

# NORTHERN TERRITORY LICENSING COMMISSION

## Reasons for Decision

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<b>Premises:</b>	<b>The Hotel Darwin</b>
<b>Applicant:</b>	Merlar Hotel Management Pty Ltd
<b>Nominee:</b>	Mr John Meers
<b>Licence Number:</b>	80300296
<b>Objectors:</b>	NT Police, Department of Health, City of Darwin
<b>Legislation:</b>	Sections 47F to 47I of the <i>Liquor Act</i>
<b>Decision of:</b>	Mr Richard O'Sullivan (Chairman)
<b>Date of Decision:</b>	11 June 2014

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## BACKGROUND

- 1) Merlar Hotel Management Pty Ltd ("the applicant") has applied to extend trading hours for The Hotel Darwin, located at the corner of Mitchell and Herbert Streets, Darwin. Additional trading hours to extend the closing time are sought as follows:
  - a) Darwin Bar – to extend trading hours from Sunday to Wednesday from 12 midnight to 2am the following day in line with trading hours currently operating from Thursday through to Saturday.
  - b) Studio Bar – to extend trading hours from Sunday to Wednesday from 2am to 4am (the following day), in line with trading hours currently operating from Thursday through to Saturday.
- 2) If the application is approved the trading hours for the licensed areas under application would be operative for seven days a week as follows:
  - Darwin Bar – 10am to 2am the following day
  - Studio Bar – 10am to 2am the following day
- 3) The applicant is seeking uniformity of trading hours throughout the week. For the Studio Bar there is a further rationale for the application.
- 4) The applicant has entered into an agreement with the licence holder and operator of the premises formerly known as the Honey Pot, for the operation of an R-rated adult entertainment venue, including private dancing/strip booths, at the Studio Bar under the name of The Honey Pot Club. The licence hours for the former Honey Pot were until 4 am.
- 5) The Northern Territory Licensing Commission ("the Commission") on 27 May 2014 approved a variation to licence conditions to allow adult entertainment to be conducted at the Studio Bar and related material alterations, with the material alteration approval being subject to:

- “• the fit out and layout of the private booths are completed to the satisfaction of the Director of Licensing, and
- CCTV cameras are installed and located throughout the venue and private booth area to the satisfaction of the Director.”

6) The applicant has advertised the application in the NT News on Wednesday 5 March 2014 and Friday 7 March 2014 pursuant to Section 32A(3)(a) of the Act. The advertisement was as follows:

*MERLAR HOTEL MANAGEMENT Pty Ltd, HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing commission, for a “Variation of Licence Conditions” to the premises known as Hotel Darwin (Liquor Licence number 80300296) located at corner of Mitchell Street and Herbert Street, Darwin NT 0800.*

*Current Trading Hours for the Darwin Bar:*

*Sunday to Wednesday 10:00 hours to midnight and Thursday to Saturday 10:00 hours to 02:00 hours.*

*Variation sought to:*

*a) Darwin Bar*

*Seek an extension of trading hours to allow the sale of liquor from 10:00 hours to 02:00 hours the following day seven days per week.*

*Current Trading Hours for the Studio Bar:*

*Sunday to Wednesday 10:00 hours to 02:00 hours and Thursday to Saturday 10:00 hours to 04:00 hours.*

*Variation sought to:*

*b) Studio Bar*

*Seek an extension of trading hours to allow the sale of liquor from 10:00 to 04:00 the following day seven days per week.*

*The premises other licence conditions will remain unchanged.*

*This is the first notification of application. The notice will be published again on Friday, 7 March 2014.*

*The objection period is deemed to commence from Friday 7 March 2014 (date of publication of second notice).*

*Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions may or will adversely affect:*

- a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- b) health, education, public safety or social conditions in the community.*

*Only those persons, organisations or groups described in Section 47F(3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.*

*For further information regarding the application contact the Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objections period.*

*Dated this 5 day of March 2014*

- 7) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty days after the publication of the last notice, namely on or before Monday 7 April 2014.
- 8) Section 47F of the Act prescribes the circumstances in which an objection may be made, specifies the grounds for objection and identifies the persons entitled to object to a particular application -

***47F Person may object to certain applications***

- (1) *Subject to this Section, a person, organisation or group may make an objection to the following applications:*
  - (a) *an application for the grant of a licence, as notified under Section 27;*
  - (2) *The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –*
    - (a) *the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
    - (b) *health, education, public safety or social conditions in the community.*
  - (3) *Only the following persons, organisations or groups may make an objection under sub-Section (1):*
    - (a) *a person residing or working in the neighbourhood where the premises the subject of the application are or will be located;*
    - (b) *a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located;*
    - (c) *a member or employee of the Police Force acting in that capacity;*
    - (d) *a member or employee of the Fire and Rescue Service within the meaning of the Fire and Emergency Act acting in that capacity;*
    - (e) *an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;*
    - (f) *a community-based organisation or group (for example, a local action group or a charity).*
- 9) Three objections have been lodged in response to the application and the applicant has provided a response to those objections pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing.
- 10) Section 47F(3) provides the categories of persons, organisation or group who may lodge an objection to an application for variation of licence conditions. Section 47F provides the grounds on which an objection can be made.

