

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Bogarts Restaurant
Licensee:	Bogarts Pty Ltd
Licence Number:	80817675
Complaints:	Cancellation of Liquor Licence Pursuant to Section 72(5)(a) of the <i>Liquor Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman)
Dates of Hearing:	21 June 2007, 31 July 2007
Appearances:	Mr Peter McQueen for Licensee Mr Graham Tribe for Director of Licensing

Background

- 1) The business premises, known as Bogart's, had operated from 52 Gregory Street, Parap for a number of years prior to it ceasing to trade, after which the licence was cancelled. Following the sale of the premises to Bogarts Pty Ltd (Director, Mr Nick Bjelica), a liquor licence was applied for in early 2006.
- 2) Following hearing, the Commission on 9 August 2006 determined to approve a liquor licence in the form of an "On Licence". Decision:

"In summary, we intend to grant a liquor licence to the applicant for the sale of liquor on premises in the restaurant and the ancillary bar. For administrative purposes, the category of licence will be an "On Licence". A copy of the proposed licence is attached."

Hearing-21 June 2007

- 3) The Commission noted that all relevant notices in relation to the Show Cause and Notification of Hearing had been served on Bogarts Pty Ltd. At hearing the Commission was advised by Mr Tribe, on behalf of the Director of Licensing, that the licence offered through the Commission's decision on 9 August 2006 was not taken up until December 2006. In effect, this means that following that decision and up to the date of this hearing, there has been a period of nine (9) months, including a six (6) month period since Licence Number 80817675 was issued on 7 December 2006.
- 4) Since the issue of the licence, the owners of Bogart's Restaurant indicated that the premises was to be sold with intention of having transfer of the licence to the new owners. It is apparent that the Proprietor of Bogart's Restaurant had anticipated an early sale as advice provided by Licensing Inspector Graham Tribe in correspondence of 12 December 2006 (attaching the licence) stated:

"You should also be aware that the Licensing Commission have the expectation that the premises will commence trading within a reasonable period of time after the issue of this licence. As such, I would draw your attention to Section 66(1)(c) and 72(5)(a) of the *Liquor Act*."

- 5) Following the issuing of a Show Cause Notice on 23 March 2007, Mr Peter McQueen, Solicitor on behalf of Bogarts Pty Ltd advised:

“Details of those continuing efforts combined with current information regarding the Licensee’s own actions and efforts to locate a buyer, together with evidence of the suitability and saleability of the premises for use as a restaurant business will be presented with other material to the Commission in support of the application.

- 6) During the hearing Mr Tribe drew the Commission’s attention to Section 72(5)(a) of the *Liquor Act* in seeking the cancellation of the Act. Section 72 (5)(a) states:

5) In addition to subsection (1), and notwithstanding anything in this Act which may be construed as qualifying or limiting the power of the Commission to cancel a licence, the Commission, after conducting a hearing, may, by order, cancel a licence where it is satisfied that –

(a) licensed premises in respect of which the licence was granted have not been used for the sale or supply of liquor for a period of 90 days;

- 7) Mr McQueen submitted evidence through newspaper advertisements and real estate listings (Exhibit 1) to demonstrate considerable effort to sell the property. Initially Raine and Horne were engaged as agents with no apparent success. Following this Flagstaff Real Estate were subsequently given rights of advertising and sale of the property within the Northern Territory and interstate.
- 8) Mr McQueen submitted exhibits as evidence that negotiations were under way for the sale of the property and that an offer for purchase had been made. Included in materials tabled were exchanges between Mr McQueen and Morgan Buckley (on behalf of their client). The most recent exchanges were dated 19 June 2007 (Exhibit 4).
- 9) This material evidences increased effort to sell the property and that immediately prior to this hearing that there had been indications that a sale would proceed. Mr McQueen advised the Commission that, however, this sale would not proceed but there were three (3) other potential purchasers being pursued.
- 10) Mr Neil Murphy on behalf of Flagstaff Real Estate provided an outline of sale efforts to date and of future prospects to be pursued if the Commission provided sufficient time to enable inspections, negotiations, etc to take place. Mr Murphy further stated that these prospects would be followed up “this week”, if given time by the Commission.
- 11) In summary, Mr McQueen submitted that there was no detriment to the public if the licence was not operational and that the Commission should take this into account as well as the efforts by Bogarts Pty Ltd, through Flagstaff Real Estate to effect the sale, which indicated good prospects.
- 12) Mr Tribe sought the immediate cancellation of the licence given the long period of it not trading.

