

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: ALICE VIETNAMESE RESTAURANT

APPLICANT: Mr Tinh Duy and Ms Dung Thi Le

PROCEEDING: Application for a Liquor Licence

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Ms Helen Kilgariff
Mr Paul Fitzsimons

DATE OF HEARING: 31 January 2008

DATE OF DECISION:

APPEARANCES: Mr Tony O'Donohoe for Director of Licensing and
Mr William Cantwell for the Licensee
Mr Malcolm Crowley for the Alice Springs Rural
Area Association and appearing on behalf of
Mr Bruce and Mrs Shelley Colombet
Mr John Crofton for himself

BACKGROUND

- 1) An application for a Restaurant Liquor Licence was submitted on 27 July 2007 by Mr Tinh Duy Nguyen and Ms Dung Thi Le to trade under the Registered Business Name of Alice Vietnamese Restaurant.
- 2) The Development Consent Authority (DCA) had on 22 December 2006 granted a Development Permit for the land to be used for the purposes of a restaurant and market gardens. In approving the restaurant the DCA required various dust and noise suppression measures to be effected. These appear to have been met with landscaping, earth mounds and a sealing of the entrance driveway and car park.
- 3) In granting approval the DCA also stipulated that "the restaurant shall not cater to more than fifty persons at any one time". A further condition was that "the restaurant shall operate only between the hours of 07:00am until 11.00pm daily".
- 4) Complying liquor licence application advertisements were placed in the Centralian Advocate on 16 October 2007 and 19 October 2007 by Alice Vietnamese Restaurant. The appropriate green advertising sign notifying of a liquor licence application was also displayed for the required thirty (30) day period.

- 5) No objections were lodged by agencies contacted by Licensing and Regulation (Alice Springs Town Council, Alcohol and Other Drugs Unit of the Department of Health and Community Services and Northern Territory Police).
- 6) Following advertising and placement of the advertising signage three (3) objections to the application were received. These were from:
 - Mr Bruce and Mrs Shelley Colombet;
 - Mr Rod Cramer on behalf of the Alice Springs Rural Area Association (ASRAA); and
 - Mr John Crompton.
- 7) These objections were reviewed by the Commission's Legal Member and deemed to comply under Section 47F(2)(a) of the *Liquor Act*. The Commission therefore determined to conduct a hearing into both the application and the objections.

APPLICATION

- 8) Mr Cantwell, a licensed Territory Building Certifier represented the applicants at hearing due to their not having complete familiarity with proceedings and not having a sufficiently high level of fluency with English.
- 9) Mr Cantwell submitted that in light of objections the hours applied for would be reduced from 11.00pm of an evening to last drinks to be served at 10.00pm each evening, ie patrons to depart thirty (30) minutes after 10.00pm. The application therefore remains for a liquor licence for a maximum of fifty (50) seat capacity restaurant (as per the Development Permit) and under the amended hours of trading applied for, which are:

10.00am until 2.00pm and 5.00pm until 10.00pm (10.30pm closure)
Tuesday to Friday.

08.00am until 2.00pm and 5.00pm until 10.00pm (10.30pm closure)
Saturday and Sunday.
- 10) In respect of the above restaurant trading hours, liquor will only be available from 12.00midday.
- 11) Following a brief outline of the proposal, the Commissioners, objectors and all parties to the hearing undertook a site visit.
- 12) Mr Cantwell referred to noise abatement measures applied to a nearby licensed rural restaurant overcoming concerns of residents. He indicated that the applicants would similarly have measures in place such as to not raise the concerns of nearby residents. Reference was made to functions such as weddings. In this regard the Commission is minded to make particular recommendations to address functions related noise issues.

- 13) Mr Cantwell referred to one objector's suggestion of a BYO licence and validly pointed out that under BYO licence conditions both quantity and type of alcohol being consumed was unable to be regulated by the Licensee to the same degree as a fully licensed restaurant.
- 14) In relation to another issue raised by objectors, that is road traffic danger from animals on the nearby rural roads, the applicant has erected a "Beware" sign advising of appropriate road care and caution when leaving the premises.
- 15) An objector's suggestion of 6.30pm closure for the outdoor area was deemed not practical and would impinge unfairly on the trading ability of the premises.
- 16) It was also mentioned in objection that there would be a likelihood of a licensed restaurant attracting theft in the area. Mr Cantwell countered this by stating that as the applicants would live in the adjoining residential wing of the premises and were keepers of pet dogs, break ins were not likely to occur due to a licensed restaurant being opened.
- 17) Following completion of consideration of the objections, the Commission heard evidence on the financial position of Mr Nguyen and Ms Li. It is apparent from the material provided that the applicants do have the material resources necessary to operate the business.
- 18) It was also noted by Commissioners that should there be a considerable reduction to the number of patrons expected, it was unlikely to jeopardise the venture as a considerable amount of the restaurant ingredients and labour would be provided by the applicants together with their son. The Commission was therefore satisfied of the financial position of the applicants and noted the projected cash flows indicated an ongoing viable business.

