

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

Premises: MADISON ON MITCHELL

Licensee: SPARTACUS PTY LTD

Licence Number: 80316631

Nominee: Mr Michael Coleman

Proceeding: Application for variation of licence conditions

Date of hearing: 28-29 October 2002

Date of decision: 30 October 2002

Heard before: Mr John Withnall (Presiding)
Ms Shirley McKerrow
Mr Brian Rees

Appearances: Ms S. Porter, for the Applicant
Mr P. McNab, for NT Police

(The following decision was delivered ex tempore by the Presiding Member on 30 October 2002. The verbatim transcript has been non-substantively edited to facilitate readability and ensure clarity).

We have come to the conclusion in this matter that we have been presented with sufficient evidence of needs and wishes to approve almost all of what is asked for, certainly to approve the thrust of the application, but with some changes to some of the conditions agreed between the applicant and the police, although not to the extent that we need to alert Mr McNab to any need to re-address the police position in the matter.

Although the agreement between the applicant and the police will obviously be relevant to our determination, there being no other remaining objector, the conditions of any licence are of course ultimately a matter for the Commission. But the changes by the Commission to the variations applied for has led us to a quick consideration of the legal position in that regard. We cannot force these

new conditions on the licensee at this point; they do not exactly correspond with what was applied for, and the licensee has not abandoned the old licence. I think that the correct approach is that we are now offering to vary the licence subject to the following replacement conditions and additional conditions, and it is up to the Colemans to accept the offer or not as they see fit. They may elect to accept what we offer or continue on with the existing licence, as they may decide. We think that is the actuality of the situation.

The Commission having indicated to Ms Porter at the outset that it had no concerns with managerial capacity as affecting the particular application, we are satisfied that a sufficient case has been made out for the Commission to approve the thrust of the application.

I might briefly mention, Darwin being a small town, that I am aware that there are apparent relationships, if no more than social, between the Colemans and the Cattermoles, the Colemans and Mr Tony Shaw (the managing director of the employer of the witness Mr Sieben), and between the Colemans and the Darwin Turf Club. We do not see that circumstance as being in any way relevant unless there could be seen to be potential issues of credibility in relation to the evidence of Ms Leanne Cattermole, Mr John Sieben or Ms Stevie Wee, and there is no such suggestion in this case. We have been impressed by all witnesses who gave evidence as to needs and wishes. We agree with Ms Porter that such evidence was effectively representative of different aspects of the hospitality industry and different demographic groups, as well as being candidly personal.

We also took into account the questionnaire (Exhibit 10).

The questionnaire was distributed by hand and by email, rather than to existing patrons from a stack on the bar of the venue, and we are told that the return rate on those which were hand-distributed was about 90%. The questionnaire is headed by an introduction that sets out fairly and squarely the purpose for which it is issued. Questions then address specifics of the application, and (critically important, in the Commission's view) correspondents are asked about their preference for the venue. There is equal opportunity provided in the document for the recipients to take a negative viewpoint, and we were told that *all* returns were passed on to us.

The value of careful drafting of such a questionnaire can sometimes outweigh the value in the raw numbers of returns, although we do not suggest that the hundred or so returns of this particular questionnaire was not a significant number. All in all, the questionnaire does have significant weight, and was considered accordingly. As Ms Porter said, it was held by the NT Court of Appeal in *Lariat Enterprises and Liquorland (Australia) Pty Ltd -v- Joondanna Investments Pty Ltd and the Liquor Commission of the Northern Territory (1995) NTSC 38* that the comparative weighting of the various elements of s.31 is a

matter for the Commission's discretion, as is also the evidentiary burden in respect of any of those matters.

In all the circumstances we are persuaded to exercise that discretion by approving the essentials of the application as follows.

The current licence condition under the major heading "Madison on Mitchell" and sub-headed "Availability of Meals" will be deleted, and will be replaced by a condition in the following terms:

Availability of Meals Meals will be available on request between the hours of 12:00 and 14:00 and again between the hours of 18:00 and 22:00 seven days a week.

