

NORTHERN TERRITORY LICENSING COMMISSION

Reasons For Decision On Whether Objections Will Proceed To Hearing

- Applicant:** Harald Willms
- Premises:** **BANYAN TREE CARAVAN PARK AND STORE**
- Objectors:** Assistant Commissioner Mark L Payne,
Operations Command,
Steven Robertson, local resident and tourist
operator
- Relevant Legislation:** Sections 4F, 47I and 127 of the *Liquor Act*
Section 28 of the *Interpretation Act*
- Member:** Brenda Monaghan
- Date of decision:** 18 April 2005

Background:

- 1) Harold Willms has made an application for a licence to allow takeaway sales from the premises known as Banyan Tree Caravan Park and Store located 8A Windmill Rd Batchelor N.T. The application was advertised in the public notices in the Northern Territory New on Wednesday 2 February 2005 and Friday 4 February 2005. The content of the advertisement includes the type of licence being applied for, the details of that licence 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 30 days after publication of the last advertisement. 30 days from

Friday 4 February 2005 expires on Sunday 6 March 2005. By application of *Section 28* of the *Interpretation Act*, the last day for receipt of valid objections by the Director is Monday 7 March 2005.

- 3) Two objections were received by the Director. The first objection is from Assistant Commissioner Mark Payne, Operations Command and the second is from Steven Robertson, local resident/ tourist operator. The Acting Chairman has allocated to me the task of deciding whether or not these objections are valid and should proceed to hearing.
- 4) 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.
- 5) In considering the objection received by Assistant Commander Mark Payne of the Northern Territory Police Force, I note the following:
 - a) The objection was received on 22 February 2005 and thus is well within the timeframe required by section 47F (4) (d).
 - b) The objector Mark Payne, being a member of the Police Force, has standing under Section 47F (3) (c) and thus is a valid objector.
 - c) The objection complies with Section 47F (4) in that it is in writing and is signed by Assistant Commander Payne. It is also lodged within the timeframe required.
 - d) Ass. Commander Payne relies on both limbs of the grounds of objection provided in section 47F (2) in that he submits that the grant of the takeaway liquor licence will adversely affect both the amenity of the neighbourhood and the health, education, public safety or social condition in the community.
- 6) A valid objection must also set out the facts relied on to constitute the grounds of objection. The first ground of objection is Section 47F (2) (a) which is 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*.

- 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 proposed licensed premises and the type of licence being sought. In his second reading speech, the Minister confirmed that the relevant *neighbourhood* will be a question of fact to be determined by the Licensing Commission in each particular case.
- 8) I refer to the previous objections hearing decision of Commission Member Jill Huck dated 27 February 2004 with respect to these premises where Ms Huck stated at paragraph 13:

In this case, the type of licence applied for is a takeaway licence and the nature of the facility could be described as rural, (for lack of a better term). The proposed premises are in a short driving distance from Batchelor town ship and various tourist destinations, including Finness River, Litchfield Park and the Rum Jungle Recreation Lake. Given that the licence is of a takeaway nature, it is reasonable to assume that Batchelor township, the surrounding rural area and the tourist destinations in the area could all be regarded as being in the neighbourhood of the Banyan Tree Caravan and Tourist Park, and I find accordingly”.

For the purposes of this present objection, I accept the definition of neighbourhood applied by Ms Huck in her previous decision.

- 9) The letter of objection received by Assistant Commissioner Payne clearly sets out a number of *facts* relied upon by him to constitute both an adverse effect on the amenity of the neighbourhood (s47F(2)(a)) and public safety issues under s47F(2)(b). He speaks of the risk of increased anti social behaviour including, littering, trespass, incidents of excessive noise, road and pedestrian safety, domestic violence, fighting and public order disturbances. He expresses his concerns regarding increased policing and monitoring requirements if another takeaway liquor outlet is allowed. He also raises concerns regarding inadequate security on the premises and the apparent lack of training of staff in patron care.

- 10) I am satisfied that Assistant Commander Payne has set out sufficient facts to support both grounds of objections being the adverse effect on the amenity of the neighbourhood and public safety issues. I consider Assistant Commander Payne to be a valid objector and conclude that the Commission must conduct a hearing in relation to his objection. In reaching this conclusion, I have taken into account of the response received by the applicant Harald Willms but I do not consider that any of the statements made by him alter the validity of Assistant Commander Payne as an objector who has valid objections to make. It is a matter for the Licensing Commission at the time of hearing the application itself to consider issues of merit.
- 11) The second objection is received from Steven Robertson, local resident and tourist operator. Mr Robertson describes himself as *a land owner and tourist operator on the Finness River approx 2km from the Banyan Tourist Park*. Mr Robertson has standing to object under section 47F (3) (a) *being a person residing or working in the neighbourhood where the premises is subject of the application are or will be located*. I note that the objection was received by the Director on 3 March 2005 and thus is within the 30-day timeframe, which expired on 7 March 2005. The application from Mr Robertson is in writing and signed by him.
- 12) Mr Robertson states his reason for objection as being that the sale of takeaway liquor will have a *detrimental impact on the amenity of the region*. This has valid ground for objection under section 47F (2) (a). The content of his letter makes it clear however that his objection covers some aspects of s47F(2)(b) also. As regards the facts to support the grounds of objection, Mr Robertson expresses concern that the takeaway liquor licence will cause *considerable anti social behaviour, litter and itinerant problems*. He is concerned that the Finness River *would degenerate into a drinking area as there is ample supply of shade and water etc*.
- Mr Robertson expresses a concern that the Litchfield National Park's present identity as *a tranquil family orientated peaceful location* will change if it becomes frequented by *itinerant drinkers of takeaway alcohol and facilities such as picnic tables would most likely have to be removed*.

- 13)Mr Robertson questions the need for a takeaway liquor outlet and *associated problems* at the entrance to Litchfield National Park. He mentions concerns raised at the previous Commission Hearing in March 2003, alleged alcohol related incidents on 22 October 2004 and other problems in December 2004 caused by itinerant drinkers harassing guests of Litchfield Tourist Park. Mr Robertson notes the proximity of the Banyan Tree premises to Rum Jungle Recreation Lake, Aboriginal land and bush camps and expresses his concern that the granting of a takeaway liquor licence may cause problems in these areas.
- 14)In his response to the objection, Mr Willms denies that there *were alleged related incidents at Banyan on 22 October 2004 (attended by Batchelor Police)*. This and other comments he makes in his response however, do not affect the valid status of Mr Robertson as an objector or his prima-facie grounds for objection. It is a matter for the Commission at the final hearing to decide the merits of the objection itself.
- 15)It is to be noted that on 13 April 2005, I was advised that Mr Robertson has recently sold his caravan park in Litchfield and is leaving the Batchelor area. As he was a valid objector at the time the objection was made, his objection stands. I am satisfied that this objection is not frivolous and vexatious and I consider that it should proceed to an objections hearing.
- 16)As the member of the Commission appointed to consider the objections to the Banyan Tree Caravan Park and Store application for variation of its liquor licence, I have decided that the two objections received from Acting Commissioner Payne and Mr Robertson are valid objections under section 47F of the *Liquor Act*. There are no grounds for dismissing these objections and the Commission must conduct a hearing in relation to them.

Brenda Monaghan

Member

18 April 2005