

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Howard Springs Tavern
Licensee:	Majestic Logistics Pty Ltd
Licence Number:	80303036
Nominees:	James Charles Elsdon Tracey Anne Bond
Proceeding:	Application for variation of licence conditions
Heard Before:	Mr John Withnall (Presiding) Mr Paul Costigan Mr Alan Clough
Date of Hearing:	06 March 2003
Date of Decision:	21 March 2003
Appearances:	For the licensee: Ms T Bond Objectors in person: Mr L Ah Toy, Mr and Mrs Beck, Ms J and S Thiel

1. The liquor licence for the Howard Springs Tavern contains a special condition prohibiting live entertainment after 19:00 hours. This condition seems to have been inserted in the licence back in the early eighties as a result of noise complaints from nearby residents at that time.
2. The licensee by the present application sought to vary that condition to enable live entertainment to 00:59 hours in the Lounge Bar/Dining Room on Friday and Saturday, and to 22:00 hours on other nights, and to midnight on Friday and Saturday in what was described as the Public Bar and Beer Garden.
3. The Commission initially determined that the application should be advertised, given the potential impact of the requested changes upon residents in the surrounding area, and the advertising process resulted in five written objections, from four different families residing in the area.
4. In response to the objections, the licensee volunteered certain restrictive conditions as to the type of music and entertainment to be provided, including the prohibition on live bands playing in the beer garden area.
5. In submitting a draft of these volunteered restrictions nominee Ms Tracey Bond distinguished three separate areas, viz. Lounge Bar/Dining Room, Public Bar and Beer Garden, whereas the licence instrument in its imposition of trading times distinguishes only two areas: Manor Inn Restaurant & Cocktail Bar, and Tony's Place.
6. It became clear at the hearing that the Manor Inn Restaurant & Cocktail Bar corresponds with what Ms Bond calls the Lounge Bar/Dining Room, and Tony's Place comprises an area that was explained to include a combined area described as Main Bar/Beer Garden.
7. Upon the re-issue of the licence to reflect the new conditions hereinafter determined, the licence descriptions of the two areas under "Trading Hours" should be updated accordingly, to correspond with the respective areas described in the new conditions.

8. The request to be able to have live entertainment in the Main Bar/Beer Garden to midnight is inconsistent with the current closing time of 2330 hours for that area on Saturdays, but Ms Bond clarified that she was not applying for any extension of trading hours and that her application should be read down accordingly.
9. The hearing was notable for the mutual respect between Ms Bond and the objectors who participated in the hearing; Ms Bond acknowledging the reasonableness of the objectors' apprehensions, and the objectors expressing appreciation of her receptivity and standard of management. What was said to be the only real incident of unacceptable disturbance on her "watch" was candidly conceded by Ms Bond as having been a managerial mistake that would not be repeated. It was clear that the objectors in attendance were reasonably comfortable with the manner in which Ms Bond proposed to operate under the suggested new conditions, and were attending the hearing more to oversee the process than to take up any adversarial position.
10. The Commission noted during the hearing that a general licence condition restricting unreasonable noise disturbance was conspicuous by its absence, and Ms Bond did not resist the suggestion that a standard condition of this nature also be introduced into the licence.
11. Ms Bond indicated several operational intentions which have not been incorporated into the new conditions below because of the objectors' level of confidence in her bona fides in this regard. Such intentions included contacting nearby residents to give warning of any "big weekend", and not normally using the Beer Garden area for live entertainment on Saturdays. The objectors will be at liberty of course to embody any future disappointment with the licensee's management of noise issues into a complaint to the Commission under s.48 of the *Liquor Act*, although the Commission anticipates that there would always be a level of consultation between the parties in minimisation of the prospect of such a complaint being laid.
12. The application is therefore granted in the following terms.
13. The condition headed "Live Entertainment" in Licence No. 80303036 is deleted, and the following condition inserted in its stead:

Entertainment and noise disturbance

- (a) The provision of live entertainment is restricted to the following times within the separately designated areas:

Lounge Bar/Dining Room -
Sunday to Thursday-12:00 to 22:00 hours
Friday and Saturday-12:00 to 01:00 hours
Public Bar/Beer Garden -
Sunday to Thursday-12:00 to 19:00 hours
Friday-12:00 to 23:59 hours
Saturday-12:00 to 23:29 hours
- (b) Bands are not permitted to perform in the area known and currently designated as the Beer Garden. Live performances in this area must be limited to solo performers or duets, without percussion equipment.
- (c) No entertainment shall be provided which includes the playing of music, whether live or recorded, of any type popularly known as metal, heavy metal, techno or disco.
- (d) No amplification shall be directed in any way outward or away from the licensed premises.
- (e) Notwithstanding the foregoing provisions, the licensee in any event shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers

of any residential premises. Without in any way limiting the generality of such restriction, the licensee shall take all reasonable steps to mitigate the noise of performers or audiences leaving the licensed premises.

- (f) The Commission on its own initiative may review noise issues pertaining to the licensed premises, and notwithstanding the compliance by the licensee with the foregoing requirements, the licensee shall implement such sound attenuation and noise mitigation measures as the Commission in its discretion may notify the licensee in writing at any time as having become in the Commission's view a reasonable requirement in circumstances then prevailing.
14. The new conditions are to take effect immediately, even though for the time being not embodied in the licence document itself. These Reasons for Decision are to be 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.
15. The licensee and objectors have "liberty to apply", meaning in this instance that if any aspect of the new requirements should be considered to be in need of clarification or minor adjustment, appropriate application can be made direct to either the Commission member who presided at the hearing or to the Chairman of the Commission, without necessarily having to be processed as a fresh application or new complaint as the case may otherwise have indicated.

John Withnall
Presiding Member

21 March 2003