

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Stuart Arms Hotel
<b>Date of Decision:</b>	22 May 2000
<b>Date of Hearing:</b>	3 May 2000
<b>Application:</b>	Substitution of Premises
<b>Applicant:</b>	Jolcraft Pty Ltd
<b>Licensee:</b>	Jolcraft Pty Ltd
<b>Nominee:</b>	Rohan Miller
<b>Heard Before:</b>	John Withnall (Presiding Member)
<b>Appearances:</b>	Mr R Miller for the Licensee Br R Hayes, Objector Br M Bambridge for Marist Brothers Sr I Davis for Daughters of Our Lady of the Sacred Heart
<b>Objectors:</b>	Brother Robert Hayes of the Marist Brothers in Alice Springs Daughter of our Lady of the Sacred Heart in Alice Springs

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Mr. Rohan Miller on behalf of licensee Jolcraft Pty Ltd has applied to substitute Lot 5645 Hartley Street, Alice Springs as the licensed premises for the Stuart Arms Hotel.

At a meeting of the Licensing Commission it was determined that the application should be advertised, and objections were received from Brother Robert Hayes and the Community of Marist Brothers in Alice Springs, and from four Daughters of Our Lady of the Sacred Heart in Alice Springs. The objectors reside in premises across the road and a little to the north of the proposed new site of the Stuart Arms Hotel. The objectors' concerns were in relation to loud music, restricted parking and intoxicated patrons in the street. As Brother Bambridge of the Marist Brothers put it, they are jealous of their peace.

Mr. Miller has responded to the objections by emphasising the degree of down- sizing of the operation as proposed for the new premises. Until January 2000 the licensee operated two licences at the Alice Plaza Shopping Centre, the Stuart Arms Hotel and the Cage Nightclub (both licences currently in voluntary suspension). These businesses occupied some 2000 sq. metres of floor space, with a combined permitted patron density (per the Fire and Rescue Service, Fire Safety Division) of almost 900 persons. The new premises will occupy only some 300 sq. metres and have a maximum patron density of less than 200 persons.

The nightclub licence is not involved in the substitution, and that licence will remain in suspension, and be relinquished by Mr Miller if this application is successful. Mr. Miller assures the objectors that the new premises will be an up-market English theme "pub", operating only one bar, with no nightclub element whatsoever. Closing time will be three hours earlier than was the case for the nightclub. Mr. Miller professes to be looking to create an up-market quality pub, consciously avoiding the nightclub type of clientele as having proved too problematical for the modest rewards involved in that side of the business.

Specifically and critically, Mr. Miller undertakes not to have any loud bands, or indeed *any* bands as such. He envisages only background music during the day, with live music at night being "laid back", provided by a soloist or duo, playing "R and B" or jazz or the like. Mr Miller is emphatic that there will no longer be any thumping of amplified bass music, and that while passers-by may well

hear the music to some extent immediately outside the premises, he does not envisage the music carrying across the road. The music stage has been planned to face away from Hartley Street, towards the rear of the car park. He expects that his application, if successful, will be subject to conditions as to the prevention of the sort of noise pollution feared by the objectors.

Mr. Miller sees the reduced operation as minimising any potential parking problems, pointing out that requirements for street parking will be mostly after the demands of normal business hours have finished for the day.

Mr. Miller testified that he proposes to sell mostly up-market international beers, such that the new operation will not be offering a cheap night out, and he cannot see that the pub would be putting problematic patrons out into the street. In any event, he expresses his awareness of the statutory prohibition against serving patrons to the point of problematic behaviour and intoxication.

Sister Davis is concerned at the increase in the incidence of intruders on her premises, but considers she is unable to attribute such increase to any particular cause, and as Mr. Miller reminds us, his venues have been closed now for several months.

It must be borne in mind that the applicant already has a licence for the proposed hotel. The current application concerns only the new location. The proposed new site has already been zoned Central Business, which encompasses a hotel as a consent use. That is, although the specific proposal will need the consent of the Northern Territory Planning Authority, it does not require a change of zoning. The task of the Licensing Commission is to be satisfied that the substitution of premises "will not adversely affect the public".

