

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Melaleuca on Mitchell
Applicant:	Value Inn Pty Ltd
Objectors:	YHA Northern Territory Inc Justin Coleman Shenannigans Irish Pub Pty Ltd Gary Coleman Terry Dowling DNPW Pty Ltd Ducks Nuts Pty Ltd
Proceeding:	Hearing of objections and application for a liquor licence
Relevant Legislation:	Sections 26, 27, 31, 32, 47F, 47H, 47I and 47J of the <i>Liquor Act</i>
Heard Before:	Me John Withnall (Presiding Member) Ms Jill Huck Mr Craig Spencer
Date of Hearing:	30 November, 1 December and 2 December 2004
Dates of Decision:	An interim licence for the Melaleuca on Mitchell Leisure Deck area was issued on 23 December 2004 and an interim decision regarding the granting of the licence for the Street Frontage Alfresco area was published on 28 March 2005.
Appearances:	Lex Sylvester and Des Crowe for the applicant David De Silva for Gary Coleman, Justin Coleman and Shenannigans Irish Pub Pty Terry Dowling for himself, DNPW Pty Ltd and Ducks Nuts Pty Ltd Michael Grove for YHA Northern Territory Inc

Background

1. In April 2004 Michael William Scott placed advertisements in the *NT News* on behalf of Value Inn Pty Ltd notifying the public of an application for a liquor licence for the premises known as Melaleuca on Mitchell. The advertisements indicated that liquor would be sold for consumption in two separate licensed areas: a Street Frontage Alfresco area; and a Leisure Deck area.
2. Five letters of objection (involving eight objectors) were received in relation to the application. The Commission member selected under section 47I of the *Liquor Act* (the Act) to consider the substance of the objections decided that six objections met the requirements of the Act and referred them to the Commission for hearing. The member's decision to dismiss the objection from Shenannigans Irish Pub Pty Ltd was reviewed under 47J and set aside. This meant that a total of 7 objectors were parties to the hearing.
3. The hearing, held on 30 November, 1 December and 2 December 2004 served two overlapping functions, namely: the hearing of the objections; and the consideration of the application for a liquor licence.

The Application

4. The Commission was advised that Melaleuca on Mitchell is a new, 452 bed, 3 storey, 5 star backpacker hotel located at 52 Mitchell Street, which seeks to cater for a rapidly emerging market of better-heeled Australian and international backpackers. This applicant sought to sell liquor in two distinct areas of the premises:
 - a Street Frontage Alfresco area adjacent to the accommodation complex. This area would be open to members of the public and would be an outdoor-style café/bar built around a large existing Beauty Leaf tree; and
 - a Leisure Deck area on the first floor of the building which would be utilised by in-house guests and their bona fide visitors only and accessible by security passes. This area constituted the common area for the accommodation complex containing the communal kitchen, eating areas, the swimming pools, the television and the movie facilities.
5. The two areas are physically separate but there would be some level of interdependence, in that the provision of meals on the Leisure Deck would largely be dependent on the kitchen located on the ground floor that services the Alfresco area. People using the Leisure Deck would have the choice of purchasing meals and snacks or self-catering. Movement between the two areas would require the use of a security pass, which would only be available to in-house guests and staff. The two different licensed areas are designed to cater for different needs, although they share a similar décor (outdoor areas with rock and water features) and would share some of the same patrons. The Leisure Deck would be a very relaxed, multi-purpose area where guests could socialize with each other if they wish to, exchange information, watch television, write letters, eat food they have prepared themselves, or cool off in the swimming pools. The Street Frontage Alfresco area, on the other hand, will be more in the nature of an outdoor restaurant or café/bar and provide a place for Melaleuca guests to mix freely with locals and other tourists.
6. It was argued that the Street Frontage Alfresco area would actually add to the amenity of the Mitchell Street area, with its outdoor style facilities designed to encourage relaxed conversation. The premises would make a feature of the large existing Beauty Leaf tree and, in the process, ensure the survival of the tree. The landscaping of the premises with rock and water features would also add to the area's attractiveness. There would be none of the characteristics of venues which tend to have problematic patrons- in that there would be no loud music, no crowds, no dancing or nightclub style entertainment.
7. Evidence was presented that there had been a change in the backpacker market in recent times, with backpackers now being better educated, more mature and with higher expectations of backpacker style accommodation. Whereas historically backpacker accommodation had been mostly provided in old houses and other converted buildings, there was now a trend towards purpose built backpacker accommodation of a much better standard. Melaleuca on Mitchell was built specifically to fill this gap in the Darwin market. The developers hoped to revitalize, what was then, the flagging Darwin backpacker industry and to assist Darwin in regaining its status as a gateway for backpackers arriving in, and departing from, Australia. A licensed café bar on the premises was an essential component in achieving 5 star backpacker accommodation accreditation for the premises.
8. Examples were given of other 5 star backpacker hotels in Australia including the Palace in Brisbane, YHA and Nomads in Sydney, Hotel Bak Pac in Melbourne and Gilligan's in Cairns. A promotional video about Gilligan's in Cairns was shown during the hearing. Counsel for the applicant explained that there would be some key differences between Melaleuca on Mitchell and Gilligan's. Gilligan's was far more ambitious in scale, with Melaleuca on Mitchell being a smaller establishment, with no nightclub, no lighting effects, and only a modest sound system (speakers at the perimeter of the licensed areas pointing inwards to minimize escaping noise).
9. The specific design features of the Melaleuca complex were explained, including the basic nature of the facilities in the rooms; there were none of the "normal" facilities expected in a

