

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Applicant:	Max Oldfield
Premises:	Top End Hotel (Licence No 80100335)
Objectors:	Northgate Plaza Body Corporation
Relevant Legislation:	Sections 4F, 47I and 127 of the <i>Liquor Act</i>
Member:	Brenda Monaghan

Background

- 1) The applicant has made an application for a variation to the licence conditions of the current liquor licence at the Top End Hotel. The application is made in order to "*provide a venue which offers "up-market" R rated adult entertainment cabaret shows with meals available from lunchtime onwards.*" The venue is to be called The Honeypot Club. The application was advertised in the public notices in the Northern Territory News on 17 and 19 August 2005. The content of the advertisement includes the type of variation being applied for, the details of the proposed changes to the use of the premises and the relevant information an objector requires to make a valid objection within the required timeframe.
- 2) Under section 47F (4) (d), an objection must be lodged with the Director within thirty (30) days after publication of the last advertisement. Thirty days from Friday 19 August 2005 expires on Sunday 18 September 2005. By application of *Section 28 of the Interpretation Act*, the last day for receipt of valid objections by the Director is Monday 19 September 2005.
- 3) The Director received ten responses from nine (9) persons. Two of those responses were from "persons" who clearly wished to object. The first of those objectors was Northgate Plaza Body Corporation. On 12 October 2005, Notification was received from Northgate Plaza, however, that after further consultation with the Licensee they wished to withdraw their objection. The second objector was Lois Fong.
- 4) The remaining responses were from members of the public who e-mailed or wrote to various ministers expressing their concerns about the proposed variation. Their responses were then forwarded on to the Director of Licensing. The Chairman has allocated to me the task of deciding whether or not these objections are valid and should proceed to hearing.
- 5) *Part IV of the Liquor Act* deals with the objection process including the valid grounds for objection, the persons or organisations that have standing to object, the form and content of the objection itself and the manner of delivery. Part IV also ensures that the applicant is given an opportunity to view and respond to any objections and gives guidance on the factors to be taken into account when deciding whether an objection should proceed to hearing.
- 6) Only certain categories of people have standing to object (s47F (3) of the *Liquor Act*). The category relevant to me in this decision is "*(a) a person residing or working in the neighbourhood where the premises the subject of the application are or will be located.*"
- 7) There is no definition of *neighbourhood* in the *Liquor Act*. The omission is deliberate in that the relevant community or area which may be classed as the *neighbourhood* will vary depending upon the location of the purposed licensed premises and the type of licence being sought. In his second reading speech, the Minister confirmed that the relevant

neighbourhood would be a question of fact to be determined by the Licensing Commission in each particular case.

- 8) The Top End Hotel is situated on the corner of Mitchell Street and Daly Street. I consider that the Darwin Entertainment Centre (the DEC) and Northgate Plaza are clearly within the neighbourhood of the licensed premises. They are geographically close and any licence variations could potentially affect them in a material way.
- 9) In considering the objection received by Lois Fong and the response from the applicant, I note the following:

The objection was received by the Minister for Racing, Gaming and Licensing on 20 September 2005 and is one day outside the time limit for the receipt of objections. It is clear from correspondence received from Ms Fong however, that she was wrongly advised about the time frame and on this basis, the Commission has granted her an extension of time pursuant to s127 of the *Liquor Act*.

Ms Fong has standing under Section 47F (3) (a) as a person “working” in the neighbourhood of the licensed premises. Ms Fong is a member of the Darwin Symphony Orchestra and is “involved in countless evening performances and rehearsals at the DEC.” On making further enquiries, Ms Fong advised that her involvement with the DSO-and therefore with the DEC- has occurred consistently over the past eight (8) years, as she has been involved in most DSO performances. Further, as a music teacher employed by two schools, she regularly attends at the DEC with her students.

The objection complies with Section 47F (4) in that it is in writing. It is not personally signed by Ms Fong but as her objection was forwarded by e-mail, her typed “signature” is sufficient. Finally, the concerns raised in her letters are valid grounds of objection. Her concerns include the nature of the clientele this venture will attract and safety issues for both adults and children in the neighbourhood as a result. The response from the Top End Hotel addresses those concerns by giving specific details of the steps they are taking to ensure that their venue is private, their shows are tasteful and the surrounding neighbourhood is safe. It is a matter for the Commission at the final hearing to listen to both sides and decide whether the objection has merit.

On the question of standing however, I consider Ms Fong to be a valid objector and her objection must proceed to hearing.

