

# NORTHERN TERRITORY LICENSING COMMISSION

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

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**PREMISES:** WOOLWORTHS LIQUOR – CAVENAGH STREET

**APPLICANT:** WOOLWORTHS LIMITED

**DECISIONS OF:** Dr ALAN CLOUGH

**DATE OF DECISIONS:** 7<sup>th</sup> of January, 2005

### **SUMMARY OF DECISIONS:**

Conduct a hearing in relation to the objection:

- St Mary's Primary School Board and,  
• Mr Tony O'Brien, Principal, St Mary's Primary School
- Mr Mark Payne, Assistant Commissioner Operations Command, NT Police
- Mr Richard Hartshorn, Manager, Quest Darwin
- Mr Brett Simmonds, General Manager, The Cavenagh
- Mr Michael Scott, General Manager, Mirambeena Resort Darwin and,  
• Leisure Investments Pty Ltd

Dismiss the letter making an objection:

- Mr Ray Medicott, Regional Manager, CVA Darwin
- Australian Hotels Association, Northern Territory Branch (Ms Sally Fielke)
- Ms Kyle Arthur, Manager/Nominee, The Victoria Hotel
- The Board of Darwin City Heart Promotions (Ms Meg Cotter)

Alan Clough  
7<sup>th</sup> of January, 2005

## Preamble

1. An application for a licence to sell liquor from premises to be known as 'Woolworths Liquor – Cavenagh Street' located at Lot 7118 (Town of Darwin), Cavenagh Street Darwin, was advertised in the 'Northern Territory News' on the 15<sup>th</sup> and 17<sup>th</sup> of September 2004. Such notification is required by s.27 of the *Liquor Act* (the *Act*), as in force at the 1<sup>st</sup> of September 2004. The advertisements notify that Woolworths Limited (the applicant) seeks a licence to sell liquor only for consumption away from the premises during the following times:
  - Monday to Friday between the hours of 1000 and 2200
  - Saturdays and public holidays between the hours of 0900 and 2200 but not on Sundays, Good Friday or Christmas Day.
2. S.47F(1)(a) of the *Act* permits a person to make an objection to an application for the grant of a licence notified under s.27. Nine letters making objections were received by the Director of Licensing (the Director). After informing the applicant of the objections made, the Director received one letter by way of the applicant's reply to them. The nine letters making objections and the applicant's reply were forwarded by the Director to the Chairman, incorporated into an 'Objection Report', on the 10<sup>th</sup> of November 2004.<sup>1</sup>
3. On the 15<sup>th</sup> of November 2004, I was selected by the Chairman to consider the substance of each of these objections pursuant to s.47I(2) of the *Act*. My statutory task is delineated by s.47I(3) 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.*

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<sup>1</sup> NT Treasury Internal Minute (Ref: LIC2004/130)

4. I interpret my statutory task in the following ways.
- a. S.47I(3)(c) essentially means that an objection made to an application is entitled to go to a hearing as an objection unless I am satisfied that sufficient reasons exist to dismiss it.<sup>2</sup> Some specific criteria for testing reasons to dismiss an objection made, and thereby for testing this entitlement, can be found at s.47F(3) which describes and delimits the persons, organisations or groups who may make an objection, and at s.47F(4) and s.47F(5) which specify the elements of an objection and how it is to be lodged. S.47F(2) can also be used to test this entitlement since it delimits the grounds on which an objection may be made albeit without specifying constituent criteria. It is not my task to evaluate the merits of an objection made. At any hearing it is for the person(s) making the objection to make out the grounds, and the facts constituting the grounds of objection pursuant to s.47H whereby an objector may not rely on any facts other than the facts specified in the objection. Moreover, at such a hearing, an applicant is likely to have the opportunity to contest the relevance or weight of any aspect of the objection on any basis.
  - b. At s.47I(3)(c)(i)(A) lies both the power and obligation to dismiss an objection made if I am sufficiently satisfied that it is of a frivolous, irrelevant or malicious nature. For testing relevance, the substance of the objection made is likely to be a useful source of relevant criteria. Other important criteria for testing relevance include those found at s.47F(3), s.47F(4) and s.47F(5). For example, an objection made by a person, organisation or group who is not a member of one of the categories of those who may make an objection prescribed at s.47F(3), or an objection not lodged with the Director within the time frame prescribed by s.47F(4)(d) and s.47F(5), is open to serious question as to its relevance. An objection may also be open to question as to its relevance if it was not signed or suitably authorised by or on behalf of the person, organisation or group making the objection, since it may not strictly comply with s.47F(4)(b). For testing whether an objection made is of a malicious or frivolous nature, however, few such specific criteria are available in s.47F or s.47I. In the absence of suitable criteria describing 'malicious' and 'frivolous', I relied primarily on the substance of the letter making an objection. I was guided by the