## **Objection from Superintendent Kristopher Evans on behalf of the Northern Territory Police**

- 11) Section 47(3)(c) of the Act allows members of the Northern Territory Police to object to an Application. Superintendent Evans is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c) and stationed at the Darwin Metropolitan Police Station. As such Superintendent Evans is a valid objector. The objection was lodged on 13 March 2014 and was therefore lodged within the prescribed time limit.
- 12) Police have objected on the grounds that additional trading hours will enable additional alcohol to be consumed which then impacts on social amenity and public safety due to increased alcohol related violence and anti-social behaviour.
- 13) The objection maintains that there are already enough venues in the area trading until the hours being sought by the applicant. Any increase in trading hours, it is submitted, will have a commensurate requirement for increased Police numbers to be in attendance in the district.
- 14) Grounds of the Police objection meet requirements of Section 47(2) of the Act and are valid for the purposes or requiring a Hearing.

## **Objection from Deirdre Logie, Director, Alcohol and Other Drug Services, Department of Health**

- 15) Section 47(3)(d) of the Act provides for an agency or public authority performing functions relating to public amenities, including health, to object to an application for a licence variation. As a Director of Alcohol and Other Drugs Services Ms Logie qualifies to have standing to lodge an objection. The objection was lodged on 10 March 2014 and is within time.
- 16) No objection is made against the application to have the Darwin Bar trade through to 2:00am seven days a week.
- 17) In relation to the Studio Bar trading through to 4:00am seven days a week, the objection of Ms Logie states:

*“Health is not able to support an application for the Studio Bar to trade to 04:00 hours (the following day, seven days a week. Health would support an application to trade on Sunday to 04:00 hours (the following day) on a permanent basis.*

*Health asks the Commission to consider patron and community safety & amenity when determining this application. Health requests the venue clearly displays signage to delineate the Non Smoking areas from the Smoking Areas.”*

- 18) Under Section 47F(2) an objection to an application “*may only be made on the ground*” that granting the application will have an adverse impact on “*the amenity of the neighbourhood*” or the “*health, education, public safety or social conditions in the community*”. While the Commission has been asked to consider safety and

amenity in determining the application there is no argument proffered as to the deleterious or adverse impacts likely to occur if the application is granted.

- 19) Without presentation of such argument the objection does not comply with requirements of the Act and is therefore determined not to be a valid objection. Comments made in the objection may however be taken into consideration by the Commission.

### **Objection from Matt Grassmayr, Manager Liveability, City of Darwin**

- 20) The objection was lodged by Matt Grassmayr, Manager Liveability, City of Darwin. The City of Darwin has standing to object to the application under Section 47F(3)(e) and is hence able to lodge an objection. The objection was lodged on 19 March 2014 and was therefore within the time required.

- 21) Grounds for the objection as submitted are:

*“Council at its 1<sup>st</sup> Ordinary meeting held on the 11 May 2010, resolved the following:-*

*That Council proceeds to object to all new application in the municipality for extension of late night trading hours after 2am.”*

What has been submitted in a policy position of the City of Darwin towards trading hours. The objection does not argue or submit that the grant of the application relating to 4:00am closure of trading will have an adverse impact on neighbourhood amenity or the health, education, public, safety or social conditions of the area as required under Section 47F(2) of the Act. The objection is therefore not valid for the purposes of requiring a Hearing.

### **Applicant’s Response to Objections**

- 22) The applicant in response to the objectors has noted that NT Police, Department of Health and City of Darwin have not expressed an objection against the Darwin Bar extending trading hours to 2:00am seven days a week. The response acknowledges the Police and Health objection to the Studio Bar proposed trading hours is on the basis of a policy determination opposing licences beyond 2:00am.

- 23) In reference to the extension of the Studio Bar trading hours the applicant states:

*“It is our desire to trade under the Honey Pot’s previously approved licence conditions and hours, which their current management operated under successfully, and with minimal incidents, for many years.”*

- 24) The applicant refers to the Management Agreement it has with operators of the newly named The Honey Pot Club for adult entertainment in the Studio Bar area of The Hotel Darwin. Hours sought are a transfer of the former Honey Pot hours to the new location. The application points out that the “*variation of an existing 4am licensed venue*” does not add another 4am trading venue to Mitchell Street.

## CONSIDERATION OF THE ISSUES

- 25) There have been no objections, following advertising, against the extension of trading hours at the Darwin Bar to allow trading until 2:00am the following day, seven days a week. In contention is the proposed extension of trading hours at the Studio Bar to enable trading until 4:00am the following day, seven days a week. This licensed area is already, under its licence, able to trade until 4:00am from Thursday through to Saturday. The application to extend the trading hours for seven days of the week is based on these hours being the trading hours of the former Honeypot.
- 26) The Commission has on 27 May 2014<sup>3</sup> already approved a variation to the Hotel Darwin licence conditions to allow adult entertainment to be conducted at the Studio Bar location, which is to be renamed The Honey Pot Club.
- 27) Objections lodged by The City of Darwin and the Department of Health do not cite or address issues of the applied for hours having an adverse impact on the neighbourhood or an adverse impact on the health and security of the area and they therefore do not qualify as valid objections under the Act. The objection which does address the requisite issues in that of the NT Police. Valid objections pursuant to Section 471(3)(c)(ii) and Section 471(7) require the Commission to conduct a Hearing into the application.

## DECISION

- 28) The Commission has determined that the objection lodged by Superintendent Kristopher Evans of NT Police is valid and requires a Hearing pursuant to Section 471(7) of the Act.
- 29) Objections lodged by Matt Grassmayr of the City of Darwin and Deidre Logie of the Department of Health are not valid in that they do not pursuant to Section 471(3)(c)(i)B of the Act "*described circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community*". The Director is required to inform a person or organisation whose objection is dismissed of the Decision and of their right to seek a review of that Decision.



Richard O'Sullivan  
CHAIRMAN

// June 2014