

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Elkira Court Motel
Applicant:	AO Resorts Pty Ltd
Nominee:	Ms Julie Martin
Licence Number:	80202513
Proceeding:	Variations of Licence Conditions and Extension of Licensed Area
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Wally Grimshaw Ms Helen Kilgariff
Date of Hearing:	3 July 2008
Date of Decision:	23 July 2008
Appearances:	Ms Julie Martin Mr Kelvin Martin Mr Chris McIntyre, Deputy Director South, Department of Justice

Background

- 1) Elkira Court Motel ("the Motel") - Liquor Licence Number 80202513 has applied for a variation of its licence condition under Section 32A(1) of the *Liquor Act* ("the Act") which states:

32A Variation of conditions on application by licensee

(1) A licensee may apply to the Commission in a form approved by the Commission for a variation of the conditions of the licence held by the licensee and may request that the Commission conduct a hearing in relation to the application.

- 2) Essentially the variation sought involves:
 - a) The extension of trading hours for the breakfast service room to commence from 06:00 hours, currently licensed to operate from 07:00 hours.
 - b) The installation of mini bars into spa and deluxe rooms of the Elkira Court Motel complex.
 - c) The ability to sell alcohol to outside guests and patrons without the requirement for a meal.
 - d) Construction of a new outdoor bar area as an extension to the existing downstairs Terrace Bistro, involving a three (3) stage development.
- 3) Mr Kelvin and Ms Julie Martin have secured a long term lease over the property and have sought the licence variations as part of a major upgrade for the property.
- 4) The Motel for a number of years has been rated a 3-1/2 star property and is branded under the Best Western banner. Ms Julie Martin, Nominee and her partner, Mr Kelvin Martin have advised that their intention is to turn the property into a 4 star "boutique resort motel". This

plan for the property will require improvements to both its physical dimensions and to the services it provides.

- 5) The variation has been duly advertised and has attracted no objections from the public. Northern Territory Police have made no comment regarding the variation or alterations proposed. Northern Territory Fire and Emergency Services have also chosen not to make comment as has the Alice Springs Town Council.
- 6) However, comment expressing reservations has been received from Mr Neil Wright of Alcohol and Other Drugs Programs of the Department of Health and Community Services ("DHCS") dated 11 April 2008. These comments are provided below:

"After consulting my Alice Springs colleagues, a couple of comments are provided for consideration in relation to this material alteration and variation to licence conditions.

- *The request for removal of the licence condition for alcohol consumption ancillary to a meal and the statement that the premises shall have the appearance and trade predominantly as a restaurant are, on the surface, contradictory. The main aspect of a restaurant is food, so by allowing people to consume alcohol without having to purchase a meal means it is not, in essence, appearing predominantly as a restaurant.*
- *Whilst the terms hotel, pub or bar will not be part of any advertising or promotion of the premises, word of mouth advertising, particularly from those utilising the premises as a bar rather than a restaurant, may increase the level of non-restaurant trade to the point where it is no longer appearing or trading predominantly as a restaurant. It is of concern that in light of the antisocial behaviour issues and alcohol restrictions in Alice Springs, another outlet for alcohol consumption is proposed – particularly one where the eating of a meal (which decreases the rate of alcohol absorption) is not required.*
- *In the absence of a detailed site plan, I am unable to comment on the potential health impacts associated with the material alteration – ie, ensuring patrons (and their behaviour) can be monitored easily.*

- 7) The applicant has responded to the issues raised by the DHCS in correspondence of 3 June 2008.
- 8) In response to the issue of what the DHCS termed a contradiction in *"trading predominantly as a restaurant"* while removing a licence condition to have a meal with alcohol, the applicant has referred to difficulty in differentiating inhouse guests and other clients in having to ask all clients if *"they intend having a meal"* before serving alcohol.
- 9) In a report to the Licensing Commission contained in the Hearing Brief (folios 39 – 42) from the Regional Executive Officer dated 4 June 2008 he states: *"On the surface, this assumption by the Health Department is not necessarily always true, however there is potential for this to occur should a restaurant type licence change its business hours and attempt to attract non diners"*.
- 10) In response to the comment by DHCS that word of mouth advertising could enable it to trade as a pub and contribute to anti social behaviour the applicant responds by advising their marketing will attempt to attract a client with *"discerning taste"*. This aim the applicant responded will be furthered through the requirement of clients to meet a dress code and through the type of alcohol to be served in the licensed area.
- 11) The applicant also advised that they intend offering an all day dining experience with all areas appearing predominantly as a restaurant with salt, pepper and cutlery etc being on all tables.

