

PARTIES: LARIAT ENTERPRISES PTY LTD  
AND LIQUORLAND (AUSTRALIA) PTY LTD  
  
V  
  
JOONDANNA INVESTMENTS PTY LTD  
AND THE LIQUOR COMMISSION OF NT  
  
TITLE OF COURT: COURT OF APPEAL (NT)  
  
JURISDICTION: DARWIN  
  
FILE NO: AP13 OF 1994  
  
DELIVERED: 23 MARCH 1995  
  
HEARING DATES: 10 MARCH 1995  
  
JUDGMENT OF: MARTIN CJ., KEARNEY J  
AND GRAY AJ.

**CATCHWORDS:**

Administrative Law - Judicial Review - Application for  
liquor licence - Jurisdictional Error - Originating  
motion to quash Commissioner's decision -  
Considerations taken into account - "needs and  
wishes of the community: - Weight - Balancing  
exercise -

Liquor Act 1978 (NT)

Practice and Procedure - Judicial review - Liquor  
Commission's decision - Approach -

Liquor Act 1978 (NT), ss32 and 51

*Public Service Association of South Australia v Federated  
Clerks' Union* (1991) 173 CLR 132, followed.  
*Hockey v Yelland* (1984) 157 CLR 125, followed.

**REPRESENTATION:**

*Counsel:*

Appellants: Mr Reeves  
First Respondent: Mr McDonald  
Second Respondent: Mr Wild

*Solicitors:*

Appellants: Mr Cureton  
First Respondent: Mr J Moore  
Second Respondent: Ms Meegan

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IN THE COURT OF APPEAL  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

NO. AP13 of 1994

BETWEEN:

LARIAT ENTERPRISES PTY LTD  
(ACN 053 410 763) AND  
LIQUORLAND (AUSTRALIA) PTY  
LTD

Appellants

AND:

JOONDANNA INVESTMENTS PTY  
LTD (ACN 009 596 052)

First Respondent

AND:

THE LIQUOR COMMISSION OF THE  
NORTHERN TERRITORY

Second Respondent

**CORAM: MARTIN CJ., KEARNEY J. AND GRAY AJ.**

REASONS FOR DECISION

(Delivered 23 March 1995)

THE COURT

On 3 April 1993, the first respondent ("Joondanna") applied to the second respondent ("the Commission") for a licence to sell liquor at a tavern proposed to be built at Palmerston. The hearing of the application started on 22 November 1993. The appellants appeared as objectors.

On 17 December 1993, the Commission refused the application. It delivered written reasons for its decision on 22 March 1994.

By an originating motion filed on 18 May 1994, Joondanna sought an order in the nature of certiorari to quash the Commission's order. It was alleged that the Commission had misconstrued section 32 of the *Liquor Act* ("the Act"), from which its jurisdiction derived, had made an error of law on the face of the record, had given inadequate written reasons and had erred in various other ways.

The motion was heard by Angel J on 25 July 1994 and judgment delivered on 29 July. His Honour quashed the Commission's order on the ground that the Commission had misconstrued s32 of the Act in a way which had resulted in jurisdictional error. The appellants appeal from the order of Angel J to this Court. In all the proceedings, including this appeal, Mr Reeves, of counsel, appeared for the appellants and Mr McDonald, of counsel, appeared for Joondanna. Upon the appeal, Mr Wild QC appeared for the Commission. After hearing argument, we allowed the appeal for reasons to be published in due course; we now publish those reasons.

The proposal which was the subject of the original application, involved the construction of a tavern which would have two bars, a bottle shop and a bistro. The evidence showed that there was an existing tavern and take-away bottle shop complex within a very short distance of the proposed tavern. Also close by was the Coles Supermarket with its own licensed take-away bottle shop.

The proposal contemplated that the revenue generated by

the tavern would help finance a further development, namely a supermarket and speciality shops.

Section 32 of the Act provides for the matters which should be considered by the Commission upon an application for a licence. It is necessary to set it out in full:

" (1) In considering whether to grant an application for a licence and in determining the conditions of a licence pursuant to section 31, the Commission shall have regard to -

- (a) the location of the licensed premises;
- (b) the location and conditions of any licensed premises in the vicinity of the premises which are the subject of an application for a licence;
- (c) the nature of any business associated with the licence applied for that it is proposed to conduct on the premises in respect of which the application is made;
- (d) the needs and wishes of the community;
- (e) except where the Commission is satisfied that an applicant for a licence does not propose to conduct any business under the licence applied for, the financial and managerial capacity of the applicant for a licence to conduct any business associated with the licence applied for; and
- (f) where -
  - (i) the premises which are the subject of an application for a licence are located in a community government area; and
  - (ii) the community government council for that community government area has the power to make by-laws with respect to liquor -  
  
advice offered by that community government council, including advice with respect to any intended exercise of the power referred to in sub-paragraph (ii); and
- (g) any other matter that the Commission thinks fit.

(2) The Commission may conduct such investigations and cause to be conducted such investigations as it thinks fit in order to inform itself of the matters referred to in subsection (1)."

