

Northern Territory Licensing Commission

Application for Material Alterations Reasons for Decision

Premises:	Rorke's Drift Bar/Café 46 Mitchell Street, Darwin NT
Applicant:	Tropics Holdings Pty Ltd
Licence Number:	80315790
Nominee:	Tracey Knight
Members:	Ms Brenda Monaghan (Presiding) Mrs Veronica McClintic Mrs Jane Large

- 1) An application was lodged by Tropics Holdings Pty in October 2005. The application was for material alterations to the premises known as Rorke's Drift Bar/Café pursuant to Section 119 of the *Liquor Act* that states:

119. Approval of material alteration of licensed premises

- (1) *A licensee shall not, except with the approval of the Commission, make a material alteration to the premises to which his or her licence relates.*
- (2) *An application for approval under this section shall be –*
- (a) *lodged with the Director;*
 - (b) *accompanied by a copy of the plans and specifications for the alteration; and*
 - (c) *accompanied by evidence which is sufficient to show that the alteration will not result in a contravention of or a failure to comply with a provision of this Act or a law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for such a purpose.*
- (3) *The Commission may require the applicant to cause a notice of the application to be published –*
- (a) *in a newspaper or newspapers nominated by the Commission; and*
 - (b) *within the period specified by the Commission.*
- (4) *The notice must –*
- (a) *include a description in sufficient detail to identify the location of the premises in respect of which the application is made;*
 - (b) *include a description of the nature of any business associated with the licence that is conducted on those premises;*
 - (c) *include details of the material alteration;*
 - (d) *contain any other particulars determined by the Commission; and*
 - (e) *be not less than a size determined by the Commission.*

(5) Where –

(a) the application is with respect to premises which are located in a community government area; and

(b) the community government council for that community government area has the power to make by-laws with respect to liquor,

the Director must, as soon as reasonably practicable, inform the clerk of the community government council that the application has been made.

(6) Where –

(a) the Commission does not require the applicant to give notice of the application; or

(b) the applicant has given notice as required and no objection to the application is lodged with the Director pursuant to section 47F or such an objection has been dismissed under Part IV,

the Commission must, as soon as reasonably practicable, consider the application.

(7) After considering the application, the Commission must, having regard to the objects of this Act –

(a) approve the material alteration;

(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 (7)(a) or (b) in addition to any action it may take under Part IV.

(9) The Commission may conduct or cause to be conducted the investigations it considers necessary in relation to the application.

(10) Where the Commission grants approval of a material alteration, the licensee must not, while the alteration is being made, conduct business on the licensed premises except in accordance with arrangements approved by the Commission.

2) The material alteration is in effect a refurbishment of the existing licensed area and the renovation of a currently unused area at the rear of the building. There is no change in concept apart from a stronger emphasis on food and the ability to host private functions. Whilst the proposal increases significantly the size of the licensed area, it appears that much of the area will be taken up with fixtures and fittings. We are advised by the applicant that the patron capacity numbers are likely to only increase by 150 or thereabouts (including seating for 50 extra patrons in the al fresco dining area).

3) The variation application was properly advertised in the NT News on 2 and 4 November 2006. The advertisement described the alteration in the following terms:

The application for material alteration is to include an increase to the licensed area of the premises and incorporates increased dining and bar service areas on the ground floor and a new kitchen area on the first floor. Staff amenities and offices will be established on the first and second floor. A ground floor gaming machine room will also be developed and will be the subject of separate advertising. The trading hours of the premises will remain unchanged.

4) There were no objections received by the Director of Licensing and the Development Consent Authority has approved the plans. The Darwin City Council has no objection. In

these circumstances, the Commission elected to conduct a site inspection and meet with the Licensee's representatives to discuss the proposal before making a decision. Following the site inspection, we have sought and obtained clarification on particular issues such as noise and security.

- 5) The meeting on site took place on Tuesday 17 January 2006. Present were the Commission members, Licensing Inspectors Graham Tribe and Peter Boyle and Mr Klaus Richter, Director of the applicant company. The Licensed Premises known as Rorke's Drift are currently contained in the front half of a large building that was once a cinema. The back half of the building which was once the cinema auditorium located on the intersection of Shadforth Lane and Nuttal Lane is not currently used for anything but storage. The material alterations envisage most of the ground floor of the building becoming part of the licensed premises.
- 6) If approved, the ground floor will in essence be divided into three (3) main areas as follows:

a) Private Function Room/Gaming Room (*the Function Room*):

