

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Beachfront Hotel
<b>Licensee:</b>	Trojanmede Pty Ltd
<b>Licence Number:</b>	80315200
<b>Nominee:</b>	Ms Danielle Howell/ Mr Adam Netherwood
<b>Proceeding:</b>	Application to vary liquor licence conditions by extending the trading hours in the licensed area known as the Trophy Room and [Rear] Beer Garden on Thursday, Friday and Saturday nights.
<b>Relevant Legislation:</b>	Sections 31, 32, 47F, 47I, 104 of the <i>Liquor Act</i>
<b>Objectors:</b>	Ms Heather Moyle Mr Michael Robbins Mr Scotty Mitchell, NT Police Mr Phil Pethick, Darwin Rental Specialists
<b>Heard Before:</b>	Ms Jill Huck (Presiding) Mr Alan Clough Mr Paul Costigan
<b>Date of Hearing:</b>	8 October 2003
<b>Date of Decision:</b>	3 November 2003
<b>Appearances:</b>	Mr Neville Henwood for the licensee Ms Alison Worsnop for Mr Scotty Mitchell Ms Ann Russell for Mr Pethick and Darwin Rental Specialists, Ms Heather Moyle and Mr Michael Robbins

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## Background

1. On 6 May 2003 the Director of Racing, Gaming and Licensing granted the licensee of the Beachfront Hotel (the Hotel) an exemption under subsection 104(3)(g) of the *Liquor Act* (the Act) in respect of the areas known as the "Trophy Room and Beer Garden". The exemption enabled patrons to enter, and remain in, these areas between 24.00 and 02.00 hours (the following day) on Thursday, Friday and Saturday nights. The rationale for granting the exemption was that it was required to enable patrons to access toilet facilities and to move between the various areas of the licensed premises without breaching the licence conditions. It should be noted that all the other licensed areas of the Hotel were licensed to trade until 02.00 hours on these nights. The notice of exemption specifically stated that the bars in the Trophy Room and Beer Garden were to be closed during the relevant period and no liquor was to be "sold or consumed on the premises during these hours."
2. On 20 May 2003 the licensee applied to vary the licence conditions for the Hotel. Specifically, the licensee wished to vary the closing hours for the Trophy Room and Rear Beer Garden on Thursday, Friday and Saturday nights from the current time of 23.59 hours to a new time of 02.00 hours (the following morning). This would have the effect of bringing the trading hours for these areas into line with other areas of the Hotel and making the subsection 104(3)(g) exemption unnecessary.

3. The Licensing Commission directed the licensee to advertise the application to vary the licence conditions in the NT News. The advertisements attracted four objections. Mr Peter Allen, the Commission member appointed to consider the objections under section 47I(2) of the Act, whilst expressing some uncertainty about parts of the Police objection, decided that all four objections should be referred to hearing.

## Legal framework

4. The *Liquor Act* makes no specific provision for licensees to seek to vary their licence conditions. In the absence of such provisions, the Commission has taken the approach that many such applications constitute applications for new licences; the licence being the sum of its licence conditions (see the detailed reasoning set out in *Rorkes Drift* (2001)). Such an approach leads to the licensee having to advertise the application (section 27), be subject to the objection process (47F) and have the application assessed under the factors set out in section 32 of the Act.
5. The current proceedings serve several overlapping functions, namely:
  - The hearing of the section 47F objections;
  - The consideration of the application to vary the licence conditions (s32); and
  - The setting of any new licence conditions specific to the application (s31).
6. The relationship between the objection process and the consideration of an application is not a straight forward one. As a result of amendments to the *Liquor Act* which came into effect in January 2003, the grounds for objections to liquor licence applications are now restricted to the issue of whether the grant of the licence would affect the "amenity of the neighbourhood" (s47F(2)). The factors listed for consideration by the Commission in section 32, however, do not specifically include the "amenity of the neighbourhood". The factors set out in section 32 of the Act are as follows:
  - the location of the licensed premises;
  - the location and conditions of any licensed premises in the vicinity of the premises in respect of which the application is made;
  - the needs and wishes of the community;
  - the nature of any business to be conducted on the premises;
  - the financial and managerial capacity of the applicant;
  - where the premises which are the subject of an application for a licence are located in a community government area and the community government council for that area has the power to make by-laws with respect to liquor, advice offered by that community government council; and
  - any other matter the Commission thinks fit.
7. Despite the lack of common terminology, it is arguable that the licence's potential impact on the "amenity of the neighbourhood" is something that may have relevance to the assessment of a number of these factors, but would vary on a case by case basis, depending on the nature of the application.
8. In the current proceedings, the applicant suggested, and it was agreed by those attending, that the most logical way to approach the interrelated issues needing coverage was to first examine the details of the application, including the section 32 factors, before dealing with the objections. The same sequence has been followed in this written statement of reasons.

