

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	QC Restaurant 41 Todd Mall Alice Springs
Applicant:	QC Restaurant Pty Ltd
Nominee:	Glenn Andrew Wallace
Licence Number:	80504834
Objectors:	Superintendent Sean Parnell, Alice Springs Police Station Mr Ron Thynne and Ms Lorri Thynne, Residents at Aurora, Alice Springs Mr Ian Drummond, Executive Chairman, Australian Property Projects, Adelaide
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:	3 November 2008

Summary of Decision

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

1. Superintendent Sean Parnell
2. Mr Ron Thynne and Ms Lorri Thynne
3. Mr Ian Drummond

Background

- 1) Mr Glen Wallace on behalf of QC Restaurant Pty Ltd, has made an application for a variation of liquor licence number 80504834 from Restaurant Licence to On Licence for the sale of liquor from premises situated at 41 Todd Mall, Alice Springs ("the Application"). The Application was advertised in the Centralian Advocate on 5 and 8 August 2008 pursuant to Section 27 of the *Liquor Act* ("the Act").
- 2) The advertisement was as follows:

I, Glenn Andrew Wallace, on behalf of QC Restaurant Pty Ltd – HEREBY GIVE NOTICE that I have applied to the Northern Territory Licensing Commission for approval for a variation to Liquor Licence (Number 80504834), issued to QC Restaurant to change the current Licence Authority from a Restaurant to an On Licence.

Proposed variation will include the removal of the following current licence conditions:

Appearance

The premises shall at all times have the appearance of and shall trade predominantly as a restaurant.

The café lounge area is designated as an area for patrons to use for the consumption of coffee, cakes or liquor before or after a meal as well as servicing the passing coffee trade. Patrons who are not intending to purchase a meal may be served liquor in this area on the proviso that the café/lounge area does not become an area used predominantly for the service of liquor to such patrons (ie those not intending to purchase a meal).

Patrons

Patrons to be seated at a table or at the bar provided that meals shall be available for consumption at all parts of the bar where bar stools are located.

Noise and Entertainment

The Licensee shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any premises.

At all times, with the exception of privately pre-booked functions, any entertainment is to remain secondary to the primary function of the premises as a restaurant.

Consumption Of Liquor

Consumption of liquor without a meal will not be advertised or promoted.

Kitchen Operations

Premises shall close no later than one and one half hours after the kitchen closes.

Snack Foods

Snack foods will be available at all times.

Advertising And Signage

The word "Bar" shall not be used in any advertising or signage.

Bar Stools

Bar Stools shall not be provided with the exception of the Bar area.

Table Service

Liquor to be sold only by way of wait staff to patrons who are seated at a table.

And be replaced by the following conditions:**Meal**

Meals shall be available from 18:30 to 21:30 hours, for service to any part of the licensed area.

Snack Food

Snack foods and complimentary "tap" water will be available at all times.

Live Entertainment

The Licensee is permitted to provide entertainment by way of live music. Live entertainment is to cease by midnight.

Noise

Between 19:00 and closing time on any night, noise emanating from the premises shall not exceed an unadjusted level of 55Db for more than three per cent (3%) of the representative time period and shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any premises.

The Licensee shall attenuate noise emanation as directed by an Licensing Inspector or Police Officer.

Notwithstanding any such attenuation, the operation of the premises may be terminated at the discretion of any Licensing Inspector or Police Officer at any time on the grounds of noise disturbance.

Camera Surveillance Requirement

The Licensee shall comply with such requirements for and in relation to camera surveillance as the Commission shall at any time notify to the Licensee in writing as being thereafter applicable to the licensed premises.

Late Trading Premises

The Licensee shall provide, to the satisfaction of the Director:

- I. An appropriate number of licensed crowd controllers;*
- II. Adequate security throughout the premises and in the immediate vicinity thereof;*
- III. Effective illicit drug control measures, and*
- IV. Complimentary "tap" water to be readily available*

Private Security

- I. The Licensee shall not engage the services of any security provider within the meaning of the Private Security Act unless such provider holds the appropriate licence under that Act. For the purposes of this condition, a person employed by or contracted to a security firm which has been engaged by the Licensee to provide security services shall be deemed to have been directly engaged by the Licensee while on duty in or about the licensed premises.*
- II. The Licensee shall not permit or suffer any security provider while on duty in or about the licensed premises to contravene the statutory requirements as to the wearing of prescribed identification.*

Takeaway

There shall be no sale of takeaway liquor to any person at any time.

Without in any way limiting the generality of the Licensee's obligations by virtue of this condition, the Licensee;

- I. shall not supply to any person any liquor in any container which is not opened and unstoppered, and*

- II. *shall not permit or suffer any patron to exit the licensed premises with any liquor supplied by the Licensee.*

Trading Hours will remain the same, currently:

QC Restaurant

*Sunday 11:30 and Monday 02:00
Monday 11:30 and Tuesday 02:00
Tuesday 11:30 and Wednesday 02:00
Wednesday 11:30 and Thursday 02:00
Thursday 11:30 and Friday 02:00
Friday 11:30 and Saturday 02:00
Saturday 11:30 and Sunday 02:00*

Alfresco Dining Area

*Sunday 11:30 and Monday 02:00
Monday 11:30 and Tuesday 02:00
Tuesday 11:30 and Wednesday 02:00
Wednesday 11:30 and Thursday 02:00
Thursday 11:30 and Friday 02:00
Friday 11:30 and Saturday 02:00
Saturday 11:30 and Sunday 02:00*

This is the first notice of application. The notice will be published in the Centralian Advocate on Tuesday 5 August 2008.

