

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	The Archrival & Nirvana Restaurant Palmerston
LICENSEE:	Not Another Sports Club or Irish Pub Pty Ltd
LICENCE NUMBER:	80315980
NOMINEE:	Jason Hanna
PROCEEDING:	Application for a variation in licence conditions pursuant to section 32A of the <i>Liquor Act</i> and the hearing of an objection to the application from Superintendent Greg Dowd, Northern Territory Police
RELEVANT LEGISLATION:	Sections 3, 6, 32A, 47F, 47H of the <i>Liquor Act</i>
HEARD BEFORE:	Ms J Huck (Presiding) Mr C Spencer Mr P Costigan
DATE OF HEARING:	21 October 2004
APPEARANCES:	Alison Worsnop and Acting Superintendent Mark Christopher for Superintendent Dowd Jason Hanna for the Licensee Peter Boyle for the Director of Licensing

Background

1. On or around 1 June 2004 Mr Jason Hanna lodged an application to vary the licence conditions of the premises known as The Archrival & Nirvana Restaurant Palmerston (the Archrival). Specifically he sought to change the trading hours for Thursday nights, varying the existing closing time from 2.00am (Friday morning) to 4.00am. The premises were already licensed to trade to 4.00am on Friday and Saturday nights. The application was advertised in the *Northern Territory News* on 9 and 11 June 2004. Only one objection to the application was received. This objection was lodged by Superintendent Greg Dowd, a member of the Northern Territory Police.

2. Section 32A of the *Liquor Act* (the Act) provides for a Licensee to apply to the Licensing Commission (the Commission) for a variation of the conditions of the licence. If the Commission considers it to be in the public interest, the Commission can require the Licensee to advertise the application in a newspaper and must then consider any objections to the licence that arise from such advertisements in the course of making a decision on the application for the variation.

The objection

3. The Act currently allows objections to be lodged on the following limited grounds:

47F (2) The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –

(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.

4. In this particular case, the objection from Superintendent Dowd was made under section 47F(2)(a) of the Act, that the variation to the licence might, or would, adversely affect the amenity of the neighbourhood where the premises are located. The facts Superintendent Dowd planned to rely on for the objection were set out in a letter dated 8 July 2004 and are summarised below:

- that the relevant neighbourhood consisted of the central business district (CBD) of Palmerston and the surrounding residential areas of Palmerston;
- that there was already an adequate supply of alcohol in the neighbourhood;
- that the variation would lead to an increase in alcohol related anti-social behaviour, including assaults, domestic violence and disorderly behaviour;
- that an analysis of Police data indicates that on evenings of late night trading, Police are more frequently required to attend incidents relating to intoxicated patrons, assaults and disturbances;
- that many of these incidents occur after 2.00am and appear to be related to the patrons of the Archival and Nirvana Restaurant; and
- that these incidents affect the amenity of the neighbourhood in terms of noise and actual and perceived community safety and also divert Police resources from other matters.

5. Mr Hanna provided a comprehensive written response to the objection on behalf of the licensee, including a critique of the Police statistics. He argued that:
 - the surrounding area is not residential and therefore the relevant neighbourhood for the venue is the CBD;
 - the venue does not impact on residential areas in terms of noise and perceptions of community safety, law and order;
 - that, unlike Darwin City, there are currently no late night venues in Palmerston on Thursday nights;
 - that the venue keeps strict control over the supply of alcohol and the behaviour of its patrons;
 - that many of the incidents involving Police at, or near, the Archrival involve patrons from other venues who, for example, may have been refused admission to the Archrival because of intoxication or failure to meet dress standards;
 - that the venue has a good relationship with the Police and the Police statistics will reflect calls from Archrival staff;
 - that the Police statistics reflect a very low number of late night incidents for Sunday through to Thursday;
 - that the venue experiences few problems on Thursday nights, despite some of the other venues closing at 1.00am and their customers then migrating to the Archrival; and
 - that Thursday night attracts a different clientele with a different attitude to the consumption of alcohol than Friday and Saturday nights and this is unlikely to change with the extension of hours.

