Northern Territory Licensing Commission

Reasons for Decision

Premises:	The NT Rock Bar
Applicant:	Blaxland Star Pty Ltd as Trustee for the Rock Bar Unit Trust
Proceedings:	Hearing into Application for the grant of a New Liquor Licence and to Consider Objections Pursuant to Section 47F(2) of the *Liquor Act* (a)the amenity of the neighbourhood where the premises the subject of the application are or will be located; or (b) health, education, public safety or social conditions in the community
Members:	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mr Paul Fitzsimons
Objectors:	Annie Mulga Ventures Pty Ltd Julie and Kel Martin of Elkira Motel Bojangles Saloon Pty Ltd t/a Bojangles Saloon and Dining Room Red Centre Investments Pty Ltd t/a Diplomat Alice Springs
Appearances:	Tony Whitelum for the Applicant Chris Vaughan for Bojangles Saloon Pty Ltd t/a Bojangles Saloon and Dining Room Julie and Kel Martin of Elkira Motel Matt Mulga for Annie Mulga Ventures Pty Ltd Senior Licensing Inspector Wayne Sanderson
Date of Hearing:	3 June 2009

Background

1) Blaxland Star Pty Ltd has made application for an 'on premise' liquor licence for the premises known as The NT Rock Bar (Rock Bar) located at Lot 108 78 Todd Street, Alice Springs. Just prior to the hearing, the Commission was advised that the applicant was to be changed to 'Blaxland Star Pty Ltd as Trustee for the Rock Bar Unit Trust.' The Unit Holders of the Trust are proprietary companies for the George Family Trust and the Cowan Family Trust. The relevant documentation regarding the trust structure has been provided to the Commission to its satisfaction.

2) The application was advertised in the Centralian Advocate on Tuesday 18 November and Friday 21 November 2008 with the following proposed trading conditions:

   - *Trading Hours are proposed to be 11:30 to 02:00 hours the following day, seven (7) days per week*
   - *Liquor will be available without the necessity of a meal*
   - *Meals shall be available from 11:30 to 15:00 hours and 18:30 to 21:30 hours for service to any part of the licensed area*
   - *Snack foods and complimentary 'tap' water will be available at all times*
   - *Camera surveillance will be operating on the premises*

- *Live Entertainment is proposed to be by way of live music (in the form of acoustic sets) and is to cease at midnight*
- *The maximum patron numbers will be 250 persons*
- *Adequate Security is to be provided*

Hearing

3) Four (4) letters of objections were assessed as being valid and in accordance with the requirements of the *Liquor Act* (the Act). As a result, the application was referred to a hearing before the Commission on 3 June 2008 in Alice Springs. The hearing included a site visit of the proposed premises by the Commission and all interested parties. The venue needs some refurbishment but essentially it is already well set up with a large internal bar/dining area and an open 'shop front' onto Todd Street. Behind this space is an external courtyard, kitchen and toilets.

Evidence Presented on Behalf of the Applicant

4) Mr Whitelum appeared on behalf of the Licensee company. He advised that Mr Jolyon (Jo) George and Mr Robert Cowan (the applicants) were the individuals behind the application. Over the past few years, Mr George and Mr Cowan have created and managed a successful tourist venture called NT Rock Tours. The business is aimed at the eighteen (18) to forty (40) year age group, principally international backpackers, offering reasonably priced safari tours to Uluru and other tourist destinations in the area.

5) The applicants now wish to extend their business to enable them to provide a venue for their tour guests to congregate before and after tour. They want to offer a place for guests to socialise, eat reasonably priced meals and/or drink alcohol. The applicants hope that the venue will also attract local Alice Springs residents - particularly local professionals.

6) This is not the first time that the applicants have tried such a venture. In February 2008, they opened a similar venue with another partner on the same site which traded until May 2008. The applicants advise that while the venue traded successfully, there were underlying management and operations issues evident. The concerns of most of the objectors appear to stem from the manner in which the Rock Bar was managed during the three (3) month period.

