

Northern Territory Licensing Commission

Reasons for Decision on whether objections will proceed to Hearing

Applicant:	Herald Williams
Premises:	Banyan Tree Caravan Park and Store
Objectors:	Sergeant Neale Carlon, OIC Batchelor Police Station Steven Robertson, local resident and tourist operator
Relevant Legislation:	Sections 47F, 47G, 47I and 127 of the <i>Liquor Act</i> Section 28 of the <i>Interpretation Act</i>
Member:	Jill Huck
Date of Decision:	27 February 2004

Background:

1. On 26 November 2003 and 28 November 2003 Mr Harald Williams placed advertisements in the *NT News* notifying the public of an application to vary the conditions of the liquor licence for the premises known as Banyan Tree Caravan Park and Store to allow takeaway liquor sales. The advertisement specified that objections to the application were to be lodged with the Director of Licensing within 30 days of the date of the second advertisement. The date arrived at by counting 30 days from Friday 28 November 2003 is Sunday 28 December 2003. That said, section 28 of the *Interpretation Act* states that, where the last day of any period for the doing of a thing prescribed by an Act falls on a Saturday, Sunday or public holiday, the thing may be done on the first day that is not a Saturday, Sunday or public holiday. The *Liquor Act* also provides at subsection 47F(5) that, if an objection is lodged by post, it is taken to be lodged with the Director on the day it is delivered to an office of Australia Post for transmission to the Director. The effect of these provisions is that objections to this application needed to have been posted or received by close of business Monday 29 December 2003.
2. Two letters of objection were received by the Director in relation to the application. The first letter from Sergeant Neale Carlon is dated 24 December 2003 and was allocated to a licensing inspector for follow-up on 29 December 2003. The second letter from Steve Robertson is not dated, there is no information as to whether and when it was posted and there is no date of receipt by the Director recorded. Both letters were acknowledged on 30 December 2003 and both were sent to the applicant for comment under separate covering letters on 30 December 2003.
3. In accordance with sections 47F, 47G and 47I of the *Liquor Act* the Chairperson of the Commission allocated the matter to a Commission Member to consider the letters of objections and the applicant's response to the letters.

Legislation:

4. Section 47F of the *Liquor Act* (the Act) states that a person, group or organisation may make an objection to an application for the grant of a liquor licence in a limited range of circumstances. This section reads in part:
 - (1) *Subject to this section, a person, organisation or group may make an objection to an application for the grant of a licence.*

(2) *An objection under subsection (1) may only be made on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located.*

(3) *Only the following persons, organisations or groups may make an objection under subsection (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 of the Police Force;*

(d) *a member of the Fire and Rescue Service within the meaning of the Fire and Emergency Act;*

(e) *an Agency or a public authority that performs functions relating to public amenities;*

(f) *a community-based organisation or group (for example, a local action group or a charity)*

5. Subsections 47F(2) and 47F(3) therefore place limitations on both the grounds for objections and the types of people, groups or organisations that can object.

6. Subsection 47F(4) requires that an objection must be in writing, must be signed by or on behalf of the person, group or organisation, must set out the facts to be relied on to “*constitute the ground on which the objection is made*” and must be lodged with the Director within 30 days of the last advertisement for the application.

7. After providing the applicant with an opportunity to provide a written response to any objections, the Director must forward the objection(s) and response to the Chairperson of the Commission. Pursuant to section 47I the Chairperson must then select a member of the Commission to consider the substance of the objection(s). The Member may also inquire into any circumstance relating to the objection as he or she considers appropriate. The Member must then make a decision (in respect of each objection) to either dismiss the objection or to forward the objection, the response and the Member’s findings to the Commission for hearing.

8. An objection is to be dismissed where the Commission Member is satisfied that it is of a frivolous, irrelevant or malicious nature or that it does not describe circumstances that may or will adversely affect the amenity of the neighbourhood (see subsection 47I(3)(c)(i)).