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<sup>2</sup> S.47J provides that a person, organisation or group who made an objection that was dismissed by me may apply to the Commission for a review of my decision. Since s.47J(4)(b) constrains the Commission to conduct a hearing if it determines to revoke my decision to dismiss, it is important, in terms of natural justice for the applicant, to evaluate *all* letters making an objection using *all* criteria available to me to ensure that a letter making an objection, upon any revocation of my decision, would go to a hearing having been thoroughly assessed as to its entitlement pursuant to s.47I(3).

notion that an objection should be regarded as malicious in nature if it were to contain some kind of wrongful intent disguised as a lawful objection to the application. I was also guided by the notion that if a letter making an objection to the application misrepresented trifling matters as serious concerns for our attention then it should be regarded as frivolous in nature and dealt with accordingly.

- c. I am also specifically empowered and obliged by s.471(3)(c)(i)(B) to dismiss the objection made if I am satisfied that it fails to describe circumstances adversely affecting the health, education, public safety or social conditions in the community or the amenity of the neighbourhood where the licensed premises is to be located. Here too, I turned to the substance of the letter making an objection for information to describe such circumstances. I was guided by my view that should an objection fail to set out the facts relied upon to constitute the ground upon which the objection is made it may not comply with s.47F(4)(c) and will, therefore, be unlikely to adequately describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community and thereby, in turn, fail to comply with s.471(3)(c)(i)(B).
- d. It is my allotted task to consider the substance of the objection made (s.471(2)). Although the *Act* does not require me to consider the *substance* of the applicant's reply, I am nonetheless obliged by s.471(3)(a) of the *Act* to "...consider [both] the objection and the reply to the objection." I take this to mean that I am constrained to consider only those matters in the applicant's reply which may be reflected in my considerations of whether the objection made is of a frivolous, irrelevant or malicious nature or 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. Just as it was important to emphasise that it is not my task to evaluate the merits of an objection made, it is also not my task to evaluate the merits of the applicant's reply. Assessment of the relative merits of the application and any objections will ultimately be a matter for the corporate Commission in deciding whether or not to grant the application.
- e. It is important to outline my approach to the concepts of 'neighbourhood' and 'community' in my considerations since the utility and reality of these concepts is highly problematic with their determination and delineation likely to be contentious and subject to many individual, contextual and environmental factors. There is a dearth of clear guidance about the concepts 'neighbourhood' and 'community' in s.47F(2) ss.47F(3)(a),(b) and (f) and s.471(3)(c)(i) of the *Act*. Reflecting upon these limitations, I concluded that my task is not one where I must describe exhaustively the precise

congruence between the neighbourhood where the licensed premises is located and the neighbourhood where a person making the objection is a resident or is working, or holds an estate in fee simple, or a lease over land. Instead, I believe my task is to spend a reasonable amount of time and resources using accessible criteria to compile sufficient facts to convince me that it *is more likely than not* that the person making the objection resides in, or works in, or holds an estate in fee simple, or lease over land in the neighbourhood where the licensed premises are located thereby complying with s.47F(3)(a) or s.47F(3)(b). Similarly, I believe my task is to use accessible criteria to compile sufficient facts to convince me that it *is more likely than not* that the objection is being made by a community-based organisation or group thereby complying with s.47F(3)(f). In this context, unless there were specific reasons leading me to think otherwise, I interpreted references to the 'community' as meaning the broader NT community.