hotel room such as TVs, phones or tea and coffee making facilities. All of these facilities were available in communal areas such as the Leisure Deck area and the foyer. It was explained that backpackers tended to only use their rooms for sleeping and storing some possessions; spending most of the rest of their time either on tours or sightseeing trips or socializing in common areas or at other venues. They therefore were not interested in paying for any unnecessary room based facilities. The rooms in the complex are therefore designed to provide clean, very low cost, secure, sleeping areas and secure areas for the storage for possessions.

10. The applicant presented a number of witnesses and a large amount of documentation to support the application. Witnesses included: Douglas Gamble, managing director of Value Inn Pty Ltd; Sharon Innes, tourism consultant; Peter Anderson, economist; and Mr Braedon Earley BGA Property Co. Documents included: a report on a 400 person telephone survey prepared by Data Analysis Australia Pty Ltd; a report on demographic trends for the Darwin inner city prepared by Peter Anderson Consulting; letters of support from the General Manager, Tourism Top End, the Managing Director, NT Tourist Commission, the Managing Director, Gondwana and the Managing Director, Guardian Security Services; 21 statements of support from various individuals (who had all inspected the premises); a petition containing 120 signatures; and a large range of publications, including research reports and articles, on the backpacker industry in Australia and the Northern Territory.
11. A distinctive feature of the evidence in this application was the wider insight it provided into the tourism industry. It was clear from the evidence presented that Melaleuca on Mitchell was not only the result of a very strategic planning process for the development of the Mitchell Street Precinct, but had also been planned after very careful research and analysis of the tourism industry in Australia and the Northern Territory. Counsel for the applicant argued, and it was generally accepted by the parties, that the Melaleuca on Mitchell development would attract more tourists to Darwin, and could provide significant economic benefits to other businesses in the area, including those of the objectors.
12. After the presentation of the evidence in support of the application, Commission members, the applicant and the objectors visited the proposed premises. This viewing of the Melaleuca on Mitchell premises included an inspection of the foyer, a selection of rooms, shared and en suite bathroom facilities, the leisure deck area, access routes to and from the leisure deck area, the communal kitchen, the proposed commercial kitchen area and the site of the proposed street frontage alfresco area. Given that the effect on neighbouring businesses of noise was a major concern, the site inspection also included a viewing of rooms and communal areas at YHA Northern Territory (YHA), which are directly opposite Melaleuca on Mitchell.