9. Where the Member dismisses an objection he or she must direct the Director to inform the person, organisation or group who made the objection that the objection has been dismissed and to provide the Member’s reasons for dismissing the objection (subsections 47I(4), (5) & (6)).

10. Where the objection is not dismissed, the Member must determine that the Commission must conduct a hearing in relation to the objection and forward the objection, the applicant’s reply to the objection and the Member’s findings in relation to the objection to the Commission (subsection 47I(3)(c)(ii)).

11. In summary, therefore, the issues to be determined in this matter are:

- whether the letters written by the individuals listed above as objectors are “objections” under section 47F of the *Liquor Act*;

- whether any of the objections should be dismissed; and
- whether there should be a hearing in relation to any of the objections.

Description of the objections, findings and application of the law:

12. The concept of neighbourhood is critical to determining the standing of objections lodged pursuant to section 47F of the *Liquor Act*. Although the term “neighbourhood” is not defined in the Act, it is clear from the relevant second reading speech that the Minister intended the concept of neighbourhood to be a flexible one. The second reading speech reads, in part:

The term “neighbourhood” is a subjective one and should be taken to mean the area likely to be affected by the premises the subject of the application. The area affected will of course be determined by the type of licence applied for and the nature of the vicinity of the application. For example, the neighbourhood around a proposed city tavern will be at most a few city blocks whilst the neighbourhood surrounding a takeaway liquor facility in a remote place may encompass an area of hundreds of kilometres. In each case, it will be a question of fact to be determined by the Licensing Commission.

13. In this case, the type of licence applied for is a takeaway licence and the nature of the vicinity could be described as rural (for lack of a better term). The proposed premises are within a short driving distance from Batchelor township and various tourist destinations, including the Finnis River, Litchfield Park and the Rum Jungle Recreation Lake. Given that the licence is of a takeaway nature, it is reasonable to assume that Batchelor township, the surrounding rural area and the tourist destinations in the area could all be regarded as being in the neighbourhood of the Banyan Tree Caravan and Tourist Park, and I find accordingly.

Sergeant Carlton

14. In his letter of objection Sergeant Carlton argues that the amenity of the neighbourhood may be adversely affected by anti-social behaviour related to the supply of liquor from the premises. He says that he has material that supports these concerns. He also raises concerns about the potential effect of the varied licence on road safety in the area and the effect on the adequacy of police resources for the area. He ties most of his concerns back to the issue of amenity of the neighbourhood.

15. In his response to the objection Mr William states that Sergeant Carlton is “a responsible Officer in Charge doing his duty in the region.” He states that the objection describes problems that are already in existence and are present “all over the place”. He argues that the objection is based on the faulty assumption that an increase in the number of takeaway licences will result in an increase in the consumption of alcohol. He points out that he will not be erecting any signs advertising takeaway alcohol. His intention is to sell takeaway beer to his Park patrons and to the neighbours who buy groceries from his store.

16. As the Commission member considering the status of this objection I have made a number of findings in respect of the objection. These findings and the application of the law are set out below:

- Sergeant Carlton is a member of the Police Force therefore he meets the requirements of subsection 47F(3)(c) of the Act;
- his signed letter of objection was lodged with the Director on or before 29 December 2003 and therefore meets the requirements of subsection 47F(4);
- the letter raises a range of concerns about the effect of the variation of the liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and

- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

17. This means that the objection cannot, and should not, be dismissed under subsection 471(3)(c)(i) of the Act and the Commission must conduct a hearing in relation to the objection (subsections 471(3)(c)(ii) and 471 (7)). In making this decision I make no findings as to the relative merits of Sergeant Carlon or Mr William's views about the impact of the licence. That is a matter for the Commission members who conduct the objections hearing.

