

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Wisdom Bar and Café 48 Mitchell St Darwin NT
<b>Applicant:</b>	AFS Realty & Business Brokers Pty Ltd
<b>Nominee:</b>	Ms Hilary Margaret Alcock
<b>Application:</b>	Application for Liquor Licence
<b>Relevant Legislation:</b>	Sections 3, 6 and 26 to 28 of the <i>Liquor Act</i>
<b>Dates of Hearing:</b>	21-25 November 2005, 6 December 2005
<b>Members:</b>	Brenda Monaghan Veronica McClintic Jane Large

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## Background

- 1) On 29 March 2005, Mr Todd McCourt, Managing Director of the applicant company, applied for a "tavern" style liquor licence for a proposed development at 48 Mitchell St on the site of the former Dental Clinic.
- 2) The application was advertised on Friday 22 April 2005 and Wednesday 27 April 2005 in the following terms:

*Liquor may be sold for consumption on the premises and the Footpath Alfresco Dining Area from 10:00 hours to 02:00 hours (the Liquor may Liquor may be sold for consumption on the premises and the Footpath Alfresco Dining Area from 10:00 hours to 02:00 hours ( the following day) seven days a week. The premises include an area formerly known as the beer garden of Rorkes Drift.*

*On Sundays to Saturdays inclusive between the hours of 12:00 and 14:00 and again between 18:00 and 21:00 a meal shall be available upon request.*

*Liquor may be sold for consumption away from the premises to house guests only during the following hours:*

*Monday to Friday between the hours of 10:00 to 22:00;*

*Saturday and Public Holidays between the hours of 09:00 and 22:00; and*

*No takeaway trading on Sunday, Good Friday or Christmas Day. The Footpath Alfresco Dining Area shall always have the appearance of a restaurant. All persons in the Footpath Alfresco Dining Area shall be seated at all*

*The Footpath Alfresco Dining Area shall always have the appearance of a restaurant. All persons in the Footpath Alfresco Area shall be seated at all times.*

*Persons may enter and remain on the premises from 06:00 hours to 10:00 hours, seven days a week, for the purposes of consuming breakfast. No alcohol shall be sold or consumed during this time.*

*Persons may enter and remain on the premises from 06:00 hours to 10:00 hours, seven days a week, for the purposes of consuming breakfast. No alcohol.*

*Persons under the age of 18 may enter and remain on the licensed premises from 10:00 hours to 22:00 hours only if they are in the company of their parent, guardian or spouse (who has attained the age of 18 years).*

- 3) Notices of Objection were received from a number of other liquor outlets in the vicinity of the proposed development. Following a hearing on the papers in relation to the objections, Dr Alan Clough published his decision on 18 July 2005 acknowledging Tropic Holdings Pty Ltd (Rorkes Drift), Shenannigans Irish Pub Pty Ltd, DNPW Pty Ltd (Duck's Nuts and Fox & Fiddle) and Value Inn Pty Ltd as valid objectors. He dismissed the objections of Minkie (NT) Pty Ltd (The Vic Hotel), Rediscover Pty Ltd (Discovery), Malaguena Pty Ltd (The Cavenagh) and David Williams of Tropic Holdings Pty Ltd.
- 4) A review was sought by The Vic Hotel, Discovery and The Cavenagh. By decision dated 15 August 2005, the Commission (being a panel of 3) affirmed the decision of Dr Clough with respect to the Vic Hotel and The Cavenagh but reversed the decision with respect to Discovery considering them a valid objector. The Vic Hotel sought a further review pursuant to s27 of the *Northern Territory Licensing Commission Act* and the previous decision of the Commission was reversed on 10 October 2005 confirming The Vic Hotel as an objector also.

