

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	MILKY WAY CAFÉ
LICENSEE:	Spirit of the Night Sky Pty Ltd
NOMINEE:	Mr Simon Webb
PROCEEDING:	Application for a Liquor Licence
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan Ms Helen Kilgariff
DATE OF HEARING:	13 February 2007
DATE OF DECISION:	26 June 2007
APPEARANCES:	Mr John McBride for the Applicant Mr Irwin Chlanda – Objector Mr John Crofton – Objector Ms Jean Liddle – Objector Mr Wayne Sanderson for the Director of Licensing

1. An application has been made by Spirit of the Night Sky Pty Ltd ATS Spirit of the Night Sky Trust for a liquor licence for the premises formerly known as Chateau Hornsby and more recently known as Spirit of the Night Sky. The Nominee and joint applicant is Mr Simon Webb.
2. The application for a liquor licence was advertised in the Centralian Advocate on two (2) occasions. It sought a licence to allow the on premises sale of liquor between 12.00 noon and midnight seven (7) days a week. The licence was sought on the condition that liquor would only be sold for consumption ancillary to a meal.
3. There were ten (10) objectors to the licence application, which proceeded to hearing on 13 February 2007. Three (3) objectors appeared in person and gave evidence and written objections from the remaining objectors were taken into consideration by the Commission when reaching a decision.

FIT and PROPER:

4. Before considering the application and the concerns of objectors in more detail, the Commission must consider whether the applicants, Spirit of the Night Sky

Pty Ltd and Simon Webb satisfy the “fit and proper” test such that their application for a liquor licence should be further considered. Spirit of the Night Sky Pty Ltd is solely owned by Wana Ungkuntja Pty Ltd on behalf of the Wana Ungkuntja Trust. It is one of a group of related companies and shares the same directors as Wana Ungkuntja Pty Ltd. The other businesses run by this group of companies includes Frontier Camel Tours, Anangu Tours and Uluru Camel Tours. All profits from these businesses are ultimately returned to the disclosed beneficiaries of the trust - being three (3) Aboriginal communities in the region. Based on financial information provided to us by the group’s accountants for both Spirit of the Night Sky Pty Ltd, Wana Ungkuntja Pty Ltd and the structure of the company group, we are satisfied that Spirit of the Night Sky Pty Ltd is a fit and proper entity to hold a liquor licence. Mr Simon Webb, the proposed Nominee is employed by the Wana Ungkuntja group as General Manager of Anangu Waai Pty Ltd and its related tourism businesses¹ including Spirit of the Night Sky Pty Ltd. Mr Webb has provided sufficient references and details of his personal employment history to satisfy the Commission that he is a fit and proper person to hold a licence as Nominee. We also note that other companies within the tourism arm of the Wana Ungkuntja group currently hold liquor licences in a responsible manner and there is no reason to conclude that the proposed Licensee and Nominee would not act responsibly should the Commission consider it proper to grant a liquor licence with appropriate conditions.

FORM OF ADVERTISEMENT:

5. At the commencement of the hearing, the Commission considered the content of the advertisement placed in the Centralian Advocate notifying the public of the liquor licence application. The Commission noted that the advertisement named the proposed Licensee as Wana Ungkuntja Pty Ltd rather than Spirit of the Sky Pty Ltd ATF Spirit of the Night Sky Trust (Spirit of the Night Sky). Spirit of the Night Sky is wholly owned by Wana Ungkuntja and shares common directors. It is one of a group of companies with Wana Ungkuntja Pty Ltd / Trust as a common shareholder. Despite the fact that the advertisement mentions Wana Ungkuntja rather than Spirit of the Night Sky, we have considered information provided to us by the group’s accountants and have formed the view that the advertisement contained sufficient information on the applicant for the objectors to be sufficiently informed on the relevant issues relating to identity.

THE APPLICATION:

6. The liquor licence application sought by the applicant both in writing and in oral evidence appears to be seeking the following:
 - A licensed Daytime Café (with liquor to be served only ancillary to a meal;
 - Pre-Booked Dinners and Star Gazing packages (with liquor to be served only ancillary to a meal);

¹ Anangu Tours Pty Ltd and Trust, Uluru Camel Tours Pty Ltd and Trust
Outback Camel Tours Pty Ltd and Trust Desert Tours Pty Ltd and Trust, Spirit of the Night Sky Pty Ltd and Trust (Folio 38 of Application Brief)