## The application

9. Mr Henwood, counsel for the applicant, submitted that the assessment of a licensee's application to vary the conditions of an existing liquor licence should be a much narrower exercise than if the assessment was in respect of an entirely new licence. He argued that, in particular, some of the factors set out in section 32 may require less thorough attention than is necessary with an entirely new licence application. Additionally he argued that any decision that the Commission might make in relation to the application should only relate to those parts of the licence conditions which the licensee had sought to vary.
10. Mr Henwood indicated that the essence of the applicant's case was that the variation was required for practical reasons. These reasons included removing an anomaly in the licence conditions, reducing security problems for the Hotel created by the anomaly (and not totally removed by the exemption), and providing some quiet drinking areas for patrons. It was also the applicant's position that the variation would have a minimal impact on the neighbourhood, particularly given the special conditions which the licensee was prepared to have incorporated into the licence.
11. Mr Sallis, the operational manager of the Hotel and a Director of Trojanmede, outlined the application for the Commission. He stated that the Trophy Room and Rear Beer Garden were the only areas in the Hotel not currently licensed to trade until 2.00am on Thursday, Friday and Saturday nights and that patrons needed to move through these areas to gain access to other licensed areas in the Hotel and to access the internal and external toilet facilities. Most customers (up to 95%) also preferred to enter and leave the Hotel through the Trophy Room and Beer Garden because the main car park was located at the back of the Hotel and this was also where taxis dropped off and picked up passengers. An alternative for patrons was to walk around the outside of the Hotel to access the different bar areas, the car park and taxis, however, this was not seen as a practical, safe or desirable option. Mr Sallis advised that the current trading hours for the different bar areas had been in place when they took over the hotel from the previous owners on 22 January 2001. The rationale for the differences in trading hours between the different licensed areas was unknown and the differences were seen as an anomaly given the physical layout of the premises. As an interim measure the licensee had applied for, and had been granted, the exemption under section 104(3)(g) of the *Liquor Act* so that patrons could move through the Trophy Room and Beer Garden between the hours of 24.00 and 02.00 on the relevant nights. The exemption, however, still required the Trophy Room bar and the servery through to the Beer Garden to be closed and no liquor to be sold or consumed in the Trophy Room and Beer Garden during the period. These constraints have continued to cause confusion for patrons and problems for Hotel security and bar staff, with staff needing to repeatedly explain why patrons cannot carry or consume drinks in these areas.
12. Mr Sallis also stated that the difference in licence conditions between the Cue Bar and the Trophy Room (which are only partly separated by a light partition and doorway and share the same long bar and fridges) caused confusion for patrons and a difficult security situation. In particular, customers did not understand the legal reasons why they had to move out of the Trophy Room at midnight to the adjourning bar. Managing these types of issues was a recurring problem for security and other staff.
13. Mr Fauntleroy, a duty manager at the Hotel, gave evidence that the period midnight to 2.00am was the time the Hotel was at its most vulnerable from a security point of view. The legalities of the current licensing arrangements forced security staff to focus most of their energies on stopping patrons carrying or drinking alcohol in the unlicensed areas (Trophy Room and Beer Garden). Potential conflict situations frequently arose because of this issue, with patrons resenting being taken to task when they considered they were not "doing anything wrong". Mr Fauntleroy said that a commonly arising situation was one in which a person was waiting for their partner or friend to use the toilets. He said it was difficult for patrons to understand why they couldn't stand outside the toilets holding their own and/or their partner's drink(s). Staff were also placed in the awkward position of

warning people not to leave drinks unattended because of the possibility of drink spiking, but at the same time having to ask people to do so in order to comply with licence conditions. In some situations tensions had been diffused by bar staff agreeing to "mind" drinks behind the bar.