6. Due to other commitments, Superintendent Dowd could not attend the hearing in person. He was represented at the proceedings by Ms Worsnop and Acting Superintendent Christopher. Acting Superintendent Christopher also gave evidence, as did Sergeant Paul Maccioni. Both officers have direct experience working in the Palmerston area; Acting Superintendent Christopher in a mainly management capacity, and Sergeant Paul Maccioni in various operational roles including as the supervisor of the tactical team.

7. Police tendered the following documents in support of their case:
 - a document titled "*PROMIS incidents reported relating to the Arch Rival, 11 University Ave Palmerston. Reporting Period 01 June 2003 and 30 June 2004*";
 - a document titled "*Some related PROMIS jobs for reporting period*" (providing details of dates, times, descriptions of reported incidents and outcomes);
 - an aerial photograph of Palmerston CBD;
 - an article from *Northern Territory News* dated 12 October 2004, with the headline "*Soldiers rescue woman*" – the article

describes an attack on a woman walking home from a nightclub in Palmerston at 3.30am on a Saturday night; and

- the National Health and Medical Research Council (2001) “*Australian Alcohol Guidelines; Health Risks and Benefits*” (the NHMRC Guidelines)

8. Police advised that the PROMIS records have a number of limitations. These include the following:

- the PROMIS records provide the nearest street address for an incident;
- where that address happens to be a licensed premises, this does not indicate that the reported incident is related to alcohol or has any connection with that licensed premises – the address is purely a geographical descriptor;
- the “reported incidents” often have little resemblance to reality, for example, what is reported as a “riot” might turn out to be two people having a verbal argument with a few people watching;
- the reports include both callouts and reports made as a result of routine patrols;
- some of the reports will be the result of a venue’s own staff requesting police attendance for incidents which may or may not be associated with the premises;
- not all incidents attended by police are recorded in the PROMIS records; and
- the records include quick thumbnail descriptions and may not always be accurate in their detail.

9. For these reasons, Police representatives asked that the qualitative data in the document titled “*Some related PROMIS jobs for reporting period*” be treated as confidential. Mr Hanna agreed with the Police comments on the problems with the interpretation and accuracy of these records. He said that, from his perusal of the documents, about one third of the incidents recorded were reported by his staff and that the majority involved people outside, and not necessarily associated with, the premises. He also provided some examples of summaries of incidents which he regarded as particularly inaccurate. His version of events was not contested. An order was subsequently made with the consent of the parties to make the relevant document confidential.

10. Both Police witnesses made it clear that they considered the Archrival to be a very well run licensed premises and that they had no complaints about the management of the premises or about its security staff, who they considered very professional. They described Police as having an excellent working relationship with the nominee and confirmed that Police have had discussions with the nominee about the plans he has for the premises, including provision of a gaming room and alfresco dining. The application to extend the hours on Thursday nights was the only plan about which they had concerns.

