

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISIONS ON WHETHER OBJECTIONS TO PROCEED TO HEARING

PREMISES:	GREEN PARK TOURIST COMPLEX LARRIMAH
PROCEEDING:	Consideration of objections pursuant to s.47I of <i>Liquor Act</i>
APPLICANT:	DIANNE ROGERS
DECISIONS OF:	Mr John Withnall
DATE OF DECISIONS:	24 January 2005
OBJECTORS:	Asst Commr of Police Mark Payne Barry James Sharpe and Frances Hodgetts “the residents of the Town of Larrimah”, namely Ann Marie Kanters, Garry White, Brian Woods, Fran Hodgetts, William Hodgetts, Troy Harvey, Glen Mohammed and Kirsten Jimmy

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1. The licensee of the Green Park Tourist Complex at Larrimah seeks to vary her licence conditions by the installation of bar and take-away facilities, to effectively change the nature of the licence from a quite limited “On Licence” to a public tavern. In view of the requested changes having a potential to significantly impact upon the community of Larrimah, the Commission required the licensee to advertise the proposal by way of notices in two editions of the “Katherine Times”, vide s.32A of the *Liquor Act* (“the Act”).
 2. As a result of the advertising of the application three letters of objection (involving ten objectors in all) were received by the Director of Licensing, who forwarded them (and the applicant’s responses) to the Chairperson on 7 January 2005 pursuant to s.47I(1) of the *Act*.

3. As Chairperson of the Commission I then selected myself to be the member to consider the substance of these objections pursuant to s.47I(2) of the *Act*. As such selected member of the Commission my primary statutory task is delineated by s.47I(3) of the *Act*, which reads as follows:

- (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.*

4. The significant relevant amendment effected by the *Liquor Amendment Act 2004* was to partially re-expand the permitted grounds of objection, as now reflected in (3)(c)(i)(B) above. Before the amendment the only permitted ground of objection was apprehension of adverse affect of the granting of an application upon the amenity of the neighbourhood. In the present case therefore apprehension of adverse affect on the health, education, public safety or social conditions in the community is now also an available ground of objection.

5. I now turn to the objections.

Assistant Commissioner Mark Payne

6. This objection is dated 17 December 2004, and faxed to the Director's office on that day. The second advertisement was published on 17 November 2004, allowing thirty days for objections. The objection of Assistant Commissioner Payne was therefore received on the thirtieth day. The police officer has standing to object by virtue of s.47F(3)(c) of the *Act*. All stated grounds of objection are in apprehension of adverse consequences for either the social or physical environment of the neighbourhood or for health, public safety or social conditions in the community.

7. After considering the written response of the applicant to the objection, my formal decision in relation to this objection is as follows:

- I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature, and that it describes circumstances that may or will adversely affect either the amenity of the neighbourhood or health, public safety or social conditions in the community;
- I determine that the Commission must conduct a hearing in relation to the objection.

Barry James Sharpe and Frances Hodgetts

8. This objection is signed by solicitor Graham Cole on behalf of both objectors, and complies with s.47F(4)(b) in that regard. It was received by fax within thirty days of 17 November 2004. Both objectors appear to reside in Larrimah, which I determine to be both the relevant neighbourhood and within the relevant community for the purposes of s.47F(3). The essence of the stated grounds of objection is that the sale of more rather than less alcohol would adversely affect the amenity, health, public safety and social conditions of Larrimah.

9. It is to be noted that one of the factual allegations contained in the objection is that *all* alcohol products are sought to be sold, whereas the applicant responds that she does not seek to sell bottled spirits or fortified wine. However, after considering the entirety of the objection in relation to the written response of the applicant, my formal decision in relation to this joint objection is as follows:

- I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature, and that it describes circumstances that may or will adversely affect either the amenity of the neighbourhood or health, public safety or social conditions in the community;
- I determine that the Commission must conduct a hearing in relation to the objection.

“the residents of the town of Larrimah”

10. All the named residents appear to have Larrimah residential addresses, and all have signed the objection which was faxed to the office of the Director on 17 December 2004, the thirtieth day from the second advertisement.

11. The several grounds of this objection require separate consideration.

12. The allegation of financial hardship to the existing licenced business in town is not a permitted ground of objection, and never has been.
13. The allegation that a tavern “would be of no benefit” to the Larrimah community cannot be seen in itself to be an allegation of any adverse affect. The allegation needs to be of a negative net community benefit rather than an allegation of the changes being in effect benefit-neutral.
14. The allegation that the town is already adequately serviced in respect of alcohol and accommodation is not linked to any aspect of adversely affected amenity, health, education public safety or social conditions other than by way of alleging the possibility of increased drink driving offences. This is the only aspect of the objection which in my view is able to go to hearing.
15. After considering the entirety of the objection in relation to the written response of the applicant, my formal decision in relation to the residents’ objection is that the only element of the objection I am satisfied is not of a frivolous, irrelevant or malicious nature, and which describes circumstances that may or will adversely affect either the amenity of the neighbourhood or health, education, public safety or social conditions in the community, is the allegation of apprehension of increased drink driving offences. Therefore
 - I determine that the Commission must conduct a hearing in relation to the objection, but only in relation to the ground of objection that the proposed new trading conditions may “facilitate the increased incidences of drink driving offences”. The other grounds of the objection are dismissed.

It is to be noted that the Fran Hodgetts who has signed the residents’ objection appears to be the same person as Frances Hodgetts whose separate objection has been determined to be heard in any event.

Decision Summary

Objection dismissed in part: the named “residents of the town of Larrimah”

Objections to go to hearing: Assistant Commissioner Payne, of NT Police

Barry James Sharpe and Frances Hodgetts

the named “residents of the town of Larrimah”
but only in relation to the ground of objection
which refers to the apprehension of increased
incidence of drink driving offences

17. In relation to the objection which I have in part dismissed, in accordance with s. 47I(4) of the *Act*, I direct the Director of Licensing to inform the persons who made that objection that the respective grounds of objection have been dismissed, and that their objection is to be heard on the single stated ground only.

Nature of decision

18. I confirm that I have made no assessment of the merits of any objection relative to the application for the liquor licence, but have dealt with them only in terms of the s.47I(3) statutory brief, which is to say that I have in effect “vetted” their entitlement to go to a hearing. It will be for the objectors to make out their (permitted) grounds of objection at the hearing, and as a general proposition it will remain open to the applicant at any hearing of objections to contest the relevance or weight of any aspect of any objection on any basis. The assessment of the relative merits of the application and those objections which are to go to hearing will be a matter for the corporate Commission in deciding whether or not to grant the licence.

John Withnall
24 January 2005