5. S.471(3)(b) permits me to inquire into 'any circumstance relating to the objection' as I consider appropriate. I used this power to consult published sources of information, viz. the internet and the NT telephone and business directories, to enlist the assistance of the Director, and to make telephone inquiries and inquiries by e-mail.
6. The information placed before me by the Chairman comprised an Internal Minute of the NT Treasury signed by the Deputy Director of Licensing dated the 10<sup>th</sup> of November 2004,<sup>3</sup> with an Objections Report attached. The Objections Report contained folios 1-32 inclusive, a list of contact details for those making an objection and a table of contents. Folios 1-4 included information pertaining to the applicant's advertisements, folios 5-23 included the letters making an objection and folios 24-30 included the applicant's response. Folio 31 is a copy of a printed map of the Darwin CBD and nearby precincts. Folio 32 is a site plan of the proposed licensed premises provided by the Director from the applicant's file. The map at folio 31 does not bear its publisher's identity although it is '© Northern Territory of Australia'. The Director advised that this map is from a series entitled 'Darwin Administrative Maps' published in 2001 by the NT Department of Lands, Planning and Environment, Land Information Division. The map highlights and labels the Darwin CBD and provides sufficient information to identify the addresses of those seeking to make objections and was marked up by the Director to indicate the proposed location of the licensed premises. I note that eight of the nine making objections to the application have addresses within the CBD as indicated by the Director on this map. I regard the map of the CBD provided by the Director as an important tool assisting my consideration of the relevant 'neighbourhood'. Its importance lies in that it is a published document

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<sup>3</sup> NT Treasury Internal Minute (Ref: LIC2004/130)

describing a locality that is widely known and is commonly referred to as the Darwin CBD. I considered that an important indicator of a 'neighbourhood' relevant to the application was a display of common interests in the Darwin CBD evidenced by any discourse regarding the CBD between the applicant and those making objections on the background of the map of the CBD provided by the Director. A key indicator of the relevant 'neighbourhood' is the proximity of the proposed licensed premises to the addresses of those making objections, as measured by an address within the Darwin CBD and by the physical distance from the proposed licensed premises.

7. Given the available grounds for objection, at s.47F(2), and the standing of my considerations underpinning these reasons for decision, I now turn to consider the substance of the objections pursuant to s.47I(2).

## CVA Darwin, Mr Ray Medicott

8. A letter making an objection to the “Proposed Liquor License at Lot 7118, Cavenagh St Darwin...”, typed with no letterhead or other identifying marks, signed and bearing the name ‘Ray Medicott’ designated as the ‘Regional Manager CVA Darwin’, was received by the Director on the 22<sup>nd</sup> of September 2004, five days after notification of the application (Folio 5). The letter making an objection complies with s.47F(4)(d) of the Act since it was lodged within the prescribed time.
9. No information is provided in the letter to describe the nature of the business ‘CVA’. The Director described CVA as ‘Conservation Volunteers Australia’ in the table of contents of the Objections Report. According to the NT telephone directory, Conservation Volunteers Australia is located at 41 Cavenagh St Darwin, and has the same telephone number as reported by the Director in his Objections Report listed under ‘Objector’s Contact Details’. An internet website describes Conservation Volunteers Australia as an incorporated, not-for-profit organisation, a Public Benevolent Institution (PBI) and a registered tax deductible gift recipient, managed by an independent board of directors whose mission is to ‘attract and manage a force of volunteers in practical conservation projects for the betterment of the Australian environment.’<sup>4</sup> A related website identifies the location of CVA’s office in Darwin which is the same address advised by the Director in the Objections Report.<sup>5</sup> An example of a community-based organisation or group furnished in s.47F(3)(f) is of a local action group or a charity. The map marked up by the Director (folio 31) indicates that the Darwin CVA office is located within the Darwin CBD approximately 125 meters from the proposed licensed premises and closer than all but two of those making objections. Inasmuch as CVA is a PBI with one of its offices located nearby the proposed licensed premises, CVA could be regarded as a community-based organisation or group which may make an objection to the application in accordance with s.47F(3)(f). However, there is no information in the letter suggesting that CVA wished to make an objection on its own behalf, so I considered the question no further.
10. S.47F(4)(b) requires that a letter making an objection is signed by or on behalf of the person, organisation or group making the objection. At folio 5 Mr Medicott states: “I strongly object to, and do vigorously oppose...” the application. He clearly seeks to make an objection to the application on his own behalf even if CVA did not.
11. Accordingly, I considered whether Mr Medicott met the requirements of s.47F(3)(a) in that he could be regarded as a person residing or working in the neighbourhood and may therefore make an objection to the application. He described himself as “..the Manager of a business not

