

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Hot Rock Restaurant and Bar
Licensees:	Anne Maree Oates Graeme Oates and Max Oldfield
Licence Number:	80817696
Proceedings:	Application to Vary Licence Conditions-Extend Trading Hours from 2:00am hours to 4:00am seven days a week
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Ms Kerri Williams
Date of Hearing:	21 June 2010
Date of Decision:	9 July 2010
Appearances:	Mr Graeme Oates and Ms Anne Maree Oates for the Licensee Mr John Banks, representing the Darwin City Council

Background

- 1) By application dated 4 January 2010, Ms Anne Maree Oates applied pursuant to Section 32A of the *Liquor Act* ("the Act") for a variation of the current licence conditions to extend trading hours from 2:00 am (the following day) to 4:00 am (the following day) seven days per week for the Hot Rock Restaurant and Bar, 28 Mitchell Street, Darwin. The current licence provides for the sale of alcohol on the premises from 11.30 am until 2.00 am the following day, seven days per week.
- 2) The Licensee stated in the application that the variation would allow the Hot Rock Restaurant and Bar to provide a-la-carte meals to patrons until 4.00 am, with meal orders being taken up to 3.00 am. It was submitted that the extended hours would "*support our Darwin economy now operating 24 hours and seven days a week*" and that the aim was to cater for shift workers, tourists and visitors to the city. It was further submitted that there was a need for a late trading upmarket restaurant within the CBD and that currently options in that regard were limited to fast food outlets.
- 3) The Licensee also submitted that the extended hours would be complimentary to the operating hours of the Darwin Airport "*with the majority of the Airline flights that arrive in Darwin now occurring between 6.00 pm and 6.00 am*". The proposal for extended hours includes the provision of a secure luggage room at the restaurant for the use of air travellers. The application stated that "*luggage storage (is) not available at airports*".
- 4) Following the advertising of the application one objection was received, that being from the Darwin City Council ("the DCC"). The DCC objected to the extended trading hours on the basis of community amenity, health, education and public safety considerations.
- 5) The Development Consent Authority advised that the change of use of the premises from restaurant to restaurant / hotel was approved and that the Development Permit does not condition the hours of operation.

- 6) Whilst not in the form of an objection, Northern Territory Police submitted comments on the application advising:
- “The Police view is that there is no evidence to suggest the concept promoted by the applicant will be more or less successful than if they traded until their existing 2.00 am licence while serving food. It is understood that the licence is rarely operating at 2.00 am, if at all”.*
- 7) Similarly, whilst not in the form of an objection, Mr Neil Wright of the Department of Health & Families commented on concerns relating to late night trading and the impact on Government’s aim of reducing the harms and impact of alcohol consumption.
- 8) In response to the DCC objection, the applicant submitted that the objection provided no indication as to how the amenity of the neighbourhood would be affected by the proposed extension of trading hours of the particular premises.
- 9) The DCC objection was assessed as being valid and within the parameters for an objection prescribed by the Act. As a result the application was referred to hearing.

The Hearing

- 10) Mr Oates addressed the Commission in respect of the application and advised that the Hot Rock Restaurant and Bar has been operating since March 2010. He described the premises as an upmarket restaurant with a stone grill cooking theme. The Licensee is seeking a 4.00 am licence to cater for a unique niche in the Darwin market. Mr Oates stated that all capital cities except Darwin have such facilities. He added that Darwin was a growing community and that there was a need for the types of facilities and services that the extension of trading hours would provide.
- 11) Both Mr and Mrs Oates informed the Commission that the extended hours were, at least in part, aimed at airport passengers arriving in or departing from Darwin in the early hours of the morning. They are not seeking a nightclub type licence but rather extended trading hours during which the restaurant could remain open to serve meals and alcohol.
- 12) Mr John Banks, the Manager of Community and Cultural Services with the DCC appeared to give evidence in support of the objection. Mr Banks informed the Commission that the DCC had considered the application for variation of trading hours at its meeting of 9 February 2010 and determined to lodge an objection.
- 13) Mr Banks submitted a document titled “Hot Rock Variation to Liquor Licence Objection – 21 June 2010” and advised the Commission that the DCC had endorsed a recommendation at its first Ordinary Meeting in May 2010 to object to all new applications in the municipality for extensions of late night trading after 2.00 am. He confirmed that the DCC continues to be opposed to late night trading in liquor beyond 2.00 am. The reasons for the DCC’s position include:
- Antisocial behaviour, including assaults;
 - Adverse impacts on health and well-being;
 - The additional stress placed on Police officers, emergency workers and medical staff;
 - The safety and amenity of the CBD; and
 - The resource implications arising from attendance to the above issues.
- 14) Mr Banks referred the Commission to the outcomes of recent decisions taken in the Newcastle area in NSW and the relationship between the reduction in trading hours for licensed venues and resultant reduction in violence and anti-social behaviour. He conceded that the DCC’s objection was not specific to the Hot Rock Restaurant and Bar but

rather a part of the DCC's general policy of opposition to licensed venues trading after 2.00 am. He confirmed this opposition was a component of the DCC's Alcohol Management Plan and the Council intends to oppose all applications for licensed hours to extend after 2.00 am. Mr Banks noted however that the degree to which the objection was pressed may vary depending on the nature of the application and the type of venue involved.