The Objections

13. The objectors' main concerns, as summarized in their written objections, were around the effect of the new premises on the amenity of Mitchell Street. These included concerns about noise from entertainment, trading hours, the nature of business to be conducted (including concerns about a potential "backpacker nightclub"), a potential increase in alcohol related incidents in the city area, the potential inability of the licensee to ensure that only in-house guests (and their bona fide visitors) used the Leisure Deck, the proliferation of tavern style venues in the city, and a concern about whether the application was consistent with the community's needs and wishes. The objectors also expressed concern about the impact of the proposed premises on the business of other licensees in the area.
14. Many of the concerns of the objectors were dissipated after listening to a full explanation of the licence concept and viewing of the Melaleuca on Mitchell premises. David De Silva described the viewing as providing "an epiphany of sorts". After this viewing there was a consensus among the objectors that Melaleuca on Mitchell was a good quality development which would attract more tourists to Darwin and actually add value to other businesses in the area.

15. Prior to the viewing, one of the main concerns expressed about the Leisure Deck area had been around the premises' ability to limit patrons to in-house guests and their bona fide visitors. The viewing provided a much clearer understanding of how access to the Leisure Deck would be controlled. The only remaining concern about this area for the objectors was how noise would be managed.
16. The more contentious area was the Street Frontage Alfresco or "beer garden" and its potential impact on the viability of other businesses in the area, objectors arguing that commercial viability can impact on amenity. Noise was again seen as a particular issue for concern.
17. The objectors agreed that appropriate licence conditions would ameliorate many of their concerns.
18. During an adjournment of the proceedings the parties (applicant and objectors) met and drew up a set of draft licence conditions for the premises, a signed version of which they presented to the Commission. The objectors indicated that these draft conditions, if accepted by the Commission, would allay their concerns about the application. They acknowledged that conditions drafted by the parties could not bind the Commission. The draft conditions were based on the conditions of the licensed alfresco area of another Mitchell Street licensed premises, the Fox N Fiddle, but contained some much tighter conditions.
19. In their closing submissions David de Silva, Terry Dowling and Michael Grove all withdrew their objections on the condition that the final licence conditions were not more liberal than those in the agreed draft. Michael Grove for the YHA expressed some ongoing concern about the adequacy of the proposed noise condition and asked for leave to come back to the Commission about the noise condition at a later date. This leave was granted, the Commission acknowledging the difficulties of formulating appropriate noise conditions in situations where there is considerable ambient noise.

Discussion and Application of the Law:

The application

20. In making the decision about whether to grant an application for a licence, the Commission was required to consider, in addition to any issues raised through objections, the factors set out in section 32 of the *Liquor Act*. The factors set out in section 32 were as follows:
 - the location of the licensed premises;
 - the location and conditions of any licensed premises in the vicinity of the premises in respect of which the application is made;
 - the needs and wishes of the community;
 - the nature of any business to be conducted on the premises;
 - the financial and managerial capacity of the applicant;
 - where the premises which are the subject of an application for a licence are located in a community government area and the community government council for that area has the power to make by-laws with respect to liquor, advice offered by that community government council; and
 - any other matter the Commission thinks fit.
- With the exception of the community government provision, all of the factors listed in section 32 had relevance to this application.