- 10) Various Ministers also received e-mails and letters from the following persons and forwarded them on to the Director of Licensing. At the outset, it was necessary for me to decide whether these persons were simply expressing concerns to their ministers or whether their emails may be considered valid objections. Where necessary, I have obtained extra information from those persons. Further, most of these e-mails were received after the time limit for objecting had expired. The Commission’s attitude to an extension of time has been sought in circumstances where I have accepted those emails as valid objections.
- 11) I comment as follows:
 - a) Susan Ferrari : Ms Ferrari has advised me by phone that she wrote two letters to the government as a member of the Faith Centre but **not** on behalf of that congregation. She does not live or work in the relevant neighbourhood and does not wish to be considered as an objector.
 - b) Valerie Aloi : Ms Aloi has advised me by phone that she neither lives nor works in the neighbourhood of the licensed premises and does not wish her correspondence to be considered as an objection.

- c) Rosemarie Reimers: Ms Reimer's e-mail was sent to the Chief Minister on 20 September 2005 and is therefore one day late. The e-mail does not disclose her place of work or residence. An e-mail was sent to her on 12 October 2005 seeking clarification by 4pm on 14 October 2005. At the time of completing this decision, no response has been received. In these circumstances, I am unable to be satisfied that Ms Reimers has standing to object and her objection is dismissed pursuant to s47I(3)(c)(I)(A) of the *Liquor Act*.
- d) Matthew and Narelle Crichton: Mr and Mrs Crichton live at Bayview and submit that they have standing to object on the basis that they live in "the neighbourhood" and frequent the CBD often. Mrs Crichton works for PowerWater in Cavenagh Street. I do not consider either Bayview or the premises of PowerWater to be within the neighbourhood of the Top End Hotel. They are too far removed geographically and would not be materially affected by the proposal with respect to potential issues such as noise, traffic congestion and unruly behaviour. On this basis, the Crichtons do not have standing as objectors under the *Liquor Act* as regards this application.
- e) Tamara Randall: Ms Randall advised me by phone that she neither lives nor works in the neighbourhood and she has no standing as an objector. Her e-mail is not a valid objection.
- f) Susan Rowe: Ms Rowe wrote to the Chief Minister on 19 September 2005 –the last day for objections to be received by the Director. I am unsure whether the objection was received by the Director on that same date or shortly thereafter. It is clear from Ms Rowe's initial e-mail that she does not live in the neighbourhood. I sought further clarification from her as to her standing to object. She advised that she is a Pastor employed fulltime by the Faith Centre Christian Church, Vanderlin Drive Malak. Ms Rowe's objection is directed to the social conditions in the community (s47F(2)(b)). She states that she does not have a designated parish but that she has members all over Darwin including Larrakeyah and Darwin City and considers this area as part of her "patch". She advises that the church is currently outreaching into the city and has been for some time. I consider that the response from Ms Rowe is sufficient for her to be classified as someone who works in the neighbourhood. The work of a pastor with a large, undefined parish cannot be compared to an office worker who attends the same premises every day and whose geographical location whilst working might be sufficient to decide whether or not they come within the neighbourhood.

I now look to the grounds relied upon by Ms Rowe and the facts she provides to substantiate her objection. It appears clear that the grounds are that the variation will adversely affect the social conditions in the community and the facts are the naked male and female strippers who will be performing at the Club. The response from the applicant comments on the number of other licensed venues who currently or in the past have held similar stage shows. It notes that the proposed premises will not be open to minors and sets out the steps the applicant intends to take to ensure that the show is private and "classy", the audience well behaved and the surrounding neighbourhood is not adversely affected. I consider that Ms Rowe's objection is valid but is limited to the one issue raised in her email. The merits of her objection are a matter for the Commission to consider at the final hearing.

- g) Mark Ciccitosto: Mr Ciccitosto lives in Montoro Court, Larrakeyah. I am unsure whether his e-mail to the Chief Minister was simply a letter of concern or whether he anticipated being an objector. I suggest that the former is more likely. I sought clarification from him on this issue but have received no response. Despite my doubts as to Mr Ciccitosto's intentions, I proceeded to consider whether his residence in Montoro Court fell within the neighbourhood of the Top End Hotel and have concluded that it does not. The entrance to Montoro Court is off Smith Street and is some distance geographically from the Top End Hotel. Based on the information provided by him, I do not consider that Mr Ciccitosto has standing to object.

Decision

As the member of the Commission appointed to consider the objections to this application for variation of the liquor licence, I have decided that the objections received from Lois Fong and Susan Rowe are the only valid objections under section 47F of the *Liquor Act*. The Commission must conduct a hearing in relation to these objections.

Brenda Monaghan
Legal Member

21 October 2005