- 15) In response, Ms Oates submitted that it was not appropriate for the DCC to support a blanket ban on trading after 2.00 am and that each application should be treated on its merits. She conceded that some late night venues in the CBD may not be properly managed but that should not be a factor in considering this particular application for extended trading hours.
- 16) Ms Oates submitted that Hot Rock Restaurant and Bar proposed to offer a unique product for which a market exists and offering services that are not currently available in Darwin. She stressed that there was a market for a late trading upmarket restaurant, particularly for travellers departing from and arriving in Darwin on late night and early morning flights and in particular 4.00 am and 5.00 am flights to and from Singapore.

Consideration of the Issues

- 17) The Commission notes that the DCC has adopted a policy of objecting to all liquor licence applications that include trading hours beyond 2.00 am. In this instance, the DCC was unable to refer the Commission to any specific area of concern directly arising from the business operation of the Hot Rock Restaurant and Bar. That said, Mr Banks articulated the reasons behind that policy decision at the hearing and the Commission accepts that it is open to the DCC to adopt the position of a blanket objection to late night trading venues within the municipality.
- 18) The Commission, however, is required to treat each application for extension of trading hours on its individual merits and is required to consider the objects of the Act as prescribed by Section 6 in doing so. In complying with those requirements the Commission is obliged to consider the public interest in respect of each particular application.
- 19) The Hot Rock Restaurant and Bar is essentially a restaurant with an on-licence. The current trading hours are 11.30 am until 2.00 am the following day. This is in accord with the majority of licensed restaurants in the CBD as, with the exception of two restaurants at Skycity Casino, no restaurants in the Darwin CBD are currently licensed to trade beyond 2.00 am.
- 20) The Commission accepts that there may be persons, such as shift workers and interstate / international travellers who would wish, occasionally, to dine in the early hours of the morning. However, the Commission is also mindful that the extension applied for would allow patrons dining at a more usual dinner hour of say 7.30 pm to 8.30 pm to remain at the restaurant after dining and consume alcohol until 4.00 am without any further food.
- 21) Whilst not pivotal to the decision, the Commission notes minor anomalies in the submissions made by the applicant to the Commission. Firstly, the Darwin Airport does in fact provide luggage storage facilities, as evidenced by the advice posted on its website. Secondly, the only regular flights arriving in Darwin from Singapore land at 2.35 am and 4.30 am daily. Passengers of those flights would not be able to avail themselves of an extended restaurant licence where last meal orders are taken at 3.00 am.
- 22) Contrary to the submission made by Ms Oates, the only commercial flights from Darwin to Singapore depart daily at 4.00 pm and 6.30 pm. Again, the extended trading applied for would be of no benefit to those passengers. The Commission also queries generally the benefit of air passengers departing Darwin in the early hours of the morning being able to consume alcohol almost up to the time of departure. In the Commission's view the potential for passengers to become intoxicated prior to departure outweighs the possible benefit of having a late trading restaurant.

- 23) The Commission is not convinced that there is a public benefit or public need for shift workers and the like to have access to a licensed restaurant serving meals up till 3.00 am. Generally shift workers in the majority of fields are aware that they will be working during "normal" meal hours and these people make allowances and provide their own meals. Similarly, the Commission finds it difficult to accept that tourists, after full a day of touring, are likely to require a quality restaurant meal after 2.00 am.
- 24) The Commission is not satisfied that the applicant Licensee has satisfied the public interest criteria to the extent necessary for the grant of an extension of hours for the sale of alcohol for two hours beyond what is the currently recognised norm for licensed restaurants in Darwin. Whilst the applicant submitted at hearing that there is a public interest in persons wishing to commence dining as late as 3.00 am the Commission is not convinced that the demand for this type of service outweighs the potential for harm arising from late trading venues.
- 25) The Hot Rock Restaurant and Bar's existing licence allows patrons to consume alcohol from 11.30 am to 2.00 am (the following day) without the requirement to partake of a meal at all. Late night licensed venues trading beyond 2.00 am in the Darwin CBD are subject to strict licensing conditions in terms of security, camera surveillance, the types of alcohol available for sale and the like. Those types of conditions are generally not applicable to restaurant / on-licence operations.
- 26) The Commission is not persuaded to effectively create a new category of licence allowing for the consumption of alcohol without a meal for such an extended period. The granting of the extension applied for would no doubt set a precedent in terms of similar restaurants currently operating in the CBD.
- 27) The Commission is mindful of public concern in respect of anti-social behaviour in the Darwin CBD associated with the current late trading licensed venues. The Commission is not satisfied that the public interest would be best served in opening the floodgates for another category of licensed premises, that is restaurants, to trade as late as 4.00 am daily.

Decision

- 28) For the reasons outlined above, the application on behalf of the Hot Rock Restaurant and Bar to extend its trading hours to 4.00 am seven days a week is refused pursuant to Section 32A(8)(a) of the Act.

Richard O'Sullivan
Chairman

9 July 2010