21. Location of the premises and the location and conditions of other licensed premises in the area: Melaleuca on Mitchell is located in the middle of the Mitchell Street Precinct; an area of restaurants, cafés, shops, taverns, nightclubs, theatres, backpacker/budget accommodation, and more upmarket accommodation. Licensed alfresco dining is a common feature in this area, with these facilities, in the main, attached to indoor tavern style premises, cafés and restaurants. The negotiated licence conditions were similar to those of other alfresco style premises in the area, with the exception of having much shorter trading hours (other alfresco premises are all licensed to trade until 02.00 hours; while the negotiated trading hours for the Melaleuca on Mitchell alfresco area were for trading to cease at midnight or earlier) and more restrictive noise and entertainment conditions.
22. The proposed licence conditions for the Leisure Deck area were even more restrictive in nature than those for the Street Frontage Alfresco area, with service being limited to in-house guests and their bona fide visitors only, and the proposed licensed hours being much shorter than those of other licensed venues. The location of the Leisure Deck area directly across the road from the YHA, raised some concerns about potential noise problems from the Leisure Deck for YHA guests, however, the Commission was less concerned by this possibility after visiting the YHA premises. It appeared, from this visit, that little street or other noise could be heard above the very loud background noise of air-conditioning from the shops underneath the YHA. We acknowledge, however, that this might be different late at night and the YHA is entitled to keep a watching brief on the situation.
23. There is little doubt that the Melaleuca on Mitchell development sits comfortably with the style of other developments in the area and will provide very attractive additional facilities in the street, arguably improving the amenity of the area. What is more, all parties at the hearing agreed that the development had the potential to attract the more up market segment of the backpacker market to Darwin and could significantly assist tourism development in the Top End.
24. The needs and wishes of the community. The Commission was particularly impressed by the thoroughness of the presentation of the “needs and wishes” aspects of this application. The applicant produced a range of material indicating that the development was consistent with the needs and wishes of the community - locals and tourists alike. Some of this material was very impressive, and included research papers, published articles, a large survey, demographic information, petitions, witness statements, letters of support and evidence from experts in the tourism field.
25. The Commission noted that the existence of objections to an application *can* be suggestive of a lack of community support for that application. In the current situation, the existence of objections was less of an indicator because most of the objectors were the potential business competitors of the applicant, rather than ordinary members of the community or employees of organisations such as Police or Health. However, it is not without significance that these objectors - after hearing the details of the application and viewing the premises - modified their stance to one of qualified support for the application. This change in the position of the objectors adds weight to the evidence of *informed* community support for the application.
26. The nature of the business conducted on the premises. The primary purpose of the business is the provision of good quality, cheap, accommodation, aimed at the international and Australian backpacker market. The Leisure Deck is consistent with this, as it will be restricted to in-house guests (and their bona fide visitors) and is integral to the development obtaining “5 star” backpacker status. The Street Frontage Alfresco area has a more tenuous connection to the accommodation, but will provide the volume of trade necessary for the premises to provide meals and snacks to Melaleuca on Mitchell’s guests on the Leisure Deck, and provide a venue where tourists and locals can mingle. Of the two licensed areas, it was the alfresco area about which the objectors had the most concerns; both because of the potential effect on their own businesses, and also because of concerns about potential noise issues.

27. The financial and managerial capacity of the applicant. The financial and managerial capacity of the applicant for this licence would appear to be impressive, and no evidence to the contrary was raised in the hearing process.
28. Any other matter the Commission thinks fit. Between the lodgement of this application and the hearing of the matter, the *Liquor Act* had undergone some significant amendments, including the expansion of the grounds for objection, the repeal of the section 32 criteria listed above and their replacement with a requirement that the Commission have regard to the new Objects of the Act in determining the conditions of a licence. Although not bound to do so in this application, given that it was lodged before these amendments came into effect, the Commission decided to consider this application against the new Objects, as set out in sections 3 and 6 of the amended Act.
29. Having done this, it was the Commission's view that this particular application was consistent with these objects and had specific strengths in terms of the potential enhancement of community amenity (s3(2)(a)), the responsible development of the liquor and associated industries in the Territory (s3(2)(b)) and the facilitation of a diversity of licensed premises and associated services for the benefit of the community (s3(2)(c)). It was clear from the evidence that there was considerable support for the licence, that there were significant benefits to the tourism industry associated with this development and the proposed licensed premises were likely to be both attractive and low risk in nature (s3(1)).

