

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

LICENCE NUMBER: 80319054

REFERENCE: LC2021/019

LICENSEE: The Frangoes Pty Ltd

PROPOSED PREMISES: Six Tanks Brewing Co
4/69 Mitchell Street
DARWIN NT 0800

LEGISLATION: Section 110 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Bernie Dwyer (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 12 May 2021

DATE OF DECISION: 17 June 2021

Decision

1. For the reasons set out below and in accordance with section 110 of the *Liquor Act 2019* (the Act), the Northern Territory Liquor Commission (the Commission) has determined to vary the conditions of Frangoes Pty Ltd (the Licensee), at the premises of Six Tanks Brewing Co, 4/69 Mitchell Street, Darwin.
2. The existing "Entertainment Condition" is deleted and replaced with the following condition:
 - (i) Entertainment by way of pre-recorded music and live performers may be played although live performers must always be situated within the internal spaces;
 - (ii) Although dancing is permitted, there shall be no designated dance floor; and
 - (iii) If entertainment by way of live performers and pre-recorded music (other than ambient music played at background levels) is to take place after 23:30 then the doors and bi-fold windows at the front of the premises shall be closed.

Reasons

Background

3. The Licensee is the holder of liquor licence number 80319054 for premises known as Six Tanks Brewing Co, 4/69 Mitchell Street, Darwin.
4. The application was lodged on 25 February 2021 by Mr Thomas Richardson of law firm De Silva Hebron on behalf of the Licensee seeking three permanent variations to the liquor licence conditions. The application is to amend one condition relating to entertainment and remove two conditions relating to entertainment.
5. The current entertainment condition states:
 - i. *Entertainment by way of pre-recorded and live performers may be played although live performers (maximum of three (3) performers) must be situated within the internal spaces playing lounge tunes, string quartets and jazz music.*
 - ii. *There shall be no rock, heavy metal or “nightclub” style entertainment provided at the venue.*
 - iii. *There shall be no designated dance floor.*
6. The proposed variation is to:
 - Amend the entertainment condition (i) to read “*Entertainment by way of pre-recorded and live performers may be played in the internal spaces of the venue*”
 - Delete entertainment conditions (ii) and (iii).
7. The application was accompanied by;
 - affidavit in accordance with section 54 of the Act
 - combined Community Impact Assessment and Public Interest Test
 - copy of lease.

Publication and Consultation

8. The application was published by way of notices in the NT News on 13 and 17 March 2021. A green advertising sign was also erected at the premises for the course of the advertising period. Copies of the NT News ads, photographs of the green sign erected in-situ and a signed statement of display were included in the Referral Brief of the Director of Liquor Licensing (the Director).
9. As a result of the public advertising no objections were received.

10. In accordance with the Act, the following were notified of the application.
 - The Chief Executive Officer of the Department of Health
 - The Commissioner of Police
 - The Chief Executive Officer, City of Darwin
11. The Department of Health replied via email dated 15 March 2021 stating it had no adverse comments.
12. The NT Police replied via email dated 15 March 2021 stating it had no objection but noting that live music is played at other venues nearby.
13. The City of Darwin did not make any response.

Compliance

14. A check of records held at Licensing NT show that the liquor licence was transferred to the Licensee on 12 November 2020. Since the date of transfer there have been no recorded negative compliance issues.
15. While there were no formal objections received to the application, the Director is aware of noise complaints in the general vicinity of Six Tanks which are being investigated by Licensing NT.

Public Hearing

16. This matter was referred to the Commission by the Director's Delegate on 19 April 2021. On 4 May 2021, the Commission wrote to the Licensee advising that the matter was listed for a public hearing on 12 May 2021.
17. On 12 May 2021, the application was heard by the Commission at a public hearing. Mr Richardson, Solicitor appeared for the Licensee together with Maurice D'Arrigo, Operations Manager. Ms Tania Chin appeared for the Director. The Commission is grateful for the assistance provided by all those that appeared.
18. The brief was tendered and admitted into evidence without objection.
19. The evidence from the Licensee was to the effect that it had taken over the licence late last year and was interested in broadening its customer base by hosting ethnic theme nights at the venue where various ethnic communities which might not have their own licensed club, such as the Indian community, would have the opportunity of showcasing appropriate live entertainment to guests. These events would be accompanied by a special food menu featuring traditional meals from the particular ethnic region. When the original licence for these premises was granted the previous licensee had volunteered the current restrictions on the scope of entertainment that could be provided. The current Licensee is concerned that those conditions are vague and could unduly restrict the type of entertainment that can be presented at the proposed ethnic theme events.

