Hearing Brief which he swore on oath were in the handwriting of Mr Terry Nixon. These notes related to the reasons for the time taken to provide the documents to the Planning Authority, and for this Authority to respond. They also pointed out:

“.If a Development Permit Was Required – The Certifier (Or Builder) Should Have Advised you at the Time”
11. Mr Tribe suggested a compromise position in that, instead of the non compliant structure being torn down and removed under Section 120 of the *Liquor Act*, a direction could be given that the outside bar is not to be used until all the Planning and Building approvals had

been received. Mr Earley agreed and accepted this proposal even though he may not have all the required approvals in place before the start of the 2008 'dry' season.

Consideration of the Issues

12. Section 120 of the *Liquor Act* states:

"120 Unauthorised alterations

(1) Where, without the approval of the Commission, a Licensee makes a material alteration to the premises to which his licence relates, the Commission may, after giving to the Licensee notice of its intention to do so, cause that alteration to be removed from the licensed premises or those premises to be restored to a condition which is satisfactory to the Commission.

(2) The cost of taking the required action pursuant to subsection (1) shall be a debt due to the Territory by the Licensee and be recoverable in a court of competent jurisdiction."

13. The Commission is left in no doubt that the required building approvals for the alterations to the licensed premises, namely, the external bar at the Golf Links Motel, were not obtained. It is difficult to believe that neither the builder nor the certifiers checked the approval documentation or that they failed to advise the Licensee of the problems at the time. It is even more astonishing that the Building Permit was issued without the required DCA planning approval. No concrete evidence has been presented about any correspondence or conversations between parties on this issue and we can only consider it based on a statement from the Licensee.

14. The facts that we have taken into consideration are:

- a. The Licensee applied and obtained Licensing Commission approval for a temporary bar structure in the outside pool area of the Golf Links Motel and notified his intention to remove this structure during the 'wet' season;
- b. the plans drawn up, which shows a steel frame anchored to a concrete base, and the building that was constructed confirms that the external bar is a permanent structure. Evidence has been given that during the past three 'wet' seasons this structure has not been removed;
- c. the Building Permit was issued without the required planning approval and this permit expired in 2006. The Certification Reports on the building and the Occupancy Permit were obtained in February 2008, a few days before the commencement of this hearing and outside the time extension granted by the Commission;
- d. the external bar has been operating since its construction, for the sale or dispensing of liquor, in a manner that was not in accordance with the application made by the Licensee and approved by the Licensing Commission and despite the lack of an Occupancy Permit.

15. The assertion by Mr Earley that there has been a 'witch hunt' is not borne out by the evidence before us which shows that the Director of Licensing and the Licensing Commission have been very accommodating in allowing extensions of time and consideration of a retrospective approval to solve the problem.

16. Whilst there is some information before us that people employed by the Licensee have not performed their duties with due diligence the responsibility lies with the Licensee to ensure that his licensed premises and operations conform with the laws and regulations of the Territory and are in accordance with any approval given by the Licensing Commission. The Licensee made the application for a temporary bar for use only in the 'dry' season. He clearly knew that the structure he authorised to be constructed was not temporary and he had continually operated the bar through all the seasons.

17. Based on the above we are firmly of the opinion that the Licensee has made a material alteration to the licensed premises, known as the Golf Links Motel, which was outside the scope of the approval given by the Commission. We do, however, feel that there is little to be gained by making an order that the alteration should be removed from the licensed premises and accept the proposal suggested by Mr Tribe and accepted by Mr Earley. This proposal appears to be a reasonable outcome to a very messy and long standing problem.

Decision

18. The Commission determines that:

- a. the external bar that has been constructed in the Pool Area of the Golf Links Motel licensed premises is to be closed immediately and not opened for the sale of alcohol or any other operation related to sale or dispensing of alcohol until the required planning/building/occupancy permits are obtained which make this bar compliant with the laws of the Territory;
- b. upon receipt of the required planning/building/occupancy documents the Licensee shall submit all documents to the Director of Licensing, together with an application to the Licensing Commission for consideration and decision on the retrospective approval for the material alterations to the licensed premises and approval to re-open the external bar.

Mrs J M Large
Presiding Member

27 February 2008