The renovation of the currently unused back-section of the building (formerly the cinema theatre) will create a multi-purpose area that can either be used as a private function room or as an extension of the main bar/café on busy nights. The Function Room will be separated from the main bar/café of Rorke's Drift by bi-fold, sound proof doors. This will allow it to be used separately for private functions whilst the public bar/café fronting onto Mitchell Street continues to trade. Guests to such a private function can access the venue from the external doors opening onto Nuttal Lane. Alternatively, the bifold doors can be opened to allow the Function Room to become part of the Rorke's Drift main cafe/bar area. The renovation of the back area also includes a gaming room and related facilities (toilets, storage etc). The Nuttal Lane entrance is also used to access the gaming room. This entrance has a sound locked lobby as a sound minimisation measure.

b) Café/Bar Area Fronting onto Mitchell Street (*Café/Bar*):

The renovation will also increase the current Café/Bar area by removing the existing back wall and extending the space by some five (5) metres. This in turn allows for the front external wall on Mitchell Street to be moved to double the alfresco dining capacity of the premises. The back part of the Café/Bar area is where the new stage will be located and where people are more likely to congregate to socialise, dance and drink rather than eat. The new "back wall" of the café/bar area will be comprised of the bi-fold doors separating it from the Function Room. The stage will be relocated from its current position near the Mitchell Street entrance towards the back half of the Café/Bar. The applicant's expressed desire (via Mr Richter and the written application) is to increase the emphasis on food sales in the premises. It is anticipated by the applicant that before 9.30pm at night, the front half of the Café/Bar will be available for dining - whilst still allowing persons to choose to drink rather than eat in these areas if they so desire.

c) Outdoor Alfresco Dining Area (*Alfresco Area*):

The alterations to the Mitchell Street frontage of the premises will increase the Alfresco Area and double its current seating capacity from 50 to 100 patrons.

- 7) Mr Richter has advised us that the renovations will take place in two (2) stages. The first stage will see the major changes to the existing Café/Bar completed. The premises are to be closed during this stage of renovations. The second stage will see the creation of the Function Room, gaming room and associated facilities in the back part of the building.
- 8) When considering any application for a new licence or the variation of an existing licence, the Commission must be mindful of the objects of the *Liquor Act* as expressed in Sections 3 and 6. Despite the fact that there were no objections received, we remain aware of the

need to take into account the public interest in order to ensure the responsible development of liquor and associated industries in the neighbourhood. These issues were fully canvassed in the recent decision of the Commission regarding Wisdom Bar & Café's (*Wisdom*) application published in January 2006. As those premises are next door to Rorke's Drift and as both are within the Mitchell Street Entertainment Precinct, our conclusions on public interest and neighbourhood amenity as expressed in the *Wisdom* decision are relevant to this decision.

- 9) In the *Wisdom* decision, we sought statistical analysis and expert advice as follows:
- (a) From the Northern Territory Police, details of alcohol related offending in Mitchell Street for the period from January 2004 to October 2005. The data provided was subject to a number of qualifications but supported a view that there was no significant change in the pattern and level of offending during the aforementioned period.
 - (b) From Senior Licensing Inspector Greg Lye, a report summarising the number and type of complaints lodged against licensed premises in Mitchell Street over the past three (3) years. Whilst there has been a significant increase in 2005 in the number of complaints against security officers/crowd controllers, there has been no significant change in the number of complaints made against licensees.
 - (c) From Racing Gaming and Licensing, details of Wholesale Liquor Purchases for Mitchell Street outlets over the past three (3) years and an analysis of the data for the 03/04 and 04/05 periods from Dr Ian Crundall. His report states "*Comparisons across the two years shows virtually no change in the volume of liquor sold*".
 - (d) From Ms Ying Kyaw, Manager of Data and Information, Racing, Gaming & Licensing an analysis of statistics provided by one objector in support of his concerns regarding market saturation. Ms Kyaw provided a report and gave evidence that in her opinion, the picture for the NT and therefore the Mitchell Street Entertainment Precinct was more positive than the picture portrayed by the objector.
 - (e) From Dr Ian Crundall, Director of the Office of Alcohol Policy, a report and advice on the question of outlet density with particular emphasis on the Mitchell Street Entertainment Precinct. Of particular interest is his comment that :

"... as regulation and enforcement patterns are currently dictated by the degree of non-compliance, outbreaks of trouble (eg when there is an influx of military personnel) and seasonable periods of celebration (eg Christmas, Easter), it might be assumed that any increased risk of compromised standards of operation would be addressed in a timely manner and would not escalate¹. In this context, the viability of the venues would rest on good business practices and commercial competition²."

- 10) Because the research and analysis was so recently prepared for the Mitchell Street Entertainment Precinct, it is equally relevant as background to this application. We have also taken the opportunity to contact both the Northern Territory Police and the Director of Licensing. We understand that the police have no comment to make. The Director has raised such matters as the need for proper camera surveillance, security, noise abatement measures and proper management that must be present if the licensed premises are to remain a community amenity. We take his comments and those of the Licensing Inspectors involved in this application on board.