## **The Substantive Hearing**

- 5) Prior to the hearing of evidence from the applicants, Mr Lawrence representing Minkie Pty Ltd, Rediscovery Pty Ltd and Shenannigans Irish Pub Pty. Ltd submitted that the application should not proceed on three grounds, namely:
  - i. the advertisement did not meet the requirements of s27(b) of the *Liquor Act* as it did not include details of Ashton Lodge which was a business associated with the licence;
  - ii. the proposed plans for the old Dental Clinic as approved under the Development Permit DP 05/0096 19/4/2005 had been altered and therefore the permit was not valid;
  - iii. the Hearing Brief given to the objectors did not include all of the documents related to the application.
- 6) The Commission considered the submission and ruled:
  - i. Whilst the inclusion of the wording "*residing at Ashton Lodge*" after the words "*in house guests*" in the advertisement would have improved the description in the advertisement, it was not strictly a requirement under the Act as Ashton Lodge was not part of the premises in respect of which the licence application was made (see s27(2) (a)). Therefore, the advertisement as published which described the nature of the business associated with the licence as including the provision of takeaway liquor to "*in house guests only*"- met the requirements of s27 (b) of the *Liquor Act*.
  - ii. Verbal advice received from the DCA was that only substantive amendments to plans approved under Development Permits would need to be re-submitted for further approval. The alteration described at the time which involved the re-positioning of the entrance and reception area for Ashton Lodge by changes to non-structural walls was unlikely to be considered as substantive and the hearing was allowed to proceed. (NB: Further investigations by the Commission following the receipt of Final Submissions support the view that an application to the DCA for approval of the variations to the Plans is likely to be required. If a licence is granted, it will be granted subject to the necessary approvals being obtained.)

- iii. Certain documentation for example commercially sensitive information was provided by the Applicant to the Commission which specifically related to the Applicant's hearing and was not required to be given to the objectors.
- 7) The substantive hearing of the objections and the application commenced on 21 November 2005 for 6 days and concluded on 6 December 2005. At the commencement of the hearing, Tropic Holdings Pty Ltd (Rorkes Drift) withdrew as an objector on the proviso that the proposal shown to them was not substantially different to the proposal placed before the Commission. This left Minkie Pty Ltd (The Vic Hotel), Rediscover Pty Ltd (Discovery), Shenannigans Irish Pub Pty Ltd (Shenannigans) and Value Inn Pty Ltd (Value Inn) as objectors to the hearing.

## The Case for the Applicant

- 8) The applicants seek a "tavern" style licence for their proposed premises to be known as the Wisdom Bar & Café (the Premises). The premises are housed in part of the Ground Floor of the former Dental Clinic located on the site adjacent to Rorkes Drift. The building is currently being renovated and refurbished and the licensed area will include the paved area previously leased for use by Rorkes Drift as a beer garden. The applicants also intend to use the public footpath adjoining the Beer Garden as an Alfresco Dining Area in the same manner as Rorkes Drift used it in the past. The applicants have recently obtained the relevant development permits for this area.
- 9) A site inspection was conducted at the commencement of the hearing. We understand that the ground floor of the former Dental Clinic will contain both the Wisdom Bar and Café and part of the facilities of "Ashton Lodge" – a separate business designed to provide budget accommodation facilities for some 70 guests.
- 10) In essence, Wisdom Bar & Cafe contains a kitchen, bar area and café all opening out onto the beer garden on the Mitchell St frontage. A liquor licence is sought for all these areas and for the Alfresco Area on the footpath. The maximum capacity for the licensed area is anticipated to be around 320 persons.
- 11) The remaining part of the ground floor will contain the Ashton Lodge reception area, communal living areas, a share kitchen, undercover recreation area and a swimming pool for the use of residents and their bona fide guests. The main entrance to the Lodge is separate to that of the Wisdom Bar & Café although the two businesses are physically interlinked within the same building. The accommodation area for Ashton Lodge is housed principally in the refurbished upper floors of the old Dental Clinic-although there are some share bedrooms on the ground floor. No liquor licence has been sought for Ashton Lodge although the applicants seek a licence condition which allows them to sell takeaway liquor to bona fide guests of the Lodge.
- 12) The applicants at the hearing provided detailed plans of the Wisdom Bar & Café (the Premises), including plans for the audio system, security cameras, seating, staff management and proposed menus. They put forward a submission that there was a need within the Darwin CBD - and particularly within the entertainment precinct on Mitchell St - for a venue specifically catering for the needs and wishes of the 30 to 50 year age group. They submitted that, apart from restaurants, all other licensed venues on Mitchell St catered for a late night party crowd with dancing, loud music and a generally noisy setting.
- 13) The applicants submitted that there is no current venue where a person can go after a restaurant dinner, the movies or a show if they wanted to sit and talk or relax. They hope that their premises will attract those looking for a quiet drink, snack or meal in the beer garden or inside the Premises at any time within licensed hours. They intend to place an emphasis on food and to provide a variety of hot and cold light meals for extended periods (when compared with other outlets) during the day and in the evening. They emphasise that they are not targeting the late night party scene already catered for by other venues with tavern licences on the street. They want to provide more tranquil surroundings with

music (both live and pre-recorded) played at levels that allow a conversation to proceed without effort.