7) The applicants at hearing were quick to distance themselves from any concerns relating to the Rock Bar's period of trade last year. Their former partner was the Nominee at the time and they place responsibility for any concerns squarely upon her shoulders. The applicants deny that they were even aware of many of the allegations of excessive noise, drunkenness and antisocial behaviour emanating from the premises. Their evidence is that they were principally involved in their tour operator business and left the proper management of the Rock Bar to their partner.

8) The applicants consider that the problems they had with the Rock Bar business last year was their 'baptism of fire' – both as regards management of a licensed premise and partnership issues. They do not accept the veracity of many of the claims made by objectors and find allegations that they were involved in allowing intoxicated people to enter and remain on premises as "ridiculous and insulting". They submit that they have now learnt a lot about managing a licensed premise and they consider that they are sufficiently experienced to run one. They are also currently far less involved in the day to day business of their tourist operation than they were last year and their intention is that Mr Jo George will act as Nominee of the premises.

9) Mr George gave evidence of their shared vision for the Rock Bar. He and Mr Cowan want to mandate a strict dress code with neat and tidy attire and appropriate footwear. A bar manager will be employed to manage bar sales and bar staff and Mr George hopes to sell

good quality wines and reasonably priced food similar to that sold in various local clubs. He advised that they were not looking at employing a top chef or making their name out of the kitchen's reputation. Instead, simple "counter style" food such as schnitzel and chips is likely to be on the menu and it is anticipated that they will cater for meals for fifty (50) to one hundred and fifty (150) people per night. The internal dining/bar area has room for tables for forty (40) people. There are also a number of barrels with high stools inside that can serve as tables for food. Sixty (60) to seventy (70) can be accommodated for eating in the outdoor decking area. The internal spaces in the venue will be non-smoking. The applicants tendered documents to support their submissions including a draft menu, a wine list and a dress code.

10) As regards security issues, the applicants advise that they have already enlisted the aid of a security firm should their licence be granted. Concerns that previously the advice of their security firm was ignored by them have been heeded by the applicants who reiterate that they do not intend to ignore them this time round. They also have more taxi spaces outside their venue now to assist in dispersing people more quickly from the premises.

11) Mr George gave evidence of the measures that they are going to take to ensure that noise from the premises is kept at a reasonable level in accordance with any licence condition. They want to be able to play amplified acoustic music but they offer to purchase a special noise control device to ensure they comply with the requirements of their liquor licence. Mr Peter Bannister, Environmental Scientist South has offered to assist the applicants in obtaining the right device and in programming it once installed.

Evidence of the Objectors

12) All written submissions from Police and from objectors were taken into account including the concerns of Red Centre Investments Pty Ltd trading as Diplomat Hotel who elected not to attend at the hearing. Mr Chris Vaughan, Mrs Julie Martin and Mr Matt Mulga gave evidence at the hearing. Each of these objectors manages licensed businesses or has an interest in one. Their concerns echoed each other in that the noise and antisocial behaviour emanating from the Rock Bar last year has made them concerned that the applicants will simply re-establish a similar business with all of the same problems.

13) Mr Vaughan has a licensed premise next door to the proposed Rock Bar. He gave evidence about the problems he experienced when the bar was open last year. He supported some of his claims with documentary evidence and advised that in the three (3) months that the Rock Bar was trading, his premises required an extra twenty-five (25) hours of security per week. Mr Vaughan is most concerned by the new application and clearly does not trust the applicants to manage a licensed premise such as the one proposed. He challenges their evidence that they did not know about the alcohol related problems at the Rock Bar last year and resists any attempts by them to try to forge some relationship between their neighbouring premises at this time.

14) Ms Julie Martin from Elkira Motel, some two (2) streets away, gave evidence that her guests complained to her last year that they were not able to sleep because of noise from the Rock Bar. Her position is that if noise levels are reasonable and her guests cannot hear anything from the premises, then she will not have a problem if the new venue reopens.

15) Mr Mulga's concerns regarding antisocial behaviour were similar to those expressed by the other objectors on that issue.

Consideration of the Issues

16) Section 26(3) provides:

(3) The applicant for a licence must demonstrate in the application that the grant of the licence will be in the public interest:

(a) by providing information about any relevant criteria referred to in section 6(2); and

(b) by specifying any other matter relevant to the public interest in the sale, provision, promotion and consumption of liquor.

