

Director-General of Licensing

Review of Delegate's Decision

Matter:	Review of decision of Delegate of Director-General of Licensing
Premises:	Tommy Guns Original Barbershop GD 208 Casuarina Square Shopping Centre Casuarina NT
Applicant for Licence:	Tommy Guns Casuarina Pty Ltd
Proposed Nominee:	Mr Darryl Finlay
Objectors:	Ms Sandra Thornton Ms Sandra Schmidt, A/Director, Alcohol and Other Drugs, Department of Health Ms Anna Malgorzewicz, General Manager, Community and Cultural Services, City of Darwin.
Applicant for Review:	Ms Frances Pagdin, Director, Alcohol and Other Drugs, Department of Health
Legislation:	Section 29 of the <i>Liquor Act</i> and section 11 of the <i>Licensing (Director- General) Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	6 May 2016

Background

1. By application received on 10 July 2015 Mr Darryl Finlay applied for a liquor licence on behalf of Tommy Guns Casuarina Pty Ltd ("the Applicant"). The Applicant operates a hairdressers and barbershop at the Casuarina Square Shopping Centre ("Casuarina Square") and sought an on-premises liquor licence for the purpose of providing its clients with an alcoholic beverage with a haircut. The Applicant advised that the proposal was to offer one alcoholic beverage per customer per day in conjunction with a haircut. The Applicant also stated that clients would incur no additional cost above that of the haircut, regardless of whether they accepted the alcoholic beverage or not.
2. The application was advertised in the NT News and attracted three objections, including one lodged by Ms Sandra Schmidt, the Acting Director of Alcohol and Other Drugs Services, Department of Health. The objections were found to be compliant with the requirements of the *Liquor Act* ("the Act") and were forwarded to a Delegate of the Director-General of Licensing ("the Delegate") for consideration.
3. By decision dated 26 February 2016 the Delegate determined, pursuant to section 29(1)(a) of the Act, to grant the licence applied for by the Applicant.

Current Situation

4. By letter dated 11 March 2016, Ms Frances Pagdin, Director, Alcohol and Other Drugs Services, Department of Health, sought a review of the Delegate's decision pursuant to section 11 of the *Licensing (Director-General) Act* which provides:

11 Application for review

- (1) *An affected person for a delegate decision may apply to the Director-General for a review of the decision.*
- (2) *The application must be made:*
 - (a) *within 28 days after written notice of the delegate decision is given to the affected person; or*
 - (b) *if the Director-General extends the time allowed for making an application – within the additional time that the Director-General allows.*
- (3) *The application must:*
 - (a) *be in the form approved by the Director-General; and*
 - (b) *be accompanied by the prescribed fee; and*
 - (c) *state the grounds on which it is made and the facts relied on to establish the grounds.*

5. Section 9 of the *Licensing (Director-General) Act* provides that an "affected person" for the purpose of a delegate decision is a person who is declared, under the Act under which the delegate decision is made, to be an affected person. Section 120ZB(1)(c) of the *Liquor Act* provides that a person who lodged an objection during the process that resulted in the decision being made is an affected person for the purpose of a review of the decision.

6. As a result Ms Pagdin, in her capacity as the Director of Alcohol and Other Drugs Services, is an affected person and therefore entitled to seek a review of the Delegate's Decision. Ms Pagdin's request for review complies with the requirements of section 11 of the *Licensing (Director-General) Act*.

7. The grounds on which Ms Pagdin seeks a review of the decision may be summarised as follows:

- It is inappropriate to permit the open consumption of alcohol in an environment designed to cater for families, children, the elderly and the community generally.
- Youth and adolescent drinking behaviour will be influenced by exposure to drinking practices and children are likely to start drinking alcohol at an earlier age. The welfare of children will be adversely affected through being in the company of adults who have a beer with their haircut and are thereby exposed to intoxication.
- There does not appear to be any separate or dedicated area for children at the premises, contrary to claims made by the Applicant.
- The proximity of the Tommy Guns premises to stores marketing goods to children.
- The potential for numerous other businesses operating at Casuarina Square to apply for a liquor licence and for customers to become intoxicated whilst shopping.
- None of the six Tommy Guns franchises operating in Australia currently holds a liquor licence, noting that in Queensland hairdressers are exempt from obtaining a liquor licence to provide alcohol to clients.
- The prospect of a person visiting the premises for a haircut, consuming a quick beer and then driving home presents an unacceptable risk as there will be no safeguards to deter problem drinking.