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<sup>4</sup> <http://www.conservationvolunteers.com.au/about-us/about-cva.htm>

<sup>5</sup> <http://www.conservationvolunteers.com.au/contact-us/cva-offices.htm#NT>

70 meters from [sic] the ...” proposed location of the licensed premises. Inspecting the map of the CBD, the Director indicated that Mr Medicott’s business is situated approximately 125m from the proposed licensed premises. I note that Mr Medicott’s concerns are explicitly related to the CBD (folio 5). I considered the applicant’s response. The applicant takes issue with Mr Medicott’s reference to the CBD (folio 26) but does not expound reasons that would lead me to regard Mr Medicott’s reference to the CBD as “irrelevant” to the application. Whatever the merits of the debate regarding the reference to the CBD, there is at least a common conversation between Mr Medicott and the applicant about the CBD wherein Mr Medicott’s business is located, as delineated in the Director’s map (folio 31). On this basis, although the Director indicated there is some question as to Mr Medicott’s continued employment with CVA,<sup>6</sup> I am satisfied that he portrayed himself as a person who works in the neighbourhood and who may therefore make an objection to the application in accordance with s.47F(3)(a).

12. My summary of the substance of the grounds for the objection made is that, should the application be successful, there would be increased risks of anti-social behaviour within the immediate area. While I agree with the applicant that the letter does not expressly refer to a ground of objection allowed by s.47F(2) (folio 26), it is my view that Mr Medicott raises concerns that are congruent with the grounds specified in s.47F(2)(a) and which are, moreover, not of a frivolous, irrelevant or malicious nature.
13. Having said this, it is also my view that Mr Medicott completely fails to set out the facts he relies on to constitute the ground on which the objection is made as required by s.47F(4)(c), and this seriously compromises the relevance of the letter making an objection to the application.
14. I considered the applicant’s response and decided to make no further inquiries. I conclude as follows.

Mr Medicott portrayed himself as a person working in the neighbourhood and appears to be a person who may make an objection pursuant to s.47F(3)(a) of the *Act*. While the letter making an objection signed by Mr Medicott appears to comply with s.47F(2)(a) in that it asserts that the grounds for the objection are adverse effects on the amenity of the neighbourhood, it fails to set out the facts relied upon to constitute these grounds and so it does not comply with s.47F(4)(c) seriously diminishing its relevance to the application. I am therefore satisfied that, on balance, the letter making an objection is irrelevant to the application and fails to describe circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community.

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<sup>6</sup> NT Treasury Internal Minute (Ref: LIC2004/130)

- On this basis both s.471(3)(c)(i)(A) and s.471(3)(c)(i)(B) apply and I must dismiss the letter making the objection.
- Accordingly, pursuant to s.471(4) I direct the Director to inform Mr Medicott that his objection has been dismissed.

