

Northern Territory Licensing Commission

Reasons for Decision

Premises:	The Archrival & Nirvana Restaurant Palmerston
Licensee:	Not another Sports Club or Irish Pub Pty Ltd
Licence Number:	80815980
Nominee:	Jason Mark Hanna
Proceeding:	Application to vary licence conditions: extension of trading hours
Heard Before:	Mr John Withnall (Presiding) Ms Annette Milikins Mrs Barbara Vos
Date of Hearing:	20 January 2003
Date of Decision:	20 January 2003
Appearances:	Mr J Hanna for licensee

The following decision of the Commission in this matter was delivered ex tempore by the Presiding Member on 20 January 2003. Some new licence conditions which were outlined in the ex tempore decision are now drafted in detail.

1. In conditionally approving the variations applied for, the Commission took into account
 - the absence of objections
 - the endorsements of the Mayor of Palmerston and of Mr Terry Mills, MLA, the Parliamentary member for the electorate
 - Mr Hanna's further evidence as to needs and wishes, emphasising the need for an alternative late night venue in Palmerston;
 - Mr Hanna's management record in the industry.
2. The Commission therefore approves the extension of trading hours for Friday and Saturday nights until 04:00 the following mornings, subject to the imposition of the Commission's standard late trading conditions to take effect as applicable.
3. As a further consequence of the changes, the current licence conditions respectively headed "Entertainment" and "Licence Concept" will be deleted.
4. The foregoing approval is also subject to the inclusion of two new licence conditions as follows:

Noise Disturbance: The licensee shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises. Without in any way limiting the generality of such restriction, the sound of music or entertainment at the licensed premises shall not be able to be clearly audible to or easily perceived by residents at any time, and after 11 p.m. on any night no sound of music or entertainment at or from the licensed premises is to be audible at all inside any enclosed residential building space.

Power of Review: The Commission may on its own initiative, without there necessarily being any complaint on foot at the time, convene a hearing into issues it perceives at any time as arising in relation to late trading and/or noise disturbance at or from the licensed premises, and by way of such hearing further review the venue's trading times for Fridays and Saturdays.

5. Inasmuch as our foregoing approval imposes new conditions which were not part of the application, we cannot force such new conditions on the licensee at this point; they do not correspond with what was applied for, and the licensee has not abandoned the old licence. We believe that the correct legal view is that we are now offering to vary the licence as requested if the licensee will agree to the additional changes, and it is up to the licensee to now accept the offer or not as it sees fit. The licensee may either elect to accept what we offer or continue on with the existing licence, as it may decide.

(Mr Hanna then indicated his acceptance of the complete package of changes to licence conditions as outlined above).

6. As Mr Hanna accepts what the Commission offers, Licence No. 80815980 will now be amended to accord with the foregoing decision.
7. Late night trading on Friday and Saturday nights may commence immediately, notwithstanding that the changes may not for the time being be embodied in the licence document itself. The transcript of this Decision is to be sufficient authority and warrant for the applicability of the new trading conditions until such time as the licence document may be re-worded and re-issued to encompass the changes.

John Withinall
Presiding Member

Delivered 20 January 2003