

# Northern Territory Licensing Commission

## Decision with Reasons

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<b>Premises:</b>	Alice Food and Wine Shop 1, 58 Todd Mall, Alice Springs
<b>Applicant:</b>	Iparpa Nominees Pty Ltd
<b>Proceeding:</b>	Application for the grant of a liquor licence
<b>Heard Before:</b>	Mr Peter Allen
<b>Date of Hearing:</b>	19 February 2003
<b>Date of Decision:</b>	20 March 2003
<b>Appearances:</b>	Mr John McBride for the Applicant Superintendent Mathew Hollamby for the Northern Territory Police

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1. The application was the subject of a hearing conducted on 22 January 2003. The hearing was adjourned and subsequently abandoned in order that the applicant, at that time represented by Mr Chris O'Loughlin, is now properly prepared. Prior to adjournment, parties heard information regarding the Alice Springs Town Council's draft "Policy on Alfresco Dining Including the Serving of Alcohol". Ms Suzanne Lollback, Director of Economic and Community Development, an officer of the Council, provided the information. Copies of the draft policy were provided to the Commission and the parties.
2. On commencement, the parties were advised that this proceeding is a new hearing and that I was prepared to recall Ms Lollback. Neither party sought the recall of M Lollback.
3. The application was lodged with the office of the Director of Licensing on 22 October 2002. The applicant is shown as Iparpa Nominees and the location of the intended premises as Shop 1, 58 Todd Mall, Alice Springs. The location is known to be towards the southern or Gap end of the Mall, abutting Reg Harris Lane.
4. The application lists the intended nominees as Christopher John O'Loughlin and Vincent Stephen Lange, known to be the directors of the applicant. Mr O'Loughlin is known to be a director of the landlord of the intended premises.
5. As required by the *Liquor Act*, the application was notified to the public by means of notices published in the "Centralian Advocate", on 25 October 2002 and 29 October 2002. Signage to advise the public of the application was erected at the intended premises. The "Statement of Display" signed by Mr O'Loughlin on 3 December 2002 confirms the required sign was erected.
6. The public notices contained the following information:
  - *The application requested seeks to allow for the sale of wine and premium bottled beer to members of the public for consumption on or at the licensed premises in conjunction with a meal.*
  - *Hours of trade will be 12 Noon to 12 Midnight, seven days a week.*
7. In plain language, the application is for a restaurant licence. No mention is made of spirits in any form.
8. The Development Consent Authority, Alice Springs Town Council and Northern Territory Police were informed of the application in written advice provided by the Deputy Director of

Licensing. Development Consent Authority approval for a “restaurant and office extensions” had been earlier notified to the applicant by the issue of Development Permit 02/0427, dated 2 October 2002.

9. The response of the Alice Springs Town Council is contained in correspondence to the Deputy Director of Licensing, dated 27 November 2002 and signed by Ms Suzanne Lollback, Director Economic and Community Development.
10. Ms Lollback’s letter informs the Deputy Director that the Council discussed the application at its meeting held on Monday 25 November 2002 and resolved as follows:
  - (a) *That Council supports the Liquor Licence application for the premises at Shop 1, 58 Todd (Cnr Todd Mall and Reg Harris Lane) from Alice Food and Wine subject to the plan for the proposed redevelopment being approved by the Council’s Environment Health Officers.*
  - (b) *That Council will support a Liquor Licence application for the alfresco dining area should the applicant apply in the future subject to all requirements being fulfilled with regards the Council’s alfresco dining policy.*
  - (c) *Any changes to the size and layout of the alfresco dining area to be subject to the Todd Mall Guidelines.*
11. The Northern Territory Police lodged an objection to the application by letter to the Deputy Director signed by Station Sergeant Lance Godwin and dated 5 November 2002.
12. Station Sergeant Godwin’s objection alleges that the proposed location is within an area well documented as experiencing ongoing problems with liquor-related anti-social problems and that at a time when the community is implementing measures including restricted trading hours to combat such problems, the granting of another licence would “send the wrong message”. Mr Godwin’s objection closes with the request that if the application is approved approval should adhere to the terms of the application.
13. Before considering this matter further it is useful to define the proposed licensed area. The licensed area can be regarded as being comprised of three sections. Firstly, that area contained within the walls of Shop 1 at 58 Todd Mall, secondly, an area that lies within Reg Harris Lane, and thirdly, an area to the front of Shop 1. The first and second areas are subject to the consent of the landlord, Mr Chris O’Loughlin, who as indicated earlier is a director of the applicant and a proposed nominee. The third area lies within the Mall and is thus subject to the consent of the Alice Springs Town Council. Subject to a licence being granted, the approved licensed area will be described in a plan to be held by the Director of Licensing and linked to the licence by the conditions of that licence.
14. I am required to have regard to the financial and managerial capacity of the applicant. No objection has been raised in this regard and on the basis of documentation made available by the applicant I am well satisfied with the financial capacity of the applicant. On the basis of further documentation supplied by the applicant and by evidence adduced in relation to Mr Vincent Lange and tested by cross-examination, I am well satisfied as to Mr Lange’s managerial capacity in relation to the licence sought and to his fitness for appointment as a nominee. Indeed, persons of Mr Lange’s skills and experience are somewhat of a rarity within this jurisdiction. I am not however satisfied as to Mr O’Loughlin’s managerial capacity and suitability as a nominee and will qualify this finding later in these reasons.
15. Substantial detail regarding the application is contained with Exhibit 2, the Operations Handbook of the proposed premises.
16. The Mission Statement to be found at page 2 of Exhibit 2 reads (in part) as follows:

*To profitably offer the Alice Springs locals and visitors a restaurant serving gourmet French and modern Australian food with a choice of up to twenty wines by the glass*

*along with a complete cellar list of up to two hundred different wines and up to six premium bottled beers.*

Other information within Exhibit 2 includes the proposed method of operation of the premises, word pictures of the directors, sample menus, a staff organisational chart, a detailed guide to the responsible service of liquor and guidelines for effective communication with patrons of licensed premises. The Handbook is commended and accepted as evidence of an appropriate level of professionalism for the conduct of licensed premises.

17. Testimonials submitted by the applicant can be taken to indicate a level of community support for the application. Entered as Exhibit 1 are individually composed letters of support addressed to either the Commission or the Deputy Director. The correspondence is signed by Mr Chris Vaughan of Bojangles Saloon and Restaurant, Mr Bill Coffey of Lasseters Hotel Casino, Mr Gerard Waterford as a counsellor and social worker in Alice Springs, Mr Craig Catchlove as General Manager of the Central Australian Tourism Industry Association, Doctor and Mrs Dominguez, Chris and Anthony Neck of Murray Neck Home World, Ms Marie Kilgariff of Travelworld, Mr Mike Loy of Jetset Travel, Mr John King and Ms Rosalind Wade.
18. I am required to have regard to the needs and wishes of the community. Exhibit 1, taken together with the Town Council's support for the application can be taken to indicate that the community's needs and wishes are satisfied in regard to this application.
19. Superintendent Hollamby for the objector submits that there is an excessive number of liquor licences in Alice Springs and informs me that there is a total seventy-four licences serving a population of twenty-seven thousand. Mr Hollamby details the concerns held by many members of the Alice Springs community regarding the number of licences and describes the various liquor-related issues that arise within the town. Clearly apparent in Mr Hollamby submissions is his concern that the premises may become some form of bar, a premises where the consumption of liquor dominates and the service of food in a proper restaurant setting becomes marginalised and eventually neglected as the licensee concentrates on the provision of liquor.
20. Aside from the issue of the actual number of liquor licences in Alice Springs, I share the Superintendent's concerns and am sympathetic to his submissions. To answer the question that naturally arises from any concern regarding the raw number of licences, many of these licences are situated in restaurant-style premises and in my seven years as Chairman of the Commission I cannot recall any substantial matters of concern arising in respect of restaurants. By comparison complaints made in respect of premises selling "takeaway" liquor have been numerous and often serious. The deleterious effects of the over-consumption of "take-away" liquor can be recited by almost all persons as general knowledge; restaurants are not seen as a problem by members of the community-at-large and no evidence of police call-outs to restaurant-style premises was adduced.
21. Nevertheless I concur with Superintendent Hollamby's submissions that the proposed premises should not be permitted, as if by osmosis, to become a bar, and that some definition of restaurant or meal is required.
22. In earlier times of silver service and set menus or three courses "a la carte", the definition of a restaurant was an easier task, particularly as competing premises such as hotels and taverns were themselves more easily defined than is now the case and the differences that applied between bars and restaurants were clearly apparent to the most casual observer.
23. More will follow on the matter of definitions as I am positively persuaded to grant the application subject to the crafting of appropriate conditions.
24. The dominant factors that persuade me in favour of the applicant are as follows:

