

# **NORTHERN TERRITORY LICENSING COMMISSION**

## **REASONS FOR DECISIONS ON WHETHER OBJECTIONS TO PROCEED TO HEARING**

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<b>PREMISES:</b>	<b>ALAWA FOODMART</b>
<b>PROCEEDING:</b>	Consideration of objections pursuant to s.47I of <i>Liquor Act</i>
<b>APPLICANT:</b>	RACHEL SIMONE LIM
<b>DECISIONS OF:</b>	Mr John Withnall
<b>DATE OF DECISIONS:</b>	13 January 2004
<b>OBJECTORS:</b>	See Schedules, pp.14 <i>et seq</i>

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1. Rachel Simone Lim has applied for a take-away liquor licence for the premises operating as "Alawa Foodmart" at 53 Alawa Crescent Alawa.
2. The second of two newspaper advertisements of the application appeared in "The Northern Territory News" on 10 October 2003.
3. Forty-six letters in opposition to the granting of the licence have been forwarded to the Chairperson of the Licensing Commission by the Director of Licensing pursuant to s.47I of the *Liquor Act*. The Director has thus adjudged these letters to be objections for the purposes of that section of the *Act*.
4. Many of these letters of objection are by more than one person, and one of them attaches a further thirty-two signatures of persons who "support" that objection.
5. I have been selected by the Chairperson to consider the substance of these objections pursuant to s.47I(2) of the *Act*. As such selected member of the Commission my statutory task is delineated by s.47I(3) *et seq* of the *Act*.
6. S.47I reads as follows:

(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) *if the member is satisfied that the objection is of a frivolous, irrelevant or malicious nature, or does not describe circumstances that may or will adversely affect the amenity of the neighbourhood – dismiss the objection; 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.*
- (4) *If the member dismisses the objection under subsection (3)(c)(i), he or she must direct the Director to inform the person, organisation or group who made the objection that the objection has been dismissed.*
- (5) *The Director must inform the person, organisation or group that the objection has been dismissed by notice in writing as soon as practicable after receiving the member's direction.*
- (6) *The notice to the person, organisation or group is to include the member's reasons for dismissing the objection.*
- (7) *If the member determines under subsection (3)(c)(ii) that the Commission must conduct a hearing, the Commission must conduct the hearing.*

7. It is not improper to remark that both the Commission and the Director have needed to feel their way to some extent in relation to the amendments to Part IV of the Act which came into effect early in 2003. I believe it to be the present view of the Commission that the judgment call by the Director as to a particular response to the application being an objection for the purposes of his duty under s.47I(1) cannot prevent the Commission member appointed to deal with it under s.47I(2) from determining, after consideration and/or enquiry, that the member is satisfied that it is not by nature an objection for the purposes of that section. The member's powers under s.47I(3)(c) relate only to an objection. Any comment on the application which does not amount to an objection cannot be the subject of a s.47I(3)(c) decision by such member. (The written responses to the present application by the Darwin City Council and the Director of Alcohol and Other Drugs, Department of Health and Community Services, are cases in point – see paragraph 43, *post*). Any comment which clearly does not intend to be an objection, or the nature of which is not *prima facie* that of an objection, can surely play no part in the Part IV process.

8. Such an approach to a “non-objection” does not disenfranchise its author from entitlement to a review of such a decision. For the very reason that the review process set out in s.47J of the *Liquor Act* could not apply to something determined *not* to be an objection, the review mechanism provided by s.28 of the *Northern Territory Licensing Commission Act* comes into play, because in the absence of any applicability of s. 47J of the *Liquor Act* there ceases to be any “appearance of a contrary intention in another Act” (vide s.25 of the *Northern Territory Licensing Commission Act*).
9. In my view it is entirely proper for the Director to be putting up to the Chairperson everything he considers *may* properly be adjudged by the Commission to constitute an objection, and leaving the Commission to determine the proper course of such matters within the application process from that point forward. S.47I allocates respective roles to Director and Chairperson and appointed member, and its purpose would be very much undermined if the Director’s initial judgments as to what he considers to be objections were to be binding on the member with the statutory appointment to inquire into their standing within the process. Even so, a screening decision by the Director that a response to an application does *not* constitute an objection might never come to the Commission’s knowledge, a situation surely fraught with concerns as to procedural fairness and natural justice. I am sure that any Court of review would be looking to be reassured that the Director would err on the side of caution in that regard.
10. A distinction needs to be made in the case of a response to an application which is expressly stated within its terms to be an objection, or is otherwise clearly intended to be an objection, but which nevertheless is adjudged by the investigating member to be incompetent in terms of s.47F (the section which is reproduced hereunder at paragraph 21). Such an objection is in a different position, seemingly intended by Part IV to be beyond any screening off by the Director and being generally within the investigating member’s powers of disposition. The distinction is between a non-objection and a defective objection.
11. Admittedly there is a troubling argument that inasmuch as s.47F(3) insists that an objection can *only* be made by the categories of persons or entities described, then an objection by somebody not within the permitted category list cannot be dealt with under s.47I(3) because it cannot be an objection. However, a line can be drawn from the relationship between s.47I(3) and s.47F(2). In similar restrictive vein to s.47F(3), s.47F(2) allows that an objection can *only* be made on the one specified ground, yet s.47I(3)(c)(i) clearly indicates that an objection failing to comply with this requirement still has to be dealt with by the investigating member as an objection, albeit a non-complying one. I take a similar and consistent approach to objections which after consideration and enquiry I find do not comply with other mandatory requirements of s.47F.
12. There can however be different outcomes depending on the different elements of non-compliance. Non-compliance of an objection with s.47F(2) is a specific ground