The objections

30. It is to the objectors' credit that they recognized that most of their concerns about the potential impact of the licence on the amenity of the neighbourhood were unwarranted. It is also to their credit that they were prepared to negotiate with the applicant about the conditions of the potential licence as a way of dealing with their remaining concerns. In doing so, they acknowledged the Commission's role as the final decision-maker in respect of licence conditions. However, the fact that the withdrawal of the objections was conditional on the Commission's acceptance of the draft licence conditions or licence conditions which were "no more liberal" in nature, places the Commission in an awkward position in respect of any changes it considers necessary to those draft conditions. With the threshold for considering any particular conditions "more liberal" uncertain, the risk of extended delays in settling the fine details of the licence is potentially great.
31. To bring the matter to a close, we will therefore make some brief findings in respect of the objections, which may not have been necessary if the objections had been withdrawn unconditionally. On the evidence before the Commission, we found that the concerns raised by the objectors about the potential impact of the proposed licence on the amenity of the neighbourhood were not made out to anything remotely approaching the level that would have been required to justify the refusal of this licence on the basis of the objections alone. This should be of no surprise to the objectors, who recognized this for themselves after hearing the evidence.
32. The Commission did consider, however, that the objectors had raised a range of issues that could be taken into account in the sculpting of the licence conditions for the new premises and considered that the draft licence negotiated by the applicant and the objectors was a useful document. The Commission therefore adopted many of the suggested licence conditions in making its own decisions about the conditions. The Commission did, however, have some concerns about a few of the suggested conditions; the Commission being uncomfortably aware that most of the objectors were the applicant's commercial competitors and that some of the tighter licence conditions would result in the objectors obtaining a commercial advantage over the applicant premises. In particular, the negotiated trading hours and entertainment conditions fell into this category. That said, the Commission did accept that the YHA had quite genuine concerns about the impact of potential noise on its own premises. For this reason, the Commission was prepared to hear more from the YHA about the noise condition. The rest of the objections, however, have been dismissed.

The Decision

33. After careful consideration of all the evidence against the legislative criteria, the Commission decided to grant the application along the lines agreed by the parties, with some changes. An interim licence for the Melaleuca on Mitchell Leisure Deck area was issued on 23 December 2004, so that the venue could operate over the Christmas and New Year period. An interim decision granting the licence for the proposed Street Frontage Alfresco area was published on 28 March 2005, with a statement of reasons to follow. This current document constitutes that statement of reasons.
34. Set out below are some of the key licence conditions that will apply to the two licensed areas. Many of them are additional to the standard conditions contained in any licence, and any deviations from the advertised licence conditions and the negotiated licence conditions are noted and explained, where necessary.
35. YHA Northern Territory Inc may apply to the Commission at any time in relation to the adequacy of the noise condition. However, the other objections are dismissed.

Licence Conditions – Applicable To Both Licensed Areas

Licence concept

36. The licence conditions shall contain the following licence concept, as negotiated by the parties:

The licensee shall operate the premises at all times to standards consistent with the concept of a 5 star backpacker hostel with products, services and facilities consistent with the requirements and reasonable expectations of that market.

In the event that the Licensee shall wish to materially alter its licence or the facilities on the licensed premises including bars and kitchens it shall advertise such variation in accordance with the requirements of the Liquor Act.

Any proposed transferee of the licence may be required by the Commission, as a pre-requisite of its consent to transfer, to sign a written acknowledgement of the proposed transferee's awareness of the conditions of the licence, and in particular the "Licence Concept" condition.

Community involvement

37. The licence will contain the following condition, as negotiated by the parties:

The Licensee or its nominee or other designated representative shall actively participate in any forum convened by NT Police or the Licensing Commission for the betterment of the Mitchell Street precinct.

Availability of meals and snacks

38. This application was advertised for "light meals and snacks to be available upon request". The negotiated condition placed a more limited requirement on the licensee to provide light meals and snacks between certain hours. This negotiated condition is now endorsed by the Commission:

Light snacks and meals will be available to patrons upon request between the hours of 12:00 and 14:00 on all days and 18:00 and 21:00 Sunday to Thursday, and 18:00 and 22:00 Friday to Saturday.

Light snacks will be available between 14:00 hours and 18:00 hours.

Noise

39. The negotiated licence conditions contained a noise condition, which the Commission has adopted, with the exception of the specific maximum noise levels of 65B(A) from 11:00 hours to 23:59 hours and 60B(A) 24:00 hours to 11:00 hours. The Commission considered that the high levels of background street noise in Mitchell Street made such specific measurements unhelpful. The amended noise condition should provide a more than adequate basis to deal with any concerns about noise generated by the premises. We also note that the YHA may, at any time, ask the Commission to reconsider this condition:

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 premises.

Notwithstanding compliance by the Licensee with this requirement, the Licensee shall effect such further or other sound attenuation as the Commission in its discretion may notify the Licensee in writing at any time as having become a reasonable requirement in the considered view of the Commission in circumstances then prevailing, provided always that the Licensee shall be entitled to request a hearing in relation to any such requirement of the Commission.

