

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	The Cavenagh
Applicant:	Mr Des Crowe on behalf of Malaguena Pty Ltd
Nominees:	Mr Andrew Chigwidden and Mr Ricki Scott
Licence Number:	80300989
Objectors:	Northern Territory Police Department of Health and Community Services; and Darwin City Council
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Merran Short
Date of Decision:	7 February 2008

Summary of Decision

Hold a Hearing in respect of the objections received from:

- Northern Territory Police (“Police”), and
- Department of Health and Community Services, (“DHCS”), and
- Darwin City Council, (“DCC”).

Background

- 1) Mr Des Crowe on behalf of Malaguena Pty Ltd (The Cavenagh), has made an application pursuant to Section 32A of the *Liquor Act* (“the Act”) for a Variation to Licence Conditions to The Cavenagh (“The Cavenagh”) located at 12 Cavenagh Street Darwin (“the Application”). The Application was advertised in the Northern Territory News on the 12 and 14 December 2007. The advertisements notified that the Applicant seeks a Variation to Liquor Licence Conditions to remove the Condition –

- No trading Good Friday and Christmas Day,

from The Cavenagh licence.

- 2) The advertisement was as follows:

Malageuna Pty Ltd, HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing Commission for a variation to the PUBLIC HOTEL Liquor Licence (Number 80101040) to sell liquor from the premises known as The Cavenagh located at 12 Cavenagh Street Darwin.

Proposed variations are:

Remove the Condition:

- *No trading Good Friday and Christmas Day.*

The nett affect of this change is to allow normal trading on Good Friday and Christmas Day. Currently, normal trading hours are: 10:00 hour to 04:00 hours (the following day).

This is the first notice of application. The notice will be published again on Friday, 14 December 2007.

The objection period is deemed to commence from Friday, 14 December 2007 (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:

the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

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 this application contact the Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, Licensing and Regulation, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 12th Day of December 2007

- 3) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice – namely 14 December 2007. The objections the subject of this decision are dated 18 and 17 December 2007 and 7 January 2008 respectively and are therefore within the time allowed by the Act.
- 4) The content and substance of the objections relate inter alia to changing social circumstances, harm minimisation, effect on the neighbourhood due to noise, bad language, and fighting.

Section 47F of the Act provides -

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;*
 - (b) *an application for a variation of the conditions of a licence, as notified under section 32A;*
 - (c) *an application for the substitution of other premises for the premises specified in a licence, as notified under section 46A;*
 - (d) *an application for approval to make a material alteration to licensed premises, as notified under section 119.*
- (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 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 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).*

Objection from Police

- 5) Section 47F(3)(c) allows an employee of the Northern Territory Police acting in that capacity to object to the Application. Ms Jacky Divall is the A/Policy Officer, Drug Diversion Coordinator, of the Drug and Alcohol Policy Unit for the Northern Territory Police and is an employee of Police Fire and Emergency Department and acting in that capacity within the meaning of Section 47F(3)(c)."
- 6) Turning then to the substance of the objections and whether they fit within Section 47F(2).

The grounds of the objections include -

- a) That the proposed Application, if allowed, will mean that The Cavenagh will not be required to seek a special licence to trade on Good Friday and Christmas Day ("the days") and this in turn would deny the Commission the "ability to not issue a special licence in the future" The Police feel strongly that The Cavenagh should continue to be required to make a special licence application for the days and that each ought be considered on the merits at the time.

Objection from the Department of Health and Community Services

- 7) Section 47(3)(e) allows an Agency or public authority that performs functions relating to public amenities, including health, education, and public safety to object to the Application. Ms Fiona Krahe, Senior Policy Officer with DHCS by letter sets out the concerns on behalf of DHCS.
- 8) These concerns include the potential increase in harm due to the increased trading days within the year from 363 to 365 and -
- that the resulting increases in trading days are "contrary to reducing alcohol related harm and controlling the supply of alcohol", and
 - that the increase in trading days may lead to an increase in people within the CBD requiring increased security and perhaps negatively impacting upon those persons

leaving their places of worship due to humbugging, noise levels, bad language and fighting.

- 9) The DHCS is also concerned that the increase in trading proposed will put “extra demand on Royal Darwin Hospital Accident and Emergency” resources.
- 10) DHCS also raised the issue of synchronising lockout to avoid the convergence of patrons on one or two hotels”.

Objection from Darwin City Council

- 11) DCC is concerned about the impact upon the Christian society and supports the variation to remove the condition regarding trading on the days provided that alcohol is only sold with food and the hours are restricted to 11.00 to 22.00 hours.

Applicant’s Response to Objections

- 12) The Applicant has had an opportunity to respond to the objections. The response of the Applicant is that the objections are either not within the grounds allowed under the Act (the Police) or are not an objection because no adverse effects are submitted, or the decision of the DCC is not ratified (the DCC), or are merely “factors” that the Commission is asked consider (DHCS).

Determination

- 13) Whist it is arguable the grounds of objection are not itemised as sometimes seen, I am satisfied that when considered as a whole, the basis of the objections could impact upon the amenity, health, public safety or the social conditions of the neighbourhood and in those circumstances the grounds of objections are within those permitted under the Act. In addition it is not unusual for the Commission to have regard to ‘comments’ from bodies such as the Objectors.
- 14) I find that the objections are valid and require a hearing.

Merran Short
Legal Member

7 February 2008