- Pre-Booked Conference Functions and Similar Events (with liquor to be served only ancillary to a meal).
7. The proposed Nominee Mr Simon Webb gave evidence at the hearing. He described the history of the Milky Way Café and the proposals for improvements to and expansion of the business in the foreseeable future. The business is located on the same site and uses the same facilities as the old Chateau Hornsby Estate. We understand that the land was purchased some time ago by Mr and Mrs Burra who commenced the Spirit of the Night Sky business in 2005 to enable guests to view the Southern skies *“in a venue dedicated to the cultural and astrology ideals of Central Australia”*² In February 2006, the land and business was purchased by Anangu Real Estate Pty Ltd as trustee for Anangu Real Estate. It is leased from Anangu Real Estate Pty Ltd ATF Anangu Real Estate Trust by Spirit of the Night Sky Pty Ltd ATF Spirit of the Night Sky Trust. This arrangement is evidenced by the lease agreement provided to the Commission. The lease expires in 2010 and has a right of renewal.
8. Before considering the detail of the objections, it is necessary to consider the applicant’s proposal in more detail. The applicant wishes to retain and improve on the business commenced by Mr and Mrs Burra. They states in their application that *“As the new owners we envisage the continuance of this dream, with major improvements in products and services provided to guests visiting Alice Springs.”* Their aim in the short term is *“to open an all day café and in the long term build an observatory, planetarium and establish a native bush foods interpreted walk.”*³ The applicant seeks a liquor licence to enable the following:
- **Daytime Café:** A restaurant style licence is sought to enable the Milky Way Café to become a licensed café during daytime hours from 12.00 noon to 5.00pm selling upmarket “café style” food with alcohol if desired. Currently, the venue does not operate a day time café at all but hopes to do so at some stage in 2007/8. It is fair to say that this proposal is still at the concept stage with no settled plans for the upgrade of the kitchen or the installation of a bar and storage as is proposed in the application.⁴ Details of what is proposed with respect to café layout, menu, price range and day to day management is sketchy. When asked by the Commission after the hearing to clarify a few matters, Mr Webb confirmed to the Deputy Director of Licensing that there was no menu prepared at this stage but that he imagined that the Café might sell foccaccia, toasted sandwiches and similar food. Mr Webb did emphasise at the hearing that the clientele the café was hoping to attract would not cause a nuisance to the neighbours or indulge in anti social behaviour. The applicants were hoping to attract responsible local residents and national and international tourists and had no interest in catering for problem drinkers.
 - **Pre-Booked Dinners and Star Gazing:** A restaurant style licence is sought to allow the Milky Way Café to serve liquor with a meal each evening

² Page 3 of Business Plan tendered at hearing

³ Page 3 of Business Plan tendered at hearing

⁴ page 5 of Business Plan

from 6.00pm onwards. The main clientele will be tour or conference groups as part of pre-booked packages involving dinner and star gazing with an astrologer. Likely numbers involved in such evenings is up to sixty (60) persons at a time but often much smaller groups are anticipated. Some liquor will be available as part of the pre-paid "package". Whilst most of the packages will also include transfers by bus to and from hotel accommodation, there will also be a pre-booked "self drive" option at a lower price. Whilst some promotional material provided appears to suggest that liquor will be available without a meal, Mr Webb denies that this was the intention of the business enterprise.

- **Pre-Booked Conference Events:** a liquor licence is sought for the Milky Way Café to allow the Licensee to cater for larger events such as conference functions. Mr Webb gave evidence that these events might attract up to two hundred (200) guests and would be held in both the internal and external areas of the venue. They might involve music and entertainment. The advertising of this application only allows for us to consider functions where liquor will be served ancillary to a meal. This was raised with Mr Webb at the hearing and he reiterated that this was all that the applicant required and the supply of liquor without a meal was not being sought.

OBJECTIONS:

9. There were a number of objectors to the application-all of whom reside in the neighbourhood of the proposed licensed premises. Many chose to rely on their written submission but three (3) attended and made verbal submissions at the hearing. The main points of objection concerned the following issues:
 - **NOISE:** Considerable concern was expressed on the issue of noise. The neighbourhood is rural with residents choosing to live there for lifestyle reasons. Sound travels a long way in such settings and a level of noise that can be ignored in an urban setting cannot be tolerated in a rural neighbourhood. When Chateau Hornsby had a licence, many residents were upset and disturbed by noise and objectors were most concerned to ensure that this current applicant did not intend to run a similar enterprise. Evidence was given of one evening function held late last year at the Milky Way Café (under a special licence variation for that occasion) where the noise of some five hundred (500) guests and a band carried a considerable distance and was considered to be unacceptable.
 - **TRAFFIC:** Some objectors were also concerned by the likelihood of increased traffic noise as the Café business expanded.
 - **ANTISOCIAL BEHAVIOUR:** Some concern was expressed that a liquor licence would increase the likelihood of antisocial behaviour in the neighbourhood - particularly if the Milky Way Café became a venue for all day drinking. The concern was that an undesirable element might begin to hang around the premises making neighbours feel unsafe in their homes and on the road.