- The licensed area is not properly delineated and may provide for the consumption of alcohol outside the Tommy Guns premises.
- Existing problems at the Casuarina Square with problem drinkers will be exacerbated by the addition of a further licenced premise within the complex.
- The offer of a beer and a haircut at 10 am may prove attractive to anti-social elements of the community and trigger anti-social behaviour if that service is refused.
- The Director-General should closely consider the effect on amenity as well as patron and community safety when reviewing the application, especially the safety and welfare of children and the vulnerable in the community.

Consideration of the Issues

8. This is an application for a quite limited liquor licence for the business premises of Tommy Guns Original Barbershop located at the Casuarina Square. Whilst there is some novelty involved in an application for a liquor licence for a hairdressing salon the within application is not without precedent in the Northern Territory with the former Licensing Commission granting such a licence in 2004.¹
9. Headlines for Hair & Beauty, located in Alice Springs, is a hair dressing salon which has held a liquor licence since 2004. The conditions attached to that liquor licence authorise the licensee to provide clients of the salon with alcoholic beverages in conjunction with a hair dressing appointment. A number of persons lodged formal objections to the grant of the licence. In determining to grant the liquor licence the Licensing Commission, at paragraph 26 of its reasons for decision, made the following observation:

... ..we are prepared to offer the applicant a liquor licence which will be carefully crafted to embody the restrictions and limitations which follow. Such a licence in our view will provide a civilised, modest and non-problematic alcohol consumption environment that should have zero impact on any current liquor issues in Alice Springs. It is difficult to see such a licence having any relevance to social disorder problems, or fostering or constituting any encouragement to excessive drinking. The licence we intend to grant sits comfortably with current competition principles, and should sit comfortably with the newly articulated objects of the Liquor Act which are expected to come into operation on 5th May 2004, especially those which aim:

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

to facilitate a diversity of licensed premises and associated services for the benefit of the community.

10. The then Licensing Commission's view in respect of this type of liquor licence being modest and non-problematic in terms of alcohol related harm has been confirmed by the fact that Headlines for Hair & Beauty has not been the subject of any complaint in respect of the supply of alcohol to its clients for a period exceeding 10 years. Nor has the liquor licence resulted in the alcohol fuelled anti-social behaviour and resultant harm anticipated by objectors at the time the application was under consideration. That outcome is not surprising given that clients of the salon attend for a hair dressing appointment, during which they are provided with a complimentary alcoholic drink, and not for a drinking session.
11. The liquor licence granted to Tommy Guns is subject to a specific condition relating to the concept of the premises. Namely, that the premises shall at all times trade primarily and predominantly as a barbershop. In addition, the licence shall cease to be in force upon any variation from the hairdressing concept. A further licence condition requires that all staff employed at Tommy Guns who are directly involved in the sale, service or supply of alcohol

¹ NT Licensing Commission – Reasons for Decision - Headlines for Hair and Beauty: 29 April 2004

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to the public or the supervision of these activities, are required to hold or obtain a Responsible Service of Alcohol Certificate within one month from commencement of employment.