Hearing

- 12) Hearing Commissioners undertook an inspection of the property in the company of the applicant and other parties to the Hearing in order to gain a more comprehensive understanding of the applicant's proposal for the property.
- 13) The applicant at Hearing advised they were seeking approval for a three (3) stage development of ground level areas to be included in respect of the variation of the licence condition to enable the service of alcohol without a meal. Material alterations would be required to the downstairs areas and in chronological order of proposed development these are:
 - a) Alfresco dining – this would combine the existing downstairs restaurant, (currently Terrace Bistro and to be renamed Cycads) a redeveloped undercover dining verandah and an additional area of approximately 90 square metres in an existing driveway.
 - b) Deck area – an area of approximately 100 square metres, currently a driveway, to be decked and provided with access to the food preparation / kitchen area.
 - c) Barbecue area – an area of approximately 90 square metres next to the motel swimming pool, currently used for poolside barbecues and general relaxation.
- 14) The application has also sought the removal of the requirement to have a meal when serving alcohol for the upstairs dining area to be called the Plantation restaurant.
- 15) Total dining capacity of the fully redeveloped premises is expected to be:
 - Upstairs at the Plantation restaurant, approximately one hundred (100) patrons; and
 - Downstairs at the Cycads, inclusive of the Alfresco, Barbecue and Deck areas, a capacity of approximately three hundred (300) patrons.
- 16) The applicant presented the proposals as part of a significant variation for the services the Motel offers which would see it attracting an increased corporate market, functions, and off the street clientele as well as tourists. The Cycads restaurant and adjoining Alfresco, Barbecue and Deck areas would be the principal eating area with Cycads being the property's signature restaurant. The upstairs Plantation restaurant would predominantly be used for meetings, functions and coach groups.
- 17) In respect of the accommodation element of the Motel's business it is the intention of the applicant to develop facilities and services to qualify for a 4 star rating through the provision of upgraded rooms, spas and the installation of minibars in the premium rooms together with upgraded restaurant and serves generally. The six o'clock commencement of breakfast trade is in line with this enhanced service.
- 18) Entrance to the downstairs Cycads restaurant and Alfresco areas through morning and lunch times would largely be through an opened double gate to the side of the main motel entrance. The applicant anticipates this will give an open and inviting appearance to people wishing to have a coffee, light snack meal, or other beverage. From 3.00pm the gate would close and all entry would be through the main reception area.
- 19) From the street the downstairs area would have the appearance of a café or restaurant. To differentiate it from a hotel the applicant advised there would be no beer on tap and premium / boutique beers would be marketed and dress standards would apply.
- 20) The application and Public Notice advertisement included the advice that *"live amplified music entertainment to be provided"*. The Commission was advised that live music would be provided in the downstairs outside area incorporating the Alfresco, Deck and Barbecue areas.

- 21) Mr Chris McIntyre advised the Hearing that should the application be granted, or granted in part, there would be a need to insert an Entertainment and Noise condition in the licence so as to limit the amplification of music.
- 22) During Mr McIntyre's address to the Hearing the applicants, on questioning from the Commission, advised they were willing to have their current trading hours under the existing licence reduced. Currently both the downstairs and upstairs areas (Terrace Bistro and Terrace Restaurant) are allowed to trade from 10.00am until 02:00am (the following day) on all seven (7) days of the week. The applicant advised they were willing to cede hours for all licensed areas, in return for consideration of the application, as follow:
- 12.00midday to 12.00midnight Monday to Thursday;
 - 12.00midday to 02.00 (the following day) Friday and Saturday;
 - 10.00am to 12.00midnight Sunday.
- 23) Mr McIntyre advised that in terms of advertising the premises should not be permitted to use the words "pub, hotel tavern" etc should the application be granted. He added that the applicant should also be prohibited from advertising alcohol without a meal and that all advertising and marketing must feature the licensed premises as a restaurant.
- 24) The Commission granted an adjournment of the Hearing to enable the applicant to consider the issue of the various building and permit approvals and to come back to the Commission with an application that takes into account the need to meet the various Statutory requirements.
- 25) On resumption of Hearing the applicant tendered as Exhibit 1 schematic drawings of a new verandah immediately outside the restaurant incorporating an extended cover over the remainder of the Alfresco area, termed Stage 1.
- 26) The applicant was advised by the Commission that the further stages (Deck and Barbecue areas) should be subject to more complete application and considered at a further Hearing.
- 27) The applicant was advised that detailed plans would need to be submitted to appropriate authorities with patron capacity to be determined by Police, Fire and Emergency Services.