- 14) The applicants produced two witnesses to attest to the need of a venue specifically catering for the 30-50 year age groups. They also relied on one witness who had conducted a survey of all premises in the Entertainment Precinct relating to clientele, noise levels and food availability.

## The Case for the Objectors

- 15) There was discussion at the outset of the hearing regarding the limits of objectors' rights to tender evidence and cross-examine (s47H of the *Liquor Act*). After some preliminary submissions, the Commission refused to accept that the financial and managerial capacity of the nominee was a valid area for objection under the heading of "amenity of the neighbourhood." The Commission was not persuaded that there was any valid basis for this line of objection in this particular application.
- 16) After some discussion with the parties, the Commission ruled that Mr Des Crowe, counsel for Value Inn was limited to general noise concerns. Mr John Lawrence, Counsel for the Vic Hotel, Discovery and Shenannigans was limited to general issues relating to the takeaway component of the proposed licence and a "public interest" argument regarding market saturation and its impact on the amenity of the neighbourhood. We intend to consider this final objection first.

## Market Saturation and the Public Interest

- 17) Mr Lawrence called two (2) witnesses to give evidence on the issue of market saturation and the public interest. Mr Mick Burns, President of the Northern Territory Australian Hotels Association (NTAHA) confirmed that he is proprietor of the Vic Hotel and owner of the land on which the Discovery Nightclub is built. Mr Burns asked the Commission to take seriously the impact of allowing further liquor licences on Mitchell St. His question was "*When is enough, enough?*" He explained that whilst he has no personal objection to this particular application, he wanted to use his right as an objector as a forum to air his concerns on the "macro" issues.
- 18) Mr Burns expressed his concerns about the negative impact of market saturation as follows:

*" I have concerns that the Mitchell Street precinct is going from an alfresco, food based precinct to being a precinct with an alcohol base... We're an industry that does impact the ..... "We're an industry that does impact the community, you know. And when the pie continually gets sliced up, if that pie is not increasing, well, what happens is commercial effects happen. And I don't think it's wrong that the Commission actually affects - that they take regard for the commercial effects. Because when someone's going broke and they're facing bankruptcy, they're going to react, and they often react by saying, you know, we're going to put in discount drinks. We're going to have a discount drink policy, we've got to get bums on seats, excuse the saying. You know, we need people here, we need to generate revenue. We know that commercial objections can't be considered. We know that. I think the Commission has got a responsibility to consider some of the ramifications of people going broke. I don't think that that's inappropriate at all. I don't think that any of (us) sit(ing) here and want to see irresponsible 50 cent all night drinking promotions. And remember - and I don't believe that the Commission does either."*

- 19) Mr Burns made the valid comment that whilst each individual licence granted in Mitchell St might have little impact, the cumulative impact of several new licences being issued or of "licence creep" might well be of concern.

- 20) Mr Justin Coleman, proprietor of the Deck Bar and Shenannigans – the latter being a popular tavern located very near to the applicant's proposed premises- also gave evidence of his concerns about the impact on licensees of another liquor licence being granted on Mitchell Street.

He put before the Commission statistics that showed that licensed premises were not trading at a level anywhere near their patron capacity. He was of the opinion that the market for licensed premises in the Mitchell Street neighbourhood had reached saturation. He expressed his concern that harsh commercial realities might force some traders to lower their standards and breach their licence conditions.

