

NORTHERN TERRITORY LICENSING COMMISSION

Decision on Whether Objections Will Proceed To Hearing

PREMISES:	Alice Vietnamese Restaurant
APPLICANT:	Trinh Duy Nguyen and Dung Thi Le
OBJECTORS:	Mr Bruce and Mrs Shelly Colombet; Mr Rod Cramer on behalf of the Alice Springs Rural Area Association and Mr John Crafton
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:	3 January 2008

Summary of Decision

Hold a Hearing in respect of the objections received from –

- Mr Bruce and Mrs Shelly Colombet;
- Alice Springs Rural Area Association – Mr Rod Cramer; and
- Mr John Crofton

Background

- 1) On 27 July 2007, Mr Tinh Duh Nguyen and Ms Dung Thi Le applied for a New Liquor Licence for the Alice Vietnamese Restaurant, situated at Lot 1900 Hefferman Road, Alice Springs, NT 0870 (“the premises”).
- 2) Notice of the application was published in the *Centralian Advocate* on Tuesday 16 and Friday 19 of October 2007. The advertisement was in the following terms (“the Application):

We, Tinh Duy Nguyen and Dung Thi Le, HEREBY GIVE NOTICE that we have applied to the Northern Territory Licensing Commission for a Restaurant Liquor Licence to sell liquor from the premises known as Alice Vietnamese Restaurant located at Lot 1900 Heffernan Road, Alice Springs, NT 0870.

PROPOSED TRADING DETAILS for the sale of liquor are as follows:

- *The business proposed to be conducted on the premises will be in the nature of a restaurant providing full table service with high quality*

authentic Vietnamese meals and beverages. The restaurant will include an alfresco dining area.

- *Dining will be available for a maximum number of 50 patrons.*
- *Liquor shall only be sold for consumption ancillary to a meal on the premises between the hours of:*

*Tuesday to Sunday 12:00 hours to 14:00 hours, and
17:00 hours to 23:00 hours*

- *Breakfast and morning tea will be available on Saturday and Sunday 08:00 hours to 12:00 hours, no liquor will be sold or supplied during these hours.*
- *Morning tea will be available Tuesday to Friday 10:00 hours to 12:00 hours, no liquor will be sold or supplied during these hours.*
- *Liquor to be sold will be restricted to light and mid strength beer, wine and a limited range of spirits. Soft drinks and fruit juice will be available. Water will be provided free of charge to all diners.*

This is the first notice of application. The notice will be published again on Friday 19 October 2007.

The objection period is deemed to commence from 19 October 2007 (date of publication of second notice).

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions 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.*

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.

For further information regarding this application contact the Deputy Director of Licensing and Regulation on telephone 89518452. Objections to this application should be lodged in writing with the Deputy Director of Licensing and Regulation, PO Box 8470, Alice Springs, within thirty (30) days of the commence date of the objection period.

Dated this 16th Day of October 2007

- 3) In addition a green sign advertising the Application was displayed for a period of thirty (30) days at the premises.

- 4) Alice Springs Town Council, the Alcohol and other Drugs Unit of the Department of Health and Community Services and the Drug and Alcohol Policy Division of the Northern Territory Police were advised of the Application and no objection or adverse comments were received. However, there were three (3) objections received from Bruce and Shelly Colombet ("Mr and Mrs Colombet") on 14 November 2007; the Alice Springs Rural Area Association Inc ("ASRAA") from Mr Rod Cramer as Chairman, received 19 November 2007 and from Mr John Crofton received 02 November 2007. All the objections were received by the Office of Licensing and Regulation within the thirty (30) day period allowed under the Act see Section 47F (4) (d) of the *Liquor Act*, ("the Act").

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).*

The Objectors

Mr and Mrs Colombet

5) Mr and Mrs Colombet objected to the Application on the following grounds:

- Noise – Mr and Mrs Colombet are concerned that the consumption of alcohol will lead to raised voices which will disturb the serenity of the residents of the rural area surrounding the premises;
- That the restaurant has plans to increase the capacity from thirty (30) to eighty (80) over time and they are concerned that the liquor licence will also be extended in the future if approved now;
- The liquor licence attached to the restaurant may attract burglaries to the area as occurs in town; and
- They are concerned that the location of the restaurant is on a road which requires caution when driving at night due to kangaroos and that increased traffic combined with the consumption of liquor may lead to more accidents in the area; and
- That granting the liquor licence will lower property values and destroy the peaceful rural environment currently enjoyed by Mr and Mrs Colombet.

6) Mr and Mrs Colombet make a suggestion that rather than a restaurant licence, a BYO licence may overcome their concern regarding burglaries. Or alternatively, the outdoor area of the restaurant is only used before 6.30pm to limit the noise that may emanate into the neighbourhood.

ASRAA Inc

7) ASRAA believes that the Application if successful will have an adverse effect on the amenity of the area in particular the noise which may be emitted from the restaurant will impact upon the quality of life by disturbing neighbours who live within close proximity (suggested as 250 meters from the restaurant) which will impact on the quality of living in the rural area.

Mr Crofton

8) Finally, Mr John Crofton who resides approximately 240 metres from the boundary of the premises is also concerned regarding the noise and the fact that noise travels much more easily in the rural area than in the built up areas. He is concerned that granting the licence will mean that the noise emanating from the semi open premises will increase and cause disturbance to the surrounding neighbourhood.

- 9) Mr Crofton advises that the neighbourhood surrounding the premises mostly comprises of five (5) acre residential blocks and hobby farms and in his view if the licence is granted it will impinge on people's quiet enjoyment of their homes.

Decision

- 10) I am satisfied that all the objectors live within the neighbourhood of the premises and accordingly that the objections are valid within Section 47F(2)(a) of the Act.
- 11) I am also satisfied that when considered as a whole the basis of the objections could impact upon the amenity, health, public safety or the social conditions of the neighbourhood and are within the grounds permitted under the Act.
- 12) In all the circumstances I find that the objections are valid and require a hearing.

Merran Short
LEGAL MEMBER

3 January 2008