14. The restriction on the carrying and/or consumption of alcohol in the Rear Beer Garden had similar problems, with staff having to prevent customers from carrying their drinks outside. As most customers left the premises through the Rear Beer Garden, security staff had to be vigilant that no one was carrying unfinished drinks. Mr Fauntleroy said that the situation would be greatly assisted by people being able to finish their drinks in the Beer Garden area.
15. It is worth noting at this point that the physical layout of the Hotel and the need to use the Trophy Room and Beer Garden as thoroughfares was confirmed for the Commission and Ms Russell (representing 3 of the objectors) by a site visit to the Hotel on the day of the hearing.
16. As well as avoiding some of the problems associated with access and the confusing trading hours, the applicant submitted that there were positive reasons why it would be useful to have the Trophy Room and Rear Beer Garden licensed after midnight. It was argued that the Trophy Room and Rear Beer Garden could both offer quiet "chill out" areas for patrons to escape the hustle and bustle of the Cue Room, Gaming Room and Captains Deck areas. In addition, the Rear Beer Garden offered patrons some respite from the smoky atmosphere inside the hotel and some privacy for couples. As already stated, the Rear Beer Garden, if licensed past midnight, would also offer customers an area to finish drinks before they left the Hotel, thus cutting down the potential for conflict with security staff. Currently security staff have to confiscate drinks from people at the relevant doorway as they start leaving the hotel.
17. Mr Sallis was at pains to emphasise that the plan was to keep both the Trophy Room and Beer Garden as low key areas. He said that there were no plans for live music in either area and there would be no music, live or amplified, in the Beer Garden at any time. In addition, the Hotel did not wish to open the servery/bar into the Rear Beer Garden past midnight; just allow alcohol to be consumed in that area. The licensee was prepared to have special conditions inserted into the licence prohibiting service and music in the Beer Garden after midnight. Mr Sallis said that it was not anticipated that extending the trading hours for either area would increase total customer numbers, although some customers may stay longer if the environment was a pleasant one.
18. Having dealt with the rationale for, and nature of, the application, Mr Henwood addressed the relevant factors in section 32 of the Act. The information he provided is summarised below:
  - The location of the licensed premises. Mr Henwood submitted that it was a relevant consideration, although not one he intended to rely on, that the Hotel has been established long before the neighbouring blocks of units had been built. People buying or renting the units would have been well aware of the existence of the Hotel and the prospect of noise and other disturbance that might be expected from being located so close of public hotel. He referred the Commission to its decision in *Top End Hotel* (2001), in which the issue of noise problems in a mixed use zone was discussed, particularly in the situation where the entertainment facilities predated the residential facilities.
  - The location and conditions of any licensed premises in the vicinity. Mr Henwood pointed out that the Hotel was the only public hotel for some distance. Other licensed venues in the area were quite different, with different clientele and licence conditions.
  - The needs and wishes of the community. Mr Henwood had organised a number of witnesses to address the needs and wishes issue and indicated that if the evidence of needs and wishes was still considered inadequate, he was prepared to provide further

evidence, although this might require an adjournment. Ultimately, the Commission heard from just Mr Sallis and Mr Fauntleroy on the issue and considered that further evidence was not required. Essentially, the evidence was that the current licence conditions did not meet the needs and wishes of the patrons of the Hotel, most of whom (about 70%) were local, many of whom found the current licensing conditions confusing, inconvenient and a source of tension, and some of whom (not quantified) would like some quieter areas in which to drink. The argument was therefore that the variation would meet the needs and wishes of the existing patrons of the Hotel who were members of the local community. A further argument was that the impact of the variation on the rest of the community would be low to negligible.

- The financial and managerial capacity of the applicant. Mr Henwood said that the financial and managerial capacity of licensee was well established and the nature of the variation sought was such that little additional scrutiny was required. If anything, the variation would make the management of the Hotel easier.

