

NORTHERN TERRITORY LICENSING COMMISSION

Matter: **Review of Objections Hearing with respect to a
Liquor Licence Application for Wisdom Bar &
Café. (s47J Liquor Act)**

Members: John Flynn (Presiding)
Craig Spencer
Brenda Monaghan

Brief Reasons for Decision

- 1) On 18 July 2005, Commissioner Clough handed down a decision on which of the several objections lodged were to proceed to hearing. He dismissed 4 objections including those lodged by Minkie (NT) Pty Ltd, Rediscover Pty Ltd and Malaguena Pty Ltd. Those companies have sought a review.
- 2) Section 47J governs the review procedure to be followed by the Commission as follows:

47J. Review of member's decision to dismiss objection

- (1) *If a member dismisses an objection under section 47I(3)(c)(i), the person, organisation or group who made the objection may apply to the Commission for a review of the member's decision.*
- (2) *An application for review is to –*
 - (a) *be in writing;*
 - (b) *be signed by or on behalf of the person, organisation or group who made the objection;*
 - (c) *set out the grounds on which the application for review is made and the facts relied on to establish the grounds; and*
 - (d) *be lodged with the Director within 14 days after the person, organisation or group received notice of the member's decision to dismiss the objection.*
- (3) *The Commission must review the member's decision in a manner that is fair and expeditious and must give proper consideration to the issues.*
- (4) *After determining the review, the Commission must, by notice in writing to the person, organisation or group who applied for the review –*

- (a) *affirm the member's decision to dismiss the objection; or*
 (b) *revoke the member's decision and conduct a hearing in relation to the objection.*
- (5) *If the Commission affirms the member's decision, the Commission must specify its reasons for doing so in the notice.*
- (6) *A decision of the Commission under subsection (4) –*
 (a) *is not a decision referred to in section 56; and*
 (b) *may be reviewed under Part 4 of the Northern Territory Licensing Commission Act.*
- 3) A Commission of 3 (J Flynn, C Spencer and B Monaghan) met to review this matter on 11 August 2005. Before us were all of the documents in the attached Index to Brief. *
- 4) The Commission notes that whilst the applicant has been made aware of a request for a review filed by 3 objectors, they have not been formally provided with copies of the requests or with a further opportunity to respond. The reason for this is that Commission is of the view that no further submissions from the applicant are required and that the detailed responses to objections received from Clayton Utz on behalf of the applicant covers all relevant issues. Thus a review has been conducted pursuant to s 47J(3) of the *Liquor Act* on the documents filed to date.
- 5) After detailed discussion and consideration of the documents in the Brief, we have made the following decisions with respect to each of the relevant objections:
- a) **Minkie (NT)Pty Ltd (The Victoria Hotel) and Malaguena Pty Ltd (The Cavenagh).**

The Commission notes the definition of “neighbourhood” applied by Commissioner Clough and the submissions put forward by Des Crowe on behalf of the objectors that the view taken was too narrow. Defining the outer limits of the “neighbourhood” in each particular case is no easy task and will invariably be the subject of debate. We note in this case that all those objectors who closely surround the proposed premises and who may be primarily affected by issues such as increased noise, traffic, public safety and litter have been included in the “neighbourhood” as defined. We accept and affirm Commissioner Clough’s decision on this issue with the result that these particular objections will not be reinstated.

b) Rediscover Pty Ltd (Discovery)

The Commission notes that Commissioner Clough dismissed this objection on various grounds including the fact that he considered aspects of it to be malicious or frivolous. He also considered that the facts supporting the assertions were not sufficiently established for it to qualify as a valid objection. We have reviewed this decision and reached the following conclusion:

- i) Whilst there may be a lingering doubt as to the motivation behind the allegations made against the proposed Manager, there is insufficient evidence before us to satisfy us that the objections should be classified as malicious and frivolous. It may be that there is some validity to the argument that the employment of this particular Manager could impact adversely on the amenity of the neighbourhood. The substance or relevance of this ground is a matter for the Commission to consider at the final hearing and until that time, we cannot be satisfied that the objection should be dismissed under s471 (3)(c)(i)(A).
- ii) The second ground on which this objection was dismissed was on the basis that the facts supporting the assertions were not sufficiently established for it to qualify as a valid objection. The Review panel has considered each ground separately and agrees with Mr Clough that many of the grounds of objection are so general and lacking in particulars as to be able to be dismissed. There are some grounds however that have sufficient substance to be considered as valid. These include concerns about traffic congestion, pedestrian movement, noise, litter and wider community issues. Noting the above reasoning, the review panel considered that the objector should be classified as a valid objector and the original decision on this point is revoked to allow the Commission to conduct a hearing in relation to the objection. The review panel considered limiting the objector's rights of inquiry at the final hearing to specific grounds contained in their objection. Ultimately, however, we recognised that the objector had made what we considered to be valid grounds of objection under both limbs of s47F(2) and limiting their rights of enquiry in those circumstances might simply place an unnecessary burden on the Commission hearing the substantive application.

Summary

- 1) The member's decision to dismiss the objections of Minkie (NT) Pty Ltd and Malaguena Pty Ltd is affirmed.
- 2) The member's decision to dismiss the objection of Rediscover Pty Ltd is revoked and a hearing is to be conducted in relation to the objection.

John Flynn (Presiding)
Acting Chairman
15 August 2005