- **ALICE SPRINGS ISSUES:** Some objectors expressed concerns that granting a licence to Milky Way Café was simply compounding the problems for Alice Springs generally. They expressed the view that there were too many licences already and to grant another was irresponsible. One (1) objector expressed disappointment that an Aboriginal owned organisation would consider seeking a liquor licence when their own people's health and welfare was already sorely compromised by liquor.

RESPONSE TO OBJECTIONS

10. The applicant's response to the objectors concerns included the following:

- **NOISE:** The main concerns appeared to be about noise emanating from a function held outside for a conference party or similar event - particularly where a band was hired. The applicant Mr Webb gave evidence that he does not want to cause problems for neighbours but considers their response to be an overreaction. When looking at his calendar for the forthcoming year, Mr Webb advised at hearing that he only had five (5) conference functions booked and five (5) enquiries for which quotes had been provided. He anticipated that only a few of those conference parties would request a band or music and therefore the nights when the peace of the neighbourhood would be affected would be few and far between.
- **TRAFFIC:** Mr Webb considered concerns about traffic noise an overreaction as he anticipates that 90% of guests to the premises will arrive and leave in groups by bus rather than individually by private vehicle.
- **ANTISOCIAL BEHAVIOUR:** Mr Webb considered the concerns expressed about antisocial behaviour to be another overreaction. The target markets for the venue is comprised of overseas tourists (70%) national tourists (20%) and local residents (10%). Most would arrive and leave by bus and would be only able to consume liquor on premises as part of a packaged tour or conference party. The package is prepaid and allows for some wine at dinner and perhaps a liqueur or beverage after the night sky viewing. It would not be profitable for the Licensee to entertain too much drinking and antisocial behaviour and they do not intend to do so. Similarly, conference parties travel principally by bus to and from the venue so that opportunity for antisocial behaviour to occur is limited. Mr Webb rejected the suggestion that if granted a licence to trade during the day, there would be the possibility of hours of drinking. He has sought a restaurant licence where liquor may only be served ancillary to a meal – not a tavern style licence. He advised at hearing that he intends to keep his food prices those of an upmarket café to ensure that he attracts the right clientele.
- **ALICE SPRINGS ISSUES:** Mr Webb reiterated that he was not catering for any sector of the Alice Springs market where antisocial drinking was prevalent. His main market group was international tourists who enjoyed a drink with dinner and a nightcap. Such responsible drinking would add nothing to the problems currently experienced in Alice Springs. Mr Webb rejected the notion that as the applicant was an Aboriginal organisation, they should do without a liquor licence on principle. The applicant is

running a business and is entitled to cater for the needs of his guests in a responsible manner.

COMMISSION'S DELIBERATIONS:

11. The Commission viewed the property. It was noted that there is a relatively small internal café space (and commercial kitchen) and various external areas (including the outdoor entertainment area and permanent viewing site) where dinner, night viewing and astrological talks currently take place on an infrequent basis. On three (3) occasions over the past year, larger conference events have also been held principally at tables organised outside under the stars.
12. The applicant advertises prebooked packages principally aimed at the conference and tourist market. The advertisements are mainly for prepaid "packages" offering distinctive set-menu options of dinner or tea/coffee and cake, a "star presentation" by an astrologer to "*highlight some of our spectacular constellations ...and also the aboriginal myths and legends surrounding them*"⁵ and a viewing of the night sky. We were advised at the hearing that trade at the venue is very slow at present but Mr Webb hopes that it will slowly increase over the next two years. Mr Webb confirmed that the dinner/viewing package mainly attracts tour groups and conference groups who arrive and depart in groups by bus. He anticipates that business from independent travellers will remain at a minimum.
13. The principal concern from objectors was one of noise and the Commission accepts that in a quiet, rural setting, careful consideration must be given to this issue. The Commission is satisfied that the normal prepaid package consisting of dinner, astrological talks and viewing will not have a negative impact on community amenity. The area of concern remains large conference parties and similar events particularly where live music is involved and particularly where large numbers of people attending.
14. If a licence is granted in a rural, residential area, then the Commission must impose meaningful noise restrictions on the Licensee to ensure that noise emanations from the premises are minimised in the public interest. The second noise related issue is with respect to traffic movements in the area. Because the daytime traffic to the Milky Way Café is likely to be small, and the night time traffic will principally be by bus, we do not consider this issue to be of major concern.

