

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Discovery 89 Mitchell Street Darwin NT 0800
Applicant:	Deva Darwin Pty Ltd
Director:	Mario Madaffari
Licence number:	80316240
Proceeding:	Application for Material Alterations Pursuant to Section 119 of the <i>Liquor Act</i>
Heard before:	Mr Richard O'Sullivan (Chairman) Mr John Brears Ms Cynthia-Lee Bravos
Date of Hearing:	31 May 2012
Appearances:	Mr Tom Anderson – Counsel Assisting the Commission Senior Sergeant Michael Hebb – Northern Territory Police Ms Karen Avery – Senior Director of Licensing

Background

- 1) Deva Darwin Pty Ltd has made application to the Northern Territory Licensing Commission (“the Commission”) for Material Alterations to the licensed premises known as Discovery and The Lost Arc, in accordance with section 119 of the *Liquor Act* (“the Act”). Mr Mario Madaffari is the sole Director and Nominee of the Licensee.
- 2) The Material Alterations for which approval of the Commission has been sought comprise:
 - Raising the existing sunken dance floor to make the entire floor one level (ground level);
 - Removing the two existing bars currently located along the walls of the ground floor;
 - Constructing one central bar which will be located in the middle of the ground floor (opposite the stage);
 - Moving the existing front face of The Lost Arc (wall and bi-fold windows) three metres towards the inside bar area, to extend the outdoor area;
 - Building a low containment wall to keep patrons within the extended outdoor area;
 - Construction of a new and easier access ramp to the downstairs toilets;
- 3) The applicant advises that there are no other variations to licence conditions sought and the trading conditions, including hours of operation, will remain unchanged.
- 4) The application was advertised in the Northern Territory News on 16 and 21 March 2012 and no objections were lodged. While not objecting to the Material Alterations, the Northern Territory Police did raise concerns with regard to patron capacity at the premises. Licensing Inspectors within the Department of Justice have also expressed concerns over the patron

capacity and management of the venue when at or near full capacity. The current licence has capacity of 1000 patrons for the Discovery Night Club area and 210 patrons for The Lost Arc area of the premises.

- 5) Section 119(7)(c) of the Act provides that the Commission may conduct a Hearing into an application for Material Alterations to licensed premises. Accordingly, the Commission determined to conduct a Hearing in relation to the application to give an airing to issues raised in relation to the Material Alterations and concerns over patron capacity of the venue, noting Discovery has a recent history of multiple contraventions of licensing conditions under the former Licensee.

Hearing

- 6) At the Hearing conducted on 31 May 2012, Mr Tom Anderson, Counsel Assisting the Commission, outlined procedures relevant to a Section 119 Material Alterations application. In doing so, Mr Anderson drew attention to subsections 119 (7) and (8) of the Act, which read:
 - (7) *After considering the application, the Commission must, having regard to the objects of this Act:*
 - (a) *approve the material alteration; or*
 - (b) *refuse to approve the material alteration and direct the Director to forward notice of the refusal together with a statement of the reasons for refusal to the applicant; or*
 - (c) *conduct a hearing in relation to the application.*
 - (8) *After the Commission has conducted a Hearing under Part IV or subsection (7)(c), the Commission must take action of a kind described in subsection 79(a) or (b) in addition to any action it may take under Part IV.*
- 7) Mr Anderson submitted that as this was a Hearing under subsection (7)(c) only (and not Part IV) the Commission's options following a Hearing were to either approve or refuse the Material Alterations sought. He submitted that if the Commission had concerns over patron numbers and capacity, any action which it may wish to take to amend the licence conditions pertaining to capacity would have to be pursuant to section 33 of the Act. Section 33 enables the Commission to vary licence conditions but such a notice of variation allows for the Licensee, within twenty-eight days, to seek a Hearing in relation to the proposed variation.
- 8) Mr Anderson then outlined the background leading to the transfer of the suspended licence to Deva Darwin Pty Ltd from Dundee (NT) Pty Ltd and tabled relevant documentation (Exhibit 2).
- 9) Mr Anderson summarised the application and drew the Commission's attention to the calculation by the Northern Territory Fire and Rescue Services (NTFRS) of the maximum patron numbers of various areas of the licensed premises (totalling 1210), noting that the capacity would have to be recalculated after any approved alterations had been completed, which may lead to an increase of the premises' patron capacity under the current licence conditions. However, this could not be known until the alterations had been completed.
- 10) Senior Sergeant Michael Hebb was then called as a witness to provide evidence on behalf of the Northern Territory Police. Senior Sergeant Hebb advised that he had met with Mr Mario Madaffari some weeks prior to the Hearing and had reviewed the plans for Material Alterations and undertaken a site inspection of the premises. He expressed the view that the proposed Material Alterations would result in an improvement to the premises. He expressed some concerns over the patron capacity in some of the individual area within the premises.