11. Police also confirmed that their concerns are largely related to events happening outside, or in the vicinity of, the premises; events which were sometimes merely the result of the Licensee acting responsibly by refusing entry to intoxicated customers arriving from other premises or asking intoxicated or troublesome patrons to leave. Police said that sometimes people hung around outside the premises and caused trouble. Other concerns were around opportunistic crimes perpetrated by people not associated with any licensed premises against patrons walking to or leaving the premises.
12. Mr Hanna advised that he did not welcome intoxicated patrons from other venues. He said that approximately 20% of potential patrons arriving at the venue after midnight are refused entry by security staff; these staff keep written records of the reasons people are turned away and record all other incidents at the venue. In borderline cases, people are encouraged to get food and bottles of water from the hotdog stand outside the venue before attempting to come into the venue. The hotdog stand is owned and managed by the Archrival and is one of several strategies in place to ameliorate the adverse effects of alcohol.
13. Police said that they were concerned that the physical layout of the Palmerston CBD made the area unsafe for patrons walking to the Archrival from other licensed premises late at night or walking home from the Archrival at night. Poor lighting, vacant blocks and the particular layout of the roads were all of concern. Police described two incidents to illustrate this: the attempted sexual assault on a woman described in the *Northern Territory News* article; and an attack by youths on soldiers walking to the Archrival from another licensed premises.
14. Police concerns around the application for late night closing on Thursdays was directly related to their observations that people tend to move between premises where the licensed hours are different and often such people are already affected by alcohol. They said that this is a problem in Palmerston on Friday and Saturday nights when the other licensed premises close earlier than the Archrival. It was acknowledged that the different licensed premises attract different types of clientele and that not all customers of the other premises automatically move to the Archrival or are admitted to the Archrival. It is not clear how the reopening of the Palmerston Tavern, also licensed to trade late on Fridays and Saturday nights, will impact on the movement of people between premises.
15. Mr Hanna said he had approached the Council regarding lighting and taxi ranks in the area. He had not had a response on the lighting issues. He said that there was no problem with transport in the form of taxis and minibuses on Thursday or Saturday nights. There was, however, a problem on Friday nights. He said that very few people drive to the Archrival at night or drive home from the Archrival at night. This is why the car park is normally fairly empty at night. He said that his patrons are

fairly “clued-in” about drink driving. The Archrival supports the Sober Bob Program and patrons are also aware of the Police presence in the area. He confirmed that it is not uncommon for people arriving after 2.00am to arrive on foot from other premises. However, very few people walk home. The most common form of transport is a minibus, with people often sharing this transport in groups. He described Palmerston as a “city of minibuses” and said that there was usually only a 5 to 10 minutes wait for a minibus and that the costs of getting home for most people would be in the range of \$5 to \$7 each, as most people live locally. The staff and management of the Archrival are active in arranging taxis and minibuses for patrons and managing safety issues while patrons wait outside the venue. Mr Hanna said that the Military now provides transport for their people and soldiers can arrange to be picked up at anytime. Military police can also be called on when necessary.

16. Police confirmed that the management of the Archrival is very conscientious about getting their patrons home safely. There is good external lighting around the premises and the management is proactive in organising taxis and minibuses for their patrons. The security staff at the premises also manage the external environment well and take some of the pressure of the Police at that location. While all licensed premises and car parks are regarded by Police as hotspots, and patrols are still necessary, the Archrival has never been targeted for specific attention.
17. Police explained that some of their concerns about the application arise from the lack of resources for policing in the Palmerston area. They said that, while there is a low volume of incidents in Palmerston itself, Palmerston Police have a large geographical area to cover, including rural and remote areas and backup for Darwin. The need to provide a Police presence around late night venues at closing time (particularly the period 3.15am to 4.00am) places some strains on Police resources. In their view, the later premises close, the more resources Police need to divert.
18. Mr Hanna pointed out that the PROMIS statistics indicated that Police attended incidents near the venue about 1.8 times per weekend and very few times during the week. He agreed that there were more incidents on the weekend (some because of juvenile activity) than during the week. He was of the view that the extended hours on Thursday nights would make little difference to this pattern. Acting Superintendent Christopher commented that trouble is usually proportionate to the number of people out and about at night. On questioning, he confirmed that Thursdays nights are not regarded as a particular concern in the Darwin CBD, where there are a range of late trading venues. Both Police witnesses agreed that it was difficult to predict the future.
19. Police raised concerns about Thursday being pay day for many public servants including Defence Force staff. Mr Hanna advised that his

clientele does not currently fluctuate much between pay Thursdays and non-pay Thursdays and he did not expect this to change.

20. It was confirmed with Police that, although noise had been mentioned as a potential problem in the written objection, there are currently no noise problems with the premises, even on Friday and Saturday nights. This is because there are no residential premises anywhere near the venue and other commercial or office premises occupied at night are some distance away. It was observed that no noise can be heard from the Palmerston Police station, which is the closest building occupied at night. So, although the Archrival's plans for Thursday night include having a band play later than is currently the case, noise is not anticipated to be a significant problem for the neighbourhood.

