

Northern Territory Licensing Commission

Short Decision

Premises:	Tremaines
Date of Decision:	30 November 2000
Date of Hearing:	15 June 2000 & 25 October 2000
Application:	Section 33(2)
Heard Before:	Mr John Withnall (Presiding Member)

Although as yet there has not been time available to write a full decision in this matter, it must be acknowledged that with the Christmas season fast approaching, Mr Tremaine must be anxious to know where he stands in relation to the disputed condition. Mr Avery too can be expected to be rather anxious to know what his level of toleration may need to be over the festive season.

It is therefore proposed to notify the bare decision that has been reached, and to publish full reasons as soon as possible hereafter.

Special Condition 12 as notified in the section 33 notice of 27 September 1999 merely replicated Condition 4 of Development Permit DP95/0568, and Mr Tremaine indicated during the course of the hearing that it was not being contested. It is the notification of Special Condition 13 that he objects to, the proscription of disturbance to neighbouring residents, characterising it as a loaded gun for Mr Avery to hold to Mr Tremaine's head.

Both parties emphasise their respective reasonableness. For his part Mr Avery testified that he does not object to overhearing the reasonable sounds of normal operation of a restaurant, but that he should not have to put up with the noise of alcoholically raised voices nor of alcoholically undisciplined departures. He makes the point that one does not normally come across the sort of loud language in and about a restaurant that has emanated from Tremaines to disturb him.

Mr Avery also indicated that he would not be complaining of any sudden patron outburst that Mr Tremaine could not be reasonably expected to foresee or control, but that any frequency or **pattern** of such disturbance is a matter of management and as such could be expected to be the subject of complaint by Mr Avery. He also conceded that the level of amplified music had not been disturbing to him for some time, but that he would certainly be looking to his remedies if there was a return to anything like the earlier disturbing level.

The Commission therefore is moved to attempt to enshrine such reasonableness in an amended version of Special Condition 13, to replace both the special conditions that were contained in the notice of 27 September 1999. This should serve to reduce Mr Tremaine's apprehensions as to ongoing complaints being grounded in hyper-sensitivities while retaining a reasonable safeguard for Mr Avery's legitimate residential amenity.

Mr Tremaine should not think that his premises are being singled out for the imposition of a noise restriction condition; such a condition is becoming quite common

The foregoing new condition shall take effect on and from Tuesday 5 December 2000.

In modern liquor licences, and in time may well become a standard core condition in any event. (Such a condition has been standard in all of Tremaines' many special licences, albeit apparently unnoticed by Mr Tremaine). Outdoor areas of restaurants and bistros are normally severely restricted in relation to the amplification of music or entertainment. Given the residential (RL2) zoning of Tremaines and the surrounding neighbourhood, Mr Tremaine must accept that in order to operate a liquor licence **outdoors** on and surrounded by residential blocks, **some** form of noise-limiting condition is unavoidable.

Pursuant to section 33(4) of the Liquor Act, the conditions of Licence No.80516320 will be varied by the addition of the following special condition:

12. The Licensee shall not permit or suffer the emanation of noise from the licensed premises of such type or volume as to cause such annoyance or disturbance to the ordinary comfort of lawful occupiers of surrounding residential property as shall be a reasonable reaction to the noise on the part of any such occupier. In determining whether any occupier alleging such annoyance or disturbance is being reasonable, and in determining whether to uphold such a complaint against the Licensee, the Commission shall have particular regard to the following matters:
- (i) any history or pattern of recurrence or continuance of noise similar to that which is the subject of complaint;
 - (ii) management initiatives implemented by the Licensee to attenuate or contain such noise; and
 - (iii) in relation to the escape of electronically amplified sound, the relevant sound levels stipulated in the Waste Management and Pollution Control (Environmental Noise) Regulations (if by then promulgated, otherwise such draft thereof as shall then be current with the Department of Lands Planning & Environment).

The Commission concedes that the new condition cannot be any purely objective touchstone for the parties; we are reluctant to impose a specific blanket decibel ceiling at the perimeter of the licensed premises, except as a last resort which in all probability would suit neither side. The unusual situation of outdoor restaurant in an RL2 neighbourhood will always necessitate the Licensee's ongoing consideration of the reasonable expectations of the neighbours in terms of their normal residential comfort.

The current draft of the Waste Management and Pollution Control (Environmental Noise) Regulations can be downloaded from the website www.lpe.nt.gov.au/enviro/LEGISLAT/noise/ It should be noted that the property descriptions in the schedules to the proposed regulations are in relation to the property receiving the noise, not the property which is the source of the noise.

John Withnall
Presiding Member

30 November 2000