

Northern Territory Licensing Commission

Reasons for Decision

Premises:	The Lane Café Restaurant
Licensee:	Iparpa Nominees Pty Ltd
Licence Number:	80517222
Nominee:	Vincent Stephen Lange
Proceeding:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i>
Heard Before:	Mr John Flynn Mrs Jane Large Ms Helen Kilgariff
Date of Hearing:	30 March 2006
Appearances:	Senior Inspector Wayne Sanderson Mr John Stirk for the Licensee Mr Ron Tynne, General Manager Aurora Alice Springs

1. This is a complaint pursuant to Section 48(2) of the *Liquor Act* in respect of The Lane Café Restaurant and in particular the emanation of noise from the upstairs function room.
2. The complainant is the Mr Ron Tynne, General Manager of the Aurora Alice Springs who had alerted Racing, Gaming & Licensing to ongoing issues regarding noise. As a result the Licensing Inspectors engaged Mr Peter Bannister, Environmental Scientist with the Northern Territory Environmental Protection Authority to conduct noise tests. The noise levels were considerably above those which would be considered acceptable.
3. The Manager of The Lane Café Restaurant was aware of the testing and had during the evening asked the sound controller of the music to turn the sound down but that person increased the volume on several occasions despite being asked to turn it down.
4. The representatives of the Licensees engaged Mr Bill Low of WA Low Ecological Services to give them advice as to what might be acceptable noise levels and the siting of any amplification. They have assured the Commission that they will take a more active role to ensure that noise levels do not affect the neighbourhood.
5. When the upstairs function area was considered by the Commission for inclusion in the licence conditions the Commission was concerned that noise could disturb the neighbourhood and included two (2) specific stringent conditions.

(b) The Licensee shall not permit noise to emanate from the premises to the disturbance of the normal comfort of occupiers of other premises. The Licensee shall attenuate noise emanation as directed by any Licensing Inspector or Police Officer.

Notwithstanding any such attenuation, the event may be terminated at the discretion of any Licensing Inspector or Police Officer at any time during the evening on grounds of noise disturbance.

(c) The Licensee shall notify the operators of the Mercure Inn Diplomat and Aurora Alice Springs of this approval and include the text of the foregoing noise condition in such advice to those premises.

6. At that time the representatives of the Licensee proposed that the area would be used for corporate functions, folk music and other functions of a “low key” nature.
7. The Commission is concerned that a number of functions have been held which did not accord with their understanding of how the premises would operate. It is these functions which have given rise to the complaint and the breach of the condition.
8. It is a further concern to the Commission that users of the function area were not alerted to the conditions of the licence in relation to noise. As a result it would appear the users have not given any real consideration to the noise from their function emanating into the neighbourhood.
9. The Commission now has some comfort that the representatives of the Licensee are now totally aware of the discomfort that it has caused to the neighbourhood, particularly the complainant, the General Manager of the Aurora Alice Springs.
10. Whilst at the hearing there seemed to be some suggestion that the Manager of the restaurant would check with the Manager of the Aurora Alice Springs as to whether the noise levels were unacceptable. The total responsibility lies with the Licensee.
11. Mr Peter Bannister has offered his services and his equipment for ongoing monitoring of sound.
12. The management has strategies in place to avoid a further complaint:
 - a) The Licensee has their own amplification system which as advised by Mr Low will be set at level 3 and they have assured the Commission that they will not allow any other amplification or modification to their system to be used on the premises.
 - b) The area beneath the amplification system will be carpeted to absorb noise and the speakers will be pointed in a direction south which appears to reduce or negate the noise.
 - c) They have investigated a “kill” switch which will automatically cut the sound if it is above a certain level. Whilst they have given no firm undertaking to install such equipment, it may well protect against further breaches.
 - d) Extra security staff will be employed so that management are free to constantly monitor the area and ensure all licence conditions are met.
 - e) Prior to the holding of a function a copy of the Upstairs Function Area Licence Conditions will be supplied to function holders.

Decision

13. In considering penalty it was not thought appropriate that a suspension of the restaurant area be considered as it was the upstairs function area that was the subject of the complaint.
14. Given the nature of the upstairs function area a timed suspension was also not considered appropriate as the area has intermittent use and any suspension would have to be of sufficient length to be effective.
15. Whilst it is not appropriate to adopt any suspension the Commission has some doubt as to whether the area is a suitable venue for the type of “function” that has caused this breach.
16. The Commission takes the position that if there is a further justifiable noise complaint then the Commission will have to review the use of the area and may well decide that it has been inappropriately used and cannot form part of the licensed premises.

17. It is up to the Licensee to ensure that the area is used in accordance with the licence conditions.

John Flynn
Chairman

11 April 2006