¹ The Director of Licensing has stated that "...our compliance activities will vary according to the relative priority of the activity and the availability of compliance resources - which in practical terms means that sometimes we will be allocating more resources, and sometimes less resources than at present, as circumstances dictate".

² It is noted that Cabinet has endorsed licensed premises having House Management Policies and Codes of Conduct for aspects that include patron care, neighbourhood amenity and responsible promotion. An examination of these would assure that the proposed premise would operate with a high level of harm minimisation.

- 11) Following concerns about market saturation that have been publicly expressed by the AHA recently, we provided them with an opportunity to comment on this application. The Commission is also in the process of obtaining an independent assessment on the question of market saturation in Mitchell Street and the surrounding CBD. The question for the Commission is whether a decision on this existing application -which was in essence completed when the independent study was announced-should await the outcome of that study. The AHA in their response, elected not to comment on this particular application. They suggested that it would be *“prudent for the Commission to take into consideration the outcomes of the independent study (into market saturation) prior to current/future decisions on new licences or (substantial)variations to existing licences.”* They concluded *“We are therefore satisfied that the framework has now been put in place to ensure that the issuing of further, new liquor licences is done on an informed basis.”*
- 12) The Commission members hearing this application considered whether the final decision on this particular decision should await the outcome of the independent study. We have decided that it should not. Whilst the Commission members hearing this matter fully support the study, we consider that to indefinitely prevent this particular material alteration from proceeding would be unfair for the following reasons:
- (a) The application had been fully considered by the Commission of three (3) and all other aspects had been decided on prior to the decision by the Corporate Commission last week to undertake the study.
 - (b) This is the only application on Mitchell Street which was under consideration by the Commission at the time the decision was made to obtain an independent study on market saturation.
 - (c) There were no objectors to this application either from other Licensees within the area or from Police, Health or other stakeholders.
 - (d) We have recent information before us from Police and Racing and Gaming supporting a view that there is no current deterioration in behaviour of Licensees or patrons that should concern us with an application of this type.
 - (e) The first stage of the development is in effect an upgrade of the existing licensed area.
 - (f) There is no change in concept apart from an increased emphasis on food.
 - (g) Whilst an increase of some 150 patron numbers is not insignificant, fifty (50) of these patron places will be allocated to the alfresco dining area.
- 13) We also considered whether Stage One (to commence shortly) and Stage Two (to commence next year) of the development could and should be considered separately. We accept the applicant’s evidence however that for sound commercial and construction reasons, they required an approval of both Stages now. We understand, for example, that much of the structural work for the Second Stage will occur whilst the premises are closed for the First Stage.
- 14) After consideration of all issues, we consider that so long as the Licensee is able to properly respond to all of our concerns by complying with licence conditions, ensuring good management and appropriate building design and materials, then the application for material alterations should be granted.
- 15) We now turn our minds to the following issues:
- 16) **Emphasis On Food:** The Commission notes with approval the applicant’s stated intention to have an increased emphasis on food at the premises. The doubling of the alfresco dining space and the building of a new kitchen capable of catering to 200 to 250 covers is indicative of this. Mr Richter on behalf of the applicant also advised that the internal Café/Bar area closest to Mitchell Street is likely to be the internal area where patrons will eat. (It is defined on the attached map as Area “C”.) With this in mind, the Commission

considered requiring that the licensee provide a greater number of permanent tables and chairs in this area. It is now persuaded however that the internal space is simply not conducive in shape and use to such an arrangement being implemented.

- 17) We do however intend to include in the licence the seating plan for Area "C" as described in the written response from the applicant that states:

"...the only practical area that could sustain permanent seating in addition to that already in place is against the inside front wall. We are able to place three high tables each with three chairs up against the wall between the staff entry and the main entry. That would provide nine (9) permanent seats plus the existing banquet shown on the plan that seats another eighteen totally twenty seven overall. To attempt to place any more permanent seating in this area would inhibit traffic flow later in the evening, and largely defeat managements objective of encouraging patrons to flow towards the back of the venue and away from the front. We stress however that it is still our intention to encourage food service in the area". between " C " and " F " by placing removable tables and chairs during the day and early evening."

- 18) Noise And Security: Two of the Commission's other major concerns were to ensure that potential security and noise issues were properly dealt with. The noise concern is restricted to the side door access from the Function Room and gaming room onto Nuttall Lane. The concerns may either be the noise made by patrons waiting or gathering outside the side door entrance combined with the noise emanating from the interior of the building through the doorway. (NB It is anticipated that the change in the position of the stage area in the main bar will in fact decrease the noise emanating onto Mitchell Street.)