## The objections

19. The objectors in this case raised a range of concerns about the past and current operations of the Hotel and also some concerns about how problems could be exacerbated by the extension of trading hours. The contents of the written objections can be summarised as falling into the following categories: complaints about specific incidents (a gun being discharged in the car park and a person injured in a fight in the Hotel); complaints about noise at the rear of the Hotel during trading hours and at closing time (noisy patrons, revving cars and the emptying of glass bins); complaints about people using the hotel car park for motorcycle and car burnouts during the night; concerns about the presence of intoxicated people on the premises; and concerns about the adequacy of crowd control. A specific concern was also expressed about the prospect of more noise in the form of live bands and amplified music in the Rear Beer Garden and how this might affect nearby residents' ability to have a good night's sleep.
20. None of the objectors attended the hearing in person, although Mr Pethick, Ms Heather Moyle and Mr Michael Robbins were represented by Ms Russell and Mr Scotty Mitchell was represented by Ms Worsnop. Ms Worsnop indicated at the beginning of the hearing that Mr Mitchell's objection was now reduced to the issue of potential noise problems and that, given the licensee's willingness to have special conditions (see paragraph 17 above) included in the licence, she might yet withdraw the objection entirely. Ms Worsnop, subsequently withdrew the objection part-way through the hearing.
21. Mr Henwood, counsel for the licensee, expressed concern about the lack of personal attendance by the objectors. He quite rightly complained that the objectors' lack of attendance meant that the licensee had no opportunity to clarify the matters raised in the objections or to test the objectors' evidence through cross examination. Mr Henwood submitted that, in the absence of oral evidence, the Commission could place little or no weight on the objections. Mr Henwood also raised concerns about the standing of Mr Pethick's objection, in particular, whether it really met the requirements of section 47F(3)(b) of the Act. Despite these concerns, Mr Henwood indicated that the applicant was willing to deal with the contents of the objections and to put forward solutions for ensuring that the amenity of the neighbourhood was taken into account if the application was successful.
22. Mr Sallis addressed each of the issues raised in the objection letters and, whilst not agreeing with some of the specific claims made in the objections, clearly indicated that the objectors' concerns were taken seriously. Among other things, Mr Sallis explained the circumstances of the two incidents mentioned in the objectors' letters (discharging of a gun in the car park and a patron hurt in a brawl), assuring the Commission that they were one-off incidents and that the police had been satisfied with the way the Hotel had handled them.

23. Mr Sallis acknowledged the concerns of the residents in the area that the extension of trading hours in the Trophy Room and Rear Beer Garden might increase the level of late night noise and disturbance. In order to allay these concerns he stated that there would be no bands in the Trophy Room and no live or amplified music at any time in the Rear Beer Garden. He also undertook to ensure that noise in the Rear Beer Garden and the car park was kept to a minimum.
24. Mr Sallis said that the company had worked hard to improve the reputation of the Hotel since taking it over in 2001. The company had concentrated on improving the presentation of the Hotel (including landscaping and better garden furniture), improving facilities (adding a disabled toilet and better lighting), improving the training and management of staff, introducing policies and procedures and generally adopting a very hands-on approach to management. Further improvements were planned with extensive renovations, for which Licensing Commission approval will be sought, planned for the future. Mr Sallis said that the result of the improvements to date had been an increased numbers of patrons, regular comments of support from patrons and some positive changes in the types of clientele attracted to the premises.
25. There was much discussion about the alleged problems with noise from the rear car parking area, particularly people revving engines, doing wheelies and burnouts. Ms Russell, on behalf of the objectors, also complained about the noise arising from people using the rear pedestrian gateway to Sergison Circuit. She suggested that noise problems might be reduced by either removing this exit point or locking the gate after closing time. Some of the noise problems appear to have occurred well after closing, with the offenders not necessarily being patrons of the hotel. The licensee undertook to explore options for reducing the problems associated with the car park, including better lighting and better security. The possible closure of entrance/exit points was also discussed but it was conceded that Mr Sallis would need additional advice on this issue because of other legal requirements such as fire brigade access etc. Mr Sallis said that he was prepared to work with residents and/or their representatives on the issue of car park noise.
26. Mr Sallis outlined the Hotel's response to previous noise complaints. He said that there had been three noise complaints since the company took over the Hotel. The first complaint concerned amplified music in the Rear Beer Garden. The Hotel dealt with the problem by removing the speakers (which had been connected to the juke box in the Trophy Room) from the Beer Garden. In a second matter, the problem turned out to be a squeaky fan motor in the Happy Garden Restaurant (which is subject to a different liquor licence). The most recent complaint focused on noise from glass disposal late at night. The Hotel had addressed this by more vigorous communication to new staff about the Hotel's policies on glass disposal. The current policy is that no glass bins are to be emptied after 9.00pm at night (staff are advised 8.00pm) and before 8.00am in the morning.
27. Mr Fauntleroy said that two dedicated security staff were employed on busy nights and that some of the bar staff were licensed crowd controllers. The duty manager also kept an eye on the patrons in a roving capacity. On Thursday, Friday, Saturday and Sunday nights one of the security staff was given responsibility for keeping an eye on the car park. The car park was shared with the Happy Garden Restaurant and contained 125 spaces (with only one third to one half full on a busy night).
28. Mr Fauntleroy, in his evidence, said that security and bar staff had adopted a policy of no tolerance of fighting, abusive language and disregard/disrespect for management at the Hotel. The Hotel had a register of people banned from the hotel and there are about 20 people currently on the register. Usually people were banned for 3 months, but it depended on how bad the behaviour was. A second offence was likely to result in banning for longer than 3 months, or even a permanent exclusion. He noted that there are two people on the current banned list who were banned because of fighting and abusive language in the car park and that a patron was recently threatened with banning after he spun his tyres in the car park.