20. Prior to lodging this application, the Licensee's officers had properly discussed their proposals with Licensing Compliance Officers and sought advice as to whether the type of music they were considering would contravene the prohibition on "nightclub style entertainment". There was no consistent view expressed on the definition of that term and the Licensee stated in its application:

"The Applicant understands the policies related to preventing licence creep, but the simple use of the words "nightclub style entertainment" has meant that the Applicant may risk breaching its licence conditions for simply engaging a DJ to play pre-recorded music sets at the venue. We believe that specifying types or genres of music in the licence conditions may cause compliance issues as music styles evolve over time".¹

21. The Licensee also submitted that whilst it was content to not have a designated dance floor on the premises it did not want to have to actively prevent patrons from dancing in any areas of free space at the venue.
22. Ms Chin for the Director conceded that the current conditions in relation to entertainment were imperfect however they were clearly aimed at constraining venues from increasing the overall noise level within this entertainment precinct. The Six Tanks Brewery, Bar and Restaurant usually operates with its bi-fold doors and windows open on to Mitchell Street. There have already been complaints about excessive noise emanating from the vicinity of these premises. Licensing Officers are therefore concerned that any relaxation of the entertainment condition not result in more noise on the street either directly from Six Tanks or indirectly through neighbouring bars increasing the sound level of their own music so that it can be heard over the competition.
23. The Commission has on previous occasions described the difficulties associated with setting and enforcing noise restrictions based on decibel readings.² Not least of which is the fact that the Northern Territory Environment Protection Authority (NTEPA) has passed responsibility for monitoring noise disturbance from licensed premises to Licensing NT which does not have the scientific expertise nor the technical equipment necessary to conduct the requisite measurements.
24. The Commission is not unsympathetic to the Licensee's frustration with the entertainment condition that the previous licensee has left it with. It is most unlikely that the premises have ever provided classical music via a "string quartet" and if they did they would have been technically in breach of the condition by engaging four performers for the string "quartet" rather the maximum allowed of three.
25. "Jazz music" encompasses such a broad range of musical styles that it is probably not a very useful descriptor in terms of noise moderation. If 'lounge music" is in fact a recognised music genre then tastes will no doubt differ as to what constitutes adherence to its form. In any event it is unrealistic to expect a licensee to provide classical music or "lounge tunes" to those people who are having a night out on Mitchell Street if there is no appetite for that style of entertainment.

¹ Director's Referral- Exhibit 1 Page21

² PINTS Club Decision

26. In the course of the hearing the Commission pressed both the Licensee and the Director's representative to provide a more workable entertainment condition. It was agreed that the matter would be adjourned to allow the parties to conduct further research on how this issue had been dealt with in the licence conditions of other Mitchell Street venues. Ms Chin also helpfully offered to investigate the situation that prevailed in other Australian jurisdictions. The parties were allowed a reasonable time within which to file further submissions.
27. On 26 May 2021, Mr Richardson, Solicitor for the Licensee, filed further submissions. He provided a summary of the entertainment restrictions which applied to the other Mitchell Street venues. He submitted that the only bar with similar restrictions to the Licensee was the Tap Bar which is an open air venue whereas the Six Tanks premises are more closely aligned to those of Monsoons and Wisdom which have no restrictions. He concluded:

“Due to the above submissions, the Applicant in the first instance requests that the Entertainment conditions be amended as follows:

- (i) Entertainment by way of pre-recorded and live performers may be played although live performers must be situated within the internal spaces; and*
- (ii) Although dancing is permitted, there shall be no designated dance floor.*

However, in the alternative, if the Commission believes that there must be a specification as to what kinds of music are permitted, that condition (ii) can be amended as follows:

- (iii) There shall be no music or live entertainment played that contradicts or is outside the Licence Concept”.*

