

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **HIBISCUS TAVERN (DOLLY O'REILLY'S)**

LICENSEE: LEANYER TAVERN PTY LTD

NOMINEE: MR WILLIAM PALMER

PROCEEDING: APPLICATION TO VARY LICENCE CONDITIONS

HEARD BEFORE: Mr John Withnall (presiding)
Mr Brian Rees
Ms Annette Milikins

DATE OF HEARING: 15 May 2001

DATE OF DECISION: Delivered 28 May 2001

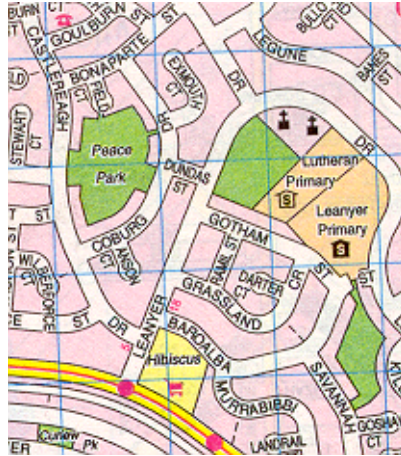
APPEARANCES: Mr Bill Palmer, for the Licensee
Ms Nola Oliver, objector in person

Mr Palmer seeks to extend his Saturday night trading for Dolly O'Reilly's (the "lounge bar" in the Hibiscus Tavern licence) from midnight to 2am Sunday.

This would leave closing time as midnight for Monday through Thursday (or "2359" according to the licence), and 10pm on Sundays. At a previous hearing in October 1999 the Commission had approved an extension of Friday night trading to 2am on Saturdays. Approval of the present application would thus give the tavern 2am closing on two nights of the week, Friday and Saturday. On all other nights the tavern closes no later than the Woolworths supermarket which shares the Hibiscus shopping complex in which the tavern is situate.

The objector Ms Oliver was also an objector in the previous hearing. She again submits that the extended hours should be seen to be not in keeping with the residential nature of the surrounding neighbourhood.

The Hibiscus shopping centre of which the tavern forms part occupies a large commercial block bounded by Vanderlin Drive, which is a broad arterial thoroughfare, and Baroalba Street and Leanyer Drive, two streets with residential areas across the road from the tavern. The location is best understood by reference to the relevant part of the Darwin street directory, which is reproduced on the next page.



Baroalba Street is essentially a residential street, apart from the Hibiscus complex, and both sides of Leanyer Drive are generally residential other than where indicated as park or school.

Ms Oliver resides in a unit complex on Leanyer Drive, on the same side of that road as Hibiscus but on the other side of Grassland Court. Her unit is at the rear of the complex. Her main concern is an apprehension of increased traffic noise; she encounters the litter problem mentioned in her written objection only occasionally, she only occasionally hears pedestrians “carrying on”, and does not hear music from the tavern.

This is consistent with the evidence of Mr Palmer as to the strategies he has in place to minimise noise disturbance to the neighbourhood. The exit on to Baroalba Street is locked at 11pm, and security personnel thereafter direct departing patrons down a side walkway into the carpark. There are two doors in Dolly O’Reilly’s; one accesses the beer garden, and is also locked at 11pm. The other is a double door creating an “airlock” which effectively contains all sound inside the venue when the outer of the twin doors is opened. As closing time approaches (Wednesdays to Saturdays) a security guard is dedicated to patrolling the carpark.

Ms Oliver agrees that in terms of noise disturbance the tavern has improved since the Palmers took over. She agrees that on late Friday nights people do leave the tavern in an orderly fashion, but their cars tend to “roar” down Leanyer Drive. Mr Palmer believes that most of his late Friday night patrons leave by taxi; he and his staff would usually call a minimum of ten taxis towards the end of the night. Ms Oliver points out that taxis can be part of the noisy traffic situation she describes.

As Mr Palmer points out, Leanyer Drive is a major access route to an extensive suburban area, and carries a large volume of traffic in any event. Ms Oliver’s description of increased traffic disturbance resulting from the extension of Friday night trading is not persuasive. She would appear to be aware of that. Ms Oliver presented as a very reasonable and self-aware person and a candid witness, such that she freely conceded that the noisy traffic she describes could be coming from anywhere, and that it is only her subjective impression that there is a noisy element emanating from the tavern at any time.

Ms Oliver believed the previous extension of trading on Friday nights to have been implemented on a trial basis, and this is supported by reference to the tavern's current licence document. Her verdict on what she understood to have been a trial is quite telling: she believed the Friday night trial had not proved anything "one way or the other". That being the case, there would seem to be nothing significantly arising out of the trial per se on which to realistically base fears in relation to a similar extension on Saturday nights.

That said, however, it is clear that Ms Oliver has an apprehension that this application is the thin edge of a wedge that will in time see a late night venue in a residential setting. We can appreciate her concern in that regard. Mr Palmer says that he has no such plans, and has no present intention to make any further application for extension of trading hours. Admittedly he could change his mind at any time without that evidence being in any way untruthful, but we have taken his statement in that regard into account in granting this application, and are likely to have reference to it should there be any future application for further extension of hours.

Ms Oliver is the only formal objector after the advertising of the application, and the Commission is of the view that her objection has not been sustained. She gave evidence of speaking with other people who are against the application; Mr Palmer countered with evidence of regular liaison with nearby residents who expressly have no objection to the proposal, or indeed to the noise management of the tavern generally.

The weighting of the Commission's evidentiary requirements varies from application to application; each of course is to be dealt with on its merits and in its particular contexts. In being satisfied with Mr Palmer's minimal evidence as to needs and wishes, the Commission has had regard to the conservative nature of the application in the context of tavern licences in general, and to the strategies already in place in effective minimisation of noise disturbance.

The Commission approves the variation of trading times as applied for.

John Withnall
Presiding member
28 May 01