

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Outback Bar & Grill 79 Todd Mall, Alice Springs
Licensee:	Todd Development Group Pty Ltd
Licence Number:	80804707
Nominee:	Penelope Anne Todd
Proceeding:	Application to vary the conditions of the licence
Heard Before:	Mr Peter Allen (Chairman) Mr John Withnall Ms Jill Huck
Date of Hearing:	6 November 2003
Date of Decision:	19 December 2003
Appearances:	Mr Adrian Todd, Director for the Licensee with Ms Penelope Todd, Nominee

On 29 April 2003 and 6 May 2003 Mr Adrian Todd on behalf of the Licensee Todd Development Group Pty Ltd (the applicant) placed advertisements in the *Centralian Advocate* notifying the public of an application by the licensee for a variation of the conditions of the liquor licence for the premises known as the Outback Bar and Grill, situated in the Todd Mall at Alice Springs. The variation sought was an extension of trading hours to permit trading until 2:00am on seven (7) days a week. The current licence allows trading until 11:59pm from Sunday to Thursday and to 1:00am on the day following Friday and Saturday nights. The advertisement specified that objections to the application were to be lodged with the Deputy Director of Licensing within 30 days of the date of the second advertisement.

On 5 June 2003 Ms Jenny Deveraux, Darwin-based Policy Officer and Drug Diversion Coordinator for the Northern Territory Police sent an e-mail to Mr Chris McIntyre, Deputy Director of Licensing with responsibility for the Alice Springs region. The e-mail thanks Mr McIntyre for "the opportunity to comment on the proposed variation of trading conditions" and goes on to discuss the merits and shortcomings of the application.

The applicant was invited to make written comments on the contents of Ms Deveraux's e-mail and did so. As required by s471(1) of the *Liquor Act*, the e-mail and the applicant's comments were forwarded to the Chairman of the Commission who appointed a Member to consider them pursuant to s471(2). The Member dismissed Ms Deveraux's "objection" on the basis that the e-mail dated 5 June 2003 was not an objection under s47F of the *Liquor Act* because, among other things, the author did not have standing to lodge an objection under s47F(3) of the Act. Ms Deveraux was advised of her right to seek a review of the decision under s47J of the Act. No findings were made as to the substance of Ms Deveraux's concerns.

On 22 September 2003 Mr Maxwell Pope, Acting Assistant Commissioner Operations Command, lodged a request for review of the dismissal decision. A review hearing was subsequently listed for Monday 3 November 2003. The standing of Mr Pope to request a review of the dismissal decision would have been a threshold issue at the hearing.

On 6 October 2003, the applicant and his daughter Ms Penelope Todd, the nominated manager of the corporate licensee, attended a meeting with Senior Sergeant Lance Godwin at the Alice

Springs Police Station. The meeting was conducted at Mr Godwin's request. In a letter written later that day to Mr Godwin and copied to the Deputy Director, the applicant stated:

Further to our meeting this morning regarding application for extended trading hours and your concerns about early week extended trading and subsequent discussions, we agree to accept the extended hour Wednesday through Saturday compromise.

The letter goes on to reiterate the rationale for the original application and to reassure Mr Godwin of the premises' good record and of the security arrangements for the premises.

On 13 October 2003 Mr Mark Payne, Assistant Commissioner Operations Command, wrote to the Director of Licensing stating that his officers had discussed the matter with the applicant who had agreed to modify his application so that extended trading to 2:00am was only sought for the Wednesday, Thursday, Friday and Saturday nights. Mr Payne's letter went on to state:

On the basis that the above points now constitute part of the licensee's application, I would be prepared to withdraw the Police objection. This will in effect alleviate the requirement for the hearing into the review of the Police objection.

Given the ambiguous wording of the letter, clarification was sought from Police as to whether the application for a review had, in fact, been withdrawn. Assurance was received that this was the case.

An uncontested hearing of the application proceeded on 6 November 2003. At the hearing, the applicant and nominee stated that at no time had they been informed, either by the Commission or by the Police, of the dismissal of Ms Deveraux's objection nor of the subsequent request for a review. They were also not aware of media coverage of the issue. At the time they met with Mr Godwin on 6 October 2003, they were of the clear understanding that the objection was still on foot.

