

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	DIGGERS DEN RESTAURANT Victoria Highway, Katherine
LICENSEE:	Arminio Niceforo
LICENCE NUMBER:	80504951
PROCEEDING:	Section 47I of the <i>Liquor Act 1978</i> , Decision on whether objections proceed to hearing.
DATE OF THESE REASONS:	15 May 2003
OBJECTORS:	Ms Joanna Gleeson Mr Mark Gage & Ms Pauline Gage, together with Mr Dean Burns & Ms Vicki Burns

The licensee has applied to vary the conditions of the licence. The licence requires the premises to trade as a restaurant. The application was advertised in the public notices section of the "The Katherine Times" on Wednesday 5 February 2003 and Wednesday 12 February 2003. As stated in the advertisement, the proposed licence conditions will not require the premises to trade as a restaurant.

The advertised application attracted two objections, one of which was lodged on behalf of four signatories.

The information placed before me by the Director of Licensing indicates that both objections are lodged by residents of the neighbourhood, each having given a street in the near vicinity of the premises as their residential address. The requirements of s.47F (3)(a) are thus satisfied.

The objection of Ms Gleeson asserts that the premises is situated in close proximity to residential housing and aged care facilities, that noise levels emanating from bands would be inappropriate due the close proximity of residential dwellings, that opportunity for parking is limited, and that the premises is not of acceptable standard; thus, drunken and violent itinerants would be encouraged to loiter within the residential area. In my view all elements of Ms Gleeson's objection bear upon the amenity of the neighbourhood and so satisfy the requirements of s.47F (2).

The objection lodged by Mr & Mrs Page and Mr & Mrs Burns is structured in six numbered paragraphs. Paragraphs 1, 2 and 3 refer to in the main to noise, parking and patron behaviour. I find that these paragraphs satisfy the “amenity” requirements of s.47F (2).

As to the matters raised in paragraphs numbered 4 and 5 of the objection, these fail to satisfy the “amenity” requirements of s.47F (2) and are dismissed. Paragraph 6, is in my view, irrelevant in the context of s.47F.

The applicant’s responses to the objections are contained in letters from Ms Diana Elliott dated 24 March and 10 April 2003. I have not weighed the objections in the light of these responses. My task lies at s.47I (c). It is to determine whether the Commission must conduct a hearing in relation to the objections. As stated earlier, I am satisfied the objectors are persons resident in the neighbourhood and that the objections, unless otherwise specified earlier in these reasons, relate to the amenity of the neighbourhood and should be heard by the Commission. The assessment of the objections against the detail of the application is in my view, a matter for the Commission at the hearing.

No attention has been given to the handwritten objection submitted by a “Katherine resident”, dated 27 February 2003. The intended objection, unsigned by “a person”, does not satisfy the demands of s.47F (4)(b).

The material placed before me by the Director includes a letter from Acting Superintendent David Pryce of the Northern Territory Police. The Superintendent’s letter lists some two pages of licence conditions which it is claimed have been agreed by the applicant. Mr Pryce states that it is on this basis that the application is not opposed. No such agreement appears within Ms Elliott’s responses for the applicant. The determination of licence conditions is in my view, a matter for the Commission and should be dealt with at the hearing of objections.

These findings are to be forwarded to the applicant, to the objectors and to Acting Superintendent Pryce.

Peter R. Allen

Member selected by the Chairman pursuant to s.47I (2).