for dismissal under s.47I(3)(c)(i), and an objection contrary to s.47F(3) can be dismissed under s.47I(3)(c)(i) as irrelevant to the Commission's consideration of the licence application. On the other hand, non-compliance of an objection with s.47F(4)(d) is able to be either similarly dismissed by the appointed member or alternatively referred to the full Commission for a possible remedial determination pursuant to s.127 of the *Act* (see paragraph 68, *post*), and non-compliance with s.47F(4)(b) is susceptible to the receipt of further evidence (see paragraph 55, *post*).

13. I must admit to a degree of discomfort in ruling an objection to be "irrelevant", but in the case of non-compliance with s.47F(3) I can see no other choice: s.47I(3)(c) provides me with only two options, either to send an objection to a hearing or to dismiss it on one of the grounds provided by s.47I(3)(c)(i). As regards the qualification of an objection for a hearing, the intent of the legislation is clear, as confirmed by the Minister when he introduced it into Parliament on 16 October 2002:

*"Objections shall be subjected to a pre-hearing process by a member of the commission appointed by the chairman who will determine the standing of the objector.....Those objections found wanting will be refused leave to be heard."*

14. Thus an objection found wanting by reason of s.47F(3) is not to proceed to hearing, yet s.47I(3)(c)(i) is the only tool provided with which to deny it a hearing. If the objection is not frivolous or malicious, then being of an irrelevant nature is the only other basis of formal disqualification provided for the purpose. I consider that this statutory notion of irrelevancy can be taken to mean, without too much of a strain, irrelevant to the further progress and consideration of the application rather than irrelevant on any consideration of its substantive nature, and my rulings as to irrelevancy have been made on that basis.
15. I now look at the many responses to the present application that are before me as objections. Some background to the licence application is relevant in this context.
16. A similar liquor licence as is now applied for was previously held by Mr Li Ji Lim in relation to the same premises, which were then trading as "Alawa Foodland".
17. Following a hearing on complaint, the Commission by written decision dated 31 January 2003 found Mr Lim to have been in breach of the "credit condition" endorsed on the licence, and imposed a variation of that condition upon the licensee. Mr Lim was also given a certain time within which to return retained credit cards to their owners.
18. Subsequently the office of the Director laid further complaints with the Commission against Mr Lim in relation to his alleged non-compliance with the requirements of the Commission decision. These complaints did not proceed to hearing before

Mr Lim voluntarily surrendered the licence in August 2003. In that event, the Director's complaints lapsed.

19. It appears that the current applicant is a relative of the previous licensee, Mr Lim.
20. The foregoing background is relevant to my considerations under s.47I because of the basis of the objections of the largest group of objectors, being neighbourhood residents who apprehend a return of anti-social behavioural problems in the area which they maintain were in direct consequence of the operation of the previous liquor licence and which had ceased or reduced upon the surrender of that licence.
21. S.47F of the Act provides that apprehension of a grant of licence adversely affecting the amenity of the neighbourhood of the licensed premises is now the only available ground of objection to an application for a liquor licence. The section reads in full as follows:
  - (1) *Subject to this section, a person, organisation or group may make an objection to an application for the grant of a licence.*
  - (2) *An objection under subsection (1) may only be made on the ground 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.*
  - (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 of the Police Force;*
    - (d) *a member of the Fire and Rescue Service within the meaning of the Fire and Emergency Act;*
    - (e) *an Agency or a public authority that performs functions relating to public amenities;*
    - (f) *a community-based organisation or group (for example, a local action group or a charity).*
  - (4) *An objection under subsection (1) is to –*
    - (a) *be in writing;*