The objectors fear adverse impact on their peace and quiet at night.

The premises of the objectors were built some sixty years ago. Today they are in the midst of a sea of Central Business zoning. Across the road from them are office buildings, the rear of a large supermarket and a multi-storied car park. They are flanked to the south by one of the more prestigious retail office centres in the town.

Br. Brambridge tells us that in times past the supermarket was the source of considerable noise disturbance, apparently from amplified announcements through external speakers, but that liaison with the supermarket management has been effective in achieving a peace on that front. He asks that Mr. Miller's company stays in contact with its neighbours in Hartley Street and maintains a sensitivity to any problems the pub maybe creating for them.

The preferred option of Br. Hayes is that the hotel go somewhere else altogether, but otherwise he is similarly concerned for safeguards against noise disturbance in the future, particularly in the case of another operator taking over the premises. In that respect, Mr. Miller candidly admitted his desire to divest himself of the operation within two years.

It seems to the Commission that the change of premises can be achieved without adversely affecting the objectors, whose previous problems with thumping music carrying from Mr. Miller's venue in the shopping centre would seem to have stemmed from the nightclub side of the operation which will not be any part of the new premises. The police have indicated in writing that they expect less noise disturbance from the reduced operation. While the new site is undeniably closer to the objectors' places of residence, on the evidence before it the Commission is confident of a quieter business operation. The Commission therefore proposes to approve the application, but with several safeguards against noise disturbance to the objectors to be built into the approval. The Cage Nightclub licence forms no part of the approval.

The application for substitution of premises for Liquor Licence No. 80303858 is approved, subject to the condition that the sale of liquor on and from the new premises shall not be permitted until the approval in writing to do so has been obtained from the Commission. Such approval will be granted, and the licence re-issued, upon the Commission's satisfaction that the premises have been completed in accordance with the applicant's presentation to the Commission at the hearing and that the applicant is ready to trade in a manner consistent with the concept that Mr Miller outlined at the hearing. As part of the Commission's satisfaction it will need to sight the written

approval of the registered owner of the new site, and Licence No. 80315670 (Cage Nightclub) will need to have been surrendered.

Inasmuch as this hearing has been in aid of the Commission's investigation and consideration of the application rather than a hearing within the meaning of Parts IV or V of the Liquor Act, the Commission is unable to impose new licence conditions upon the applicant other than by Section 33 of the Act or by consent of the licensee. It is therefore a further condition of approval of the application that the licensee will consent to the following conditions becoming part of the Stuart Arms licence, such that the licensee's eventual request for permission to commence trading at the new premises will be taken to be an acceptance of the new conditions.

Such special conditions will be as follows:

1. The premises shall operate at all times as a specifically themed "pub", and shall not install or trade with more than one bar without the written consent of the Licensing Commission first had and obtained, such consent to be entirely at the discretion of the Commission;
2. The premises shall not incorporate any open or "beer garden" type of trading area;
3. The sound of music or other entertainment shall be at such levels at any time as shall be inaudible to any persons within any other enclosed building in the surrounding area, and in any event at no time shall cause undue disturbance or annoyance to any persons not within the licensed premises. For the purposes only of this restriction, the carpark building within which the licensed premises shall be located is not defined as an enclosed building.
4. Dress codes appropriate to "upmarket" premises shall be enforced;
5. The licensee shall implement and maintain a satisfactory rubbish removal program in respect of areas immediately adjacent to the licensed premises;
6. Adequate security personnel shall be provided,
7. The licensee at all times shall act consistently with an ongoing commitment to consult with relevant elements of the local Alice Springs community in relation to any concerns reasonably raised by members of that community from time to time in relation to any aspect of the operation of the premises.

The licensee should liaise with the Director of Licensing in the event that any of the foregoing matters should give rise to any operational queries.

John Withnall  
(Presiding Member)

22 May 2009