Decision

- 13) The Commission determined to adjourn the hearing and allow a period of time for Bogarts Pty Ltd to sell the business.
- 14) A period of six (6) weeks was granted and the Commission sought a continuation of the hearing after that period.

Hearing-30 July 2007

- 15) At the commencement of the hearing the Presiding Commissioner and Chairman advised that due to the changes in circumstances of the availability of the initial panel, the hearing would proceed with one Commission Member (Chairman) presiding pursuant to Section 51(2A) of the *Liquor Act*.

The *Liquor Act* at Section 51(2A) provides that at a Hearing under the Act, the Commission may be constituted by one Member or three Members.

At the time of the Hearing on 21 June 2007, the Commission was constituted by three Members, the others being Ms Jane Large and Mr John Brears.

Due to the long unavailability of one of the Members this then varied the constitution of the Commission from three Members to less than three, effectively reducing it to one Member for the completion of the Hearing; a fact that brings into effect the provisions of Section 51 contained at sub-sections 10A, 10B and 10C.

The relevant sub-sections of Section 51 are as follows:

(10A): Where the Commission is constituted by one member, a party who is not satisfied with the decision of the Commission may apply, within 14 days after the decision, in writing to the Chairperson for a new hearing.

(10B): Where a party applies, under subsection (10A), for a new hearing the Chairperson may, if he thinks fit, cause a new hearing to be held.

(10C): Where a new hearing is held, under subsection (10B), the Commission –

(a) shall be constituted by not less than 3 members; and

(b) may make any decision that it could have made if a hearing had not previously been held.

- 16) Mr McQueen advised that information from Mr Neil Murphy of Flagstaff Real Estate was to the effect that he “has not found a purchaser as yet”. Mr McQueen then provided an outline of the three (3) prospective purchasers who had been pursued without success since the initial hearing.
- 17) Mr McQueen further outlined that Bogart’s Restaurant was part of a Unit Title at Gregory Street, Parap and that currently the sale of fifty (50) units was in process with mortgages of twenty-one (21) of these under lodgement. He indicated that parties involved with the purchase of a number of the Unit Titles had expressed interest in the purchase of Bogart’s Restaurant.
- 18) On behalf of his client he sought a further extension of time to allow sales activity to proceed. He sought permission to consider indefinite suspension of the licence pursuant to Section 66(1)(C) of the *Liquor Act*.
- 19) Mr Tribe sought the cancellation of the licence under Section 72(5)(a) of the *Liquor Act*. He also advised that a suspension as sought by Mr McQueen could have been pursued by the Director of Licensing at any time since the granting of the licence. He maintained sufficient time had been allowed for Bogarts Pty Ltd to sell the premises and it was therefore now time for cancellation to be considered.
- 20) He stated that if it was in the Commission’s mind to suspend the licence that this be done on the basis of a restricted period of time following which the licence would automatically be cancelled without further hearing.
- 21) Mr McQueen sought that this period of suspension be extended to December 2007 and Mr Tribe sought a period of three (3) months could be the maximum with a self executing order for the cancellation of the licence after this period.

Decision

- 22) That Licence Number 80817675 be suspended until 31 October 2007 to allow sufficient time for negotiations and sale processes to be complete for any parties interested in the purchase of Bogart’s Restaurant.

23) If there is no executed sale by 31 October 2007, that on the following day the licence will be automatically cancelled without the need for further hearing.

Richard O'Sullivan
Chairman

13 August 2007