- (b) *be signed by or on behalf of the person, organisation or group making the objection;*
- (c) *set out the facts relied on by the person, organisation or group to constitute the ground on which the objection is made; and*
- (d) *be lodged with the Director within 30 days after the publication of the notice or the last of the notices referred to in section 27.*

(5) *If an objection is lodged by post, the objection is taken to be duly lodged with the Director if it is delivered to an office of Australia Post for transmission to the office of the Director within the period referred to in subsection (4)(d).*

22. Familiarity with what is alleged in effect to have been the adverse impact of the previous licence on the amenity of the local area is common to the largest group of objectors, albeit in varying degrees of factual detail. All claim to be resident in the suburb of Alawa, which I accept as being resident in the “neighbourhood”, given that street directories show the proposed licensed premises to be almost centred in that suburb. All of the group predict and are hostile to a return to the previously adverse neighbourhood environment.

23. All persons within this group are identified in the First Schedule hereunder. In relation to these persons I make the following findings:

- All are prima facie residing in the neighbourhood of the proposed licensed premises;
- All are objecting on the express or clearly implied ground that the proposed licence is likely to adversely affect the amenity of the neighbourhood;
- All their objections were lodged with the Director within thirty days of the second of the published notices of the application, and comply with s.47F(4) in all respects.

24. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objections of the persons named in the First Schedule is as follows:

- I am satisfied that their objections are not of a frivolous, irrelevant or malicious nature, and that (subject to the respective caveats noted in the First Schedule) they describe circumstances that may or will adversely affect the amenity of the neighbourhood;
- I determine that the Commission must conduct a hearing in relation to these objections.

25. The objection of Michael O’Malley, included in the First Schedule, includes an annexure bearing the endorsement “I support this objection” and signed by thirty-two more people. These persons are identified in the Second Schedule. All except

one give Alawa residential addresses. Some of the names are printed in block capitals rather than signed in cursive handwriting, but every such name is in a respectively distinctive handwriting not repeated elsewhere on the page in relation to any other name. In light of a wealth of relevant legal authority as to names printed in handwriting, in my view all these names must all be regarded as “signed”. But are they to be held to be objections?

26. The page bearing the signatures is an annexure to a complying objection. All persons signing the page (except Bill Carloss, see *post*) give residential addresses in Alawa, and the expressed purpose of their signatures is to indicate support for the detailed and complying objection to which they are annexed. The complete document read as a whole therefore contains a statement as to the grounds on which the additional signatories also object to the application. In my view each such person can be regarded in those circumstances as an objector in his or her own right rather than a “petitioner”, and only the objection of Bill Carloss is incompetent in terms of s.47F.
27. Mr Carloss gives an address in Coconut Grove. In pursuance of my investigative powers under s.47I(3)(b) I contacted Ms Barb Carloss who is another of the persons identified in the Second Schedule. As a result of my conversation with Ms Carloss, I am satisfied that her brother-in-law Bill does not reside or work in the Alawa area, and I make that finding. I therefore rule that the objection of Mr Carloss is irrelevant to the Commission’s determination of the application to which it relates, and I accordingly dismiss it pursuant to s.47I(3)(c)(i) of the *Act*.
28. The remainder of the persons named in the Second Schedule cannot be denied objector status. It may well be that many if not most (or even all) of such persons do not seek objector status, but the current legislation persuades me that they should be made aware that they have the option of attending a hearing in that role. As objectors, should they choose not to attend the hearing their objections will not be dismissed or otherwise wink out of existence, but will remain part of the material to be considered by the Commission in determining the application, albeit by then in the broader context of such evidence and further material as may by then have been received by the Commission by way of any hearing.
29. In relation to all persons identified in the Second Schedule, with the exception only of Bill Carloss, I make the following findings:
  - All are prima facie residing in the neighbourhood of the proposed licensed premises;
  - All are indicating an objection on a basis that is clearly referable to the likelihood of the proposed licence adversely affecting the amenity of the neighbourhood;
  - their objections comply with s.47F(4) in all respects.

30. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objections of the persons named in the Second Schedule is as follows:
- I am satisfied that their objections are not of a frivolous, irrelevant or malicious nature, and that they describe circumstances that may or will adversely affect the amenity of the neighbourhood;
  - I determine that the Commission must conduct a hearing in relation to these objections.
31. A small grouping of local residents do not make any reference to the previous liquor licence at the store but nevertheless have objected on a ground or grounds clearly referable to an apprehension of adverse affect on the neighbourhood amenity. These persons are identified in the Third Schedule. (It is to be noted that Third Schedule signatories Ron and Kay Harbeck are also signatories named in the Second Schedule).
32. In relation to the persons identified in the Third Schedule I make the following findings:
- All are prima facie residing in the neighbourhood of the proposed licensed premises;
  - All are objecting on grounds that are clearly referable to the likelihood of the proposed licence adversely affecting the amenity of the neighbourhood;
  - All their objections were lodged with the Director within thirty days of the second of the published notices of the application, and comply with s.47F(4) in all respects.
33. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objections of the persons named in the Third Schedule is as follows:
- I am satisfied that their objections are not of a frivolous, irrelevant or malicious nature, and that (subject to the caveat noted in the Third Schedule) they describe circumstances that may or will adversely affect the amenity of the neighbour- hood;
  - I determine that the Commission must conduct a hearing in relation to these objections.
34. Another group of objectors are the owners of business premises in Alawa. They fear that the grant of the licence will see a return of vandalism to the area with consequential damage to their businesses. I have no problem in regarding such persons as persons "working in the neighbourhood", nor their fears for their neighbourhood property and businesses as an apprehension that the grant of the

licence may, if not will, adversely affect that aspect of the amenity of the neighbourhood. These persons are identified in the Fourth Schedule.

35. In relation to the persons identified in the Fourth Schedule I make the following findings:

- All are prima facie persons who may properly be regarded as working in the neighbourhood of the proposed licensed premises;
- All are objecting on grounds that are clearly referable to the likelihood of the proposed licence adversely affecting the amenity of the neighbourhood;
- All their objections were lodged with the Director within thirty days of the second of the published notices of the application, and comply with s.47F(4) in all respects.

36. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objections of the persons named in the Fourth Schedule is as follows:

- I am satisfied that their objections are not of a frivolous, irrelevant or malicious nature, and that they describe circumstances that may or will adversely affect the amenity of the neighbourhood;
- I determine that the Commission must conduct a hearing in relation to these objections.

37. Objections have been lodged by two members of the Northern Territory's Legislative Assembly, the members for the electorates of Casuarina and Johnston. For the sake of consistency of the scheduled referencing, these two objectors are identified in the Fifth Schedule.

38. I have been informed of the terms of a subsequent letter received by the Director from the Member for Casuarina, and am satisfied that such letter did not intend to effect a withdrawal of his objection.

39. Reference to the NT electoral boundaries reveals that the area generally shown as Alawa in Darwin street directories, and in which area the Alawa Foodmart premises are almost centred, straddles both the electorates of Casuarina and Johnston. I am unable to see that the Parliamentary members for both those electorates are not therefore to be regarded as "working in the neighbourhood".

40. Despite the apparently representative nature of their objections (democratic representation being after all part of their "work" in and for the neighbourhood), both base their complaints on social problems with itinerants purchasing liquor from the store and consuming it in the vicinity. The complaints thus satisfy the requirements of s. 47F(2) and 47F(4)(c).

41. In relation to the persons identified in the Fifth Schedule I make the following findings:
- They are both persons who may properly be regarded as working in the neighbourhood of the proposed licensed premises;
  - they are objecting on grounds that are clearly referable to the likelihood of the proposed licence adversely affecting the amenity of the neighbourhood;
  - Their objections were lodged with the Director within thirty days of the second of the published notices of the application, and comply with s.47F(4) in all respects.
42. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objections of the persons named in the Fifth Schedule is as follows:
- I am satisfied that their objections are not of a frivolous, irrelevant or malicious nature, and that they describe circumstances that may or will adversely affect the amenity of the neighbourhood;
  - I determine that the Commission must conduct a hearing in relation to these objections.
43. I now deal with letters before me which although expressing unfavourable comment in relation to the application, are nevertheless in my view not objections. There are three such letters, from the persons identified in the Sixth Schedule. I need to deal with each of these separately.
44. The letter from Mr Conley plainly states that he is responding to an “opportunity to make comment on this application”. The thrust of his letter is to suggest that it would be “prudent” that the application should not proceed until past issues have been addressed. He does not indicate whether he or his Department objects or is adverse to the grant of the licence; indeed, no stance at all is outlined in relation to the merits of the present application. In my view his letter by its terms was clearly not intended to be an objection for the purposes of Part IV of the *Act*, and I determine it not to be an objection within or for the purposes of the Part IV process.
45. The letter from Darwin City Council is not as straightforward, being an advice that Council resolved that it “is not in favour” of the grant of new licence “until the issues raised in the petition to Council (dated 5 November 2003) have been addressed”. The “petition” referred to is the annexure to the objection of Michael O’Malley, a copy of which had been received earlier by the Council.
46. S.47I (3)(b) empowers me to conduct such investigation as I consider appropriate. I have therefore spoken with several persons at the Council office, and am satisfied that the resolution was carefully worded in the face of advice at the relevant Council meeting that if a formal objection was intended the resolution would need to plainly say so. In other words, the resolution and the letter of advice to the Director of

Licensing are to be taken at face value as a precise statement of the Council's position in the matter. I therefore determine that statement not to be an objection within or for the purposes of the Part IV process. (I note in passing that even as an objection it would have been out of time in any event).