Strip and Lingerie Shows

40. The negotiated licence conditions contain the following provision, which is now endorsed:

Strip and lingerie shows shall not be conducted.

Street Frontage Alfresco Only

Licence concept

41. The licence will contain the following concept clause for the street frontage alfresco area as negotiated:

The area shall have the appearance of an alfresco dining area or café set in a open air uncovered (other than for shade) tropical garden with rock and water features.

Entertainment

42. The negotiated condition will apply, with the removal of the time restrictions for entertainment (limiting entertainment to the period between 17:00 and 22:00 daily). As far as we are aware, no similar Mitchell Street premise is subject to such time restriction for entertainment. The strict noise condition should protect any residents in the area from any undue disturbance:

Entertainment by way of recorded music and live music (not amplified independently of the in-house sound system) of not more than solo artists or duos may be played in the Street Frontage Alfresco and shall be limited to easy listening music and shall not include bands, nightclub or disco style music or karaoke. There shall be no designated dance floor on the premises. Drum kits and drum machines may not be used.

Provision of seating

43. The licence shall contain the following condition:

Seating shall be provided for at least 80% of the maximum patron capacity recommended by the NT Fire and Rescue Service

Table service

44. The licence will contain the following condition as negotiated by the parties:

Table service of liquor is to be available to any seated persons in the Street Frontage Alfresco area at any time that this part of the premises shall be open for trade.

Mobile bar

45. The following condition was negotiated by the parties and is endorsed by the Commission, with minor modifications:

The licensee shall be at liberty to employ in the Street Frontage Alfresco a mobile bar for the service of liquor, soft drinks, fruit juice and water. The mobile bar shall have wheels, shall be up to 2 metres long and will contain refrigerated cabinets. The mobile bar shall be used at times when the patronage levels make it reasonable to alleviate queues and delays which might form at the main servery bar.

Trading hours

46. This application was advertised for liquor to be sold for consumption on the premises on seven days per week between the hours of 10:00 and 02:00 the following day. The compromise reached between the objectors and the applicant was for trading hours to be reduced to 10:00 to 24:00 on seven days per week in the Street Frontage Alfresco area. The Commission now formally endorses these hours, noting, in doing so, that they are way below the industry standard (which is for 02:00 hours every trading night for alfresco areas). Once the premises are established, the licensee may wish to seek a variation to these trading hours:

Trading hours for the Street Frontage Alfresco shall be between 10:00 and 24:00 hours Monday to Sunday.

Trading days

47. The advertisement advised that the venues would trade seven days per week with no restrictions on trading on any particular day specified. At the hearing, Counsel for the applicant volunteered that the Street Frontage Alfresco area would not trade on Christmas Day and Good Friday. This position is now endorsed by the Commission.

Section 106 Notice

48. A section 106 notice is to be issued declaring that:

A person who has not attained the age of 18 years shall not enter or remain in the Street Frontage Alfresco area of the licensed premises before 22:00 hours unless that person is in the company of his parent, guardian or spouse (who has attained the age of 18 years). After 22:00 hours no person under the age of 18 years shall enter or remain in this area.

Leisure Deck Only

Trading Hours

49. This application was advertised for liquor to be sold for consumption on the premises on seven days per week between the hours of 10:00 and 02:00 the following day. The compromise reached between the objectors and the applicant was for trading hours to be reduced to 10.00 to 23.00 hours Sunday to Thursday and 10:00 to 24:00 hours Friday to

Saturday. The logic of the shorter trading hours for Sunday to Thursday was unclear, given that this is tourist accommodation and in-house guests are unlikely to need to go to bed earlier on weekdays. The Commission endorsed a slightly modified version of these hours, noting, in doing so that they are way below the industry standard (which is for 02:00 closing in alfresco areas):

Trading hours for the Leisure Deck shall be between 10:00 and 24:00 hours Monday to Sunday.

Trading days

50. The advertisement did not mention any restrictions on trading on any particular day of the year for either licensed area. At the hearing, Counsel for the applicant asked that, given its focus on in-house guests, the Leisure Deck area should be able to trade on all days of the year. The objectors had no difficulty with this request. This position is now endorsed by the Commission.

