

Northern Territory Licensing Commission

Reasons for Decision

Application:	For a Liquor Licence
Applicant:	Bogarts Pty Ltd
Nominee:	Vladimir Boskovski
Members:	Brenda Monaghan (Presiding) Paul Costigan John Brears

1) Bogart's Pty Ltd, through its sole director Mr Bjelica has applied in the company name for a Liquor Licence for the premises owned by Mr Bjelica at 52 Gregory St Parap. An establishment known as Bogart's has traded from these premises for a number of years with a full liquor licence. The former lessee who owned and ran the restaurant business on the leased premises obtained held the most recent licence. We understand that the business closed its doors in early 2006 and has not been trading since. It appears that the former lessee was not obliged under the lease to leave the licence with the premises when he vacated or to transfer it to the landlord. For this reason, the lessor has had to make a fresh application for a liquor licence, as he wants to reopen a restaurant/bar on his premises.

i) The application was advertised in March 2006 in the following terms:

Proposed Trading Details for the sale of liquor are as follows:-the business proposed to be conducted on the premises will be in the nature of a tavern.

- *Liquor may be sold for consumption on the premises between the hours of Monday to Sunday 11.30 to 02.00 hours the next day.*
- *The concept of the premises will be that of an up market restaurant and tavern providing high quality dining, bar facilities and entertainment. The entertainment will generally consist of live piano bar and recorded music with a DJ operating during special functions.*

The estimated patron capacity will be 50 persons in the bar area and 180 persons in the restaurant area.

There were no objections received from the public.

- 2) The Commission met with the applicant on site on 22 June. The applicant advised the Commission that he intends to reopen the business and run it in the same style as it has always been run -as a restaurant with ancillary bar. We have no concerns about granting such a licence to him. The Development Consent Authority have confirmed that they have no objection to the facilities being used for a restaurant with an ancillary bar so long as the bar facilities do not exceed the area allowed in the Development Permit.
- 3) It became clear at the onsite meeting that it was quite important to Mr Bjelica that he be granted a licence which would allow him to sell takeaway liquor, install gaming machines and no doubt trade as a "tavern" with liquor sales only or food sales ancillary to liquor. Whilst Mr Bjelica does not himself intend to change the concept of the premises, install gaming machines or sell takeaway, he does want to be able to advertise the business for sale at some future time stating that he has a licence that allows these things.
- 4) It is important to comment that under our current *Liquor Act*, there are no categories of licences. The Act speaks only of the granting of licences "*for the sale of liquor, or the sale*

and consumption of liquor on, at, or away from, premises specified in the licence". Licences are distinguishable by their conditions in that, for example, late night trading venues will have extra security and noise conditions and restaurants will have specific time limits placed on the sale of liquor after the kitchen closes. Depending on the types of conditions imposed, the licences have been classified for administrative purposes into general groups such as "Public Hotel," "Restaurant," "On Licence," "Tavern," etc and these descriptions have been included in the licences themselves.

- 5) The previous licence relating to the premises known as Bogart's was titled- Tavern Licence. Some licence conditions related to Bogart's Bar and others to Bogart's Restaurant. Our understanding is that the Tavern category was given to this licensed premise many years ago and dates back to a period where more general licences were given more easily than they are now. It was also issued prior to the Development Consent Authority's (DCA) reconsideration of the site –presumably at the time when the motel units were strata titled.
- 6) Whilst we understand why Mr Bjelica wants the licence noted "Tavern", we are unable to grant a licence in those terms. We make the following comments in support of our decision:
 - a) Pursuant to Section 6(2) of the *Liquor Act*, a licensee must comply

"with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including –

- (i) by-laws made under the Local Government Act; and*
- (ii) provisions of or under the Planning Act;"*

The DCA have made it quite clear that the Development Permit (DP96/0385) does not allow a tavern to be run from the premises. It only allows a restaurant with ancillary bar in accordance with the revised floor plan lodged by the applicant. Thus, whilst the previous licensee retained a Licence entitled "Tavern", they would not have been able to trade as a Tavern without breaching their Development Permit. Had the Licensing Commission been aware of the anomaly, we would no doubt have varied the licence sooner to ensure it complied with the Development Permit. We can only assume that as the previous licensee accepted the restrictions of the Permit and traded as a restaurant with an ancillary Bar, the wider terms of his licence were of little consequence to his trading.

- b) Even if we called it a Tavern, it is clear from the Section 3 of the *Gaming Machine Act* that Bogarts cannot qualify for gaming machines because its primary activity is not the sale and consumption of liquor. Under section 3 of that Act,

"hotel liquor licence means a licence granted under the Liquor Act –

- (a) where the primary activity conducted on or at the premises specified in the licence is the sale and consumption of liquor on or at those premises; and*
- (b) that is endorsed with the words "**Authority – Public Hotel**" or "**Authority – Tavern**".*

As it is quite clear that the premises are to be used as a restaurant catering for up to 180 and an ancillary bar catering for up to 50, the primary activity is clearly not the sale or consumption of liquor. Further, the current Development Permit allows for nothing more than that.

- c) The previous licence did not allow the sale of takeaway liquor but only consumption on the premises. The application before us does not seek a takeaway component to the licence and we will not be granting one.

- 7) 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.

Brenda Monaghan
Legal Member

9 August 2006