- 21) The survey sampling relied on by Mr Coleman related to actual patronage at a number of licensed premises in the CBD. The survey took place over four (4) nights being a Saturday, Sunday, Monday and Thursday in early November 2005 (Exhibit 16). It consisted of the taking of a physical head count of patrons during early, mid and late evening periods. As one might expect, the patronage on Sunday and Monday nights was particularly low with an improvement on the Thursday night and a significant increase in patronage on the Saturday night. Some venues were clearly more popular than others.
- 22) Mr Coleman compared the survey results on actual patronage with the maximum capacity figure for each licensed venue. The results showed that at least on those four (4) nights in November 2005, the licensed premises in the CBD were not trading at a level anywhere near their patron capacity. The "maximum patron capacity" relied on by Mr Coleman was the maximum number of patrons allowed on the premises as defined by the Northern Territory Fire Service. We accept the general accuracy of those figures but make the comment that they are based on public safety issues and do not in any way clarify for the Commission the patron numbers that premises generally require in order to make a profit. We suggest that a business can still be profitable with a level of patronage substantially less than the capacity figures quoted. We are also well aware that the seasonal fluctuation in patronage of local hospitality outlets is significant. It is difficult for us to draw any meaningful conclusion from such a limited survey. Mr Coleman also tendered statistics on population growth and market issues and comments will be made on that evidence later in this decision.
- 23) The Commission acknowledges as valid concerns raised by Mr Burns and Mr Coleman on market saturation and the public interest. We reiterate that we are fully aware of the need to consider the social, community and health implications of granting new liquor licences and that the question of "*When is enough, enough?*" is necessarily at the forefront of our thinking. For this reason, we have taken steps to obtain expert reports and analysis to see whether there is any measurable deterioration in the standards of behaviour of licensees or patrons of Mitchell St licensed premises.
- 24) Mr Burns also expressed concerns about the change in focus on Mitchell Street from food based businesses such as restaurants to liquor based businesses. He was critical of this change and emphasised the need for some sort of policy to be implemented to control the development on Mitchell Street.
- 25) We accept the general concern expressed by Mr Burns and acknowledge that the Commission is focussed on ensuring the proper development of the Mitchell Street Entertainment Precinct. We note however that Mr Burns, himself, (in partnership with Mr Doug Gamble, proprietor of Value Inn) advised us of his intention to apply for a liquor licence which includes a large underground nightclub virtually next door to the applicant's premises. It is ironic to hear an objector express concerns about licence saturation and the change in emphasis in the neighbourhood from food-based to liquor-based when he himself is involved in a further large, liquor-based development.
- 26) Further, the Commission feels that it is unwise to rely solely on the evidence provided by the parties involved in the hearing when such issues as market saturation are being argued. Whether they admit it or not, their commercial interests will necessarily be a factor colouring their evidence and we should be cautious about accepting their assessment of

market saturation unless there is other evidence available supporting their conclusions that the public interest (rather than business interests) are at risk. We are also aware that a competitor within the neighbourhood might choose to object to one application but not others for reasons of their own and this makes us necessarily cautious when considering their submissions and evidence.

## **Enquiries Made by Commission on the issue of “Public Interest”**

- 27) The Commission made comment at the outset that it was very aware of the considerable responsibility placed on it by Section 3 of the *Liquor Act* to:
- (a) *to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and “...consumption of liquor;*
  - (b) *to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and*
  - (c) *to facilitate a diversity of licensed premises and associated services for the benefit of the community.”*
- 28) Nowhere are these considerations more important than in the Mitchell Street Entertainment Precinct—a designated entertainment area. In this area, we find a greater concentration of food, liquor and entertainment outlets than anywhere else in Darwin and the precinct attracts a large number of tourists and residents from throughout the Greater Darwin region.
- 29) The Commission emphasised to parties that whilst it could take account of some aspects of the effects of competition in the market place on the grounds of public interest, it could not take account of the impact that granting an extra licence might have on the commercial viability of individual businesses. Such considerations would be rightly classified as anti-competitive and therefore outside the limits of the Commission’s consideration.
- 30) In an effort to obtain the best information on the current amenity of the neighbourhood and public interest issues, the Commission sought statistical analysis and expert advice as follows:
- a) We sought from the Northern Territory Police details of alcohol related offending in Mitchell Street and received data for the period from January 2004 to October 2005. The data provided was subject to a number of qualifications but it is fair to say that the data indicated no significant change in the pattern and level of offending during the aforementioned period.
  - b) We obtained a report from Senior Licensing Inspector Greg Lye summarising the number and type of complaints lodged against licensed premises in Mitchell St 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) Racing Gaming and Licensing provided details of Wholesale Liquor Purchases for Mitchell St outlets over the past 3 years. We also received 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) We sought a report from Ms Ying Kyaw, Manager of Data and Information, Racing, Gaming & Licensing with her analysis of statistics provided by Mr Justin Coleman in support of his concerns regarding market saturation. We further sought her advice on any extra statistics and information we should take into account when considering this issue. Ms Kyaw provided a report and gave evidence. In essence, following an analysis of estimated population and tourist growth in the NT and economic predictions

and data analysis in the areas of housing and finance, Ms Kyaw formed the view that the picture for the NT and therefore the Mitchell St Entertainment Precinct was more positive than Mr Coleman's evidence portrayed.