28. On 28 May 2021, Ms Chin provided further submissions on behalf of the Director. She attached the table at Attachment A to her submissions which lists the entertainment and noise conditions which are included within the licence conditions for other licensed premises in Mitchell Street. That table is now Attachment A to this Decision Notice.
29. Ms Chin's investigation of the interstate licensing regimes revealed a greater reliance on acoustic and audiometric standards, particularly in the larger jurisdictions, which are generally monitored and enforced by the relevant EPA. It would appear that South Australia has deliberately moved away from restrictions on the number of performers and type of music that can be played. The focus there and elsewhere seems to be based on ensuring that the sounds associated with entertainment are confined within the structure of the premises.
30. Ms Chin concluded:

“It would be within the parameter of the Commission to consider that any entertainment by way of pre-recorded and live performers are to occur within the confines of the premiseswith the closing of any doors and bi-fold windows.....to ensure there is no.....undue disturbance or discomfort to residents of the neighbourhood.

Assessment of the Application

31. In determining whether the variation of the licence conditions is in the public interest the Commission is required to consider whether the varied licence would advance the following objectives set out in section 49(2) of the Act:

To determine whether issuing a licence or an authority is in the public interest, the Commission must consider how it would advance the following objectives:

- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) preventing the giving of credit in sales of liquor to people;
- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

32. The Commission needs to also determine that the proposed variation will not have a significant adverse impact on the community after considering the matters set out in section 49(3) of the Act:

To determine whether issuing a licence or an authority would have a significant adverse impact on the community, the Commission must consider the following:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;

- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50;
- (j) any other matter prescribed by regulation.

33. The Commission heard evidence to the effect that Licensing Compliance Officers are currently investigating complaints of noise disturbance in this precinct. It is a live issue and regardless of any special conditions restricting the type of music that can be played, section 93 of the Act provides:

A licensee must not cause or permit its employees or patrons to cause undue and unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.

Examples for section 93

- 1 *The delivery of stock and the removal of rubbish must be at appropriate hours.*
- 2 *Live music must be at a reasonable volume.*

34. Having been guided by the Purposes of the Act in section 3 and the considerations specified in section 49, the Commission has determined that it is appropriate to vary the conditions of licence. It has decided to retain the condition that there be no designated dance floor to maintain a significant point of differentiation between these premises and the nightclubs on Mitchell Street, whilst acknowledging that some dancing may occur. The Commission also finds that the current music restrictions are imprecise and unduly restrict the licensee's ability to cater for the legitimate entertainment preferences of its patrons. The overarching goal is to prevent "undue and unreasonable noise" that adversely affects the amenity of the neighbourhood not to impose an unpopular style of music on the public in the hope that it might be less noisy than other styles.

35. From the limited information before us as to the situation elsewhere within Australia it would seem that the focus of licensing authorities is to ensure the sound stays within the premises. The Commission considers that to be a good starting point and is hopeful that a condition requiring the licensee to close the windows and doors on to Mitchell Street after 23:30 will satisfactorily ameliorate the risk of noise disturbance. However, the Licensee should clearly understand that if noise levels emanating from the premises either prior to 23:30 or later in the night with the doors and windows closed is causing unreasonable disturbance that the Commission will intervene under section 113 or as part of a complaint proceeding to impose more stringent noise abatement conditions.

36. For the reasons outlined above the Commission has determined to vary the conditions of licence in the terms set out in paragraph 2.

Notice of Rights

37. Section 31(1) read with section 60(3) of the Act provides that the decision set out in this decision notice is reviewable by Northern Territory Civil and Administrative Tribunal (“NTCAT”). Section 94(3) of the NTCAT Act provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
38. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the Licensee.



RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
17 June 2021

On behalf of Commissioners Coates, Dwyer and McFarland

ATTACHMENT A

LICENCE NO	PREMISES	AUTHORITIES	CONDITIONS	
(1) 80319054	The Frangoes Pty Ltd (Six Tanks Brewing Co)	Producers Public Bar Late Night – 2am (Trading hours 10:00am – 02:00 7 days a week)	Entertainment	<p>(i) Entertainment by way of pre-recorded and live performers may be played although live performers (maximum of three (3) performers) must be situated within the internal spaces playing lounge tunes, string quartets and jazz music.</p> <p>(ii) There shall be no rock, heavy metal or ‘nightclub’ style entertainment provided at the venue.</p> <p>(iii) There shall be no designated dance floor.</p>
			Noise	The Licensee shall take measures necessary to ensure that noise from the premises does not cause undue disturbance or discomfort to residents of the neighbourhood.
(2) 80315480	Shenannigans Irish Pub	Public Bar Late Night – 2am (Trading hours 10:00am – 02:00 7 days a week)	Special Conditions	<p>Noise Control – Noise levels emanating from any part of the premises must be such as to not cause unreasonable disturbance to the business or ordinary comfort of lawful occupiers of neighbouring premises.</p> <p>Inappropriate Procedures – Any procedures that are inappropriate or are considered to be against the spirit of the above mentioned licence conditions shall be resolved by the Director of Liquor Licensing. Failure to negotiate a satisfactory solution will lead to an application of the Director of Liquor Licensing for adjudication by way of a hearing.</p> <p>* No reference to types of music within licence.</p>
LICENCE NO	PREMISES	AUTHORITIES	CONDITIONS	
(3) 80818191	Deva Short Stay Pty Ltd / The Jungle House (Youth Shack)	Public Bar (Trading hours 11:00am – 23:59 7 days a week)	Entertainment	Entertainment by way of recorded music, movies, television including satellite TV, and DVDs may be played. There shall be no designated dance floor on the premises, and no live music or karaoke.

				Entertainment activities shall cease by 23:00 hours.
			Noise Control	Noise levels emanating from any part of the premises must be such as to not cause unreasonable disturbance to the businesses or ordinary comfort of lawful occupiers of neighbouring premises or to any other person in the vicinity.
(4) 80515750	Freshfood Group Pty Ltd (Mellow Thai Restaurant and Café)	Restaurant Bar BYO Late Night (Trading hours 11:30am - 02:00 7 days a week)		No conditions pertaining to Entertainment or Noise.
(5) 80516340	PK International Pty Ltd (Mitchelli's Pizza Café)	Restaurant BYO Late Night (Trading hours 11:30am - 02:00 7 days a week)		No conditions pertaining to Entertainment or Noise.
(6) FLL1029	EFUS Food and Catering Services Pty Ltd (Alfonsino's)	Restaurant (Trading hours Mon - Sat 12:00 - 23:59 Sun & PH 10:00 - 21:59)	Appearance	The premises shall at all times have the appearance of and shall trade predominantly as a restaurant.
			Noise	The Licensee shall ensure that there is no excessive noise caused by the operations on the premises which affect the amenity of the neighbourhood. This includes ensuring the delivery of stock or removal of rubbish is at appropriate hours and that patrons, whilst on the premises or in the course of leaving the premises (including after close of trading), are not rowdy or noisy and do not cause any disturbance to the vicinity of the premises.

LICENCE NO	PREMISES	AUTHORITIES	CONDITIONS	
(7) 80300296	Marlin Darwin Pty Ltd (The Hotel Darwin)	Takeaway Public Bar Late Night Adult Entertainment R-Rated (Trading hours 10:00am - 04:00 7 days a week)	No Conditions	No noise, entertainment conditions attached to licence.
(8) 80304385	Karma Darwin Pty Ltd (The Deck Bar)	Public Bar Late Night (Trading hours Sun - Thur 10:00am - 02:30 Fri - Sun 10:00 - 04:00)	Alfresco / Function / Seating	Requirements on conditions with appearance with functions / seating and public.
			Noise	The licensee shall take all measures necessary to ensure that noise from the premises does not cause undue disturbance or discomfort to residents of the neighbourhood.
(9) 80315790	Tropics Holdings Pty Ltd (Monsoons)	Public Bar Late Night Adult Entertainment R-Rated (Trading hours 11:30am - 04:00 7 days a week)	Footpath Alfresco Dining Area	Trading hours, subject to any exceptions in the licence, shall be 11:30 to 02:00 the following day 7 days a week. Patrons in outdoor area to be seated. The Licensee shall not permit or suffer conduct in the Area which would impact on the amenity of the environs. The Licensee shall not permit or suffer the emanation of noise from the Area of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises.

