

NORTHERN TERRITORY LICENSING COMMISSION

DECISION ON REVIEW

Premises: THROB, Smith St. Darwin

Licensee: DESPERADO INVESTMENTS PTY LTD

Date: 29 Dec 2000

The licensed premises now trading as “Throb” have only recently been converted to a tavern-type licence permitting (and insisting on) the operation of the premises as a “gay and lesbian bar/nightclub” from 1600 hours to 0200 hours on Thursday, Friday, Saturday and Sunday nights. The term “nightclub” can be taken to be a colloquial descriptor of the drinking environment offered by the premises: not being licensed to trade past 2am it is not subject to what are referred to as the “late trading venue conditions” which usually delineate a nightclub type of operation.

The current trading conditions are the result of an application in late July 2000 to convert what was then a restaurant licence into a tavern with late night trading to 4am. Objections to that application necessitated the scheduling of a hearing which was eventually compromised by the withdrawal of the objections upon the applicant accepting conditions in the licence requiring 2am closure and the maintenance of the concept of a gay and lesbian venue. The variation of the licence on that basis was approved by the Commission on 10 November 2000.

Since then on at least one occasion the Commission has approved a temporary variation to 4am to accommodate the staging of a specific entertainment event.

An application on behalf of the licensee to trade on New Year’s Eve to 6am (the following morning) was refused by the Commission, and the licensee sought a review of that decision pursuant to sec. 28 of the Northern Territory Licensing Commission Act. The Commission appointed members Withnall and McKerrow to conduct such review, and those members heard submissions from Mr Timothy Palmer on the afternoon of 27 December 2000. Mr Palmer is a Director of the company which manages the premises for the licensee pursuant to a management agreement approved by the Commission. The review panel accepted that Mr Palmer’s submissions were made on behalf of the licensee.

As was the case last year, the Commission has overseen the establishment of a trading regime for the Darwin CBD on New Year’s Eve that has been the result of considerable consultation and liaison between the Director of Licensing, the Police, Darwin City Council, various other community agencies and elements of the hospitality industry. The centrepiece for celebration within the CBD can be expected to be the street party in Mitchell Street, and one of the main givens in the consideration of an over-all plan for the evening is that existing late night trading venues already have an established *right* to trade to 6am on New Year’s Eve by virtue of an enabling condition in their licences. The extension of trade on this one night from 4am to 6am is an existing option contained in the body of rights and obligations which constitutes the late trading conditions for such venues.

With a view to both uniformity of approach and the perceived need to maintain a separation of times when the various outlets empty their revellers into the streets, the Commission has approved the policy applied by the Director in determining applications for extended New Years Eve trading by allowing those premises normally closing at midnight to extend to 2am, and those normally closing at 2am to extend to 4am. It was with full knowledge of such policy that Throb nevertheless applied to extend from 2am to 6am, and was refused. The present situation therefore is that Throb must close at 4am on the night, which was the limit of the Commission's approval.

Mr Palmer submits that Throb is a special case. He puts to us that the gay community is a sub-layer of the community with different needs to be recognised, that his clientele is deserving of special consideration. He makes the point that the environment at Throb is unique in Darwin for the gay community, and argues that his clientele should not have to abandon comfort and safety for vulnerability and danger in order to continue imbibing in town in the early hours of New Year's Day.

Mr Palmer quite specifically characterises the required special treatment as being given equality with the late night venues which on New Year's Eve are allowed to trade on to 6am.

Mr Palmer is of course entitled to expect nothing less than equality of treatment. This would see Throb treated in the same way as other 2am taverns, and on that basis there can be no argument against an extension to 4am on New Year's Eve. But in seeking to trade to 6am that night as if Throb was already a late night venue, Mr Palmer seeks a trading advantage over other 2am taverns on the sole basis of the nature of his self-chosen operational concept. For whatever reason, economic constraints or not, the licensee of Throb abandoned the original application to become a late trading venue, and the operation of a "gay bar" to 2am became the licence of choice. The licensee opted out of the full public scrutiny process that has historically been the burden of those venues currently able to normally trade to 4am, yet Throb now wants to be in the same situation on New Year's Eve as if it had in fact been trading in the manner it chose not to pursue.

Mr Palmer's concern for the wellbeing of his clientele is undoubted, but the Commission must act without discrimination unless only to the unequivocal benefit of the public at large, and we cannot see that we should grant Throb the New Year's Eve trading advantage it seeks on the basis of difficulties attendant on the sexual preferences of its clientele. No other basis for the exercise of our discretion having been offered, the trading extension is to be limited to 4am.

That said, however, we have considered Mr Palmer's safety concerns, and can also appreciate that elements of the patronage of Throb on New Year's Eve, given the occasion and the particular entertainment environment, may have some difficulty in effecting any necessary transition to street mode within the thirty minutes allowed to clear the premises after cessation of liquor service. Extending that thirty minutes to sixty minutes will be consistent with the Commission's concerns as to the separation (or "staggering") of different groups exiting from premises closing during the night. Such an extension will allow Throb patrons to take to the street as late as 5am, and hopefully be better able to avoid the 4am and 6am rushes on transport facilities and the potential for disorderly and sometimes violent street behaviour at those times.

The order therefore is that Licence No. 80515930 be temporarily varied to allow trading from 1600 hours on 31 December 2000 to 0400 hours on 01 January 2001. Pursuant to sec.104(3)(g) of the Liquor Act, the Commission authorises all persons on the premises at the closing time of 0400 on 01 January 2001 to remain on the premises to 0500 hours that day, provided that all service of liquor shall have ceased promptly at 0400.

This decision over-rides the previous temporary variation authority.

John Withnall
(Presiding member)
29 December 2000