

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Nirvana Restaurant
Licensee:	TJ Investments (NT) Pty Ltd
Licence Number:	80503480
Proceeding:	Application for Material Alteration Pursuant to Section 119 of the <i>Liquor Act</i> and Variation to Licence Conditions Pursuant to Section 32A of the <i>Liquor Act</i>
Heard before:	Ms Cindy Bravos (Presiding Member) Mr John Brears Mr Walter Grimshaw
Date of Hearing:	30 August 2012
Appearances:	Mr Jason Hanna for the Licensee Mr Tho Thanh Thai for the Licensee Licensing Inspector Shane McCorkell for the Director of Licensing Mr Alan Thomas - Objector

Background

- 1) TJ Investments (NT) Pty Ltd ("the Licensee") of Nirvana Restaurant made an application on 14 May 2012 to vary the liquor licence and to extend the licensed area at the premises.
- 2) The application pursuant to Section 32A of the Liquor Act ("the Act") entails an extension of the licensed premises to incorporate a new alfresco deck situated on the Dashwood Crescent side of the premises. The extension is proposed to be an additional area utilised for on-premise consumption of alcohol and service of meals.
- 3) Also sought in the application was a variation of licence conditions pursuant to Section 119 of the Act to allow the sale of alcohol without the requirement for such sales to be ancillary to the consumption of a meal.
- 4) Advice of the application was forwarded to the Northern Territory Police, the Development Consent Authority and the Darwin City Council ("DCC"). Neither the Northern Territory Police nor the Development Consent Authority objected to the application.
- 5) Whilst the DCC also raised no objections to the application, it did request that conditions be placed on the licence to limit noise levels so as to not cause unreasonable disturbance to the amenity of nearby residents. Further, whilst supporting the sale of alcohol without a meal between 8.00pm and 2.00am the following day, the DCC requested that conditions be placed on the licence so that patrons may only consume alcohol whilst seated at a table.
- 6) Additionally, following publication of the application in the Northern Territory News, one objection was received from Mr Alan Thomas. Mr Thomas, a resident and owner of an apartment situated within close proximity to the Nirvana Restaurant noted that whilst being in favour of the construction of the alfresco deck area, he objected to the application on the grounds that the removal of the requirement for alcohol to be served in conjunction with a meal posed the potential for the proposed deck area to cause disturbance to local residents. Mr Thomas sought for a condition to be placed on the licence to limit usage of the deck area to no later than 10.00pm each evening.

- 7) On 16 August 2012, the Northern Territory Licensing Commission (“the Commission”) Legal Member following consideration of the objection and it meeting the requirements of Section 47 of the Act determined that the Mr Thomas’ objection was valid and thus required the application to go to Hearing.

Hearing

- 8) The Hearing was conducted on 30 August 2012. Following the formal opening, the Hearing was adjourned to allow the Commission and the parties to conduct a viewing of the premises and the specific areas affected by the application for extension of the licensed premises and the variation of the licence condition.

Submissions of the Licensee

- 9) Mr Hanna informed the Commission that the deck area was designed to seat approximately thirty-five patrons at predominantly small tables and no allowances were being made for anything other than an alfresco dining area. There was no intention to provide high tables or dry bars in the area and smoking would not be allowed in the deck area.
- 10) Mr Hanna also stated that whilst an exit existed from the deck area to Dashwood Crescent to comply with fire exit requirements, the gate was self-locking and not designed to encourage the exit to be used as a regular entry and exit point for patrons.
- 11) Mr Hanna submitted that whilst some noise would be likely to emanate from the deck area, it would be controlled in a responsible manner by premise staff. Additionally a screen was being erected on the left hand side of the premises looking out into Dashwood Crescent in order to further minimise noise. Further, that quotes were being sought for the construction of a shade cloth/sail for placement over the deck area which would also assist to minimise noise emanating from the area.
- 12) Mr Hanna advised the Commission that the Licensee did not wish to limit the use of the deck area to hours other than those already contained in the licence conditions. Mr Hanna advised that most patrons currently leave their tables by 11.00pm and normal business practice would be to clear the deck area gradually as the evening progressed and move patrons that had not yet left the area to the front area of the venue so as to reduce staffing costs.
- 13) Mr Hanna’s written application also stated that the Nirvana Restaurant had been operating for the past sixteen years and during that time there had been no complaints regarding noise or public disturbance. Inspector McCorkell confirmed at the Hearing that he was unaware of any complaint to date.
- 14) With respect to the request for a variation to the licence conditions so as to allow the sale of alcohol without the requirement for such sales to be ancillary to the consumption of a meal, Mr Hanna advised the Commission that the venue operates as a live music restaurant offering music and other forms of entertainment such as comedy and belly dancing. Mr Hanna submitted that allowing for patrons to be served alcohol without a meal would allow for greater enjoyment for patrons as they would not feel ‘pressured’ into purchasing a meal. Mr Hanna also submitted that the venue would continue trading predominantly as a restaurant and would not be advertised as a bar.