17) In considering whether to grant a licence, the Act prescribes that the Commission must have regard to the objects of the Act as set out in Section 6.

18) The Commission accepts that the applicants are financially secure and that the corporate and trust structure proposed is acceptable. The Commission's focus however remains on whether Mr George and Mr Cowan have satisfied us that they have the necessary skills and expertise to run a responsible establishment.

19) The Commission generally accepts the documentary and oral evidence tendered by other Licensees that the Rock Bar was not a responsibly managed premise when it was open for three (3) months in 2008. There is sufficient corroborative evidence from different sources to be satisfied that the premises were poorly managed with at times unacceptable levels of noise, intoxicated or unruly behaviour by patrons leaving the premises and generally poor management of the staff and the business.

20) The Commission does not accept Mr George and Mr Cowan's assertions that they were largely unaware of the problems and that the blame lay fairly and squarely with their former partner who was Nominee at the time. It is too glib to sidestep the significant problems emanating from the Rock Bar and for the applicants to say they were unaware. Whilst they were not the Nominee, they were the financial partners and should have had sufficient control to pull matters back into line.

21) This is not a complaint hearing however. It is a hearing to enable the Commission to consider whether or not this liquor licence should be granted. We note Mr George's (as proposed Nominee) and Mr Cowan's documentary and oral evidence as to how they intend to run the business should a new licence be granted.

22) The Commission has some concern that the concept of the venue is not fully thought out and whilst we query the mix of professionals and international backpackers, we understand that this formula worked in trading last year. We also find Mr George's stated intention to serve cheap food with fine wine not without its anomaly. However, the draft wine list and menu assisted and gave the Commission some comfort in this regard.

23) The Commission understands the nervousness of neighbouring Licensees who consider that Mr George and Mr Cowan got their opportunity to prove themselves and their business last year and failed - at least where community amenity issues were concerned. The Commission also understand the applicants' interests in servicing their clients by providing a place to socialise and eat dinner.

24) The Commission will not tolerate a poorly managed premise in Alice Springs that may be detrimental to Alice Springs community and the public interest. What it will support is a well controlled and regulated venue promoting a responsible drinking culture and a safe facility for back packers to eat, drink and socialise. The Commission is satisfied that such a venue if well managed will assist in servicing tourists particularly. To ensure the desired outcome, the Commission intends to grant a licence but to impose tight restrictions on the venue.

Decision

25) The Commission is satisfied that a licence should be granted but with restrictions as follows:

(a) An on licence with trading hours between 11.30 and midnight, seven (7) days per week excluding Good Friday and Christmas Day with an emphasis on provision of food.

(b) The premises are to retain the appearance of a restaurant and a significant proportion of the internal area must be retained for dining.

(c) Meals must be available from 11.30 to 1500 hours and from 1830 to 2130 hours for service to any part of licensed premise. A packet of chips or a pie is not considered to be a meal.

(d) Liquor may be supplied without a meal but snack food and complimentary tap water must be available at all times.

(e) The Maximum patron number for the premises is two hundred (200).

(f)

(i) The Licensee shall not permit or suffer the emanation of noise from the premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of the neighbourhood.

(ii) The issue of the licence is conditional upon the purchase, installation and programming of a noise control device by the Licensee to the satisfaction of an authorised officer (Noise Control Officer) of the Department of Natural Resources, Environment, the Arts and Sport appointed under the *Waste Management and Pollution Control Act.*

(iii) the Licensee shall comply with the requirements or instructions of a Noise Control Officer at all times.

(g) A security plan is to be developed and submitted to the Deputy Director Licensing for his approval.

(h) The Licensee shall comply with such requirements for and in relation to camera surveillance as the Commission shall at any time notify to the Licensee in writing as being thereafter applicable to the licensed premises.

(i) The decision to grant an On Licence is to be reviewed after six (6) months of operation with the Commission to obtain the views of Northern Territory Police and the Deputy Director of Licensing as to its continued operation as an On Licence. The review is to include consideration of Police Incident Reports and other matters brought to the attention of the Police and the Deputy Director of Licensing.

Richard O'Sullivan
Chairman

29 June 2009