29. Mr Fauntleroy said that the Hotel's clientele used to be fairly rough. This had changed a lot under the new management with people seeing the Hotel as their own, being respectful and playing by the rules. It had also helped that a local family who were responsible for much of the trouble at the Hotel, including the gun incident, had been evicted. Mr Fauntleroy said that quite a few members of this family had been banned from the Hotel.
30. Mr Fauntleroy agreed that there was noise in the car park at closing time, although he thought the claim of frequent noise from revving cars was overstated. He said that management tried to slow the venue down 15 to 30 minutes before closing; lights were tuned on, juke boxes are turned down, and last drinks are called between 1.30am and 1.45am. He said that the main problem at closing time was delays in getting people into taxis. This was something that he and Mr Sallis were trying to improve. Mr Fauntleroy said that the car park was usually empty by 2.30am except for cars which had been left there by their owners. The current practice is for security staff not to leave until the last person has gone.

### **Application of the law:**

31. The Commission is satisfied that the concerns of the objectors, although possibly not accurate in all details, were genuinely held, that they were not frivolous, irrelevant or malicious in nature and that they needed to be taken into account in the Commission's decisions as to whether the application should be granted and the nature of the specific licence conditions that should apply. In particular, the Commission considered that the concerns of residents about the possibility of unreasonable noise late at night should be given some weight. The Commission noted that the concept of what is "reasonable" or "unreasonable" noise needed to take into account that some level of noise was to be expected by residents living next to a large public hotel.
32. In making its decision about whether to grant the licence application, the Commission considered the factors set out in section 32 of the Act. Of the factors listed, the ones most pertinent to this application were: the location of the premises (s32(1)(a)); the needs and wishes of the community (s32(1)(d)); and the catch-all provision of "any other matter that the Commission thinks fit" (s32(1)(g)).
33. Location of the premises. The Commission noted that the Hotel is located in what has become a medium to high density residential area, with most of the current residences having been established many years after the Hotel commenced its operations. As observed by Mr Henwood, residents would have moved into the area with the full knowledge of the Hotel's existence and with some appreciation of the possible impact this may have on the neighbourhood, including the likelihood of some noise associated with the operations of the Hotel (music, traffic, patrons). Mr Henwood's observation was supported by Ms Russell's evidence that units adjacent to the Hotel were difficult to rent because of people's fears about noise. Whilst this fact is not determinative, it has some relevance to the issues under consideration (see John Withnall's remarks at *Top End Hotel* (2001) p6). That said, the matter we are dealing with here is not a complaint about the operations of the Hotel, but an application to vary the Hotel's licence conditions by extending trading hours in one of the licensed areas. In this context, it is not unreasonable to consider whether such a change should be allowed in a neighbourhood that combines commercial and residential uses, if that change is likely to result in increased noise and disruption to the neighbourhood.
34. The needs and wishes of the community. Without the benefit of any independent survey of community attitudes, it is difficult for the Commission to be absolutely certain of the level of community support for the proposed variation. In the current situation the Commission was reliant on the evidence of two members of the Hotel's management that the variation was consistent with the needs and wishes of the Hotel's patrons and, further, that the Hotel's patrons were largely drawn from the local community. The variation was presented as removing some of the current sources of confusion, inconvenience and tension for patrons as well as providing some positive benefits to patrons such as quiet areas in which to drink.