47. Sharon Sykes writes expressing a "concern" grounded in the adverse affect on the neighbourhood amenity. She concludes by thanking the Director "for the opportunity to voice my concerns". She does not indicate in any way whether her concerns amount to a desire that the licence not be granted. After carefully considering this letter I am not satisfied that it is or was intended to be an objection, and I determine it not to be an objection within or for the purposes of the Part IV process. I note that prima facie it was also out of time as an objection, but I have not investigated the applicability of s.28(2) of the *Interpretation Act* and s.47F(5) of the *Liquor Act* to the circumstances of its receipt by the Director because it does not otherwise constitute an objection that could have gone to a hearing.
48. There are also several non-complying objections, by which I mean responses to the application which were clearly intended to be objections but which fall foul of one or more of the requirements of s.47F.
49. The objections of the persons identified in the Seventh Schedule do not state any grounds at all. In respect of these objections, I am satisfied that each objection does not describe any circumstances that may or will adversely affect the amenity of the neighbourhood, and I accordingly dismiss them pursuant to s.47I(3)(c)(i).
50. The two objectors named in the Eighth Schedule did not sign their objections. I have verified with the Licensing Inspector who has been co-ordinating this matter for the Director that what I have are true copies of what each objector lodged with the Director. Both objections on the Director's file have the objector's name typed at the foot of the document but are unsigned, prima facie contrary to the requirement of s.47F(4)(b). There is perhaps a query in my mind as to whether unsigned objections are objections at all, but if they were obviously intended to be objections I believe the proper approach, as I have already mentioned above, is to regard them as objections in need of a ruling on their non-compliance with the relevant part of s.47F.
51. The unsigned letter from Tricia Ross is an email. Although not framed as an objection, her emailed letter nevertheless urges the Commission not to allow the store to resume the sale of alcohol, on grounds of apprehension of reversion to the previous unsatisfactory situation with regard to intoxicated itinerants consuming liquor within the neighbourhood. In my view the letter does constitute an objection, but one that appears to be defective in terms of s.47F(4)(b). However, in my view the defect is curable.
52. Whereas a fax is the electronic transmission of an already existent paper document, an email (as distinct from its attachments) only exists in electronic form. The transmission creates the document. Even so, there are several ways in which to

digitally sign an email, as distinct from ways of reproducing an image of a signature within an email. The latter process is not a secure one in that it is generally reversible after receipt, even if within a “.pdf ” file, although it seems technology for securing this sort of signature across all file types is imminent. Digital signing, on the other hand, is already a secure process, although as almost always with fast developing new technology the situation is confused by competing systems and is generally not yet within the knowledge, needs or skill levels of the average home email user. It seems that there will be no comfortable acceptance of digital signing in commercial matters by the judiciary until standardisation can be achieved between the different systems. However, there are indications that a Court is more likely to accept a digital signature at the present time where the function of the signature is not to indicate an intention to be bound by the terms of a document but to merely confirm or validate a document’s authorship.

53. It is this latter type of signature that is normally associated with statutory requirements for forms or applications to be signed, and would certainly seem to be the case with s. 47F(4)(b) of the *Liquor Act*. But Ms Ross has simply typed her name at the foot of the email. Can this be accepted as “signed” in the case of an email?
54. However unlikely it may at first seem that a nineteenth century legal authority on signatures might be relevant in this digital age, going back to basic principles in this instance is instructive. In what is still regarded as the classic authority on the nature of signatures, one Higginbotham J in the Victorian Supreme Court in *R v Moore; Ex Parte Myers (1884) 10 VLR 322*, made the following comments:

*It was observed by Patterson J in Lobb v Stanley, that the object of all Statutes which require a particular document to be signed by a particular person is to authenticate the genuineness of the document. A signature is only a mark, and where the Statute merely requires a document shall be signed, the Statute is satisfied by proof of the making of the mark upon the document by or by the authority of the signatory ... In like manner, where the Statute does not require that the signature shall be an autograph, the printed name of the party who is required to sign the document is enough ... or the signature may be impressed upon the document by a stamp engraved with a facsimile of the ordinary signature of the person signing ... But proof in these cases must be given that the name printed on the stamp was affixed by the person signing, or that such signature has been recognised and brought home to him as having been done by his authority so as to appropriate it to the particular instrument.*

55. It seems to me that the method of creation of the document does not necessarily vitiate the essence of this classic approach, and that in the case of an email it is a question of proof of intent or acknowledgment on the part of the author. That is, the email can be accepted as a signed document for the purposes of the statute if there is sufficient other or external evidence that the author of the email intended the machine-printed name to stand as a signature and acknowledges and stands by it as a signature. Such evidence would need to be available now, within the s.47I(3)

assessment process, otherwise I would be unable to send the objection on to a hearing with its signature issue unresolved.

56. I therefore contacted Ms Ross, pursuant to my powers of investigation under s.47I(3)(b). I record that she certainly acknowledges and stands by her printed name in her email as a signature. There was a question in my mind as to whether more evidence should be required than just my conversation with a voice on the telephone. However, I have decided against requiring further evidence from Ms Ross on this issue after taking into account the following considerations:

- The issue is to be resolved on the balance of probabilities;
- The telephone number came to me from the file of the licensing inspector who had already been in communication with Ms Ross;
- At the conclusion of my telephone conversation I had no doubt that the person I had spoken to was the objector Tricia Ross;
- The issue would seem to be the sort of factual circumstance that the legislation contemplates or allows being resolved or settled by recourse to s.47I(3)(b).

57. I therefore rule that my above note of my telephone conversation with Ms Ross is to stand as sufficient evidence of her type-printed signature being acknowledged by her as intended to stand as a signature for the purposes of s.47F(4)(b) of the *Liquor Act*.

58. On another issue, it became evident while speaking with Ms Ross that she no longer resides in the Alawa area, and that upon her return from her present holiday in Queensland she will be seeking a new residence in an area of Darwin she cannot at this stage indicate. It will depend on what suitable property she may locate. However, she remains in her position with Anglicare, in which role she will continue to make house calls to several clients who reside in the neighbourhood of Alawa Foodmart. Ms Ross suggests that on that basis she should be regarded as working "in the neighbourhood", and on reflection I accept that proposition.

59. The objection of Ms Ross was also prima facie out of time, but comes within the circumstances of acceptability described in paragraph 66, having been emailed on 10 November 2003.

60. My findings in relation to Tricia Ross are therefore as follows:

- She is a person who may properly be regarded as working in the neighbourhood of the proposed licensed premises;
- She is objecting on grounds that are clearly referable to the likelihood of the proposed licence adversely affecting the amenity of the neighbourhood;
- Her objection complies with s.47F(4) in all respects.

61. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objection of Tricia Ross is as follows:

- I am satisfied that her objection is not of a frivolous, irrelevant or malicious nature, and that (subject to the caveat noted in the Eighth Schedule) it describes circumstances that may or will adversely affect the amenity of the neighbourhood;
- I determine that the Commission must conduct a hearing in relation to these objections.

62. The other objector identified in the Eighth Schedule is Antoinette Wells, whose objection is unsigned but otherwise compliant with s.47F. She too has typed her name at the conclusion of her objection, and consistent with my foregoing remarks on the nature of signatures I sought to contact Dr Wells. I am advised by her staff that she is on holiday interstate, and will not be able to be contacted until the end of January 2004. I am not prepared to delay this matter until then, nor am I prepared to try to craft some conditional approval of her objection. In fairness to the applicant, if a query hanging over an objection cannot be resolved in the normal course of my current investigation then I am unable to determine as an outcome of that investigation that the offending objection should go to hearing.

63. My formal finding therefore in relation to the objection of Antoinette Wells is that I am satisfied that by reason of its unsigned nature the objection must be ruled to be irrelevant to the Commission's determination of the application to which it relates, and I accordingly dismiss it pursuant to s.47I(3)(c)(i) of the *Act*.

64. I indicate that should it be determined that I had no power to dismiss an unsigned objection in this way, then I would have determined that I equally had no power to determine that a hearing should be conducted in relation to an unsigned objection.

65. The last group of non-complying objections are by the persons identified in the Ninth Schedule, and are objections whose only prima facie defect is that they were received out of time, and do not appear to comply with s.47F(4)(d). Objections needed to have been lodged by 9 November 2003.