Mr Robertson

18. Mr Robertson also raises concerns about the potential adverse impact of a varied licence on the amenity of the Rum Jungle/Litchfield Park/Finnis River region. He states that takeaway liquor is associated with anti-social behaviour, litter and the presence of itinerants throughout the Northern Territory. He expresses the view that, as a "land owner and tourist operator on the Finnis River approximately 2 Km from the Banyan Tree Caravan Park [he does not] wish to see the Finnis River become a drinking place". He also expresses concern for the impact on the Rum Jungle Recreation Lake Reserve and Litchfield Park. He states that Banyan Tree directly adjoins Aboriginal land and associated bush camps and would be the closest liquor outlet for many Wagait communities. He also raises concern about road safety in the area if people drink and drive.
19. In his response to the objection Mr Williams states that Mr Robertson is the owner of the "next door" Litchfield Tourist Park, a caravan park 3 kilometres away from his own, and situated on the banks of the Finnis River. The same response applies to this objection as to that of Sergeant Carlon, that is, he states that the objection describes problems that are already in existence and is based on the faulty assumption that an increase in takeaway licences will result in an increase in consumption of alcohol. He points out that he will not be erecting any signs advertising takeaway alcohol. His intention is to sell takeaway beer to his Park patrons and to the neighbours who buy groceries from his store.
20. Given the discussion above about the identification of the relevant "neighbourhood", and Mr William's description of Mr Robertson as being the owner of the tourist park "next door", it is clear that Mr Robertson is someone who works in the neighbourhood. His concerns about the impact of a takeaway licence on the amenity of various tourist destinations also meets the "amenity of the neighbourhood" requirement.
21. A less straightforward issue is whether Mr Robertson's letter of objection was lodged within the statutory timeframe of "30 days". My inquiries made pursuant to section 471(3)(b) of the Act revealed that: the Commission's Executive Officer received a phone call from Mr Robertson on 29 December 2003 advising of his intention to hand-deliver a letter of objection that day; the letter was definitely in the licensing inspector's in-tray on 30 December; and that the licensing inspector could not be sure when the letter was placed there or when it had been delivered. As set out in the first paragraph of this decision, 29 December 2003 was the last day that objections could be lodged. It is therefore necessary to make a finding as to whether the letter arrived on 29 December 2003 or on 30 December 2003. Whilst this is a finely balanced issue, I am prepared to find that the letter was lodged on 29 December 2003. I make this decision knowing that the Commission has the discretion under section 127 of the Act to extend time-lines set out in the legislation and that, had I found that the letter was lodged on 30 December 2003, I would have referred the matter to the Commission for a decision under that provision.
22. My findings and the application of the law in respect of Mr Robertson's objection are set out below:
- Mr Robertson operates a tourist venture on the Finnis River some 2 to 3 kilometres from Banyan Tree Caravan Park and Store. He is clearly a person working in the neighbourhood where the premises are located and therefore he meets the requirements of subsection 47F(3)(a);

- Mr Robertson's signed letter was lodged with the Director on 29 December 2003 and therefore meets the requirements of subsection 47F(4);
- the letter raises a range of concerns about the effect of the variation of the liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2);
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

23. This means that the objection cannot, and should not, be dismissed under subsection 47(3)(c)(i) of the Act and the Commission must conduct a hearing in relation to the objection (subsections 47(3)(c)(ii) and 47(7)). In making this decision I make no findings as to the relative merits of Mr Robertson and Mr William's views about the impact of the licence. That is a matter for the Commission members who conduct the objections hearing.

Decision

24. As the Member of the Commission appointed to consider the objections to the Banyan Tree Caravan Park and Store application for a variation to its liquor licence, I have decided that the letters from Sergeant Carlton and Mr Robertson are both objections under section 47F of the *Liquor Act*. I have also decided that there are no grounds for dismissing these objections, and that the Commission must conduct a hearing in relation to the objections.

Ms Jill Huck

Member selected by the Chairman pursuant to subsection 47(2) of the *Liquor Act*