Submissions of the Objector

- 15) Mr Thomas has resided in an apartment in Harriet Place since February 2012, having purchased the property in late 2011. Mr Thomas’ apartment’s balconies overlook Dashwood Crescent and are situated some sixty to seventy metres from the deck area of Nirvana Restaurant.

- 16) Mr Thomas stated to the Commission that he considered the area to be a relatively quiet area for city living and that the area is usually quiet after 10.00pm - 10.30pm at night. However, Mr Thomas further advised the Commission that since he moved into the area in February 2012 he has called the Police on three to four occasions due to noise related issues, none of which have related to the Nirvana Restaurant.
- 17) Mr Thomas advised the Commission that whilst he was in support of development of the area he was also concerned that if the Nirvana Restaurant was allowed to utilise the deck area past 11.00pm it will disturb local residents from being able to go about their normal activities.
- 18) Mr Thomas advised in his written objection dated 21 June 2012 that he was of the view that alcohol should only be available for purchase with food in the proposed alfresco area to avoid the area becoming an "Alfresco Bar". In later correspondence dated 22 July 2012, Mr Thomas advised that should a closure time for the deck area be set at 11.00pm then his concern regarding the removal of the condition to sell liquor only with a meal is reduced.
- 19) Mr Hanna advised the Commission that despite the submissions at Hearing by the Licensee that his level of comfort regarding the application had not changed.

Consideration of the issues

- 20) In considering the application for an extension of the licensed premises and the removal of the licence condition to only be able to serve alcohol ancillary to a meal, the Commission is required to consider the objects of the Act. In complying with those requirements, the Commission must consider the public interest in respect of each application received.
- 21) The submissions of the Licensee are that the proposed alfresco area will seat approximately thirty-five patrons at small tables and would not be utilised as a smoking congregation area or as a thoroughfare in and out of the premises. All patrons being served alcohol would be seated and as the evening progresses, patrons remaining on the deck area would be encouraged to move inside to the lounge area. The removal of the requirement for alcohol to be served ancillary to a meal would allow patrons to enjoy the facilities of the premises which includes the provision of live music and other entertainment without the need to eat a meal.
- 22) The submissions of the objector relate to concerns about the possible impact upon local residents from noise emanating from the alfresco area and as such, has requested that a curfew be placed on the usage of the alfresco area. Should a time limit be placed on the usage of the alfresco area, then the objector's concerns regarding the removal of the requirement to serve alcohol ancillary to a meal is reduced.
- 23) Whilst not regarded by the Commission as an objector, the DCC requested that conditions be placed on the licence to limit noise levels so as to not cause unreasonable disturbance to the amenity of nearby residents. Further, whilst supporting the sale of alcohol without a meal between 8.00pm and 2.00am the following day, the DCC requested that conditions be placed on the licence so that patrons may only consume alcohol whilst seated at a table.
- 24) The Commission is mindful that pursuant to the public interest criteria of the Act, business conducted at licensed premises must not cause annoyance or disturbance to persons who reside or work in the neighbourhood. The Commission notes that the current licence condition regarding noise requires that:

The Licensee 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 sound of music shall not be able to be clearly audible or easily perceived by any such residents at any time, and after 22:00 hours on any night no music from the licensed premises is to be audible at all inside any enclosed residential building space.

- 25) In this respect, the Commission notes that this condition currently limits noise levels so as to not cause unreasonable disturbance to the amenity of nearby residents and that this would also apply to the noise emanating from the alfresco area if approved. The Commission also notes that there have been no noise complaints received by the Commission with respect to the premises and as such it would appear that the Licensee has been abiding by this license condition to date.
- 26) The Commission notes that it is the intention of the Licensee to utilise the alfresco area as a seated area for up to thirty-five patrons and that the live music area is to remain unchanged from its current location in the lounge area in the front portion of the restaurant. In this respect, the Commission considers that the Licensee will be in a position to manage noise levels emanating from the alfresco area in a manner so as to not disturb the amenity of local residents.
- 27) The Commission also notes that the primary purpose of the business is that of a restaurant and not of a bar. The premises should be advertised in no other way than that of a restaurant. It is the view of the Commission that the removal of the condition that alcohol is only to be served ancillary to a meal would not change the primary purpose of the premise, being that of a restaurant.

Decision

- 28) The Commission approves the application to extend the licensed premises to incorporate a new alfresco deck situated on the Dashwood Crescent side of the premises.
- 29) The Commission has determined that the current noise condition contained in the licence is to remain.
- 30) The Commission approves the removal of the licence condition that liquor shall only be sold for consumption ancillary to a meal.

Cindy Bravos
Presiding Member

5 October 2012