- e) Finally, we tendered the report of Dr Ian Crundall, Director of the Office of Alcohol Policy entitled "*Outlet Density and Harm: An Overview.*" The report considered relevant research – some conducted in Australia but most in Northern Europe and parts of the USA. The findings of that report provided some background but the *postscript* made it clear that it cannot be known for sure how the findings of the literature translate to the specific social environment of the Northern Territory. 31)

31) Following receipt of his report, Dr Crundall was then asked the following question by the Commission:

*"On the basis of the following:*

- i) an assumption that there will be no significant change in population numbers visiting Mitchell St in the foreseeable future;*
- ii) your analysis of the research on outlet density, the police, consumption and licence breach statistics; and*
- iii) -an assumption that regulation by police and RGL of licensed premises will be maintained at current levels,*

*what, in your opinion, will be the impact / harm of adding a further liquor outlet in Central Mitchell St (a bar/restaurant with 300 capacity and a focus on the 30 to 40 age bracket)?"*

32) Dr Crundall's response was:

*"Based on the assumptions given and the information I have had access to, I would not anticipate any significant change in the levels of alcohol-related harm resulting from a*

*"Based on the assumptions given and the information I have had access to, I would not anticipate any significant change in the levels of alcohol related harm resulting from a new bar/restaurant venue opening in Mitchell Street. Given that access to alcohol is already convenient in that precinct, there is little evidence to indicate that there will be substantial change in aggregate alcohol purchases or levels of harm. However that is not to say there would not be an impact.*

*If the number of potential patrons remains the same (since people frequenting Mitchell Street is to be constant), there will be added competition for existing outlets that provide similar venues. I cannot comment on the commercial basis for opening another venue. At best a business case has ascertained there is an unmet market to be serviced. Indeed one would trust that the application has demonstrated that the proposed venue will be fulfilling a niche not already provided for.*

*The more it is the case that the new venue will offer a service that is completely different from any exiting outlet, the less likely there is to be direct competition. The greater the similarity with existing venues, however, the greater the pressures on any one venue to offer inducements to patrons that ensure their preferred custom. In a worse case scenario this could affect responsible serving practices (eg more crowding, cheaper prices that encourage greater consumption, less vigilance in serving to intoxicated persons, etc). But 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*

*escalate<sup>1</sup>. In this context, the viability of the venues would rest on good business practices and commercial competition<sup>2</sup>."*

- 33) Dr Crundall went on to suggest that the Commission could consider refusing an application such as this on the basis that it could be justified in terms of harm minimisation because it would *"send out a message that a limit has been reached."*
- 34) The Commission considered the above suggestion from Dr Crundall but concluded it was not persuaded that a "limit" had been reached and it felt that a refusal on these grounds would not be acceptable in the circumstances. The best evidence placed before the Commission at this hearing would support the view that -
- a) There has been no significant deterioration in behaviour of licensees or the public in Mitchell St licensed premises over the past few years;
  - b) The Director of Licensing and the Police give us no reason to suspect that there will be any decrease in the current level of regulation of the neighbourhood;
  - c) There has been no significant increase in the amount of alcohol consumed in the neighbourhood (apart from mid strength beer);
  - d) The general outlook for the Darwin economy is positive in terms of population growth, economic growth and visitor numbers. Even if the patron number for Mitchell St licensed premises were to remain relatively constant, we are not persuaded by the evidence before us that the particular market being targeted is saturated; and
  - e) The applicants are relying on the fact that the market group they are targeting is not properly catered for by the current licensed venues and that their "concept" will add an element of diversity to the Mitchell St outlets.
- 35) The applicants argue that whilst some areas of the market might be saturated (ie they suggest that the late night venues are one such group), there is a need for a venue catering for the 30 to 50 age group. We accept the evidence provided by the survey, witnesses and Ms Alcock's knowledge and experience of the neighbourhood that this particular market group is not sufficiently catered for in Mitchell St. The proposed nominee, Ms Alcock appears from evidence before us to be a professional and competent person who shares the owner's vision and commitment to cater well for this particular market group.
- 36) Mr Justin Coleman argued that there was no significant market in the 30 to 50 year old age bracket and that other licensees had attempted to tap into that market without success. The applicant's response was that other venues had too quickly changed from catering for this target group to another concept or a variety of concepts. They emphasised that it took a good twelve (12) months to build up a clientele and that they were fully prepared to wait. The applicants provided cashflow projections for the first twelve (12) months and their accountant stated that the projections were in his estimation very conservative.

