

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Outback Bar & Grill
Licensee:	Town & Country Tavern Pty Ltd
Licence Number:	80804707
Joint Nominees:	Geroffrey John Booth Mark Leslie Ellis
Proceeding:	Application for a Review of Commission Decision
Heard Before:	Ms Brenda Monaghan (Presiding) Mrs Jane Large Ms Helen Kilgariff
Date of Hearing:	23 August 2006
Date of Decision:	23 August 2006
Appearances:	Senior Inspector Wayne Sanderson Mr Michael Deane for the Licensee Mr Geoffrey Booth

1. The applicant seeks a review of the Commission's decision refusing to grant its application to change the description of its licence from an Authority – on Licence to an Authority – Tavern and further with respect to the Commission's refusal of a change of trading name from Outback Bar and Grill to Town and Country Tavern.
2. The Commission noted three (3) reasons in its earlier decision in April 2006 :
 - a) The Licensee did not have Development Consent Authority permission to change the licence from an On Licence to a Tavern;
 - b) The premises did not have the appearance of a tavern and did not comply with the current description of a tavern as described in an internal document which has been used by Racing, Gaming & Licensing (RGL) for many years (no doubt with Commission approval) to classify licence types; and
 - c) The Commission noted that the licence categories were under revision as part of the *Liquor Act* rewrite and deferred further consideration of this matter until after the categories had been clarified.
3. The Commission at the review hearing today has been provided with sufficient documentation to confirm that the Licensee does in fact have the required Development Consent Authority permission for a tavern to be run on the premises and that the permission dates back some years.
4. The review panel also considers that it is unfair to defer any further the consideration of this matter for clarification of licence categories. The time frame for the introduction of the new *Liquor Act* is still unclear.
5. This leaves one issue for the consideration of the Commission on review and that is whether or not the premises have the appearance and function of a tavern and whether the current classifications referred to in paragraph 2 b) above should prevent the Licensee from changing the licence category and the name.

6. Mr Deane, on behalf of the Licensee gave compelling reasons why we should grant these applications. He referred to the Macquarie Dictionary definition of a tavern being “premises where food and alcoholic drink are served, but where no accommodation is provided”.
7. He submitted evidence to support a conclusion on the facts that the premises have, for a number of years, conducted a business which focuses principally on the supply of liquor rather than food and in fact his client is attempting to reverse this trend by placing a greater emphasis on the quality and type of food available.
8. Mr Deane also looked to the internal RGL document which classifies licence types. He noted that the definition of a tavern states “This premises is similar to a public hotel but without accommodation. It usually has facilities for meals and entertainment”. The definition in the same document of a public hotel states “This premises comprises of two or more public bars, one of which must be a high standard lounge. .”.
9. Mr Deane submitted that whilst the definition appears to require two or more public bars, there is no requirement in the RGL document for a tavern to be exactly the same as a public hotel-only “similar to it”.
10. Mr Deane’s submission is that his client’s business falls squarely within the current definition and general understanding of a tavern licence. He further noted that whilst the Outback Bar and Grill has only one bar, there are two other taverns in town with only one bar, namely the Firkin and Hound and Uncles Tavern.
11. Mr Sanderson, on behalf of the Director of Licensing emphasised the view that the licence types referred to in the RGL document were the only definitions that currently guide the Department in classifying licence types. Whilst acknowledging that two taverns in town have only one bar, he emphasised the fact that the description in the relevant document suggested that two or more bars were required for a tavern.
12. Mr Sanderson suggested that perhaps the premises should be called the Town and Country rather than the Town and Country Tavern. This suggestion was not acceptable to the Licensee.
13. In reaching a decision on review, the Commission notes that it has received much more detailed information than the Commission had when making its earlier decision.
14. The Commission notes that under our current *Liquor Act*, there are no licence categories and the *Act* itself speaks only of licences “for the sale of liquor, or the sale or consumption of liquor on, at, or away from, premises specified in the licence”.
15. Licences remain distinguishable by their conditions and it is only for administrative purposes that licences have been classified into general groups such as Tavern, Public Hotel, Restaurant etc.
16. The Commission is satisfied that the Outback Bar and Grill has for a number of years traded in such a manner that it should be classified as a tavern. Any “licence creep” occurred many years ago and is only now of historical significance. The current conduct of business is principally the service of liquor but with a significant emphasis on food in the form of counter meals.
17. The conditions in the current licence can be considered the same as those of a tavern.
18. There is precedent for a tavern licence to be granted where the premises only have one bar and we are persuaded that the Licensee should not be prevented from having the licence description changed to “Authority – Tavern” and the name changed to Town and Country Tavern. Whether or not a later application is made for a gaming machine licence is irrelevant.

19. As regards the name change the Commission accept that the name Town and Country Tavern was chosen for valid reasons and there is nothing misleading, deceptive or offensive about this name that should prevent the Licensee from using it.

Brenda Monaghan
Presiding Member