The application

21. The Commission and the parties involved in the hearing, all had copies of the applicant's written application for the variation of The Archrival and Nirvana Restaurant's licence conditions. The application included a detailed document addressing each of the "public interest" criteria set out at section 6 of the *Liquor Act*. The application emphasised the responsible service of alcohol; the use of licensed crowd controllers to maintain the safety of patrons and the order of the premises; the claim that the location of the premises meant that it had minimum impact on people residing or working in the area or attending places of worship, hospitals or schools; the positive relationship the premises has with local council and the Police; the claim that all staff had appropriate training; that staff worked to a Code of Conduct and credit was used appropriately; the venue's successful track record in operating as a late night venue on Friday and Saturday nights; and the customer demand for late trading on other nights of the week, particularly Thursdays.
22. In order to fully understand the application and assess the objection, Mr Hanna was asked to expand on the information he had provided in his written application. He advised that he was seeking the variation to the licence conditions in order to improve the Archrival business. The variation was one of a number of changes to the business he was planning. He said that Palmerston was a city, not a suburb, and, as such, needed a lot more facilities such as restaurants, pubs and clubs as well as more entertainment. By extending the Archrival's opening hours on Thursday night and providing live music, he believed he was offering the people of Palmerston a service currently only available in Darwin. He said that there was a demand from his current patrons for the extended hours and he also thought that the extended hours would meet the needs of staff working at other licensed premises in Palmerston, giving them somewhere local to go after work. He also hoped to attract some of those Palmerston people who travel into the Darwin CBD on Thursday nights. He explained that currently anyone wishing to avail themselves of a late trading venue on Thursday nights has to travel into Darwin. Such travel involves high taxi costs (\$72 return) and/or the risks

associated with driving at night and possibly under the influence of alcohol if they take their own transport. He said that his assessment of the need for a late night venue was based largely on anecdotal evidence and he had not conducted a formal survey of his patrons or potential patrons.

23. Mr Hanna said that Thursday night is a fairly slow, relaxed night at the Archrival and he expected that it would continue to be a laid-back type of night despite the later closing time. He said that people did not drink as much on week days and were less inclined to “power drink”. He expects much lower patron numbers than he gets on Friday and Saturday nights, with a crowd of no more than 60 people. He said he would be quite happy with 40 people. He currently has live entertainment on Thursday night; this would continue but with the band starting and finishing later. He said that the kitchen would close for meals at 9.30pm but snack food and tea and coffee would be available at all times. He considered that the provision of these latter services was important for preventing intoxication.
24. Mr Hanna said that the types of people the Archrival attracts vary somewhat with the night, with crowds being at their youngest on Friday nights. On Saturday nights the younger people tend to go into Darwin CBD. Generally the Archrival attracts an older crowd than some of the other late night venues. He said that it makes good economic sense to cater for the slightly “older” age group, as these people have more money to spend and are less fickle in their entertainment habits.
25. Mr Hanna said that he has tried to keep the Archrival as a fairly upmarket venue by imposing dress standards and being strict about intoxication issues. The current dress code is neat dress; with no football gear, no thongs, no ripped clothing, no colours (bike gangs, football groups) and no hats allowed. He described his customers as “good quality patrons”, who are generally well behaved. He said he makes a special effort to make the venue attractive to female clientele by providing a safe, relaxed and friendly environment. He said the Archrival attracts a lot of newly single people wanting to socialise and that the Archrival provides the type of environment where off duty Police can feel comfortable drinking. Almost all of his customers live or work locally.
26. As part of her submission to the Commission, Ms Worsnop raised concerns about whether patrons of the venue might be drinking in excess of the NHMRC Guidelines on low risk drinking. She also drew the Commission’s attention to Recommendation 7 of the *Alcohol Framework: Final Report* (July 2004) which recommends setting a target of reducing the average per capita consumption of alcohol in the Northern Territory to the national average within five years. She expressed a concern about the increased consumption of alcohol which might result from increased licensed hours. The Commission agreed to note Ms Worsnop’s concerns.