66. However, 9 November 2003 fell on a Sunday, and s.28(2) of the *Interpretation Act* provides that in that circumstance the statutory action required to be taken within a period expiring on a Sunday or a public holiday may be taken on the next day. In combination with s.47F(5) of the *Liquor Act* this allows objections to have been put into the post or emailed on Monday 10 November 2003. On the face of the documentation before me, this validates the objections of the Police officer and of the principal of the Alawa Primary School. In relation to those two objections I make the findings that:

- The objections are compliant with s.47F(4);

- Each objector has statutory standing to be an objector under s.47F(3);
- They are objecting on grounds that are clearly referable to the likelihood of the proposed licence adversely affecting the amenity of the neighbourhood.

67. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objections of the Police and the principal of the Alawa Primary School is as follows:

- I am satisfied that their objections are not of a frivolous, irrelevant or malicious nature, and that (subject to the respective caveats noted in the Ninth Schedule) they describe circumstances that may or will adversely affect the amenity of the neighbourhood;
- I determine that the Commission must conduct a hearing in relation to these objections.

68. The objection of Pamela Carmody was dated 10 November 2003 but faxed to the Director on 11 November 2003. This objection cannot be validated by s.28(2) of the *Interpretation Act* because lodgment action of whatever sort needed to have been taken on the 10<sup>th</sup>. However, the Commission has the power under s.127 to save this objection by extending the time retroactively within which it needed to have been lodged. I cannot exercise such power myself within the ambit of my appointment for the limited purpose of the Part IV objection process; it is a power that requires a quorum of, or delegation from, the corporate Commission.

69. I therefore referred the objection of Ms Carmody to the Commission for possible action under s.127 of the *Liquor Act*.

70. On 9 January 2004 the Commission met at my behest and considered the circumstances of the receipt of Ms Carmody's objection. The Commission at that time then determined that pursuant to s.127 of the *Liquor Act* the time within which Ms Carmody was required to have lodged her objection be extended by two days, the extended period expiring on 11 November 2004.

71. In relation to Ms Carmody's objection I therefore now make the following findings:

- Her objection is compliant with s.47F(4);
- She is prima facie residing in the neighbourhood of the proposed licensed premises;
- She objects on a basis that is clearly referable to the likelihood of the proposed licence adversely affecting the amenity of the neighbourhood;

72. After considering the written responses of both the applicant and her mother to the objections, my formal decision in relation to the objection of Pamela Carmody is as follows:

- I am satisfied that her objection is not of a frivolous, irrelevant or malicious nature, and that (subject to the caveat noted in the Ninth Schedule) it describes circumstances that may or will adversely affect the amenity of the neighbourhood;
- I determine that the Commission must conduct a hearing in relation to the objection.

73. An objection was also received from a person who gives no residential address and does not wish to be identified to other parties without her consent. An objection cannot proceed on that basis. Not only does an objector become a party in the proceedings (s.51(11)(b) of the *Act*), but under the scheme of Part IV of the *Act* the applicant is entitled to know the basis of the standing of each objector to make the respective objections. This person has an entry in the Darwin telephone book with an Alawa address, but I cannot process an objection on the basis of even partial anonymity. I therefore determine this particular response to the application not to be an objection within or for the purposes of the Part IV process.
74. There remains to note a general caveat in relation to hearings of the accepted objections. Many objectors make reference to previous complaint action against the previous licensee of the Alawa Foodland premises, and some make accusations against the previous licensee that read more in the nature of complaints in themselves. The administrative or other history of the previous liquor licence will only be permitted to be raised at the hearing of any objection insofar as it will be argued to be relevant to any apprehension of adverse affect on the neighbourhood amenity as a consequence of the new licence being granted. The previous licensee's management of his licence will not of itself be in issue, or otherwise be relevant.
75. In reaching the various foregoing decisions I have not given any consideration to the substance of the application nor to the relative merits of the application and the objections, but have confined myself to the statutory brief constituted by s.47I(3) of the *Liquor Act*. The assessment of the relative merits of the application and those objections which have not been rejected or dismissed will be a matter for the corporate Commission in deciding whether or not to grant the licence.
76. By way of convenient summary, the present position is that the letters from the persons named in the Sixth Schedule (and from one other person I do not identify) have been determined not to be objections, and the objections of Bill Carloss, Antoinette Wells and the persons named in the Seventh Schedule have been dismissed. All others are to be heard.
77. Those persons whose responses to the application for the liquor licence have been determined not to amount to an objection may seek a review of the relevant decision pursuant to s.28 of the *Northern Territory Licensing Commission Act*. Such application for review must be made within 28 days of receipt of the decision in respect of which a review is sought. Those objectors whose objections have been

dismissed pursuant to s.47I(3)(c)(i) of the *Liquor Act* may apply for a review of the relevant decision pursuant to s.47J of the *Liquor Act*. An application for review under s.47J must be made within 14 days of receipt of the decision in respect of which a review is sought.



