

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Darwin City Waterfront Ground Floor DCW Hospitality Building Kitchener Drive Darwin NT 0800
Applicant:	DCW Hospitality Pty Limited CAN: 112 313 185
Nominee:	N/A (In principle application only)
Licence Number:	N/A (New Application)
Objectors:	Brevet Sergeant ES Mitchell (NT Police) Mr Ian Morris, Chairman, Bridgeport Body Corporate Mr Chas Carter, Resident, Bridgeport Mr Richard Layton, Resident, Bridgeport
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision Of:	Philip Timney
Date of Decision:	5 September 2008

Summary of Decision

That the Commission conduct a hearing in respect of the objections received from:

1. Brevet Sergeant ES Mitchell (NT Police)
2. Mr Ian Morris, Chairman, Bridgeport Body Corporate
3. Mr Chas Carter, Resident, Bridgeport
4. Mr Richard Layton, Resident, Bridgeport

Background

- 1) Mr Adrian Findlay, on behalf of DCW Hospitality Pty Limited ("DCW"), has made an application for "in principle" approval of a Tavern Licence for the sale of liquor from premises situated at Ground Floor DCW Hospitality Building, located at the Darwin City Waterfront. DCW advises in the application that it is seeking in principle approval for a liquor licence to assist in the leasing of the proposed licensed area with a view to the eventual Lessee / Operator making a full application for a Tavern Licence.
- 2) The Application was advertised in the Northern Territory News on 25 and 27 June 2008 pursuant to Section 32A of the *Liquor Act* ("the Act"). The application states that the applicant applies for "in principle" approval for a Tavern Licence for consumption of liquor on the premises. The application seeks trading hours for the sale of liquor on the premises from 10.00am until 3.00am the following day seven (7) days a week, with bar service ceasing at 2.00am.

The advertisement was as follows:

DCW Hospitality Pty Limited Hereby Give Notice that it has applied to the Northern Territory Licensing Commission for a "TAVERN" Liquor Licence to sell liquor from the premises Located At "Darwin City Waterfront", Kitchener Drive, Darwin City.

Proposed Trading Details for the sale of liquor as follows:

- *The business proposed to be conducted on the premises will be in the nature of a Tavern, including "a micro-brewery", a Restaurant and Alfresco dining facilities.*
- *Light meals and snacks will be available from the bar.*
- *A Menu-based meal will be available from a conventional restaurant style dining area with formal seating.*
- *Entertainment will be in the form of small jazz duets and trios and solo acoustic guitar players and similar. There will be no 'nightclub' style entertainment provided at the venue.*
- *Liquor may be sold from 10.00 hours until 02.00 hours [the following day], seven days a week.*

This is the first notice of application. The notice will be published again on Friday, 27 June 2008.

The objection period is deemed to commence from Friday, 27 June 2008. (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 grant of the licence 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) the health, education, public safety or social conditions in the community.*

Only those persons, organizations 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, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 25th day of June 2008.

- 3) Pursuant to Section 47F (4) (d) an objection must be lodged within thirty (30) days after the publication of the last notice, namely on or before 28 July 2008. The objections the subject of this decision were dated 27 July 2008 and 28 July 2008 and were therefore lodged within the time allowed by the Act.
- 4) The content and substance of the objections relate inter alia to possible anti-social behaviour, harm minimisation, effect on the community (including apartment residences in close proximity), lack of need demonstrated by the application, noise issues (particularly for residences within the proximity of the proposed licensed premises) lack of public transport, road user safety and the proximity of similar licensed premises.

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 47(3)(c) allows members of the Northern Territory Police to object to the Application. Brevet Sergeant ES (Scotty) Mitchell is the OIC / Senior Policy Advisor of the Drug & Alcohol Policy Unit of the Northern Territory Police and is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c). As such Brevet Sergeant Mitchell is a valid objector.
- 6) Turning then to the substance of the objection and whether it fits within Section 47F(2).

The grounds of the objections include -

- a) Objection to the proposed trading hours of 10.00am to 3.00am seven (7) days a week,
- b) Proximity of the proposed premises to existing and similar licensed premises,

- c) proximity of the proposed premises to residential areas and potential for noise and property damage issues,
- d) waterfront access of the proposed premises and potential harm for patrons of the proposed premises, and
- e) security issues, including security for the safety of patrons leaving the premises late in the evening on foot.

The grounds of objection relate to the amenity of the neighbourhood where the premises the subject of the application will be located and the health, public safety of the community and patrons of the proposed licensed premises. On that basis the grounds of objection are valid and require a hearing.

Objection from the Residents of Bridgeport

- 7) Section 47(3)(a) allows a person residing or working in the neighbourhood where the premises the subject of the application will be located to object to the Application. Mr Morris, Mr Carter and Mr Layton are residents of Bridgeport, an apartment building in close proximity to the proposed licensed premises. Mr Morris is also the Chairman of Bridgeport Body Corporate. As such, all three (3) are valid objectors.
- 8) The objections Mr Morris, Mr Carter and Mr Layton are similar in nature and for the purposes of this decision may be dealt with collectively. Turning then to the substance of the objections and whether they fit within Section 47F(2):

Mr Morris objection raises the issue of the applicant's failure to demonstrate the need for the trading hours specified by the applicant and the need for the entertainment proposed for the premises.

The three (3) objections raise issues of:

- Objections to the proposed trading hours of 10.00am to 3.00am seven (7) days a week,
- The proximity of the proposed premises to residential properties and the potential for noise and anti-social behaviour problems, including property damage, likely to effect residents,
- The lack of a suitable area for dropping off and picking up patrons from the proposed premises and potential traffic hazards,
- The potential for noise issues for residents given the extended trading hours and possibility of "outside" entertainment, and
- The prospect of a further application for a second tavern licence at the Darwin City Waterfront site in the future.
- The grounds of each objection relate to the amenity of the neighbourhood where the objectors reside and the public safety or social conditions of the community. On that basis the grounds of each of the three objections are valid and require a hearing.

Applicant's Response to Objections

- 9) The objections were forwarded to the applicant under cover of a letter dated 30 July 2008. Mr Adrian Findlay provided a response by letter dated 18 August 2008. Mr Findlay did not refer specifically to the objections in his response but rather provided "additional information" as follows:
 - (a) Preserving the amenity of the area will be paramount to ensure the quiet and comfortable enjoyment of the area by hotel patrons,

- (b) There will be no access to the premises from Kitchener Drive and no outdoor seating along this frontage and outdoor entertainment area will be on the water frontage side of the building,
- (c) Increased security staff will be engaged for high volume patronage events, including the provision of security to patrol the licensed premises and surrounding areas,
- (d) The ultimate Licensee will employ measures to provide for the responsible service of alcohol, and
- (e) Measures will be implemented to limit noise emanation from the premises for the comfort of hotel guests and residents in the vicinity.

Determination

- 11) In my opinion the objection made by Police to the application is a valid objection and requires a hearing.
- 12) Similarly, the three (3) objections received from residents of Bridgeport are valid objections concerning the impact of the proposed licensed premises on the amenity of their neighbourhood. As such, those objections are valid and require a hearing.
- 12) On the basis of the matters set out above, I find that all four (4) objections are valid and require a hearing.

Philip Timney
Legal Member

5 September 2008