

NORTHERN TERRITORY LICENSING COMMISSION

Premises: VICTORIA HOTEL
Smith Street Mall Darwin City NT

Matter: Application for the approval of material alterations pursuant Section 119 of the *Liquor Act*.

Hearing Date: 30 June 2005

Licensee: Minkie Proprietary Limited

Licence Number: 80300989

Members: Brenda Monaghan (Presiding)
Craig Spencer
Jill Huck

- 1) On 07 February 2005, Mr Mick Burns, Director of Minkie Proprietary Limited applied in writing for the approval of a material alteration of the Victoria Hotel (the Hotel) premises which would result in an extension of the liquor licence.
- 2) In summary, the applicant seeks to extend the licensed area to encompass the newly renovated court yard area (the Courtyard) located between the Smith Street Mall and the internal access route to West Lane. The written application states: *'the licensing of this area will primarily be for the purpose of alfresco dining, with an emphasis on lunchtime catering and early evening. To facilitate the objectives of the Liquor Act (S3) the area has been renovated with a clear focus on emphasising and presenting the history of the Victoria Hotel (Vic. Hotel) as an icon of Darwin. The alfresco dining in this area is to appeal to a specific market, which is a mature demographic, including tourists and locals wishing to have a quiet alcoholic beverage with their meal'*.
- 3) The application was advertised in the following terms:
The application for material alteration is to include the Alfresco Dining Area of the courtyard to be part of the licensed premises.

TRADING DETAILS proposed for the sale of liquor in the Alfresco Dining Area are as follows:

Liquor may be sold for consumption in the Alfresco Dining Area from 10:00 hours to 04:00 hours (the following day) seven days a week.

No trading on Good Friday or Christmas Day.

On Sundays to Saturdays inclusive between the hours of 12:00 and 14:00 and again between 18:00 and 21:00, a meal shall be available upon request.

The Alfresco Dining Area shall always have the appearance of a restaurant.

The majority of persons in the Alfresco Dining Area must be seated'.

- 4) The above advertisement was placed in the NT News on Wednesday 6 April and Friday 8 April 2005. No objections were received. Northern Territory Police were asked to comment on the application as were the Department of Health but no comment has been received from them.
- 5) The Courtyard is a common area for the communal use of any Paspaley tenants leasing the various tenancies surrounding it. Over the past months, there have been significant alterations to the Courtyard, the ground level internal area of the Hotel and the tenancies on the opposite side of the Courtyard. These alterations mean that the downstairs bar area of the Hotel is now accessible from the Courtyard by means of folding glass doors. Access from the first floor of the Hotel to the Courtyard is via an external staircase from the upstairs balcony. Thus, persons wanting to access al fresco dining in the Courtyard area can enter the Courtyard from the main public entrance to the Smith Street Mall, from West Lane or via the Hotel. Currently, renovations are also under way on the other side of the Courtyard with the ultimate aim that various food outlets will provide a variety of foods to members of the public. The alfresco dining area proposed for the Courtyard allows members of the public to purchase food from either the Hotel or these other food outlets. Any alcohol consumed by these customers will be sold to them by the Hotel.
- 6) It is anticipated by Mr Burns that the other food outlets around the Courtyard will principally sell food and use the al fresco dining area during the day and in the early evening. He anticipates that by mid evening, only Hotel patrons are likely to be using the Courtyard.
- 7) It is also important to note that the Courtyard is part of a main public thoroughfare between the Smith Street Mall and West Lane. Currently, a roller door between the Vic Hotel and West Lane is operated by Darwin City Council and effectively closes off the rear entrance to the Courtyard when it is down. The roller door is opened at 06.20 am and closed at 7.30pm Monday to Wednesday with closure at 8.30pm on Thursday and

Friday. The door remains closed on weekends. This means that during the weekdays and early evenings, the Courtyard remains a public thoroughfare for “through traffic” from the Mall to West Lane and vice versa. Once the roller door comes down in the evening, the “through traffic” ceases and the Courtyard becomes an area with only one public exit onto to the Mall. This Mall exit must remain open at all times but Mr Burns confirms that if the variation is approved, Hotel security staff will be responsible for maintaining appropriate control over the licensed Courtyard during licensed hours.

