

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: MALATHI'S

LICENSEE: Coprax Pty Ltd

LICENCE NUMBER: 80805090

APPLICATION: Substitution of Licensed Premises

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Ms Merran Short
Ms Helen Kilgariff

DATE OF HEARING: 29 October 2007

DATE OF DECISION: 2 November 2007

APPEARANCES: Mr Tony O'Donohoe for Director of Licensing
Mr Sean Stewart for the Licensee
Ms Malathi Stewart
Mr Chris Vaughan

- 1) Ms Malathi Stewart, Licensee of Malathi's in Alice Springs has made an application for a substitution of licence to sell liquor from premises known as Malathi's located at 51 Bath Street, Alice Springs, to 78 Todd Street, Alice Springs ("the Application"). The Application was advertised in the Centralian Advocate on the 8 and 12 June 2007 pursuant to Section 27 of the *Liquor Act* (the *Act*). The advertisements notified that the Applicant seeks a substitution of premises to sell liquor from premises located at 51 Bath Street, Alice Springs to 78 Todd Street Alice Springs, the proposed premises.
- 2) Objections were received from Avril and Chris Vaughan ("the Vaughans") and Bartolomeo and Lori Del Giacco ("the Del Giaccos").
- 3) A decision of the Legal Member Merran Short dated 13 September 2007 found that the Vaughans and the Del Giaccos were valid objectors and the matter proceeded to hearing in Alice Springs on 29 October 2007.
- 4) At hearing the Vaughans appeared in person and the Del Giaccos were absent due to prior commitments.
- 5) Following the opening by the Applicant, the Commission proceeded immediately to a view of the proposed premises. After the viewing the Applicant outlined the application, in particular:

- a) emphasising the expected clientele which is to include more tourist customers than they have at the present location;
 - b) security including CCTV cameras and in this regard a camera plan was submitted to the Commission and is Exhibit 2;
 - c) the issues of layout and parking were addressed, both at the viewing and in the form of the plans which comprise of Exhibit 1.
- 6) In summary it is proposed to substitute the existing licence from Bath Street to the new premises. At hearing there was evidence that although the current licence allows for opening from 11:30 hours until 02:00 hours (the following day), the practice in Bath Street was to not open until 15:30 hours. This is one of the issues that caused concern to the Vaughans.
- 7) The Vaughans' objections can be summarised as:
- i) the proposed substitution of the licence is to an area that the Northern Territory Police have identified as a late night 'hot spot' for alcohol related and anti-social behaviour;
 - ii) the nature of the business cannot be categorised as a restaurant because for the 101.5 hours of trading meals will only be available for 21 hours;
 - iii) the performance of any live music will have a detrimental impact upon the residential premises nearby, including a hotel that backs onto the proposed new premises;
 - iv) there is insufficient car-parking provided at the proposed new premises.
- 8) Mr Vaughan gave evidence addressing each of these objections, he was particularly concerned that there was adequate security to ensure the safety of patrons in the area and that meals were provided for "meal time" trading hours.
- 9) As to the live music and the noise emanating from the premises the Applicant advised the Commission that Malathi's would continue to employ the use of their noise machine to monitor the decibels emanating from the premises to ensure that the Applicant complied with any licence conditions.
- 10) Finally Mr Vaughan raised the fact that disabled car parking was provided at the back of the premises, yet the applicant had submitted that it was unlikely that the rear entrance to the premises would be open at all times.
- 11) Mr Stewart addressed each of these issues advising in respect of the security issues that they would install a yellow / blue light system to call taxis or Police as necessary in line with the system at Bojangles, the premises next door. The Applicant also agreed to provide meals at "meal times" when serving liquor to the satisfaction of the Director of Licensing, and as to parking the Applicant allowed that the back entrance may be open and if so would have security.

- 12) At the conclusion of his evidence, Mr Vaughan agreed that each of the objections raised had been addressed.
- 13) Mr O'Donohoe, representing the Director indicated to the Commission that the Director submitted that licence conditions should include meals to be readily available between 12:00 and 14:00 hours, CCTV coverage and security to the satisfaction of the Director and noise conditions of the licence to be changed in accordance with the location and plan of the new premises.

DECISION

- 14) In assessing the application to substitute the licence the Commission had regard to the matters raised by the Applicant in respect of noise, security, CCTV and meals and noted Mr Vaughan's agreement that provided each of those issues as stated by the Applicant were met then for the most part the Vaughans' objections had been addressed.
- 15) The Commission approved the application for substitution of premises from 51 Bath Street to 78 Todd Street, Alice Springs subject to the following conditions:
- A) The Licensee shall comply with such requirements in respect of meals to be available between the hours of 12:00 and 14:00 and 18:30 and 21:30 to the satisfaction of the Director, for service to any part of the licensed area.
 - B) The Licensee shall comply with such requirements for and in relation to camera surveillance as the Director shall at any time notify to the Licensee in writing as being thereafter applicable to the licensed premises.
 - C) The Licensee shall provide a responsible and appropriate level of security within the licensed premises including the Beer Garden to the satisfaction to the Director.
 - D) Between 19:00 and closing time on any night, noise emanating from the premises shall not exceed an unadjusted level of 55dB for more than three per cent (3%) of the representative assessment period as measured within ten (10) metres of the front entrance of any surrounding residences and/or hotels.

Richard O'Sullivan
CHAIRMAN

2 November 2007