## Noise

- 37) Mr Crowe representing Value Inn Pty Ltd brought concerns before the Commission relating to the noise emanating from the Wisdom Bar and Café. The concerns were that the Value Inn is situated in very close proximity to the proposed premises and their concern is that

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<sup>1</sup> 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".

<sup>2</sup> 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.

noise from the Wisdom Bar & Café premises will significantly affect them. Their major areas of noise concern were a side door from the café/bar that is facing their premises and the Ashton Lodge swimming pool/recreation area where take-away liquor may be consumed.

- 38) The Commission was concerned by the close proximity of the Value Inn to the side entrance of the Wisdom Bar & Cafe. However, it also took into consideration that this entrance was not the main gateway into the Bar. It was, in fact, a specially constructed disabled entrance with appropriate ramps for wheelchairs. Whilst the entrance can be utilized by all patrons to the Bar it would be expected that the majority of patrons would enter and exit via the main entrance which fronts Mitchell Street.
- 39) The Commission noted that the applicants had from the outset shown a willingness to accept conditions to alleviate their neighbour's noise concerns. This fact is evidenced by correspondence between the parties, copies of which were tendered by the applicants as exhibits.
- 40) In addition, the applicants clearly have a vested interest in controlling noise issues as the closest accommodation facility likely to be disrupted is contained in their own development-namely Ashton Lodge. The applicants have ensured that their sound system provides high quality sound with individual controls for the various areas on the premises. Thus their equipment should be able to be programmed and controlled sufficiently to cater for noise concerns. Where live entertainers have their own amplifying equipment, all licensees are required through their management practices to ensure that the noise levels remain within reasonable limits in accordance with their licence conditions. Should they fail to comply, then the Commission will have no hesitation in reviewing the licence conditions.
- 41) In order to ensure that appropriate controls are in place to control the noise levels both the Commission and one objector sought guidance from Mr Nigel Green, Senior Environmental Scientist at the Office of Environment and Heritage on the terminology to be used in any noise condition.
- 42) The noise condition put forward by Mr Green forms part of a draft policy prepared by the Environmental Protection Authority. We understand that this policy and other measures such as approval of a Noise Management Plan may in time be implemented but that there is no current timeframe for their implementation.
- 43) The draft noise condition requires the assessment of octave band background noise levels by an acoustic engineer. The obligation is then on the licensee to ensure that no part of the noise within the 63 Hz, 120 Hz or 250 Hz bands exceeds the assigned octave band background noise levels in relation to the venue by more than 10 dB for 90% of the measurement period when measured in accordance with specific guidelines. Mr Green provided the names of two (2) acoustic consultants in Darwin who could assist licensees in complying with this requirement and he acknowledges the potential for a significant cost outlay to the Licensee.
- 44) Whilst the applicant was willing to be a "guinea pig" with respect to the implementation of a new noise condition, we are reluctant to impose the same at this time. We prefer to look to the more general prohibitions contained in the licenses of neighbouring venues and tailor them to the specific concerns facing these particular premises.

### **Takeaway for Bona Fide Guests**

- 45) There was some detailed consideration given at the hearing regarding the request for takeaway sales to bona fide guests of Ashton Lodge. The main concern was the noise issue if people are drinking or partying in the outdoor recreation area or the pool area next to the Value Inn site. There is also the wider concern about the impact of takeaway liquor upon the wider community in terms of noise, litter and antisocial behaviour.

