

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISIONS ON WHETHER OBJECTIONS TO PROCEED TO HEARING

PREMISES:	MELALEUCA ON MITCHELL
PROCEEDING:	Consideration of objections pursuant to s.47I of <i>Liquor Act</i>
APPLICANT:	VALUE INN PTY LTD
DECISIONS OF:	Mr John Withnall
DATE OF DECISIONS:	04 August 2004
OBJECTORS:	YHA Northern Territory Mr Justin Coleman Shenannigans Pty Ltd Mr Gary Coleman Mr Terry Dowling DNPW Pty Ltd Ducks Nuts Pty Ltd Australian Hotels Association Northern Territory Branch

1. An application for a new liquor licence for premises under construction to be known as "Melaleuca on Mitchell" was advertised in the "N.T News" on 14 and 16 April 2004.
2. Five letters of objection (involving eight objectors in all) were received by the Director of Licensing, who forwarded them (and the applicant's responses) to the Chairperson on 30 June 2004 pursuant to s.47I(1) of the *Liquor Act* ("the Act").
3. On 12 July 2004 I was selected by the then 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* as it was at the time of the application (see Schedule 2 to the *Liquor Amendment Act 2004*). Prior to the *Liquor Amendment Act 2004*, s.47I(3) of the *Principal Act* read 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) *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. The significant relevant amendment effected by the *Liquor Amendment Act 2004* was to partially re-expand the permitted grounds of objection. For most of the life of the *Liquor Act* any person was able to object to any application on any grounds. Effective from 24 January 2003, the *Liquor Amendment Act 2002* restricted the available grounds of objection to the single ground of adverse affect upon the neighbourhood. Effective from 5 May 2004 the *Liquor Amendment Act 2004* added the grounds of health, education, public safety or social conditions in the community, but only in respect of new applications made subsequent to the commencement date.
5. In the present case, therefore, the available grounds of objection remain limited to adverse affect upon the neighbourhood.
6. On that basis I now turn to the objections.

YHA Northern Territory Inc

7. A corporate body is a “person” for the purposes of all legislation: *Interpretation Act*, s.19. This corporate objector is the proprietor of premises in Mitchell Street directly opposite the proposed new licensed premises, and accordingly has the standing to be an objector pursuant to s.47F(3)(b) of the *Act*. In any event the YHA in my view can also be said to be a person “working” in the neighbourhood, vide s.47F(3)(a).
8. The YHA objects (my summary) that the design of Melaleuca On Mitchell, its proposed trading conditions and drinking environment will impact on the amenity of its members and of Mitchell Street in general.

9. 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 the amenity of the neighbourhood;
 - I determine that the Commission must conduct a hearing in relation to the objection.

Justin Coleman and Shenannigans Pty Ltd

10. Shenannigans Irish Pub in Mitchell Street is almost directly across the road from the proposed Melaleuca. The objector Shenannigans Pty Ltd is claimed to be the proprietor of "Shenannigans Irish Bar and Restaurant". No connection of Mr Justin Coleman with Shenannigans business is actually claimed.
11. Both these objectors are said to rely for their standing to object on both ss.47F(3)(a) and (b) of the *Act*, with no particularisation or distinction. It was not clear to me whether it is claimed that either or both own and/or lease land in the neighbourhood and/or reside and/or work in the neighbourhood.
12. In further confusion of the situation, I had corporate Commission knowledge that the liquor licensee of the Shenannigans venue in Mitchell Street is Shenannigans Irish Pub Pty Ltd, not Shenannigans Pty Ltd.
13. Because of the confusion as to the identity of the corporate objector and its connection with Mr Justin Coleman, I had recourse to my power under s.47I(3)(b) enabling me to inquire into any circumstance relating to the objection as I consider appropriate.
14. In pursuance of that power I caused to be made a series of company searches at the Australian Securities & Investments Commission (ASIC), and business name searches at the Territory Business Centre.
15. The ASIC searches disclosed that the objector Shenannigans Pty Ltd does not appear to exist. There are recorded incorporations of only