27. The nominee advised that his focus to date had been on providing a safe, pleasant environment at the Archrival and complying with the legislation in relation to behaviour and intoxication levels, rather than monitoring the specific amounts of alcohol individuals were consuming. He therefore was unable to provide reliable comment on consumption levels.
28. Mr Hanna commented that it was his intention to try to further educate patrons about the requirements of the *Liquor Act* by placing prominent signs around the bar area. He had seen examples of such signage in New South Wales and thought the signs could help patrons understand why they were being refused service or asked to leave the premises. The Commission indicated its support for this initiative.
29. The Commission asked Mr Hanna whether he would be prepared to accept an extension to Thursday nights of the “Power of Review” condition in the Archrival’s current licence conditions. This condition reads as follows:

The Commission may on its own initiative, without there necessarily being any complaint on foot at the time, convene a hearing into issues it perceives at any time as arising in relation to late trading and/or noise disturbance at or from the licensed premises, and by way of such hearing further review the venue’s trading times for Fridays and Saturdays”.

30. The provision provides for a very low threshold for intervention if concerns arise about the operation of late night trading. Mr Hanna indicated that, if his application was successful, he would be happy for the condition to be extended to Thursday nights.

The legislation

31. In considering this application to vary the conditions of the liquor licence, the Commission is required by section 32A(8) to have regards to the new objects of the *Liquor Act*:

(8) Where a hearing is conducted in relation to an application, the Commission may, having regard to the objects of this Act –

(a) vary or refuse to vary the conditions of the licence; and

(b) make any other order it thinks fit.

(9) A variation of the conditions of a licence takes effect on the date specified by the Commission in a notice under subsection (7)(a) or an order under subsection (8).

32. The objects of the Act are set out at section 3 of the Act:

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.*

33. Section 6 of the Act sets out a lengthy list of criteria that the Commission might consider when taking into account the “*public interest in the sale, provision, promotion and consumption of liquor*” under section 3(1)(b).

34. Although the *Liquor Act* does not explicitly state how the consideration of an objection lodged on the limited grounds allowed by section 47F(2) fits within the broader consideration of the application, it would seem logical that the Commission’s findings in relation to an objection might assist its consideration of at least one of the objects set out at section 3 of the Act. If convincing enough, an objection might be sufficient to justify the refusal of the application pursuant to section 32A(8)(a); in other circumstances it may help shape any orders which the Commission might make under section 32A(8)(b). The objection therefore becomes one matter among many which the Commission needs to consider when making its decision.

Discussion of evidence and findings

35. The Commission had before it the written material from Mr Hanna and Superintendent Dowd, the documents tendered by Ms Worsnop, the extensive oral evidence provided by Mr Hanna, Acting Superintendent Christopher, Sergeant Maccioni and oral submissions from Ms Worsnop and Mr Hanna. In considering all of this material the

Commission was greatly assisted by the openness and constructive approach taken by the parties.

36. By the end of the proceedings, there was general agreement between the parties on a range of factual issues including the following:

- that the Archrival is a well run licensed premises, which has good management practices and good security arrangements;
- that there is a sound relationship between Archrival management and staff and local Police;
- that the Archrival's customers are generally well behaved and present few direct problems for Police;
- that there are some safety issues associated with people walking to the venue from other venues at night, mainly due to the physical environment;
- that the Archrival's management has successful strategies in place to ensure that its customers get home safely;
- that the Archrival is located in the Palmerston CBD and is well away from residential areas;
- that, because of its location, there are no noise problems associated with the premises;
- that, if successful, the application would enable the Archrival to provide a service on Thursday nights not otherwise available in Palmerston; and
- that Thursday nights are currently not problematic for Police either in Palmerston or in Darwin City.