LICENCE NO	PREMISES	AUTHORITIES	CONDITIONS	
			Late Trading Premises	<p>From 00:00 hours on any day on which the premises shall trade beyond 02:00 hours, the provision of live entertainment shall be a prominent feature of the business conducted at the premises.</p> <p>The Licensee shall take all measures necessary to ensure that noise from the premises does not cause undue disturbance or discomfort to residents of the neighbourhood.</p> <p>*Lock out after 03:00 hours – Regulation 62.</p>
(10) 80317565	AFS Realty & Business Brokers Pty Ltd (Wisdom Bar & Café)	Lodging (Ashton Lodge) Public Bar Late Night (Trading hours 10:00am – 02:00 7 days a week)	Premises Concept	<p>The concept for the premise shall be a relaxed, tropical garden atmosphere providing quality food, beverages and service in the non-smoking area of 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 ensure at all times that some areas within the licensed area are available to patrons where comfortable conversation is possible. The Director of Liquor Licensing must first approve any material change to this concept.</p>
			Noise Control	<p>The licensee shall take all measures necessary to ensure that the noise from the premises does not cause undue disturbance or discomfort to the residents of the residents.</p>
			Community Involvement	<p>The Licensee or its nominee or other designated representatives shall actively participate in any forum convened by the NT Police or Director of Liquor Licensing for the betterment of the Mitchell Street precinct.</p>

LICENCE NO	PREMISES	AUTHORITIES	CONDITIONS	
(11) 80818038	Crocosaurus Cove Pty Ltd (The Tap on Mitchell)	Public Bar Late Night (Trading hours 10:00am - 02:00 7 days a week)	Licence Concept	Licence shall have the appearance of an Alfresco Dining Area or café set in an open air (other than for shade) tropical garden with rock and water features. The area will provide a quality tourist attraction with the Crocodile Tourist Theme Park with products and services consistent with the reasonable expectations of that market.
			Community Involvement	The Licensee or its nominee or other designated representatives shall actively participate in any forum convened by the NT Police or Director of Liquor Licensing for the betterment of the Mitchell Street precinct.
			Entertainment	Entertainment by way of music and live music (not amplified independently of the in-house sound system) of not more than solo artists or duos may be played in the Alfresco Dining Area and shall be limited to easy listening music and shall not include bands, nightclub or disco style music or karaoke. There shall be no designated dance floor on the premises. Drum kits and drum machines may not be used.
			Noise	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. Notwithstanding compliance by the Licensee with this requirement, the Licensee shall effect such further or other sound attenuation as the Director of Liquor Licensing in its discretion may notify the Licensee in writing at any time as having become reasonable requirement in the considered view of the Director of Liquor Licensing in circumstances then prevailing, provided always that the Licensee shall be entitled to

		request a hearing in to any such requirements of the Director of Liquor Licensing.
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LICENCE NO	PREMISES	AUTHORITIES	CONDITIONS	
(12) 80317973	Best Venues Pty Ltd (Opium)	Public Bar Late Night Adult Entertainment R-Rated (Trading hours 10:00am - 04:00 7 days a week)	Persons May Remain On Premises	During the hours between 04:30 hours and 05:30 hours where the premises remains open, the music volume shall be turned down and the lighting of the venue shall be increased.
			Licensee To Participate In Mitchell Street Forum	The Licensee or its nominee or other designated representatives shall actively participate in any forum convened by the NT Police or Director of Liquor Licensing for the betterment of the Mitchell Street precinct.
			Lock out for Extended Late Night Authority	*Lock out after 03:00 hours - Regulation 62.
(13) 80317973	Crocosaurus Cove Pty Ltd (Crocosaurus Cove)	Special Venture (Trading hours 10:00am - 22:00 7 days a week) *may trade to 23:59 on any date to cater for a pre-booked function	Premises Appearance	The premises shall at all times have the appearance of and trade predominantly as a food court and/or function centre for the service of meals and snacks to visitors to the crocodile and reptile exhibits and to any persons attending a pre-booked function and must be conducted at all times in a manner that clearly distinguishes it from a hotel, tavern or nightclub.
(14) 80316240	Deva Darwin Pty Ltd (Discovery) (The Lost Arc)	Public Bar Late Night Adult Entertainment Explicit (Trading hours 10:00am - 04:00 7 days a week)	Concept	Bar 4 - high standard adult entertainment (cabaret acts and R rated floor shows). High dress standards.
			Entertainment	From 00:00 hours on any day on which the premises shall trade beyond 02:00 hours, the provision of live entertainment shall be a prominent feature of the business conducted at the premises. The Licensee shall take all measures necessary to ensure that noise from the premises does not cause undue

		disturbance or discomfort to residents of the neighbourhood.
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