12. I do not agree with the submissions that it is inappropriate to permit the open consumption of alcohol in an environment designed to cater for families, children, and the community generally. Casuarina Square is typical of similar dedicated shopping centres throughout Australia, most of which include licensed restaurants and bars and/or take away liquor outlets for the convenience and enjoyment of patrons. Casuarina Square currently includes a licensed restaurant and take away liquor outlets attached to the major supermarkets.
13. The submission that no licensed premises should be permitted to operate in shopping centres cannot be maintained and does not take account of the fact that many shoppers patronise and responsibly enjoy the opportunity for a family meal, including alcohol, in a safe and family friendly environment. It is acknowledged that the Tommy Guns premises are in proximity to stores catering for children and adolescents. Again, that is not unusual for major shopping centres where businesses within the centre offer a wide range of goods and services catering for the needs of the entire community, including families and children.
14. In my view the submission that youth and adolescent drinking behaviour will be influenced by exposure to drinking practices at Tommy Guns is misguided given the significant limitations in respect of the amount of alcohol that will be supplied to customers, that is one beer per adult per haircut. It is, in my opinion, bordering on fanciful to suggest that the consumption of one beer whilst having a haircut will result in intoxication of patrons and the exposure of children to anti-social behaviour to any greater extent than would occur if a family visited the licensed restaurant for a meal and drinks.
15. Whilst Tommy Guns does not have a separate or dedicated area for children at the premises there is no requirement under the liquor licence for that to be the case. Alcohol provided at the premises must be consumed within the confines of the tenancy and the entire floor space of the premises is licensed for the consumption of liquor. I do not see that situation as raising any specific or significant risk and note that it would be most unusual for licensed premises to include an "alcohol free" zone where no alcohol is permitted. Given the relatively small size of the tenancy occupied by Tommy Guns I do not consider it practical or necessary that an area of the floor space be devoted exclusively to children.
16. Whilst the potential for other businesses operating at Casuarina Square to apply for a liquor licence certainly exists I do not see that possibility as an existing or cogent reason to reject the application made by Tommy Guns in this instance. Even were there to be a proliferation of applications for similar liquor licences at the Shopping Centre it would be a requirement that each supply of alcohol would be contingent on a purchase from the store and the prospect of patron continuing to shop at different premises just to obtain free beers, and thereby result in significant intoxication, is extremely remote.
17. It is correct that no other Tommy Guns franchise currently operating in Australia holds a liquor licence. As noted in the letter seeking the review, in Queensland hairdressers are exempt from obtaining a liquor licence to provide alcohol to clients. Five of the current Tommy Guns franchise are in fact located in Queensland where an exemption applies. It should also be noted that in Victoria hairdressers have been exempt from holding a liquor licence where they provide alcohol to clients from May 2014, subject only to conditions that the alcohol must be provided on a complimentary basis, must be consumed on the premises by a customer and must not be supplied to a minor. Those exemptions indicate a public demand for such services and an acknowledgement by the relevant governments that the supply of alcohol in such circumstances does not present a significant risk to public safety and wellbeing.
18. The submission that a person visiting the premises for a haircut, consuming a quick beer and then driving home presents an unacceptable risk in terms of road safety is not sustainable on

the basis the law as it stands in the Northern Territory, and elsewhere within Australia, does not mandate a 0% blood alcohol content for persons driving motor vehicles.

19. It is also difficult to reconcile the submission that the prospect of Tommy Guns patrons consuming one beer whilst having a haircut will exacerbate the existing problems at Casuarina Square with problem drinkers and alcohol fuelled antisocial behaviour. Few if any of those problems are the result of irresponsible on premise consumption of alcohol at licensed premises within Casuarina Square but rather from the purchase and unlawful public consumption of take away liquor purchased from the existing liquor outlets at Casuarina Square and in close proximity.
20. In the same vein, I do not accept that the offer of a beer and a haircut at 10 am will prove attractive to anti-social elements of the community and trigger anti-social behaviour. The minimum cost for a haircut at Tommy Guns is in the order of \$25.00. It is implausible to suggest that a person with an alcohol problem will expend that amount for a haircut and a beer whilst there are two major take away liquor outlets located at Casuarina Square from which beer may be purchased from 10 am for a fraction of the cost of a haircut at Tommy Guns.
21. On the basis of the matters considered above I have determined to affirm the decision of the Delegate in this instance and endorse the grant of a liquor licence to Tommy Guns Casuarina Pty Ltd for the purpose of authorising the supply of alcohol to patrons utilising the services offered by Tommy Guns Original Barber Shop.

The Decision

22. For the reasons set out above, and in accordance with section 14(2)(a) of the *Licensing (Director-General) Act*, I have determined to affirm the decision of the Delegate to grant a liquor licence to Tommy Guns Casuarina Pty Ltd, subject to the existing conditions attached to the licence as issued following the Delegate's decision.

