

NORTHERN TERRITORY LICENSING COMMISSION

STATEMENT OF REASONS FOR DECISION

APPLICANT FOR REVIEW:	Minkie (NT) Pty Ltd
DECISION UNDER REVIEW:	The decision to dismiss an objection from Minkie (NT) Pty Ltd to an application for a liquor licence for the Wisdom Bar & Café
RELEVANT LEGISLATION:	Sections 47F, 47I and 47J of the <i>Liquor Act</i> Sections 27, 28 and 29 of the <i>Licensing Commission Act</i>
MEMBERS:	Ms Jill Huck (Presiding Member) Ms Annette Smith Ms Elizabeth Morris
DATE OF HEARING:	10 October 2005
APPEARANCES:	Mr Des Crowe for Minkie (NT) Pty Ltd trading as the Victoria Hotel Ms Judith Kelly for AFS Realty & Business Brokers Pty Ltd, the applicants for a liquor licence for the Wisdom Bar & Café

Background

1. This is a review under the *Licensing Commission Act* of a decision made pursuant to section 47J of the *Liquor Act*. That decision in turn was a review of a decision made by a single Commission member under section 47I of the *Liquor Act*.
2. Section 47I of the *Liquor Act* (the Act) deals with the issue of whether an objection to an application should proceed to hearing or whether it should be dismissed. The provision reads, in part, as follows:

47I. *Decision on whether objection to proceed to hearing*

- (1) *The Director must forward an objection and the reply to the objection (if any) to the Chairperson.*

(2) *On receiving the objection and the reply to the objection, the Chairperson must select a member to consider the substance of the objection.*

(3) *The member selected under subsection (2) –*

(a) *must consider the objection and the reply to the objection;*

(b) *may inquire into any circumstance relating to the objection as he or she considers appropriate; and*

(c) *must –*

(i) *dismiss the objection if satisfied that the objection –*

(A) *is of a frivolous, irrelevant or malicious nature; or*

(B) *does not describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community; or*

(ii) *determine that the Commission must conduct a hearing in relation to the objection and forward the objection, reply to the objection and his or her findings in relation to the objection to the Commission....*

3. The brief history of this matter is as follows:

- An application was advertised for a liquor licence for the Wisdom Bar & Café, located at 48 Mitchell Street Darwin;
- Des Crowe lodged an objection to the application on behalf of Minkie (NT) Pty Ltd. Minkie trades as the Victoria Hotel, which is located in the Smith Street Mall, Darwin;
- Dr Alan Clough, the single member of the Commission selected under section 471 to consider the standing of the objections dismissed the Minkie objection under section 471(3)(c)(i) of the Act on the grounds that:
 - i. he was unable to determine that the letter making the objection was not, on balance, malicious or frivolous in nature;

- ii. that the letter did not adequately describe circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community; and
- iii. that the letter making the objection was not relevant to the application in that Minkie (NT) Pty Ltd was not a person living or working in the neighbourhood who may make an objection to the application pursuant to section 47F(3)(a) and is not a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located, who may make an objection pursuant to section 47F(3)(b).

The central issue in this third ground for dismissal was the location of the boundaries of the “neighbourhood” in which the proposed premises are located.

(See *Wisdom Bar & Café Objections Decision* July 2005);

- Des Crowe, on behalf of Minkie, requested a review of Dr Clough’s decision under section 47J of the Act. Section 47J requires the Commission to review the single member’s decision in a manner that is fair and expeditious and gives proper consideration to the issues;
 - The three member Commission panel who reviewed the decision affirmed the decision to dismiss the objection on the basis that Minkie was not in the relevant neighbourhood. The other grounds for the dismissal were not dealt with directly except insofar as they were considered in respect to another almost identical objection which Mr Crowe had lodged on behalf of Rediscover Pty Ltd. The Commission panel revoked Dr Clough’s dismissal decision in respect of Rediscover and determined to conduct a hearing in relation to that objection (see *Wisdom Objections Review* August 2005);
 - Minkie lodged an application to have the review panel’s decision in respect of Minkie reviewed pursuant to the provisions of the *Licensing Commission Act*.
4. At the hearing of the review application under the *Licensing Commission Act* the Commission heard arguments on all the issues dealt with in the original section 47I decision by Dr Clough.

