

Northern Territory Licensing Commission

Decision on Whether Objections Will Proceed To Hearing

Premises:	Tennis Palmerston Corner Bonson and Tilston Avenue Palmerston NT 0830
Applicant:	Australian Sports, Education & Lifestyle Pty Ltd
Nominee:	Mr Matthew Dudley
Licence Number:	N/A
Objectors:	Palmerston City Council
Legislation:	Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Richard O'Sullivan (Chairman)
Date of Decision:	19 February 2013

Background

- 1) An Application pursuant to Section 26 of the Liquor Act ("the Act") was submitted by Mr Matthew Dudley of Australian Sports, Education and Lifestyle Pty Ltd on 24 September 2012 for an "On Licence" liquor licence for a new premises to be located at the corner of Bonson and Tilston Avenue, Palmerston.
- 2) The Application was advertised in the NT News on Friday 2 November 2012 and Wednesday 7 November 2012 pursuant to Section 27 of the Act.
- 3) The advertisement was as follows:

Australian Sports, Education and Lifestyle Pty Ltd, HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing Commission for an "ON LICENCE" Liquor Licence to sell liquor from the premises located at "Tennis Palmerston", 16 Bonson Terrace, Palmerston NT 0832.

Proposed trading details for the sale of liquor are as follows:

- *The business proposed to be conducted on the premises will be in the nature of a sports training centre with an "On Licence".*
- *Liquor will not be supplied to the general public. Liquor will only be supplied to persons that have participated in an activity at the centre and their bona-fide guest and only at the day and time of participation.*
- *Liquor in the form of beer, wine and spirits may only be sold in either bottles or cans.*
- *Snack foods are to be available at all times.*

- *Proposed Trading Hours are:*

*Monday to Friday 15:00 hours to 23:59 hours
Saturday to Sunday 12:00 hours to 23:59 hours*

This is the first notice of application. The notice will be published again on Wednesday, 7 November 2012.

The objection period is deemed to commence from Wednesday, 7 November 2012. (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) 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, Gambling and Licensing Services, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 2nd Day of November 2012

- 4) 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 Friday 7 December 2012.
- 5) Section 47F of the Act prescribes the circumstances in which an objection may be made, specifies the grounds for objection and identifies the persons entitled to object to a particular application -

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 sub-Section (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).

6) One objection has been lodged in response to the application and the applicant has provided a response to that objection pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing.

Objection from Mr Mark Spangler, Director Technical Services, Palmerston City Council:

7) Section 47F(3)(e) provides that an Agency or public authority that performs functions relating to public amenities, including health, education and public safety may make an objection. As such Palmerston City Council is a valid objector. The objection was lodged on 12 November 2012 and was therefore lodged within the prescribed time.

8) A determination also needs to be made on whether the grounds of the objection conform with Section 47F(2)(a) and (b) of the Act which relates to “amenity of the neighbourhood” or “the health, education, public safety or social conditions of the community”. The Palmerston City Council’s objection specifies concerns over the close proximity of schools to the proposed licensed area and the presence of children during trading hours.

9) The objection therefore conforms with the requirements of the Act in this respect.

Applicant’s Response to Objections:

10) The applicant has responded by advising that the Palmerston Tennis Facility will have clients of all ages and the clients, family and friends would be welcome to attend the facility. The applicant states that the coaching of tennis and the provision of tennis lessons will be their principal source of income with liquor and other sales of refreshments all augmenting this principal income.

- 11) The applicant advises that they provide a family sports facility and “*we have no intention to promote the consumption of alcohol to the wider community. Our aim is to promote healthy lifestyle and education*”. The applicant also advises of the measures to ensure liquor fridges are secured at all times.

Consideration of the Issues

- 12) Given the status of the Palmerston City Council on being effectively a key stakeholder in commercial and sporting developments within its boundaries and given its general role in promoting the social wellbeing and public safety of its residents, the nature of the objection would benefit from consideration at Hearing.
- 13) There is a unique aspect to the objection from Mr Mark Spangler, Director Technical Services, Palmerston City Council. The initial objection lodged on 12 November 2012 states “*this letter may be placed before Council at its next meeting. Should this letter be varied or not endorsed by Council you will be advised accordingly.*”
- 14) A further letter of 11 January 2013, following a response to the objection from the applicant, provides the same caveat ie “*that this letter may be placed before Council at its next meeting. Should this letter be varied or not endorsed by Council you will be advised accordingly.*” This letter acknowledges the security of liquor at the Tennis venue but raises the inappropriateness of the provision of alcohol at times when the majority of the clients are expected to be under age.
- 15) Neither the original objection on 12 November 2012, nor the subsequent letter reconfirming the objection of 11 January 2013, refer to the matter being put before Council. This raised the potential that the objection did not have endorsement of the Palmerston City Council and therefore the Chairman directed Licensing Inspector Steven Holehouse to obtain further information on the status of the objection.
- 16) On further enquiry Licensing Inspector Holehouse has provided the following in a File Note of 18 February 2013:
- “At the request of the Chairman of the Licensing Commission, On 18 February 2013, I contacted Palmerston City Council regarding an objection letter dated 12 November 2012, pertaining to the application for liquor licence for the premises “Tennis Palmerston”.*
- On speaking with Mr Ted Vivien of the Lands and Planning division, Palmerston Council, he informed me that in response to the advertisements placed in the NT NEWS on Friday, 2 November 2012, and Wednesday, 7 November 2012, the objection is not directly from the council board itself, but is lodged from the Lands and Planning department through delegation from the council board.”*
- 17) It is evident from the File Note from Inspector Holehouse that Mr Mark Spangler as Director Technical Services has a delegated authority to lodge an objection on behalf of Council. While noting it would be preferable to have formal Council endorsement of this position, the Commission is cognisant that bodies such as Local Councils do not always have the ability to meet and consider matters such as objections, within the required timeframe.
- 18) On this basis and that in all other respects the objection meets the criterion established under the Act, the objection will be required to go to Hearing.

Decision

19)The Commission has determined that the objection lodged by Palmerston City Council is valid and requires a Hearing pursuant to Section 471(7) of the Act.

Richard O'Sullivan
Chairman

19 February 2013