- 11) In relation to large number of patrons exiting a late night premises, Senior Sergeant Hebb advised that in cities and towns with colder weather, patrons tended to quickly disperse following closing time but that this was not the case in Darwin, with its tropical climate.
- 12) Ms Karen Avery, the Senior Director of Licensing, gave evidence that she has met with Mr Madaffari and formed the view that the material alterations and business model outlined were a considerable improvement to the previous operations of the Licensee. However, she advised she would not be supportive of an increase in patron numbers.
- 13) Mr Madaffari outlined his history of involvement in nightclubs and the general philosophy and management procedures he would adopt for Discovery. He advised that he had owned and managed the Metropolis Night Club in Fremantle successfully from 2000 to 2008. During this time he had spent approximately three million dollars (\$3 million) in renovations to modernise the premises. He detailed that in all of the years of operating the Metropolis Night club, only one breach of a Council by-law or regulation had occurred. The premises had no dealings with the Western Australia licensing authority over licence breaches or infringements. Mr Madaffari stated that he would be the Nominee for the premises for the foreseeable future and he generally adopted a hands-on approach. He tabled site plans (Exhibit 4) for the works proposed to be undertaken which he estimated will involve an investment totalling in the vicinity of two million dollars (\$2 million).
- 14) Mr Madaffari explained that his business model would rely heavily on the use of the NightKey patron management system which would identify problem patrons and be useful to Police and Inspectors in investigations to identify patrons involved in incidents or misbehaviour.
- 15) The Material Alterations proposed include raising of the sunken dance floor, removal of two existing bars along the walls of the ground floor, installation of a central bar in the middle of the ground floor, construction of a new easier access ramp to the downstairs toilets and the removal of the front of the building of The Lost Arc to three metres inside the existing bar area to create an outdoor smoking area. Other aspects of the re-design of the interior of the premises relating to furnishings, fixtures and fittings detailed by Mr Madaffari included:
 - Additional soft furnishing to absorb sound and prevent sound reverberations
 - Increased use of LED lighting to make the premises brighter
 - Reducing the volume of music in areas away from the dance floor
- 16) Mr Madaffari proposed that the alterations be undertaken in two stages, involving an investment of approximately one million dollars (\$1 million) for each stage.
- 17) Stage One would involve the elevation of the sunken dance floor and the removal of stairs to facilitate easier access to the toilets and the replacement of the front area of the Lost Arc to three metres inside the premises to create a larger al fresco and smoking area.
- 18) Kitchen renovations to The Lost Arc and the removal of the two side bars from Discovery and the development of a central bar and general refit of The Lost Arc would largely comprise Stage Two.

Consideration of the issues

- 19) In considering the application, the Commission accepts Mr Anderson's submission that it does not have power, following this Hearing, to vary the licence conditions. The Commission's consideration is therefore limited to whether or not to approve Material Alterations applied for pursuant to section 119. On the evidence of the Northern Territory Police and the Senior Director of Licensing, the Material Alterations sought will improve the premises and the Commission is inclined to agree with their views. Improved lighting, concentration of the loudest music to the dance floor and installation of soft furnishings will

likely lead to increased capacity of the licensee to observe and manage the conduct of patrons.

- 20) The Commission is presented with an application involving the proposed investment of approximately two million dollars (\$2 million) to modify the premises and upgrade the furniture and fittings.
- 21) It is the Commission's judgment that this will result in improvement to the appearance and ambience of the venue. The applicant has also given evidence that he will have strict procedural guidelines in place, backed by an operation and procedure manual to be adhered to by all staff and enforced by senior management. The use of the NightKey patron management systems, based on its successful use at the Metropolis Nightclub and elsewhere, will also likely improve the management of problem patrons.
- 22) The applicant, through its sole Director, Mr Madaffari, also brings to Discovery experience and a history of operating a successful nightclub in Fremantle for over eight years with a virtually unblemished record. This gives weight to the claims by Mr Madaffari that his business model for the operation of Discovery would be an improvement on the previous Licensee.
- 23) Of concern to the Commission, but not under active consideration under the current application, is patron numbers within the venue. It is up to the NTFRS to determine the maximum number of patrons for safety once the Material Alterations are completed and the Licensee seeks to trade. The Commission in the ex tempore Decision delivered at the completion of the Hearing, placed on the record its concerns should the Material Alterations result in the NTFRS increasing the maximum patron capacity of the venue. The Commission considers that it is empowered by Section 33 of the Act to vary the conditions of the licence at any time to reduce the maximum patron capacity of the premises should it be considered necessary to do so. It remains to be seen whether it will necessary to exercise that powers.

Decision

- 24) The Commission approves the material alterations to Discovery Nightclub, including The Lost Arc, as sought by the applicant. In giving approval, the Commission imposes the following time conditions which are consistent with the applicant's current intentions.
 - a. Stage One (1) of the works involving the elevation of the sunken dance floor and the re-installation of the exterior wall of The Lost Arc to three metres inside the premises are to be completed within six (6) months of this Decision.
 - b. Stage Two (2) works involving development of a central bar and refit of The Lost Arc are to be completed within twelve (12) months of this Decision.
- 25) The applicant is also to provide a program and schedule of works within fourteen days from the date of this Decision.

Richard O'Sullivan
Chairman

25 June 2012