Discussion of the evidence, findings and application of the law

5. A critical issue in this case was whether Minkie was in any of the classes of entities described in subsection 47F(3) of the Act as being able to make objections. Mr Crowe argued that Minkie fulfilled the descriptors set out in paragraphs 47F(3)(a) and 47F(3)(b), that is:

(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.*

6. In his decision Dr Clough held that Minkie did not meet these requirements as the company was not in the neighbourhood where the premises are to be located. Dr Clough provided the following description of the relevant neighbourhood:

It is apt to consider the relevant neighbourhood to be the recognised 'Mitchell Street entertainment precinct' since all of those seeking to make objections are entities with licensed premises in this precinct or in nearby parts of the Darwin CBD with commercial interests that are similar to those of the applicant. Key indicators of the relevant 'neighbourhood' then are the proximity of the proposed licensed premises to the addresses of those making objections, as measured by an address within the Darwin CBD and within the Mitchell Street precinct along with the physical distance from the proposed licensed premises.

7. On review, the panel considering the matter pursuant to section 47J stated:

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.

8. During the review of this matter under the *Licensing Commission Act* Mr Crowe argued that the neighbourhood should not be limited to the Mitchell Street Entertainment Precinct and that at least one objector had been included whose premises (Discovery) were further away from the Wisdom Bar & Café than Minkie's premises (Victoria Hotel); 350 metres as opposed to 300 metres. He said that the Victoria Hotel was very much part of the same CBD entertainment scene as the objecting Mitchell Street premises, with patrons moving easily between the different venues. He argued that objectors should not have to prove that they, themselves, will be directly affected by all the problems associated with a new licence to be considered to be in the relevant neighbourhood. He also argued that the takeaway component of this particular licence application meant that the relevant neighbourhood was larger than would be the case if the application was confined to the consumption of liquor on the premises.
9. Noting that the term "neighbourhood" is not defined in the Act, Mr Crowe referred the Commission to the Minister's Second Reading Speech which reads, in part:

The term "neighbourhood" is a subjective one and should be taken to mean the area likely to be affected by the premises the subject of the application. The area affected will of course be determined by the type of licence applied for and the nature of the vicinity of the application. For example, the neighbourhood around a proposed city tavern will be at most a few city blocks whilst the neighbourhood surrounding a takeaway liquor facility in a remote place may encompass an area of hundreds of kilometres. In each case, it will be a question of fact to be determined by the Licensing Commission.

10. Ms Kelly submitted, on behalf of the applicant for the licence, that the neighbourhood for a licence application should, among other things, only include locations likely to be directly affected by the proposed licensed premises. She argued that, given its location, it was nonsense for the Victoria Hotel to claim to be affected by potential problems such as noise, traffic and litter from the Wisdom Bar & Café. She did not accept the fact that patrons could easily walk between the different premises a sufficient ground for considering them to be in the same neighbourhood. Ms Kelly also said that her client would be arguing that some of the Mitchell Street Entertainment Precinct objectors were not in the relevant neighbourhood. Ms Kelly provided a number of dictionary definitions of the term neighbourhood including the Macquarie Dictionary (3rd Edition) definition which reads, in part: "1. *the region near or about some place*

or thing; the vicinity. 2. a district or locality, often with reference to its character or inhabitants”.

11. The Commission considered that there was merit in the arguments put forward by both parties on this issue. In such a situation the task of delineating the boundaries of the relevant neighbourhood for the Wisdom Bar & Café premises became a somewhat subjective and arbitrary exercise. Ultimately the Commission came to the view that the Victoria Hotel was in the same neighbourhood as the Wisdom Bar & Café. Factors in favour of such a conclusion included, but were not limited to, the common character of the area; the fact that patrons can and do move easily between the Victoria Hotel and various Mitchell Street premises at night; and our subjective belief that the public would probably perceive the various premises as being in the same general neighbourhood.
12. Having decided that the objection should not be dismissed on the ground that the objector was not located in the neighbourhood, the Commission turned to the other grounds for dismissal cited in Dr Clough’s original decision. We heard submissions from both parties about the issues involved, with Ms Kelly strongly endorsing Dr Clough’s decision and Mr Crowe arguing that the somewhat over-the-top nature of the Minkie objection letter was a result of very little information being provided about the Wisdom Bar & Café application and therefore having to plan for the worst case scenario.
13. After considering the arguments of the parties, the Commission decided to adopt the reasoning of the earlier Commission panel which reviewed the dismissal of the almost identical Rediscover Pty Ltd objection letter.

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.*

Decision

14. Having conducted a review of the decision to dismiss the Minkie (NT) Pty Ltd objection the Commission decided to revoke the previous decision to dismiss the objection and substitute a decision that the Commission must conduct a hearing in relation to the objection.

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Jill Huck
Presiding Member
21 October 2005