

NORTHERN TERRITORY LICENSING COMMISSION

Review of a decision to dismiss an objection

Objector: Ms Undisclosed Objector

Premises: Driver Supermarket

Relevant legislation: Sections 47F, 47G, 47I, 47J of the *Liquor Act*

Date of decision: 9 March 2004

Members: Jill Huck (Presiding Member)
John Withnall
Alan Clough

1. Section 47F of the *Liquor Act* (the Act) states, among other things, that a person, group or organisation may make an objection to an application for the grant of a liquor licence. Subsection 47F(2) currently restricts the grounds for such objections in the following way:
 - (2) *An objection under subsection (1) may only be made on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located.*
2. Section 47I requires the Chairperson to select a member of the Commission to determine whether each objection to an application should be dismissed or referred to hearing. The member is required to dismiss an objection if that member is satisfied that the objection is of a frivolous, irrelevant or malicious nature or does not describe circumstances that may or will adversely affect the amenity of the neighbourhood (see section 47I(3)(c)(i)). In such circumstances the member must provide written reasons for their decision.
3. A person whose objection has been dismissed under section 47I(3)(c)(i), has the right to seek a review of that decision under section 47J. Provided that the review application complies with certain requirements, “*the Commission must review the member’s decision in a manner that is fair and expeditious and must give proper consideration to the issues*” and either affirm the member’s decision to dismiss the objection or revoke the member’s decision and conduct a hearing in relation to the objection.

4. In this particular case, Ms Undisclosed Objector has lodged a written objection to an application for a liquor licence for the Driver Supermarket. Ms Undisclosed Objector had also been an objector to a 2002 application for a liquor licence for those premises and had participated actively in the hearing process in early 2003. The application for the licence had been withdrawn by the applicants before the conclusion of the hearing. It would be fair to say that the circumstances in which the original application was withdrawn were somewhat confusing to the objectors. It would also be fair to say that Ms Undisclosed Objector was distressed to see the application readvertised in November last year. Ms Undisclosed Objector subsequently wrote a 2½ page letter, among other things, protesting the reapplication and complaining about the process which could result in the need to give evidence at a second hearing.
5. Ms Undisclosed Objector's letter, along with other letters of objection and the applicant's response, was referred to a Commission member for determination in accordance with section 47I. It was that member's view that while the letter was clearly an objection to the application, the letter did not make any "*submissions able to be reasonably linked to the available ground of objection set out in s.47F(2).*" Given his conclusions on this issue, the member was required to dismiss the objection pursuant to section 47I(3)(c)(i) of the Act. An explanation of the dismissal decision is contained in a written statement of reasons dealing with the objections to the Driver Supermarket application dated 6 February 2004.
6. On 25 February 2004 the Commission received a letter from Ms Undisclosed Objector more fully explaining the grounds for her objection. This letter was taken to be an application for a review of the decision to dismiss the objection. Her intention to seek a review was confirmed by telephone on 7 March 2003.
7. On 9 March 2003 the Commission met to review the decision. The Commission had before it the following written material:
 - Ms Undisclosed Objector's 8 December 2003 letter objecting to the licence application;
 - A statement of reasons in respect of the objections dated 6 February 2003, which included the decision to dismiss Ms Undisclosed Objector's objection;
 - Ms Undisclosed Objector's written application for a review of the decision.

The Commission also spoke to Ms Undisclosed Objector by telephone. Among other things, Ms Undisclosed Objector was able to provide background information that clarified some the comments contained in her 8 December 2003 letter.

8. The Commission's task was to "stand in the shoes of the original decision maker" and to form its own view as to whether the 8 December 2003

objection letter complied with the requirements of section 47F(2), that is whether the objection had been made “*on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located*”

9. In this case, the Commission found that, although a substantial part of the letter did not contain issues relevant to the “amenity of the neighbourhood”, being concerned with the licence application and hearing process, there was a portion of the letter which could be regarded as focusing on neighbourhood amenity issues. That portion of the letter is to be found in the second half of the first page and, possibly in one or two sentences on the second page. The Commission also found that the objection letter was not of a frivolous, irrelevant or malicious nature and that the letter complied with the requirements set out in sections 47F(3) and 47F(4) of the Act. Given these findings, the Commission, standing in the shoes of the original decision maker, is required by section 47I(3)(c)(ii) to determine that the Commission must conduct a hearing in relation to the relevant part of the objection and forward the objection, the reply to the objection, and its own findings in relation to the objection to the Commission.

Decision:

10. For the reasons set out above, the Commission has decided, pursuant to section 47J(4) of the Act, to revoke the member’s 6 February 2003 decision in respect to Ms Undisclosed Objector’s letter of objection and to conduct a hearing in relation to those parts of the objection that are based on the ground of concern about neighbourhood amenity.

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Ms Jill Huck
Presiding Member