Review of this Decision

23. Section 120ZA(a) provides that a decision made by a delegate of the Director-General is not reviewable by the NT Civil and Administrative Tribunal ("NTCAT"). A review of a delegate's decision, by the Director-General, is conducted in accordance with Part 3 of the *Licensing (Director-General) Act*. Section 9 of that Act relates to the review of delegate decisions by the Director-General and provides, relevant to this matter:

9 *Meaning of affected person*

A person is an **affected person** for a delegate decision if any of the following apply:

- (a) *the person is declared under the Act under which the delegate decision is made to be an affected person for the decision;*
 - (c) *for a decision that was made in relation to an application – the person is the applicant;*
 - (d) *the person made a submission, complaint or objection (however described) during the process that resulted in the decision being made.*
24. As a result, affected persons for the purpose of the Delegate's decision in respect of Tommy Guns Original Barbershop were the applicant for the liquor licence (Tommy Guns Casuarina Pty Ltd) and the objectors to the application before the Delegate, namely Ms Sandra Schmidt, A/Director, Alcohol and Other Drugs Services, Department of Health, Ms Sandra Thornton and Ms Anna Malgorzewicz, General Manager, Community and Cultural Services, City of Darwin. Section 11(1) of the *Licensing (Director-General) Act* provides that each of the affected persons was entitled to seek a review of the Delegate's decision.

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25. Of the objectors to the application, only Ms Pagdin, on behalf of Alcohol and Other Drug Services², sought a review. On one argument, Ms Pagdin and the Applicant are the only parties to the review by the Director-General and the objectors who did not seek a review are not parties. However, the legislation applicable in this case appears to provide otherwise in respect of who is entitled to seek a review by NTCAT of the Director-General's decision on review. The Delegate's decision in this case was made under the *Liquor Act*. Under that Act a decision to grant a liquor licence pursuant to section 29 is specified in the Schedule to the Act as a reviewable decision. Affected persons for the purpose of a section 29 decision are prescribed under section 120ZB of the *Liquor Act*. In respect of a decision made by the Director-General following a review of a delegate decision, section 120ZB(3) provides:

(3) A person is an **affected person** for a reviewable decision mentioned in section 120ZA(b) if the person was an affected person under the Licensing (Director-General) Act for the decision that was reviewed under Part 3 of that Act.

26. Section 9 of the *Licensing (Director-General) Act* defines "affected persons" for a delegate decision as including, at section 9(d), persons who made an "*objection (however described) during the process that resulted in the decision being made*".

27. Three persons, as identified in paragraph 24 above, lodged an objection to the grant of the licence to the Applicant in this instance. Those objections were considered by the Delegate in reaching her decision to grant the liquor licence. In my opinion all three objectors fall within the definition of affected person prescribed by section 9 of the *Licensing (Director-General) Act* and are therefore now entitled to seek a review by NTCAT of this decision.

28. That conclusion is supported by the fact that the Director-General, pursuant to section 14(2) of the *Licensing (Director-General) Act*, may vary or set aside a decision of a delegate. An objector who is satisfied with the decision of a delegate is unlikely to seek a review by the Director-General. However, if the Director-General subsequently varies or sets aside the delegate's decision it would be reasonable for an objector who was content with the delegate's decision to be entitled to seek a review of the Director-General's varied or substituted decision.

29. In addition, section 15 of the *Licensing (Director-General) Act* provides that the Director-General must give notice of the review decision to the applicant and, of relevance in this instance, to "*each person who has a right to apply for a review of, or to appeal, the decision under the Act under which the delegate decision was made*". In this case a copy of this decision is to be provided to the Applicant and to each of the three objectors.

30. Section 120ZC of the *Liquor Act* provides that a person affected by this decision may seek a review before the NTCAT. As noted above, in this case the affected persons are the Applicant and the three objectors. Any application for review of this decision must be lodged with NTCAT within 28 days of the date of this decision. For the purpose of this decision, and in accordance with the reasons set out above, affected persons are the Applicant, Ms Pagdin on behalf of Alcohol and Other drugs Services, Ms Sandra Thornton and Ms Anna Malgorzewicz on behalf of City of Darwin.



Cindy Bravos
Director-General of Licensing

Date: 6 May 2016

² It is noted that the original objection on behalf of Alcohol and Other Drugs Services was lodged by Ms Schmidt in her then capacity as the Acting Director of that agency. No issue is taken with the fact the application for review was made by Ms Pagdin, the Director of the agency, on the basis the original objection was lodged on behalf of the agency and not by Ms Schmidt in a personal capacity.