In many situations, this level of information would not be considered sufficient to establish “the needs and wishes of the community”. However, in this case, the Commission is inclined to agree with Mr Henwood that the hurdle should not be placed too high. This is largely because of: the very low key nature of what is now proposed in the application; the fact that the application is for a variation of an existing licence rather than an entirely new licence; the credible evidence given by the two staff members; the fact that the Police objection was withdrawn during the hearing; and the fact that Ms Russell, while still expressing some general concerns about the operations of the Hotel, seemed satisfied with the rationale for the application and the specific proposals to address neighbourhood concerns put forward by the applicant.

35. Any other matter the Commission thinks fit. The Commission was left in no doubt that the current licence conditions required significant amendment, particularly in respect of the conditions applying to the area known as the Trophy Room and Rear Beer Garden. Even with a section 104(3)(g) exemption in place, the security and other practical problems associated with the area were of clear concern.
36. Another matter considered under this heading, was the nature of the conditions the applicant was prepared to accept in relation to how business would be conducted in the affected areas. In a letter to Police and in oral evidence at the hearing, the applicant offered to agree to the following licence conditions: that there would be no live bands or amplified music in the Rear Beer Garden after midnight; and that there would be no service to patrons in the Beer Garden after midnight. At the hearing the applicant also offered to be bound by a noise condition in respect of the Beer Garden.
37. All of these proposed conditions relate only to the period of time affected by the variation (midnight to 2.00am), however, the Commission noted that Mr Sallis made a number of undertakings during the hearing covering a wider time period. These voluntary undertakings included that there would be no live or amplified music in the Beer Garden at any time, no bands in the Trophy Room at any time and initiatives to reduce noise problems in the car park.
38. Taking all of the matters set out above into account, the Commission concluded that the arguments in favour of the variation outweighed those against it. The Commission decided to vary the Beachfront Hotel licence conditions along the lines suggested by the applicant, with some minor amendments. Aside from some wording changes, the Commission decided to include the Trophy Room in the suggested noise condition. This was consistent with the licensee's general undertaking that the variation would have minimal impact on the neighbourhood.
39. Trial period. The Commission was advised by Mr Henwood that the Police had suggested a trial period of 6 months for the variation of licence conditions. Mr Henwood said that the applicant was not opposed in principle to this suggestion, however, he was unclear about how such a trial period could be implemented pursuant to the provisions of the *Liquor Act*. While the Commission considered that such a trial would be technically possible, we considered that it would be a cumbersome process. It was also the Commission's view that section 48 of the Act (Complaints) provided an easy mechanism for community members (and the Police) to complain to the Commission if the changed licence conditions were causing a problem. If, after a hearing into the complaint(s), the Commission was satisfied that the situation were serious enough, it would be at liberty to change the licence conditions in any way it saw fit, including reducing the trading hours of specific areas of the Hotel. The Commission therefore rejected the suggestion of a formal trial of the changed licence conditions.

## The decision

40. The Commission decided to grant the application to vary the trading hours of the Trophy Room and [Rear] Beer Garden from 10.00 to 23.59 on Thursdays, Fridays and Saturdays

to 10.00 to 02.00 (the next day) on each of those nights. The following special conditions will apply:

- There will be no live or amplified music in the Beer Garden after midnight;
- Service in the Beer Garden will cease at midnight, although patrons will still be able to consume alcohol in the Beer Garden that they have purchased from other bars in the Hotel; and
- The licensee will take all reasonable measures necessary to ensure that noise from the Trophy Room and Beer Garden after midnight does not cause undue disturbance or discomfort to residents of the neighbourhood.

41. The new conditions in respect of the Trophy Room and [Rear] Beer Garden are to take effect immediately upon publication of this statement of reasons. The statement of reasons will be of sufficient authority and warrant for the applicability of the new conditions until such time as the licence document may be re-worded and re-issued to encompass the changes.

J Huck  
Presiding Member