- The financial capacity of the applicant, which is such that the premises can be developed and opened for trade in the style and manner described by the applicant,
  - The support of the Alice Springs Town Council and a range of other organisations and individuals in the Alice Springs community,
  - The relevant experience of Mr Vincent Lange in the management of licensed premises, and,
  - The premises is unlikely to contribute to liquor-related problems in the Alice Springs community.
25. Approval is limited to the terms of the public notice as published in the Centralian Advocate. The approved licence shall be in accordance with the plan referred to at Part 13 of these reasons. The matter of the plan and calculation of the precise boundaries of the licensed area to be shown thereon are delegated to the Deputy Director of Licensing.
26. Approval for the grant of a licence shall be on an “in-principle” basis and shall remain “in-principle” until such time as the proposed premises is in a ready to trade state other than for stock and statutory and regulatory requirements pursuant to all relevant legislation have been complied with, provided always that if the premises is not ready to trade and is not appropriately compliant within six months from the date of this decision then this approval shall lapse in its entirety.
27. As to definitions, it is apparent from the evidence that the licensee will offer a range of dining experiences, some of which will involve light meals, or meals and food items served in entree sized portions. Some of these meals or food items will be served at the bar within the premises prior to patrons taking up the offer of a table elsewhere in the premises.
28. In order to firmly give effect to the objector’s concerns that the premises might become a de facto bar it shall be condition of the licence that “the premises shall at all times have the appearance of, and shall trade predominantly as a restaurant”.
29. In response to Superintendent Hollamby’s submission that a “meal” should be adequately defined, it shall be a condition of the licence that a “meal” shall be defined as “a food item ordered by an individual patron from a published menu that is then prepared specifically for that patron and served as individual meal”. This definition is intended to recognise that although a meal may be similar in appearance to other meals served on the premises, the emphasis shall be on the specific presentation of that meal to the individual patron who placed the order. In keeping with current tastes and dietary trends a meal can be of entree rather than substantial meal size. It should be obvious from the foregoing that a meal shall not consist of pre-packaged foods such as salted chips, cashews, peanuts, beer nuts or other “finger food”, served unopened or opened by wait staff and poured into a container or placed on a dish.
30. The licence shall contain and be subject to a “Licence Concept” condition as follows:
- The licensee shall operate the business at all times to standards consistent with the concept of “upmarket” or “quality restaurant” serving gourmet French and modern Australian food, complemented by a wine list of appropriate and “superior” quality wines. Should the standard of any aspect of the licensed operation deteriorate to a point considered by the Commission to be inconsistent with such a concept, then the Commission may on its own motion convene a hearing into the operational standards of the premises, and at the conclusion of such hearing may suspend, cancel or vary the conditions of the licence if in the opinion of the Commission the licensee shall have failed to show sufficient cause to the contrary.*
- 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 acknowledgment of the proposed transferee’s awareness of the conditions of the licence.*

The purpose of this condition is ensure that the licensee remains faithful to the substance and detail of the application as presented in evidence at this hearing and importantly, that the licensee does not, without the approval of the Commission, convert or slide the premises into some other mode or manner of operation.

31. At Part 14 of these reasons I indicated a lack of satisfaction as to Mr O'Loughlin's managerial capacity and suitability as a nominee. Mr O'Loughlin is known to be a competent and successful businessman with a range of professional and commercial interests in Alice Springs. No issue is taken, or can be taken, as to his general managerial capacity or managerial capacity specific to his professional and commercial interests. My concerns relate strictly to Mr O'Loughlin's capacity for the management of liquor licensed premises, particularly as a nominee. Throughout his evidence and during cross-examination, Mr O'Loughlin presented somewhat as a "fish out of water" and was unable to satisfactory answer questions pertinent to the operation of licensed premises, particularly questions related to patron management and the responsible service of liquor. Thus I am unable to approve Mr O'Loughlin to be a nominated manager of the licensee. This matter stands delegated to the Deputy Director who may give his approval at any time later than six months following the date of this decision and set such terms for approval as he sees fit.
32. The issue of an alfresco dining permit and compliance with such permit is a matter for the Alice Springs Town Council, the landlord and controller of the Todd Mall.

Peter R Allen  
Chairman