46) In reaching its decision on this issue the Commission took into account the following:

Ashton Lodge is directly across the road from Liquorland in the Mitchell Street complex. Liquorland is open from 10am to 10pm Monday to Friday and 9am to 10pm on Saturdays. These takeaway hours accord with those sought by the applicant for the sale of takeaway liquor by them to houseguests of the Lodge. Thus there is no need for a takeaway condition for in-house guests for supply reasons and we will not allow this provision unless there are good reasons for doing so and unless we are satisfied that the amenity of the neighbourhood will not be adversely affected. We have taken into account the following matters:

- a) The actual levels of supply to in house guests are likely to be limited to small quantities such as a single drink, a six (6) pack or a bottle of wine. Whilst the applicants admitted that there might be some small discount on house prices for guests wanting to purchase takeaway liquor, we accept that the prices charged will no doubt be considerably higher than both Liquorland and other large takeaway outlets nearby. Further, the accommodation provided by Ashton Lodge will be catering for the guest on a limited budget. We consider that these guests are far more likely to buy their takeaway from a cheaper outlet across the road than from the Wisdom Bar.
- b) The applicants want to be able to sell takeaway liquor to their guests for two (2) stated reasons. The first is that they maintain control over their guests if they are the ones supplying the liquor. They would not, for example, sell a bottle of wine to someone who was intoxicated.
- c) The second reason given was for the convenience of the Ashton Lodge guests. We consider that this reason has some validity. There will be no individual bar fridges in Ashton Lodge. A takeaway condition will mean, for example, that a guest of Ashton Lodge could choose to drink some wine with their meal at the Wisdom Bar & Café and could remove the remains of an unfinished bottle back to their room. They could also buy a single drink from the bar and sit outside in the outdoor recreation area reserved for lodge guests and consume their drink there. Without this option, the guests are forced to buy larger quantities of liquor from Liquorland across the road or similar outlets.

47) We see good reasons to grant this limited takeaway provision so long as conditions are imposed in the licence restricting noise particularly in the outdoor areas bordering the Value Inn. This can be done by simply closing access to these areas after 11.00pm and by including a satisfactory noise condition. The applicant has agreed to both conditions. We considered placing a restriction on the amount of takeaway liquor a guest can purchase from the bar but upon reflection we consider this provision is unnecessary in the circumstances.

48) The applicants have the onus of satisfying the Commission that it is appropriate to grant the licence. Following careful consideration of the provisions of the *Liquor Act* and in particular the Objects in Sections 3 and 6- we consider that the applicant has satisfied that onus. In reaching this conclusion we have taken particular note of the following :

- a) The Beer Garden and Footpath Alfresco Dining Area were previously licensed areas used by Rorkes Drift. The extra increase in capacity for “new” areas is approximately 130 persons being the capacity suggested for the internal areas of the bar and café. Seen in those terms, this development is not a large one. It is also closely linked to new accommodation facilities (Ashton Lodge) and appears to be placing a pleasing emphasis on food in both its layout (eg the open kitchen), the extended hours the kitchen is open and the suggested menu choices.
- b) We accept the evidence put forward by the applicants that the needs of the target group of consumers (30 to 50 year olds) are currently not well catered for in the Mitchell Street Entertainment Precinct - no doubt because they are a harder market to make money

out of. We consider that granting this licence adds to the diversity of liquor outlets on the street. We intend to protect this diversity by including a specific concept clause in the licence and by ensuring that that concept is only varied in a material way with the consent of the Commission. (s3(1)(b),(2)(b)&2(c) of the *Liquor Act*).

- c) There is no evidence before us from the Police or the Office of Racing, Gaming and Licensing that there has been deterioration in behaviour of the public or of licensees on Mitchell St such that we should be concerned about this particular application being granted. We note that the Police chose not to object. (s3(1)(a),(b) & s2(a) and s6(2)(a)(b)(c)(d)(f)(g) of the *Liquor Act*). During the recent Christmas/New Year holiday time the Commission members have closely watched the activities on the Darwin Entertainment Precinct and concluded that the Territorians and tourists were visiting the Precinct to dine, socialise, have fun and be entertained. There was nothing observed that would be detrimental to the social wellbeing and harmony of the community. This observation is borne out by the Licensing Inspector reports over the same period.
- d) There is no evidence before us in the form of research on outlet density or statistics on consumption of alcohol in the neighbourhood suggesting an increase in consumption such that we should be concerned about the health implications for the community. (s3(1)(a),(b) & s2(a) and s6(2)(a)(b)(c)(d)(f)(g) of the *Liquor Act*).
- e) Finally, we consider that any valid concerns regarding undue noise, takeaway, the prior provision of the relevant approvals from statutory authorities and other issues with respect to the premises can be appropriately dealt with by way of licence conditions. (s6(1)(b)& 6(2)(b)(c)(d)(e)(f)(h)(j)(l)(m))