- 19) In the proposed design, the applicant has attempted to respond to potential noise concerns by providing a 2-door sound lock. They further provided a written response to Commission queries as follows:

"The entrance off Nuttall Place is necessary as the rear of the building will be used as a function venue requiring a separate entry to that off Mitchell Street. We are confident that through strict management practices we will alleviate concerns about noise escaping from the twin door air lock structure, and concern about patrons leaving the venue and congregating in Nuttall Place. Our proposed management practice when using this entry will include security staff manning both internal and external door to monitor and if necessary restrict volume of patron movement in either direction to ensure that only one door is open at any one time, and security staff based at the external door monitor and request patrons that maybe congregating to move along towards Mitchell Street. As stated previously, unlike other venues that have this system as their main entry, it is understandable that this approach would not be feasible, however, unlike the others, the rear of our venue would just be an extension of the front pub, and therefore expect that the majority of patrons will both enter and vacate through the venue to Mitchell Street. As a fair proportion of patrons move from venue to venue, entry and exit into Mitchell Street will be more appealing. We thus do not anticipate a large volume of patrons using the Nuttall Place entry, which in turn will enable us to control this entry through management practice as outlined. We are fully aware of the sensitivities of these issues, and although we have a good record, should for any reason a problem occur, we would then be prepared to look at closing this entry as a point of vacating the premises from 12.00 midnight."

- 20) We intend to approve the soundlock system of doors at the Nuttall Lane entrance with certain provisos. The applicant advises us that plan for the soundlock area will be revisited by the architect/ builder to ensure that it works efficiently when there is a flow of patrons entering and exiting. As the construction of this doorway is part of the second stage of development, we make our approval subject to our consideration and approval of any revised plans. We also accept that good management practices should be able to ensure

that this entrance remains an effective noise barrier. If that is not the case however, we will revisit the issue and reconsider imposing restrictions on the usage of this door.

- 21) The other important issue for the Commission is security particularly in Nuttal Lane as that area has no street lighting. We intend to require that the licensee has sufficient lighting along the building and particularly around the Nuttal Lane entrance and appropriate security and surveillance cameras in that area. The existing camera surveillance equipment for the remainder of the premises altered during the first stage of renovation must also be upgraded to comply with the latest version of the "Camera Surveillance Requirements at Licensed Premises" documentation.

Decision

- 22) The application for Material Alterations is sought for a two stage project. The First Stage is the major renovation to the existing Bar/Café area. We understand that it is hoped work will commence on that once approval is granted. We accordingly approve this First Stage on the following terms:

First Stage

- a) **Camera Surveillance:** The camera surveillance equipment covering the front areas of the premises (including the first stage of renovations) are to be upgraded to comply with the latest version of the "*Camera Surveillance Requirements at Licensed Premises*" documentation prior to commencement of the second stage of renovations.
- b) **Seating:** A special condition shall be placed in the licence that the Licensee shall provide permanent seating for twenty-seven (27) patrons in the internal area of the Bar/Café described as Area "C" on the attached plan, such seating arrangement to be in accordance with the applicant's proposal set out in paragraph 14 above.
- c) **Noise:** The following noise condition will replace the current noise condition and be included in the Special Conditions:

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.

- d) The Licensed Premises shall not reopen following the first stage of alterations until the required approvals including a Certificate of Completion have been obtained and the camera surveillance requirements have been complied with to the satisfaction of the Director of Licensing.

Second Stage

- 23) Pursuant to Section 119 of the *Liquor Act*, the Commission also approves the Second Stage of the renovation to the back part of the premises to make a Function Room, Gaming Room and associated facilities as shown in the plans provided. The approval is subject to the following requirements:
- a) The re-design of the Nuttal Lane soundlock entrance, the final proposals for lighting, security and camera surveillance around that entrance and along Nuttal Lane and any changes to the plans/concept/usage of the Second Stage are to be approved by the Commission prior to commencement of that stage of renovations.

- b) The approval is subject to the condition that the sale of liquor from this part of the premises following renovation will not be permitted until the approval in writing to do so shall have been obtained from the Commission. Such approval will be given upon the Commission's satisfaction that the premises have been completed in accordance with the applicant's presentation to the Commission and that the applicant is ready to trade in a manner consistent with the concept that has been presented to the Commission.
- 24) The applicant now has what is often referred to as a licence in principle for the Second Stage. In terms of its duration in this guise it is not open ended, and it is a further condition of its grant that it may be cancelled by the Commission if upon the expiration of a period of eighteen (18) calendar months from this date, the applicant shall have failed to obtain from the Commission either the approval to commence trading or an extension of time within which to seek such approval. The allowance of any such extension of time shall be a matter entirely within the Commission's absolute discretion.
- 25) The Licensee should liaise with the Director of Licensing in the event that any of the foregoing matters should give rise to any queries at any time.

Brenda Monaghan
Presiding Member

16 February 2006