The Commission needs to raise a concern at the role played by the police in the application after the objection of Ms Deveraux had been ruled out by Ms Huck. Admittedly Mr Todd says in all fairness that the meeting was a good one and that he did not feel he was being put under any pressure by the police. However, it is clear that his agreement to the "compromise" was not a fully informed decision.

Mr Todd found the meeting with Mr Godwin "confusing". He concedes that the police officer told him that the police "had no objection" to the application, but then proceeded to prevail upon Mr Todd to give some ground on the application in relation to closing times earlier in the week. Mr Todd gave evidence that he was unaware at that stage that the Deveraux objection had been ruled out of the proceedings, or that a review of that decision had been requested:

Commission: So did you realise - did they explain, at that stage, that their objection had been dismissed?

Mr Todd: No. They hadn't said that. They - what they virtually said was there was some legal - legal things they were going through and there may be a hearing just for that before anything else happens, and I - nothing was elaborated on it...

Commission: At that time of the meeting, you didn't know that the police did not have a valid objection?

Mr Todd: Oh, I didn't have a clue. No. No. I just thought, you know, that - I heard, in the initial parts, that the police had objected but, you know, they object to every application, from what I can gather, and that was as far as I knew.

Mr Todd's reflections on the reasons for agreeing to the compromise are best described in his own words:

Mr Todd: Well, it was a little bit confusing because I think they virtually just wanted, you know, they - like he said, "We've got no objections to it" because I think they virtually

agreed to us having it on Fridays and Saturdays. It was in the letter there somewhere. And then he said, "We don't think you probably need it on Sundays and Mondays because the crowd's not about." And I said, "Well, you know, that's not quite right."...And I guess the compromise was, well, maybe if we - well, if we do compromise, well, we might have half a chance of getting it for a bit of the time, anyway, which is what we need....

Commission: What was put to you as why you should agree to this compromise?

Mr Todd: Oh, it wasn't any sort of, if you do this, or whatever. It was just, you know, if we - I guess it was probably more me than the police. It was - I just wanted to, you know, get some sort of action happening because it's been dragging on for so long, and I just thought, well, if I agree to what they want, well, maybe we can get something going....A little is better than nothing, isn't it?

It seems clear to the Commission on the totality of the testimony of Mr Todd and his daughter that while Mr Godwin was obviously not felt by the Todds to have been pressuring them, nevertheless Mr Todd was eventually worn down by his combined misconceptions as to the state of the process at that point, the police role and standing in that process, and the strength of the police bargaining position generally in relation to liquor applications.

In our view Mr Godwin should have been at more pains to ensure that Mr Todd was aware of the state of the process and of the relative positions of licensee and police within that process at that stage. This is not to suggest for a moment that Mr Godwin is seen as having deliberately acted in any way that was misleading or less than candid; he certainly made reference at the interview to what was obviously the review hearing, and his telephoned invitation to Mr Todd to "revisit" the matter suggests that in all likelihood he reasonably assumed that the applicant knew of the objection dismissal decision. Our disquiet stems from our belief that in the rather novel circumstances he needed to have gone further, to have been meticulously careful to ensure that Mr Todd was under no misapprehension as to where the parties respectively stood within the process at that stage, such that any agreement he could talk Mr Todd into accepting would genuinely be an exercise of fully informed free will on Mr Todd's part.

The Commission too needs to look at its s471 procedure. The legislation mandates notice of the dismissal of an objection being sent only to the objector. We note that in future, if only as a courtesy, a copy of a Commission decision under s471(3)(c)(i) should be forwarded directly to the applicant whose application was the subject of the dismissed objection. Admittedly such a decision will be quickly available to the public on the web-site of Commission decisions, but that is of no assistance to an applicant who has not been alerted to the decision having been made. Objection decisions have the potential to alter or determine the course of applications from that point, and it is only administrative common sense, if not basic procedural fairness, to notify these decisions to applicants to enable them to adjust or confirm their own course accordingly.