It is convenient at this point to set out section 56 of the Act which is also relevant to this appeal:

" Subject to section 51, where a hearing has been conducted by the Commission under this Act, a decision of the Commission -

- (a) shall be final and conclusive; and
- (b) shall not be challenged, appealed against, reviewed, quashed or called into question in any court."

The Commission heard evidence touching on the "needs and wishes of the community" for the proposed tavern. In the result, the Commission was not satisfied that a community need or wish for the tavern had been shown. It expressed itself as follows:

"The Commission does not accept that the community wants to see a development that will provide two more bars, one additional bottle shop and one lounge style bistro."

In its reasons for decision, the Commission expressed its concern that the second phase of the development may not be carried out. It then said:

"Even were the Commission minded to grant a licence conditional upon an all or nothing development, on the evidence presented to the Commission, there is no overwhelming and unambiguous demonstration of the needs and wishes of the community and the application must fail."

Earlier in its reasons, the Commission said:

"The Commission believes that it should only grant a licence that would lead to such a high density of licensed bars and takeaway facilities in circumstances of overwhelming and unambiguous evidence of community support for such a proposal."

The references to "overwhelming and ambiguous demonstration" of the needs and wishes of the community are said to demonstrate that the Commission misconstrued s32 and thus made an error going to jurisdiction. This means, so it is said, that s56 does not bar the making of an order in the nature of certiorari to quash the Commission's orders.

To consider this argument, it is necessary to return to s32. Section 32(1) requires the Commission "to have regard to" a number of matters specified in the sub-paragraphs (a) to (f) and under sub-paragraph (g) "any other matter that the Commission thinks fit".

Accordingly, there is no limit to the matters which the Commission may have regard to as long as such matter is relevant, in the Commission's opinion, to the application for a licence. The Commission must have regard to the matters specified in sub-paragraphs (a) to (f) but may have regard to a further limitless range of other relevant matters.

The Commission is not obliged to give any matter any particular degree of weight. The Commission must "have regard to" each specified matter but it is clearly entitled, in a particular case, to give a specified matter great weight,

little weight or no weight at all. The statutory obligation is to "have regard to" the specified matter and decide what weight, if any, it should be given in the particular circumstances. As the weight to be given to the specified or other matters relevant to a particular application may vary, so may the requirements as to evidence. In respect of some matters a minimum of evidence may suffice, for others a great deal more may be required to satisfy the Commission.

Let it be assumed that the Commission has before it an application for a licence to conduct a bottle shop at a location which the Commission regards as entirely unsuitable. In that context it would be open to the Commission to say that the evidence of the community's need and wish for a bottle shop would have to be "overwhelming and unambiguous" to counter balance the extreme unsuitability of the proposed location.

In most cases, the Commission will be faced with considerations which point in opposing directions and are of differing weight. It will ordinarily be involved in a balancing exercise in determining how its discretion should be exercised.

In this case, the Commission expressly accepted that it was obliged to have regard to the needs and wishes of the community. In its reasons for decision, it set out the evidence which supported the existence of such a need and wish.

It stated that the question of determining the needs and wishes of the community was "the central issue" in the

application. In the result, the Commission did not accept that the community either needed or wished a development of the type the subject of the application.

The Commission was concerned that the applicant was relying upon the anticipated cash flow from the tavern to finance the development of a supermarket. The Commission was troubled by the possibility that the applicant would build the tavern and not proceed with the supermarket. In that event, there would be an undesirable proliferation of liquor outlets.

In that context, the Commission made the observations, earlier set out, which are said to constitute error.

We read the criticised passages as meaning no more than that, because of the density of liquor outlets which the proposed development would produce, an overwhelming expression of community support would be required before a licence for such a development could properly be granted.

We can find nothing in the passages complained of which justifies the conclusion that the Commission misdirected itself in any way. The Commission clearly recognised that it must have regard to the needs and wishes of the community. It found as a fact that there was no such need or wish for the tavern in this instance. It volunteered the opinion that very strong evidence of such a need or wish would be required to counterbalance the undesirable aspects of the proposed development.



To say that the Commission misconstrued s32 and thus made an error going to jurisdiction is quite unwarranted. Accordingly, certiorari does not lie and s56 bars any other attempt to have the decision of the Commission reviewed; see *Public Service Association of South Australia v Federated Clerks' Union* (1991) 173 CLR 132 and *Hockey v Yelland* (1984) 157 CLR 124 at 130, per Gibbs CJ.

In justice to the learned primary judge, it should be said that the issue which we regard as decisive did not appear to have been given the emphasis before His Honour that it deserved. Mr Reeves assured the Court that the point was raised, but His Honour's reasons for judgment justify the inference we have drawn.

The foregoing are the reasons the appeal was allowed and the following orders made viz:

1. That the orders made by Angel J on 29 July 1994 be set aside.
2. That the order made by the Commission on 17 December 1993 be restored.
3. That the first respondent pay the appellant's costs of the appeal and of the proceedings before Angel J.

The second respondent made no application for costs and no order was made in respect of them.