DAYTIME CAFÉ

15. The applicant wants the Milky Way Café to be licensed during daytime hours. We are satisfied that any concerns about noise and antisocial behaviour can be controlled by a well-crafted licence and a responsibly managed "up market" café. Whilst we consider that the concept proposed is acceptable, we need to be satisfied that the venue in its layout and day to day management will clearly target a clientele who are unlikely to cause nuisance to the neighbourhood. As the proposal for the daytime café is currently only at the concept stage, we have insufficient details to be satisfied on this issue. The Commission would

⁵ An extract from promotional material tendered at hearing

normally expect to view the food and beverage menus, price lists and other relevant material. Further, the current interior of the premises appears to the Commission to be of a very basic standard and requires some renovation before we can be satisfied that the premises will attract a responsible clientele. We would normally expect to be provided with detailed plans for any renovations before granting the licence. For this reason, the Commission refuses this aspect of the licence application but acknowledges that the applicant may well reapply for a licence for a daytime cafe at a later stage.

PRE-BOOKED DINNERS AND STAR GAZING

16. The second part of the application relates to the “Package” offering pre booked dinner, astrological talk and night viewing. We note that the target market groups are tour groups and conference parties arriving and departing by bus. Few independent travellers are anticipated. We are satisfied that a liquor licence should be granted to enable the Licensee to offer liquor ancillary to a meal and we intend to grant this part of the licence.

PRE-BOOKED CONFERENCE EVENTS

17. The final part of this application is for a liquor licence to allow the Licensee to cater for pre-booked conference groups and events. We are well aware that this aspect of the application is the part that most concerns the objectors and with good reason. The Objects of the Act include a requirement “to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor” and any grant of licence to allow the applicant to cater for large conference groups and the like must be carefully considered. We do not accept the applicant’s view that an occasional very noisy night is something the neighbours should accept as reasonable but we do consider that there is a reasonable middle ground.

18. For this reason, we intend to grant to the applicant the ability to cater for such functions but with strict conditions and subject to a review after twelve (12) months.

LICENCE CONDITIONS

19. The conditions are as follows:

- A liquor licence is granted for the Milky Way Café from 6.00pm to midnight seven (7) days a week. The application for a liquor licence from noon to 6.00pm is refused.
- At all times whenever liquor is available for sale the premises shall trade as a restaurant or as a function venue.
- Liquor may be served only in conjunction with a meal as part of a pre-booked function.
- All liquor is to be sold in open containers and consumed on or at the premises.

- The Licensee shall not use nor permit to be used any of the words Hotel, Pub, or Bar in any description of the premises or in any advertising, promotional material or signage.
- No later than seven (7) days beforehand, the Licensee must advise the Director of Licensing of the details of any proposed function or event catering for in excess of one hundred (100) persons. The Director of Licensing has the discretion to decide what conditions should be imposed on the premises with respect to the function or event in question. The Director of Licensing may also refuse to allow the event if he is not satisfied that licence conditions can reasonably address concerns about neighbourhood amenity or public interest.
- The Licensee shall not permit or suffer the emanation of noise from the licensed premises of such type or volume as to cause such annoyance or disturbance to the ordinary comfort of lawful occupiers of surrounding residential property as shall be a reasonable reaction to the noise on the part of any such occupier. In determining whether any occupier alleging such annoyance or disturbance is being reasonable and in determining whether to uphold such a complaint against the Licensee, the Commission shall have particular regard to the following matters:
 1. any history or pattern of recurrence or continuance of noise similar to that which is subject of complaint;
 2. management initiatives implemented by the Licensee to attenuate or contain such noise.
- Entertainment by way of live or amplified music must be in accord with any conditions or directions of the Director of Licensing. No loud entertainment such as rock bands are permitted. No amplification shall be directed in any way outward or away from the licensed premises.
- Without the prior approval of the Director, there shall be no music played in any external spaces after 10.00pm, Sunday to Thursday and after midnight on Friday and Sunday night.
- Noise will be managed and maintained at levels so as to not cause harm or annoyance to our neighbours. Closing procedures will be developed to ensure that Café patrons do not loiter in car park or surrounding areas after the Café has closed.
- The Commission on its own initiative may review noise issues pertaining to the licensed premises, and notwithstanding the compliance by the Licensee with the foregoing requirements, the Licensee shall implement such sound attenuation and noise mitigation measures as the Commission in its discretion may notify the Licensee in writing at any time as having become in the Commission's view a reasonable requirement in circumstances then prevailing.

20. The terms and conditions of this licence relating to community amenity issues shall be reviewed by the Commission after twelve (12) months from the date of issue of this licence. As part of the review the Director shall provide to the Commission a report detailing all relevant matters and following consideration of that report the Commission shall decide on the form of the review.

Richard O'Sullivan
CHAIRMAN

26 June 2007