Shenannigans One Pty Ltd (ACN 081857534)

Shenannigans Two Pty Ltd (ACN 081857507)

Shenannigans Irish Pub Pty Ltd (ACN 071891588)

16. Justin Andrew Coleman is a Director and Secretary of all of the above companies.
17. The business name Shenannigans Irish Pub expired in March 2000. The current business name of plain "Shenannigans" is registered with the TBC as the operator of the tavern licence, with the proprietor of that business shown as Shenannigans Irish Pub Pty Ltd. As already mentioned, the liquor licence is held by Shenannigans Irish Pub Pty Ltd.
18. I have no choice but to dismiss the objection of the non-existent Shenannigans Pty Ltd as irrelevant, pursuant to s.47I(3)(c)(i)(A) of the *Act*.
19. To the extent that Mr Justin Coleman's standing to be an objector relies on his personal proprietorship of the Shenannigans venue, he must fail, and his ownership or lease of any other "land in the neighbourhood" is not stated (although I note that the searches of the above companies show a residential address on the Darwin Esplanade for Mr Coleman, at least between 1995 and 1998). However, as Director and Secretary of the corporate proprietor of the tavern, he no doubt claims to personally work there, and on due consideration I am of the view that he should be accorded the standing of a person "working in the neighbourhood" in terms of s.47F(3)(a).
20. Moving then to the compliance of the "substance" of the objection, the many particularised grounds are carefully linked to an over-all allegation of adverse affect on the amenity of the neighbourhood. Whether or not all the grounds are likely to be made out in terms of the *Act* is not a matter for my premature comment at this stage; I am simply holding that they are crafted in such a manner as entitles Mr Coleman to have the opportunity to attempt to make them out by way of a hearing.
21. After considering the written response of the applicant to the objection, my formal decision in relation to Mr Justin Coleman's 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 the amenity of the neighbourhood;
 - I determine that the Commission must conduct a hearing in relation to the objection.

Gary Coleman

22. This objector is described as the proprietor of the businesses “Colemans Printing” and “Quickprint”, said to be “located in the Central Business District of Darwin”. No specific addresses are given. Mr Coleman too relies on both ss.47F(3)(a) and (b) for his standing to object, without further particularisation.

23. In the absence of addresses on which to make a determination as to unity of “neighbourhood” I again had recourse to s.47I(3)(b), consulting the current Darwin telephone directory to establish that Coleman’s Printing is shown as being at 68 Cavenagh Street in Darwin while Quickprint is at 14 Knuckey Street. A business name search in relation to Quickprint also shows the operative address as 14 Knuckey Street.

The initial question therefore arises as to whether the businesses are in the same “neighbourhood” as Melaleuca.

25. I do not accept that the Darwin CBD is necessarily a single neighbourhood in this context. It surely varies with perspective. On a Territory-wide view, two bush properties many kilometres apart might quite reasonably be seen as being in the same neighbourhood, with their occupants perceived as neighbours in the traditionally accepted sense. However, the perspective narrows from a strictly urban viewpoint.

26. I do not see that the “bottom” of Cavenagh Street is clearly in the same neighbourhood for the purposes of s.47F of the *Act* as that part of Mitchell Street where the Melaleuca is being constructed. The urban character is different, the geographical separation significant in the urban context.

27. The premises at 14 Knuckey Street, however, are just around the corner from Mitchell Street, and only a few hundred metres from the Melaleuca. The rear of the Melaleuca is in line of sight down Shadforth Lane from a footpath area near Quickprint, and amenity issues for the Quickprint premises arising out of the proximity of the Melaleuca operation are quite conceivable.

28. In my view it is his proprietorship of the Quickprint premises that can give Mr Gary Coleman the standing to be an objector to the Melaleuca application. However, business name search shows that Mr Coleman is not the proprietor of Quickprint. The proprietor is Colemans Printing Pty Ltd, a company of which Gary Vincent Coleman is a director and the Chief Executive Officer.