Consideration of the Issues

- 28) Under the application submitted, the Commission has under consideration the following:
- a) Extension of the hours of the downstairs restaurant to serve breakfast from 6.00am (currently 7.00am);
 - b) The installation of minibars in the more upmarket room accommodation;
 - c) Approval of an extended licensed area, with an implied requirement to have approval of material alterations;
 - d) An increased licensed area commencing with Stage 1 – a 90 metre squared Alfresco Area. Application for Stage 2 – the Deck and Stage 3 – the Barbecue area to be submitted at a later stage. In total these stages would add an additional 280 square metres of licensed area.
 - e) The removal of the condition for non residential guests to have alcohol without being served a meal.
 - f) Advice that live music would be provided in the downstairs areas, from Stages 1 to 3.
- 29) The Commission at Hearing raised its concerns over the lack of detailed plans and drawings for Stages 1 to 3 to be incorporated in the licensed area of the premises.

- 30) Issues such as Development Consent Authority approval and meeting the various standards applying to parking and capacity have not been addressed. Furthermore the applicant has not fully addressed the community need aspect in what it was seeking. Under Section 32 of the Act:

32 Objects etc. to be considered in determining conditions

In determining the conditions of a licence, the Commission –

- (a) must have regard to the objects of this Act; and*
- (b) may conduct or cause to be conducted any further investigations it considers necessary to enable it to make a proper determination.*

These objects are detailed in Section 3 of the Act as follows:

3 Objects

- (1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor –*
 - (a) so as to minimise the harm associated with the consumption of liquor; and*
 - (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.*
- (2) The further objects of this Act are –*
 - (a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;*
 - (b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and*
 - (c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.*
- (3) When the Commission exercises a power or performs a function under this Act, the Commission must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.*

- 31) Before any consideration of material alterations described as Stages 2 (Deck area) and 3 (Barbeque area) the Commission advises that it will require a more substantial and comprehensive addressing of the community and public interest issues as required under the Act. The Commission is able to consider the Stage 1 (Alfresco area) at this stage as it is an incremental extension to the Motel dining and patron capacity. It does not provide for, at least to its fullest extent, the proposal to have live music to a large audience.
- 32) It is apparent to the Commission that the applicant is proposing to develop a large capacity area where live music can be played, with the service of drinks and meals, in attempting to capture a market previously catered for when the Alice Springs Plaza Hotel (Melankas) and the NT Rock Bar were in operation. Mr Kelvin Martin during Hearing referred to the application providing an entertainment product not being catered for in Alice Springs.
- 33) The Commission has some concern, if not at least some serious reserve, in granting approval to a large scale entertainment venue. It is more satisfied to deal with and accept a smaller capacity restaurant venue as envisaged under the revised application before it. This will enable the compatibility of increased Alfresco dining and café patronage and the provision of music entertainment on motel accommodation guests to be gauged. The impact of such a development on the surrounding neighbourhood will also be able to be assessed before any larger scale extension / development is considered.

- 34) Credit is accorded to the applicant for agreeing to reduce trading hours as a measure, in part, to allay the Commission's concern.

Decision

- 35) The Commission determined to agree to:

- a) Extension of time for breakfast to be served to allow for a 6.00am commencement;
- b) Installation of minibars in the spa rooms and upgraded rooms of the accommodation complex;
- c) In principle the incorporation of the Alfresco area (Stage 1 comprising approximately 90 square metres) into the licensed area, subject to the necessary Planning and other approvals;
- d) Provision of alcohol without a meal to non residential guests on the proviso the premises trades and has all the appearances of a restaurant;
- e) The variation of the licence hours for all venues in the complex as follows:
 - i) 12.00midday to 12.00midnight Monday to Thursday;
 - ii) 12.00midday to 02:00 (the following day Friday and Saturday);
 - iii) 10.00am to 12.00midnight Sunday.
- f) That a Noise and Entertainment clause be added to the new licence restricting the level of music amplification and other noise emitted from the premises and for these noise attenuation conditions to be determined by the Director.

- 36) The Commission seeks that the Director in setting these Noise and Entertainment conditions takes regard to the Commission's wishes that live entertainment and music be provided only as an adjunct to its restaurant operations.

- 37) The Commission determined to add the following conditions to the licence:

- a) The premise shall at all times have the appearance of and shall trade predominantly as a restaurant. All tables are to have the appearance of and to be decorated and presented as a restaurant.
- b) The Licensee shall not use nor permit to be used any of the words Hotel, Tavern, Pub or Bar in any description of the premises or in any advertising, promotional material or signage.
- c) Consumption of liquor without a meal will not be advertised or promoted.
- d) Premises shall close no later than one and one half hours after the kitchen closes.
- e) Snack foods will be available at all times.
- f) Liquor to be sold by way of wait staff to patrons who are seated at a table.
- g) The Licensee shall provide adequate security.
- h) At any time liquor may be supplied or sold for consumption on premises to bona fide lodgers of the premises or invited guests of the lodger (in the presence of the lodger), via the mini bar service located in the guest rooms. All purchases must be charged to the lodger's room account.

Richard O'Sullivan
Chairman

23 July 2008