

NORTHERN TERRITORY LICENSING COMMISSION

Decision on Whether Objections Will Proceed To Hearing

PREMISES:	The Lane Cafe Restaurant – 58 Todd Mall, Alice Springs
APPLICANT:	Iparpa Nominees Pty Ltd
NOMINEE:	Vincent Lange
LICENCE NUMBER:	805172222
OBJECTORS:	Michael and Shirley Hollow and; Northern Territory Police
LEGISLATION:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
DECISION OF:	Merran Short
DATE OF DECISION:	9 November 2007

Summary of Decision:

Hold a Hearing in respect of the objections received from:

- Michael and Shirley Hollow (the Hollows”) and;
- Northern Territory Police.

Background

- 1) Mr Vincent Lange, Nominee of The Lane Café Restaurant in Alice Springs has made an application for Licence Variation and Extension of Premises located at 58 Todd Mall, Alice Springs, (“the Application”). The Application was advertised in the Centralian Advocate on the 3 and 7 August 2007 pursuant to Section 32A(3) and (4) of the *Liquor Act* (“the Act”). The advertisements notified that the Applicant seeks a variation to the liquor licence to sell liquor from the premises known as THE LANE CAFÉ RESTAURANT located at 58 Todd Mall (“the premises”).

2) The advertisement was as follows:

*I Vincent LANGE on behalf of Ilparpa Nominees Pty Ltd, hereby gives notice that I have applied to the Northern Territory Licensing Commission for a **Variation to the Liquor Licence** to sell liquor from the premises known as **The Lane Café Restaurant** located at **58 Todd Mall, ALICE SPRINGS**.*

Details of the proposed variation are as follows:

- *To extend the existing upstairs function area for the premises known as The Lane Restaurant. The area is to be extended for the addition of a restaurant service area permitting the sale and consumption of liquor on premises.*
- *This proposal will change the existing nature of the upstairs area from that of function area to that of function area **and** restaurant. Proposed access to upstairs will be via entry from within the Reg Harris Lane.*
- *The premises shall predominantly have the appearance of a restaurant.*
- *When the area is to be utilised for a function or event, the existing condition will remain that; at all events, pre-booked tickets are to be available, but a pre-booked ticket will not always be essential for admission to a function or event.*
- *Existing Licence conditions to remain in effect for the first floor include;*
- *Permitted Trading Hours for the area shall be between 17:00 and 02:00am (the following day), seven (7) days a week.*
- *The Licensee shall not permit noise to emanate from the premises to the disturbance of the normal comfort of occupiers of other premises. The Licensee shall attenuate noise emanation as directed by any Licensing Inspector or Police Officer.*
- *At all times, tapas type food or meals from a published menu are to be available.*

This application will be advertised on a Tuesday and the following Friday.

The objection period is deemed to commence from the publication date of the second advertisement.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation may or will adversely affect –

- *the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- *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.

*Objections to this application should be lodged in writing with the Deputy Director Licensing, PO Box 8470, Alice Springs NT 0871, **within THIRTY (30) DAYS** of the second (2nd) advertisement.*

For further information regarding this application, contact the Deputy Director Licensing on telephone 8951 8452.

Dated July 2007

- 3) Pursuant to Section 47F(4)(d) of the Act an objection must be lodged within thirty (30) days after the publication of the last notice – namely 7 August 2007. The objections the subject of this decision are dated 15 and 31 August 2007 and are therefore within the time allowed by the Act.
- 4) The content and substance of the objections relate entirely to noise emanation as a result of the Application.

Objection from Michael and Shirley Hollow

Section 47F of the Act provides -

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 subsection (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).*

- 5) The Hollows are residents of the Todd Mall. Section 47F(3)(a) of the Act entitles persons residing or working in the neighbourhood of the premises to make an objection.
- 6) Turning then to the substance of the objections and whether they fit within section 47F(2).

The grounds of the objection include:

- a) the likelihood of increased noise emanating from the premises seven (7) days per week, and
- b) that the proposed Application, if allowed, will provide the Applicant with an increased event/function area of 107m² to be located directly west of the current licensed area with the potential for increased noise levels due to additional patrons and live bands playing in the expanded space.
- c) Finally it is worth noting that the Hollows also complained that the Application notice required to be displayed at the premises by the Applicant was at a height too high to read and therefore they were unable to respond in detail to the Application.

Objection form Northern Territory Police

- 7) Section 47(3)(c) allows members of the Northern Territory Police (“the Police”) to object to the Application. Mr E S (Scotty) Mitchell is the OIC/Senior Policy Officer of the Drug and Alcohol Policy Unit for the Northern Territory Police and is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c).
- 8) Turning then to the substance of the objection and whether it fits within section 47F(2).
 - d) As to the letter from the Police dated 15 August 2007, whilst they say they have “no objections” to the Application, they nonetheless comment on the type of music that ought to be allowed by the Licensing Commission (“the

Commission”) given the location of the premises. In the circumstances I intend to deal with the Police comment as an objection despite the assertion by the Police to the contrary. I do so because the effect of the letter from Police is to direct the Commission as to the type of music to be played at the premises. With all due respect, it is not for the Police to place ‘conditions’ upon their consent and in the circumstances I am of the view that the Police comment must be treated as an objection for it to have any weight in the Commission’s considerations.

Applicant’s Response to Objections

- 9) The Applicant has had an opportunity to respond to the objections. The response of the Applicant to the Hollows objection is that they feel able to “allay the fears of Mr and Mrs Hollow as any artist who would play in the new development would be located internally with the level of noise negated by a roof and walls.”
- 10) The Applicant has not responded specifically to the letter from Police which is understandable given the wording of that letter. In any event for the reasons stated above I am treating the Police letter as an objection.

Determination

- 11) I am satisfied that the objections are made on the grounds that the grant of the Application may adversely affect the amenity of the neighbourhood or the social conditions in the community where the premises are located and in those circumstances the objections fulfil the requirements of section 47F (2) of the Act.
- 12) I find that the objections are valid and require a hearing.

Merran Short
LEGAL MEMBER

9 November 2007