29. To the extent that Mr Gary Coleman’s standing to be an objector relies on his personal proprietorship of Quickprint, he must fail, and his ownership or lease of any other “land in the neighbourhood” is not stated. The search material consistently refers to a residential address for him at Casuarina.

30. However, inasmuch as he is Chief Executive Officer of the company that operates the Quickprint business, I have no difficulty in allowing that he personally works there and should be accorded the standing of a person “working in the neighbourhood” in terms of s.47F(3)(a).

Moving then to the compliance of the “substance” of the objection, again I perceive the many particularised grounds to be carefully tied to an over-all allegation of adverse affect on the amenity of the neighbourhood. Again I make the point that whether or not all the grounds are likely to be made out in terms of the *Act* is not a matter for my assessment at this stage; I am simply holding that the objection is made in such terms as entitles Mr Coleman to have his case heard.

32. After considering the written response of the applicant to the objection, my formal decision in relation to Mr Gary Coleman’s 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 the amenity of the neighbourhood;
- I determine that the Commission must conduct a hearing in relation to the objection.

Terry Dowling, DNPW Pty Ltd (“Pig & Whistle”), and Ducks Nuts Pty Ltd

33. This objection is dated 17 May 2004 and was received in the Director’s office by fax at 19:28 on that day. It was thus prima facie out of time as an objection.

34. S.47F(4)(d) provides that an objection must be lodged with the Director within thirty days of the second advertisement. In the present case, objections had to be lodged within thirty days of 16 April 2004, ie. on or by 16 May 2004. These objections on their face were therefore already out of time when drafted.

35. However, the date 16 May 2004 fell on a Sunday, whereby s.28 of the *Interpretation Act* allows the objections to have been lodged with the Director the following day, 17 May 2004.

36. All of these objectors claim to fall within ss.47F(3)(a) and (b), ie. residing or working in the neighbourhood and holding a lease over land in the neighbourhood. Both the Pig & Whistle (as it then was) and Ducks Nuts venues are in Mitchell Street and no more than a few hundred metres from the Melaleuca, and are undeniably in the same neighbourhood. Their corporate proprietors thus have the necessary standing to object. Mr Dowling personally is in a similar situation to that of Justin Coleman: as a Director and the Secretary of DNPW Pty Ltd, he can be perceived to be a person “working in the neighbourhood” in terms of s.47F(3)(a).

37. Turning to the substance of the objections, again the particularised grounds are carefully linked to requisite allegations of adverse affect on the amenity of the neighbourhood. Again I hold that the prima facie compliance of these objections with the *Act* requires that they be heard.
38. After considering the written response of the applicant to the objection, my formal decision in relation to the foregoing set of objections is as follows:
- I am satisfied that the 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 the objections.

Australian Hotels Association NT

39. This objection too is dated 17 May 2004, and was received in the office of the Director on that date.
40. The AHA objection is therefore also prima facie out of time, but is also saved by s.28 of the *Interpretation Act*.
41. However, in my view no standing of the AHA to object is to be found in s.47F(3). The AHA is patently not a “public authority”, nor can it be an Agency, which is a term defined in the *Interpretation Act*:

In any Act...“Agency” means a department or unit of a department, or other authority or body, nominated as an Agency in an Administrative Arrangements Order;

- That only leaves “community-based organisation or group” as described in sub-section (f) of s.47F(3). I cannot see the AHA as community-based. The examples offered by the sub-section are a local action group or charity, illustrations with which the AHA as a trade association and registered industrial body under the *Workplace Relations Act* does not appear to be *ejusdem generis*.
42. In my view the AHA objection does not satisfy the requirements of s.47F(3).
43. My historical disquiet with s.47I(3)(c)(i) being the only available tool to deal with a non-complying objection has been documented in a previous objections decision dated 13 January 2004 in relation to *Alawa Foodmart*. That decision is accessible on the Commission’s website, and paragraphs 11 to 14 of that decision are pertinent to the present matter.

Nature of decision

46. 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.471(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 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 go to hearing will be a matter for the corporate Commission in deciding whether or not to grant the licence.

John Withnall
04 August 2004