Snacks are to be available at all times that the premises shall be open for trade.

Exceptions remain as to trading on Good Friday and Christmas Day. Current Commission guidelines would prevent the venue from opening at a minute past twelve on a Saturday morning after Good Friday night and closing again at 02:00, even if there might be any economic point to such an exercise.

The special condition headed "Entertainment" is deleted, and replaced by a two-part condition as follows:

Entertainment The licensee shall not play or permit techno music, acid music, heavy metal or death metal music to be played in the premises.

The maximum noise emanating from the licensed premises as measured at any premises where a person resides shall not exceed the limit specified (and for the periods of the day prescribed) by the *Environmental Protection Act* of South Australia in the *Information Sheet on Environmental Noise* dated 22 July 2002 in respect of premises classified as 'predominantly commercial,' that is to say:

- (i) 65dB(A) from 7am - 11pm; and
- (ii) 60dB(A) from 11pm - 7am.

Notwithstanding the compliance by the licensee with this requirement, the licensee shall effect such further sound attenuation as the Commission in its discretion may notify the licensee in writing at any time as having become a reasonable requirement in circumstances then prevailing.

Note that the change of the ceiling of 65 decibels to 60 will apply from 11 pm onwards.

The latter part of the noise condition is just a fall-back general power in the event of some circumstance not envisaged at this time. If it will settle the applicant down a bit I can remark that the same condition already applies to Rorke's Drift, and several other venues in town have a much tighter noise condition than that.

Moving on to the product range, there will be a small drafting change here. The current special condition headed "Product Range" is deleted, and replaced with a condition as follows:

Product Range The licensee shall maintain a reasonable range of Australian and imported liquor, including a reasonable range of premium quality and upmarket Australian wines.

Just a slight change there to clarify that the range was not meant to be restricted to wine only.

The special condition currently headed "Patrons To Be Seated" will be deleted in its entirety and replaced with a two-part condition as follows:

Provision of Seating Seating shall be provided for at least 50% of the maximum patron capacity recommended by the NT Fire and Rescue Service.

Table service of liquor is to be available to any seated persons in the premises at any time that the premises shall be open for trade.

This ensures that if anybody wants to sit and choose to be waited on, that service will be provided.

The licence concept condition will remain, with appropriate changes as follows:

Licence Concept The licensee shall operate the premises at all times to standards consistent with the concept of an "up-market" or "quality" lounge bar. Should the standard of any aspect of the licensed operation deteriorate to a point considered by the Commission to be inconsistent with such concept, the Commission may of its own motion convene a hearing into the operational standards of the premises, and at the conclusion of such hearing may suspend or cancel the licence if the licensee in the opinion of the Commission shall have failed to show sufficient cause to the contrary.

Again this is simply a fall-back position for the Commission, enabling the Commission to monitor for itself the maintenance of the standard promised during the course of the hearing.

Finally there is the additional special condition for which the applicant has volunteered, which is to read almost exactly as it is set out in Exhibit 3, as follows:

Community Involvement The licensee or its nominee or other designated representative shall actively participate in any forum convened by the NT Police or the NT Licensing Commission for the betterment of the Mitchell Street precinct.

In summary, we have approved the application in essence; the noise condition is a little broader than the applicant may have wanted or expected, the requirement remains for table service to be available, and the licence concept condition remains although now in relation to the changed concept. So as was said at the outset, it is now a matter for the applicant to accept or decline what is on offer as aforesaid.

MS PORTER (*after taking instructions*): Yes, thank you. I can inform the Commission then that the licensee is prepared to accept the variations in the terms of the licence as set out by the Commission this morning.

MR WITHNALL: All right. Thank you for that. One further thing. We clarify that we have lifted the restriction on the dance floor. That is gone.

MS PORTER: Yes, thank you.

MR WITHNALL: And we also allow that the variations may take effect immediately even though the reprint of the licence might not have been made available to the licensee. The warrant for that can be the transcript if any question ever arises, although I am quite confident that the reprint of the licence will be available in the immediate future in any event.

John Withnall
(Presiding Member)
30 October 2002