Restrictions on Patrons

51. The advertised application specified that liquor would only be sold to in-house guests and their bona-fide visitors on the Leisure Deck. The Commission endorses the restrictions for the Leisure Deck.

Liquor may be sold on the Leisure Deck at any time during the licensed hours to in-house guests and their bona fide visitors for consumption on the Leisure Deck.

Entertainment

52. The applicant and objectors negotiated the following licence condition for the Leisure Deck:

Entertainment by way of recorded music, movies, MTV, television including satellite TV, and DVDs may be played in the Leisure Deck from 10:00 hours to 23:00 hours daily. There shall be no designated dance floor on the premises, and no live music or karaoke.

53. Considering that there is no other television area in the accommodation complex, and the potential absurdity of in-house guests being prevented from providing their own low-key entertainment (eg by playing a guitar or using a portable CD player) on the Leisure Deck, the Commission was of the view that the negotiated condition was too restrictive and modified it as follows:

Organised entertainments by way of recorded music and movies, DVDs and television (including MTV and satellite television) projected onto the large screen in the pool deck area, are permitted during licensed hours. Guests may provide their own informal entertainment and may watch the television located near the self-catering kitchen during and outside these hours as long as the noise conditions are observed. There shall be no designated dance floor on the Leisure Deck, and no karaoke. Drum kits and drum machines may not be used.

Trading extensions

54. As agreed by the parties, the following licence condition will apply to allow potential extensions of trading for special events:

Sale of liquor outside of normal trading hours during special broadcasts of notable one-off events, such as international football matches, may be the subject of Temporary Variation applications.

Restrictions on area where liquor can be consumed

55. The negotiated licence conditions contained the following condition, which is now endorsed:

Alcohol is not permitted to be consumed in the pool, nor at, or on, the immediate edge of the pool.

Section 104(3)g) Authority- Leisure Deck

56. Because of the location of key facilities such as the communal kitchen and swimming pools on the Leisure Deck, the licensed area of the Leisure Deck will need to be accessed by guests on a twenty-four hour basis. The following authority will therefore be part of the licence conditions for the Leisure Deck:

Pursuant to the provisions of section 104(3)(g) of the Liquor Act, in-house guests and their bona-fide visitors are authorized to enter and remain on or at the licensed premises while the premises are not open for the sale of liquor in accordance with the provisions of this licence.

Section 106 notice not required for this area

57. Because of the location of key communal facilities on the Leisure Deck, it will not be practical to limit the access of minors to this area. Fortunately, the low key nature of the proposed liquor licence in this area and the fact that the area will only be used by in-house guests and their bona fide visitors, means that the risks directly associated with the availability of alcohol should not be great. The Commission did have some concerns about potential water safety problems for some unsupervised minors associated with the swimming pools, however, this is something about which the Melaleuca on Mitchell operators will need to make their own risk assessment and implement appropriate management controls.

Date of Effect of the Decisions

58. The date of effect for the decision to grant a liquor licence for the Leisure Deck was 23 December 2004, the date the interim licence conditions were issued. While the decision to grant a licence for the Street Frontage Alfresco area was made by the Commission at the same time, the applicant was not notified of this decision until 28 March 2005 when an Interim Decision concerning the licensing of this area was published. Given that this part of the licensed premises is still being developed, the Commission decided that the applicant should have up to 12 months from the date of notification to make this area fully operational. This means that if the Street Frontage Alfresco licensed area is not open for trade by 28 March 2006, the approval for this part of the licence will lapse.

59. A complication in this matter was the death of the presiding member, Mr John Withnall, before this statement of reasons was completed. Under section 51 of the *Liquor Act* the Commission at a hearing must be constituted of either one member or three members. In the event of the Commission being constituted by one member, section 51(10A) allows a party to request a new hearing if dissatisfied with the decision. The hearing in this case was clearly conducted by three members and the decision to grant the licence was made by those same three members. However, should an argument be successfully put to the contrary, then, as the author of this statement of reasons, I would become the member responsible for making the decision.

Jill Huck
Commission Member

14 August 2005