In the circumstances we are not satisfied that Mr Todd's agreement with the Police was fully voluntary, and we do not believe that he should necessarily be held to the cutback application as negotiated with the police. We do not propose to incorporate the terms of the agreement into the licence just because they were agreed; rather, we will evaluate *all* the material before us with a view to its relevance and cogency in relation to what the applicant is actually seeking from the Commission.

Mr Todd clearly indicated during the course of the hearing that on reflection what he really wanted was what he had always wanted, namely an extension of trading to 0200 seven nights a week as was advertised.

Mr Todd told of having bought the business when it was Scotty's Place, a venue "in a sorry state" and one he would not patronise himself because of the intimidatory demographic of the crowd that used to frequent it at that time. He spent a considerable sum of money in refurbishing and modernising the premises into an upmarket venue now attractive to locals and tour groups alike. Older people are finding it comfortable, and ladies on their own know they will not be harassed. He has built up a good reputation for meals, and the atmosphere is relaxed. Business people are using the premises for informal meetings. The venue no longer attracts the sort of clientele who

cause trouble, an assertion backed up by inspection of his security incident registers. A state of the art security surveillance system has been installed. Spotlights have been installed to light up the mall area at the front of the premises.

Many people tend to arrive mid-evening, and the Todds receive many complaints that the current trading hours do not permit such patrons to comfortably eat and relax at their leisure. They are now getting several tour group bookings a night, and are equally as busy in that respect in the early part of the week. Tour groups have said that they would prefer to be able to stay together at the Outback and not have to break up and wander off as early as midnight through the week.

Ms Penelope Todd also gave evidence, presenting as an efficient and effective hands-on manager of the premises.

Licensing Inspector Jamie Orr testified as to having conducted about a dozen inspections of the premises during the preceding year, eight of them at night. The premises were always well patronised and no problems were detected.

Although the premises currently have the appearance more of an upmarket restaurant than a tavern, it is to be remembered that it is a tavern, operating the same on-licence as did Scotty's Place. In terms of the Territory norm for taverns generally, its current trading hours can be regarded as restricted. Informal views of the premises by Commission members confirm the evidence presented to us that the venue now presents as a facility far removed from its Scotty's Place days, and there seems no logical reason why the success of this management initiative should not be now accommodated in the manner applied for. There is nothing about the revamped operation to suggest that extending its closing time to 0200 hours will in any way contribute to any increase in anti-social behaviour in or about or because of the venue; to the contrary, the evidence points to later trading hours being likely to be a positive contribution to the improving late night environment of the Mall.

It is clear from an examination of the evidence of the Todds and the evidence of Licensing Inspector Orr that the Outback Bar and Grill is a well-managed and quality premises; evidence confirmed by the repeated observations of the Chairman and other Members of the Commission. It is also apparent that the revitalisation of the premises has attracted a clientele that previously had purposely avoided it. The new clientele includes a seven day a week tourist component that prefers to remain on the premises rather than move on to other locations at the current relatively early closing time.

The application to extend the hours of trade to 02:00am, seven nights a week, is approved and licence conditions amended as detailed hereunder:

Trading Hours for the Outback Bar & Grill shall be:

- *Sunday 11:00am to Monday 2:00am*
- *Monday 11:00am to Tuesday 2:00am*
- *Tuesday 11:00am to Wednesday 2:00am*
- *Wednesday 11:00am to Thursday 2:00am*
- *Thursday 11:00am to Friday 2:00am*
- *Friday 11:00am to Saturday 2:00am*
- *Saturday 11:00am to Sunday 2:00am*

The conditions pertaining to the availability of meals is varied with the consent of the applicant licensee and shall be as hereunder.

Meals

Meals shall be available on request between 11:30am and 3:00pm and between 6:00pm and 10:00pm.

A meal is defined as a food item ordered by patron from a published menu that is then specifically prepared for that patron and served as an individual meal. A meal shall not consist of packaged items such as salted chips, peanuts, beer nuts or other finger-food whether served as packaged or opened into a bowl or similar container.

Snack foods shall be available on request at all times during which the premises are open.

Consistent with the Commission's policies with regard to noise abatement the condition below is included in the licence with the consent of the applicant. The Commission is progressively including the condition in all relevant licences.

Noise Control

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.

Peter R Allen
Chairman