OBJECTORS

Mr Malcolm Crowley

- 19) Mr Malcolm Crowley spoke on behalf of the ASRAA and represented the objection of Mr Bruce and Mrs Shelley Colombet. Mr Crowley questioned the validity of taking into account petitioners in favour of the restaurant who lived outside the Alice Springs township, including from interstate.
- 20) Mr Cantwell had earlier tabled a petition of supporters in favour of the restaurant which, while including non Alice Springs petitioners, did include many within the surrounding rural area. The Commission also noted the earlier petition from the DCA in support of the restaurant which included an additional number of nearby residents, including a number residing on Hefferman Road. The Commission was therefore satisfied that there was a degree of support for the licensed restaurant as outlined by Mr Cantwell and presented at hearing.
- 21) Mr Crowley also questioned the seating capacity of the restaurant which, on site inspection, showed there were approximately sixty (60) seats provided for in the outdoor area and a similar number of higher quality seats provided for in the indoor area of the restaurant.

- 22) Mr Cantwell advised that the indoor and outdoor furniture was imported in bulk in a container and that the numbers were probably superfluous to needs. Mr Cantwell also added that it would be impractical to only provide fifty (50) seats as such configuration would require constant movement of furniture to cater for the variable number of customers at each table. He confirmed the applicants would strictly adhere to the fifty (50) seat maximum condition.
- 23) Mr Crowley also stated that his concerns and the concerns of the people and organisation he was representing over noise issues were not based on the internal area of the restaurant but rather the outdoor undercover area. The Commissioners therefore determined to focus on the outdoor area in its deliberations in respect of the noise issues.

Mr John Crofton

- 24) Mr John Crofton resides at Lot 1862 Grasstree Road, approximately one hundred (100) metres to the west of the restaurant. Mr Crofton's concerns raised at hearing were on the specific issue of noise in the neighbourhood and to his home in particular.
- 25) He opined that the mounding of earth at the restaurant intended to mitigate noise would be ineffective as the outside dining area was on a similarly elevated concrete pad, as was his residence. The implication being that noise would readily drift from the outside restaurant area to his block.
- 26) Commission members on site inspection had noted the earth mounding and also noted that its height approximated the height of the floor of the outdoor restaurant area. Noise abatement from this mounding was not apparent to the Commissioners.
- 27) In response Mr Cantwell, on behalf of the applicant, offered to install sound absorbing material to the end bays of the outdoor dining area facing Mr Crompton's residence. The Commission noted this offer and while not mandating the construction of the sound absorbing structure, does urge the applicant to undertake this measure.

DECISION

- 28) The Commission noted that while there were valid objectors there were also supporters of the restaurant and the restaurant licence from nearby residents. The capping of restaurant numbers to fifty (50) is also considered to have an impact of lessening likely noise and traffic.
- 29) The offer to reduce the trading hours from 11.00pm to the earlier hour of 10.00pm placed the applicants in good stead as this was done in response to concerns of residents over possible noise in the evenings.
- 30) The Commission grants a liquor licence for the hours applied for at hearing and this licence is in the form of a Restaurant Liquor Licence with liquor to only be consumed with a meal.

- 31)The Commission recognised that there will be patronage for weddings and functions and this requires some coverage in any decision to grant a licence. The Commission is therefore determined that there is to be no amplified or live music on the outside dining area and that for the internal restaurant that noise levels be kept down so as not to interfere with the ambience of nearby residents.
- 32)The Commission therefore determined that the maximum level of music / sound in the internal area of the restaurant is to be set a level to be determined by the Director. Any other conditions relating to entertainment and noise set by the Director are to be complied with.
- 33)The Commission endorses the fifty (50) seat capacity limit of the restaurant as approved by the DCA and adds that this should be strictly complied with.

Richard O'Sullivan
CHAIRMAN

1 February 2008