37. The Commission adopts the above points as findings of fact. In addition, the Commission makes the following findings:

- that the relevant neighbourhood for the purposes of considering the objection is the Palmerston CBD;
- that, on the balance of probabilities, the change in licence conditions will have some impact on this neighbourhood on Thursday nights because of more patrons moving between the different licensed premises and some people hanging around the premises until the later closing time; and
- that given the location of premises, the good management practices in place and type of business being conducted, any adverse impact on the neighbourhood is likely to be of a minor nature.

Application of the law:

38. As already stated, when considering an application for a variation of the conditions of a licence, the Commission is required to have regards to the objects of the *Liquor Act*. These objects are diverse in nature and there are some tensions between them. Any decision the Commission

might make, therefore, will inevitably involve the weighing of competing factors.

39. The primary object of the Act is to regulate the sale, provision, promotion and consumption of liquor so as to minimise the harm associated with the consumption of liquor; and in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor. Mr Hanna's application is to extend the hours at which people can access a licensed premises in the Palmerston area. It is arguable that providing greater access to licensed premises will increase the risk of alcohol-related harm for some individuals, families and communities. That said, it is clear from Mr Hanna's application and much of the Police evidence that this venue has a good track record for the responsible service of alcohol and for the general conduct of the premises. Mr Hanna was also able to demonstrate that his plans for the venue have taken into account the relevant public interest issues.
40. The second object of the Act is to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor. The Commission has found that there may be a minor adverse impact on some aspects of community amenity if this application is successful. On the one hand, it is equally arguable that the levels of community amenity, social harmony and well being may be enhanced through the provision of a greater range of entertainment options for the Palmerston community.
41. The third object is to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory. Mr Hanna's plans for the Archrival would seem to sit comfortably with this object.
42. The final object is to facilitate a diversity of licensed premises and associated services for the benefit of the community. It is clear on the facts that Mr Hanna's application meets this criterion in that it will provide the only late night venue for the Palmerston area on a Thursday night. This not only provides a better range of entertainment options for the people of Palmerston, but also may provide some financial and safety benefits for those Palmerston residents who would have otherwise travelled into Darwin City to access such a venue.
43. Thus, in considering this application against the objects of the Act, there are factors that could be used to justify a decision to grant or refuse the application. In this case, the Commission, having carefully considered all the evidence, the arguments for and against the application, and having grappled with the legal criteria, is inclined to the view that the application should be granted.
44. In making our decision, we have taken into account Mr Hanna's ready agreement to amend the "Power of Review" condition of the licence to include Thursday nights. This condition provides a low threshold for the

review of the decision to extend the licensed hours if that extension proves at all problematic.

Decisions

45. Having had regards to the objects of the *Liquor Act*, the Commission decided to grant the section 32A application for a variation of The Archrival & Nirvana Restaurant licence conditions to allow late night trading on Thursday nights. The trading hours for Thursday nights will be amended to read:

Thursday 11.30 and Friday 04.00"

46. In addition, the Commission, pursuant to section 32A(8)(b) of the Act, amended the *Power of Review* condition in the licence to read:

The Commission may on its own initiative, without there necessarily being any complaint on foot at the time, convene a hearing into issues it perceives at any time as arising in relation to late trading and/or noise disturbance at or from the licensed premises, and by way of such hearing further review the venue's trading times for Thursdays, Fridays and Saturdays.

47. Pursuant to section 32A(9) of the Act, the variation of the conditions of the licence will take effect on the date of publication of this decision, notwithstanding that the licence changes have not yet been included in the licence document itself. Until such a time as the licence document is reworded and reissued to encompass the changes, this written statement of reasons is to be sufficient authority and warrant for the applicability of the new trading conditions.

48. With the consent of the parties in this matter, the Commission made a further order that the documents titled "*Some related PROMIS jobs for reporting period*" marked as *Exhibit 4* will be marked as Confidential and kept in a locked filing cabinet with the instruction that they can only be accessed by the parties in this matter and by the staff and members of the Licensing Commission and the Division of Racing, Gaming and Licensing.

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Jill Huck
Presiding Member
2 December 2004