The objection period is deemed to commence from Friday 8 August 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 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 this application contact the Deputy Director of Licensing on telephone 89518452. Objections to this application should be lodged in writing with the Deputy Director of Licensing, Licensing and Regulation, PO Box 8470, Alice Springs, within thirty (30) days of the commence date of the objection period.

- 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 8 September 2008. Prior to the expiry of the objection period the Chairman granted to NT Police an extension of the time within which to file an objection. The objection from Superintendent Parnell was received on 9 September 2008. The remaining objections the subject of this decision were both received 22 August 2008 and 22 August 2008 respectively and were therefore lodged within the time allowed by the Act.
- 4) The content and substance of the objections relate inter alia to public safety, access, anti-social behaviour harm minimisation, the proximity of similar licensed premises and the amenity of the Alice Springs Mall..

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. Superintendent Sean Parnell is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c) and stationed at the Alice Springs Police Station. As such Superintendent Sean Parnell 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) General concerns for the safety of patrons and members of the public in and around the venue.

- b) Restricted access to the venue for Police.
- c) Limited parking near the venue and safety issues for patrons departing the venue late in the evening.
- d) The proximity of the proposed licensed premises to existing licensed premises trading for similar periods and the impact of Police resourcing.

The grounds of objection relate to the amenity of the neighbourhood and public safety issues in the locality where the premises are located. On that basis the grounds of objection are valid and require a hearing.

Objection from Mr Ron Thynne and Ms Lorri Thynne

- 7) Section 47(3)(a) allows a person residing or working in the neighbourhood where the premises the subject of the application are or will be located to lodge an objection. Mr and Ms Thynne are residents of the Todd Mall and, as such, entitled to object to the application.
- 8) Turning then to the substance of the objection and whether it fits within Section 47F(2):

Mr and Ms Thynne's objection raises the following grounds:

- (a) additional sale of alcohol resulting in unwanted anti social, offensive and noisy behaviour at late hours in the Todd Mall,
- (b) traffic of alcohol affected people between QC Restaurant and other late trading licensed premises.

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 or social conditions of the Todd Mall. On that basis the grounds of objection are valid and require a hearing.

Objection from Mr Ian Drummond

- 9) Section 47(3)(a) allows a person residing or working in the neighbourhood where the premises the subject of the application are or will be located to lodge an objection. Mr Drummond is the Executive Chairman of Australian Property Groups, owner/operator of Aurora Alice Springs, located at Leichhardt Terrace, Alice Springs. In that capacity, Mr Drummond works in the vicinity of the premises for which the variation of licence is sought and is entitled to object to the application.
- 8) Turning then to the substance of the objection and whether it fits within Section 47F(2):

Mr Drummond's objection states that the proposed variation will adversely effect:

- (a) the amenity of the neighbourhood where the premises the subject of the application will be located; and
- (b) the public safety and social conditions of the community.

Mr Drummond further objects that the variation, in allowing the Licensee to trade as a bar, will increase the consumption of alcohol in the area, change the patron profile of the establishment and lead to increased anti-social behaviour and to increased property damage within the Todd Mall. The grounds of the objection are valid and require a hearing on the basis they fall within sub-sections 47F(2)(a) and (b).

Applicant's Response to Objections

- 9) Mr Wallace responded, on behalf of the applicant, to the objections received by letter dated 24 September 2008. Mr Wallace responded specifically to the objection of Mr and Ms Thynne as follows:
- (a) QC restaurant is located in an area zoned commercial use and it is widely accepted that the Todd Mall is a restaurant and bar strip;
 - (b) More use of the Mall as an entertainment area will lead to more people in the Mall and a decrease in anti-social behaviour;
 - (c) QC is currently able to trade until 2:00 am and none of its patrons have created any problems in the Mall. In addition, the variation will not attract unruly patrons nor will the variation increase the amount of alcohol available;
- 10) Mr Wallace provided the following responses to the objection from Police:
- (a) The provision of entertainment and music at QC will not affect the sobriety of patrons;
 - (b) The variation of licence will not compromise the public safety of patrons;
 - (c) Access to QC, by Police and others, is available from 4 directions and CCTV cameras operate in the Mall outside the premises;
 - (d) Adequate car parking is available at the ANZ car park, Parsons Street, Leichhardt Terrace and the Post Office car park; and
 - (e) The application is not for a new licence but rather variation of a licence that has operated for 16 years without any history of problems with Licensing or the Police. The variation will not result on an additional burden on Police resources.
- 11) Mr Wallace provided the following responses to the objection from Australian Property Projects (Mr Drummond):
- (a) The variation will not attract increased numbers of patrons to the venue nor will the grant of an on licence allow the licensee to sell more alcohol. Also, the provision of entertainment and music at QC will not affect the sobriety of patrons;
 - (b) The variation of licence will not compromise the public safety of patrons;
 - (c) Licensed venues are not the source of anti-social behaviour in the Todd Mall. Take away outlets are the predominant source.

Determination

- 11) In my opinion the objection made by Police to the application is a valid objection and requires a hearing. The response from the Licensee addresses a number of the grounds of objection. However, whilst presenting an alternative view, the response does not go so far as to completely refute the concerns raised by Superintendent Parnell.
- 11) Similarly, the response to the objections of Mr and Ms Thynne and Mr Drummond put forward a different point of view of the licensee in respect of the effect the variation may have on anti-social behaviour in the Todd Mall. The response, whilst no doubt in accord with Mr Wallace's view of the likely impact of the variation, does not resolve the issues raised by the objectors
- 12) On the basis of the matters set out above, I find that the three (3) objections are valid and require a hearing.

Philip Timney
Legal Member

3 November 2008