John Withnall  
14 January 2004

First Schedule

*(neighbourhood residents fearing reversion to  
previous problematic local environment)*

Robyn Malby  
Don Jackson  
Mr and Mrs Marshall  
Jude Murdock  
Ray Swann  
Gerry Van Wees  
Andrew Mills and John Mann  
Grant and Julia Billsborrow  
Janice Warren  
Peter and Jenny Robinson  
Chris and Maria Ola  
Michael O'Malley  
Chris Jones  
Karina Plunkett  
Marion Fanning

*(Hearing of the objections of the following persons to be subject to caveat \*1 below):*

Simon Donnelly  
Patricia and Gilbert Jean  
Julie Parkinson  
John Rogers  
Glenys Lancaster  
Marilyn Hawthorn  
Cheryl and Andrew Fyles  
Darryl Legg

*(Hearing of the objections of the following persons to be subject to caveat \*2 below):*

David Reader  
Robert and Sarah McAusland

*(Hearing of the objections of the following persons to be subject to caveat \*3 below):*

Chris Moffitt  
John and Tiiu Knight  
James Walker

Second Schedule  
(the “supporters” of the O’Malley objection)

Robyn Ducat  
 Steven McMurray  
 Ron Harbeck  
 Jackie Das Gupta  
 Esther Woollard  
 Barry Denholm  
 F V Schmid (?)  
 Sharon Finch  
 Kay Harbeck  
 Peter Lovejoy  
 Henry Lovejoy  
 Tomasz Sciwinsk  
 E Collings  
 Stephen Calvys (?)  
 Louise Lenzo  
 Peter Fuller  
 Alasdair Dunwoodie  
 Kaye Kimber  
 Alexi Boubaris  
 Fritz Nabholz  
 Lynnette Nabholz  
 Lyle Lee  
 Thelma Lee  
 Maree Klesch  
 Rachel Klesch  
 Barb Carloss  
 Bill Carloss (*objection dismissed*)  
 Matt Swanson  
 Elizabeth Whalan  
 Christhol Vivian  
 Jennifer Whalan  
 Sue Franks

Third Schedule  
(other neighbourhood residents)

M. and C. Wood  
 Ron Harbeck  
 Kay Harbeck  
 Brian Bates (*subject to caveat \*1 below*)

Fourth Schedule  
(neighbourhood business owners)

Julie D'Or  
Michael Hatton  
Debbie Bell

Fifth Schedule  
(local MLAs)

Kon Vatskalis MLA, Member for Casuarina  
Chris Burns, MLA, Member for Johnston

Sixth Schedule  
(comments not by nature objections)

Damien Conley, Director, Alcohol and Other Drugs, Department of Health and  
Community Services  
Darwin City Council  
Sharon Sykes

Seventh Schedule  
(no grounds provided, objections dismissed)

Maureen and Bob Archbold  
Julie Mallise

Eighth Schedule  
(objections unsigned)

Antoinette Wells (Objection dismissed)  
Tricia Ross (subject to caveat \*1 below)

Ninth Schedule  
(only defect being prima facie out of time)

*Ruled to comply with s.47F(4)(d):*

Assistant Commissioner Mark Payne, of the NT Police (subject to caveat \*1 below)  
Sharon Reeves, for the Alawa Primary School

*Referred back to Commission before being ruled to comply with s.47F(4)(d):*

Pamela Carmody (subject to caveat \*3 below)

Caveats

*Caveat \*1: The objections of these persons included reference to an additional ground relating to the adequacy of existing liquor outlets. This ground is no longer available as a discrete ground of objection, and will be permitted to be raised at the hearing only insofar as it may be shown to have any bearing on any adverse effect of the proposed new licence on the amenity of the neighbourhood.*

*Caveat \*2: The objections of these persons included an additional ground relating to the practice of retention of credit cards at the venue. This ground does not prima facie come within the permitted ambit of s.47F(2) and will be permitted to be raised at the hearing only insofar as it may be shown to be likely to relate or contribute to any adverse effect of the proposed new licence on the amenity of the neighbourhood.*

*Caveat \*3: The objections of these persons included the additional grounds referred to in both caveats \*1 and \*2 above, and the hearing of their objections will be subject to the conditions referred to in both the above caveats.*

(Decision ends: John Withnall, 13 January 2004)