## Licence Conditions

49) We intend to grant a tavern style liquor licence which must include the following conditions:

- a) *The concept for the premise shall be a relaxed, tropical garden atmosphere providing quality food, beverages and service in the Beer Garden, the Footpath Alfresco Dining Area and within the air-conditioned internal spaces. The venue, in music choice and focus, will predominantly cater for people in the 30 to 50 year old age group and will provide an atmosphere where comfortable conversation is possible at all times. The Commission must first approve any material change in this concept.*
- b) *Liquor may be sold for consumption on the premises (which includes the Beer Garden and in the Footpath Alfresco Dining Area) from 10:00 hours to 02:00 hours (the following day) seven days a week.*
- c) *On Sundays to Saturdays inclusive between the hours of 12:00 and 14:00 and again between 18:00 and 21:00, a light or full meal shall be available upon request. Light meals and snacks shall also be available from 10am to 11pm.*
- d) *Takeaway Liquor shall only be supplied to persons registered as bona fide guests of Ashton Lodge.*
- e) *Liquor may be sold for consumption away from the premises to house guests of Ashton Lodge only during the following hours:*  
  - Monday to Friday 10:00 to 22:00;*
  - Saturday and Public Holidays between the hours of 09:00 and 22:00; and no takeaway trading on Sunday, Good Friday or Christmas Day.*
- f) *The Footpath Alfresco Dining Area shall always have the appearance of a restaurant. All persons in the Footpath Alfresco Dining Area shall be seated at all times.*

- g) In the event of any complaint placed before the Commission arising from the appearance of the Area the Commission will consider the arrangement and appearance of the tables and chairs within the area, the availability of meals and/or snack foods, the ready availability of menus and the deployment of the Licensee's staff for the service of the area and any other relevant matters.*
- h) The area shall remain clearly and physically delineated from the public footpath by means of permanent or semi-permanent installations and appropriate lighting shall be installed and maintained.*
- i) The service of food and liquor shall be predominantly by way of table service by staff of the Licensee and the Licensee shall use its best endeavours to ensure that there are sufficient staff to provide such a service. The licensee shall take all measures necessary to ensure that the public footpath contiguous to the area is not obstructed in any manner at any time and shall not permit or suffer conduct in the area which would impact on the amenity of the environs.*
- j) Persons may enter and remain on the premises from 06:00 hours to 10:00 hours, seven days a week, for the purposes of consuming breakfast. No alcohol shall be sold or consumed during this time.*
- k) Persons under the age of 18 may enter and remain on the licensed premises from 10:00 hours to 22:00 hours only if they are in the company of their parent, guardian or spouse (who has attained the age of 18 years).*
- l) There shall be seating provided in the Beer Garden, the Internal Café area and the Internal Bar area for at least 80 percent (80%) of the maximum patron capacity allowed by the NT Fire and Rescue Service.*
- m) 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.*
- n) Pre-recorded and live music generally identified as "easy listening" may be played although live musicians must be situated within the internal spaces. There shall be no karaoke, drum kits or drum machines and no designated dance floor.*
- o) 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.*
- p) The outdoor entertainment area and pool area of Ashton Lodge shall be closed to all persons after 11pm and the licensee shall use its best endeavours to ensure that this condition is complied with.*
- q) The Licensee or its nominee or other designated representative shall actively participate in any forum convened by the NT Police or the Licensing Commission for the betterment of the Mitchell Street Precinct.*
- r) The granting of this licence is subject to and conditional upon the Licensee obtaining all relevant approvals from the Development Consent Authority and other bodies to the satisfaction of the Director of Licensing.*

Brenda Monaghan  
Presiding Member

13 January 2006