- 8) The written application confirms that the owner of the property, Paspaley Pearls Properties Proprietary Limited, supports the application. The Darwin City Council also supports the application *‘providing Council’s rights are not diminished, that you maintain a minimum 2 meter egress that is clearly delineated, and that all costs associated with the amendment of the easement are met by Paspaley Pearls Properties Pty Ltd.’*
- 9) The Council further states in writing: *Council has the following comments in relation to the proposed Material Alteration taking into account the Objects of the Liquor Act as defined in Section 3 of the Liquor Act.*
 - a) *Access across the Council controlled access easement must be maintained at all times for people of all abilities and ages to the satisfaction of Council. Any licensed area over the pedestrian access easement in Council’s favour must be available to all members of the public and not restrict persons with a disability, or persons of any age (including those under the age of 18) from utilising the access easement at any time of the day or night, whether this be by physical barriers or management practices.*
 - b) *Council requests a condition of any liquor licence issued affecting this area be included that requires an agreement between the applicant and Council allowing persons to cross Council’s easement while in control of alcoholic beverages prior to issuance of a liquor licence’.*
- 10) Despite the fact that there were no objectors to this application, the Commission elected to view the premises and to hear from the applicant in more detail before considering whether or not the material alteration should be approved. Mr Tony Parkinson, Fire Officer, attended both the viewing and the meeting between Commission members and Mr Mick Burns, Director of Minkie (NT) Pty Ltd on 30 June 2005. The Commission had requested input from the Northern Territory Fire Service to ensure that the proposed variation to the licence would have no fire safety issues left unresolved.
- 11) At the meeting on 30 June 2005, Mr Parkinson confirmed that the fire service were satisfied with the alterations and proposal to licence the Courtyard for alfresco dining but would leave any final formal approval until the alterations were complete and the premises were ready for occupation.

12) After some deliberation, the Commission has decided to approve the material alterations, which will enable the Courtyard to become part of the licensed area. The Commission is concerned to ensure however that the licensee maintains the area as a place for alfresco dining rather than simply an extended bar area. The special conditions will contain the following:

The material alteration to the licensed premises is approved on the basis that:

- a) Liquor may be sold for consumption in the Courtyard alfresco dining area from
 - i) 10:00 hours to 02:00 hours (the following day) 7 days a week.
 - ii) No trading on Good Friday or Christmas Day.
 - iii) On Sundays to Saturdays inclusive between the hours of 12:00 and 14:00 and again between 18:00 and 21:00, a meal shall be available upon request.
- b) The Courtyard alfresco dining area shall always have the appearance of a restaurant. Patrons are permitted to stand on the proviso that table seating for at least eighty percent (80%) of the permitted patron capacity for the area must be available at all times.
- c) Pursuant to s104(3)(g), hotel patrons are authorised by the Commission to enter the Courtyard from the Hotel for the purposes of access and egress during the period from 02:00 hours to 30 minutes after the internal areas of the licensed premises have closed for the sale of liquor. During this period, a defined path to the Mall shall be maintained from both the external staircase to the Courtyard and from the glass doors of the ground floor bar. The path shall be properly defined by the use of moveable barriers in a manner approved by the Director of Licensing.
- d) Pursuant to s106(1)(a), the Courtyard is declared an area where a minor may not enter and remain after 21:00 hours each day.
- e) An exemption shall be granted pursuant to s104(3)(g) to allow persons to enter and remain in the area known as the Courtyard between 6:00 hours and 10:00 hours, seven (7) days a week, to allow patrons to utilise the seating in the Courtyard and to move through the area. The Licensee shall ensure that no liquor is sold or consumed on the premises during these hours.
- f) The variation is subject to a 2 metre easement being retained through the courtyard to ensure a clear path for the public moving between West Lane and the Mall. This easement shall be in a form approved by

the Darwin City Council, the Director of Licensing and the Development Consent Authority and shall be free of furniture and other fitting at all times.

- g) The issue of the revised licence is subject to and conditional upon a certificate of occupancy being obtained for the Victoria Hotel and the Courtyard.
- h) The Licensee shall provide a responsible and appropriate level of security within the licensed premises including the Courtyard.
- i) The Licensee shall operate the Courtyard area of the licensed premises at all times consistently with the concept as presented to the Commission, or as otherwise subsequently approved in writing by the Commission.

It is part of the concept of this licence that:

- i) the Courtyard shall be used principally and primarily for al fresco dining and shall not be operated as if it were a beer garden or as an extension of the ground floor bar;
- ii) The area may be used from time to time for special events such as the Hooker's Ball, Halloween and a New Years Eve party provided that the Licensee applies within the specified time to the Director of Licensing for a Temporary Variation of the Liquor Licence.
- iii) Should the usage of the Courtyard area be considered by the Commission, a Licensing Inspector or Police Officers to be inconsistent with such concept, the Commission may of its own motion convene a hearing into the operation of the premises and, at the conclusion of the Hearing, may suspend, cancel or vary the licence if the Licensee in the opinion of the Commission shall have failed to show sufficient cause to the contrary.
- j) The Licensee shall not permit or suffer the emanation of noise from the Licensed Premises including the Courtyard of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises.

Brenda Monaghan
(Legal Member)
15 August 2005