### St Mary's Primary School, Mr Tony O'Brien

15. A letter making an objection “..on behalf of St Mary’s Primary School and the Board..” to the “..proposed grant of a liquor licence at Lot 7118, Cavenagh Street”, typed on St Mary’s Primary School letterhead, signed and bearing the name ‘Tony O’Brien’ designated as the ‘Principal, St Mary’s Primary School’, was received by the Director on Monday the 18<sup>th</sup> of October 2004, i.e. 31 days after notification of the application (folios 7-10). The letter appears to have been faxed on Friday the 15<sup>th</sup> of October, i.e. 28 days after notification of the application which would mean it complies with s.47F(4)(d). S.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 17<sup>th</sup> of September 2004. The last day for their receipt was the 17<sup>th</sup> of October 2004. The 17<sup>th</sup> of October 2004 was a Sunday. Under these circumstances, s.28(2) of the *Interpretation Act* permits this letter to be lodged with the Director on the first day following this day, viz. Monday the 18<sup>th</sup> of October 2004. Therefore the letter was lodged with the Director within the allotted time, as permitted in s.28(2) of the *Interpretation Act*.
16. The map marked up by the Director (folio 31) indicates that St Mary’s Primary School is located in the CBD approximately 160 meters from the proposed licensed premises and closer than all but three of those making objections. The letterhead indicates that the address of the School is Lindsay Street, Darwin (folio 7). S.18 of the *Interpretation Act* includes a body corporate as a ‘person’. To evaluate its standing with respect to s.47F(3), I first considered whether St Mary’s Primary School Board was a body corporate that could be regarded as a person working in the neighbourhood where the premises the subject of the application will be located and may make an objection to the application in accordance with s.47F(3)(a). At my request the Director searched the Australian Business Registry (ABR)<sup>7</sup> using the Australian Business Number (ABN) provided at the top of the letterhead (folio 7) and this revealed that ‘St. Mary’s Primary School’ is categorised within this registry as an ‘Other Unincorporated Entity’ having ‘club-like’ characteristics with a number of people grouped together by a common purpose. This description, on its face, would appear to be inconsistent with the commonly held legal understanding of a body corporate as an incorporated entity. The ABR was established pursuant to s.24 of the *New Tax System (Australian Business Number) Act* (1999) of the Commonwealth. The definition of an ‘entity’ that may be entitled to register an ABN under s.37(f) of this Commonwealth Act encompasses ‘any unincorporated association or body of persons’. Consistent with this, I note too that s.9 of the *Corporations Act* (2001) of the Commonwealth describes a ‘body corporate’ as including ‘an unincorporated registrable body’. On this basis I was inclined to conclude

<sup>7</sup> [http://www.abr.business.gov.au/\(vqhegnuryt1ts452hnjlh55\)/content.aspx?page=advancedSearch](http://www.abr.business.gov.au/(vqhegnuryt1ts452hnjlh55)/content.aspx?page=advancedSearch)

that St Mary's Primary School Board could be regarded as a body corporate. I note that the applicant was unable to determine whether St Mary's Primary School is an owner or lessee of land in the neighbourhood and queried whether the school is a person residing or working in the neighbourhood (folio 29). Because of s.18 of the *Interpretation Act*, it was also necessary for me to consider whether St Mary's Primary School was a body corporate that could be regarded as a person who holds an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application will be located and may make an objection to the application in accordance with s.47F(3)(b). To attempt to clarify the applicant's query, I again requested the assistance of the Director who advised me that St. Mary's Primary School is a component of the Catholic Church of the Diocese of Darwin Property Trust (CCDDPT) although information to confirm this was not available at the website of the ABR. The Director also advised me that the CCDDPT is a property trust established by a bishop of a diocese pursuant to s.3(1) of the *Catholic Church in the Northern Territory Act*. Under s.3(2) of this Act a bishop of a diocese shall not establish a property trust in respect of an institution unless the persons having the management of the affairs of the institution have requested him to establish a property trust in respect of it. S.11(1)(a) of the *Catholic Church in the Northern Territory Act* provides that a property trust so established is a body corporate. While it may be arguable that provisions of other legislation defining or prescribing body corporate status is not sufficient to establish body corporate status under the NT *Liquor Act*, my discovery of this provision in the *Catholic Church in the Northern Territory Act* further inclined me towards the view that St Mary's Primary School Board could be regarded as a body corporate thereby fitting the definition of a 'person' according to S.18 of the *Interpretation Act*. However, I still had no ready way to confirm that St. Mary's Primary School was in the fold of the CCDDPT and held tenure over the Lindsay Street property. So I decided to telephone Father Tim Brennan, the Vicar General of the Diocese, who assured me that St. Mary's Primary School is, indeed, a component of the CCDDPT. On this basis, I was also inclined to conclude that St Mary's Primary School could be regarded as a person who holds an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application will be located and may make an objection to the application in accordance with s.47F(3)(b). However, in order to assure myself as to its standing with respect to s.47F(3) of the *Act*, I finally turned to consider whether St Mary's Primary School Board could be regarded as a community-based organisation or group and thereby comply with s.47F(3)(f). I decided to telephone Mr O'Brien to ask him about the make-up of the Board. Mr O'Brien advised that the Board consists of up to ten members of the parent body, plus two ex-officio members one of which is the Principal (viz. Mr O'Brien), an additional staff representative, and a representative of parents and friends of the School. He described the

- Board as a policy setting and advisory body primarily representing the parents of St Mary's Primary School students. On this basis, I am satisfied that St Mary's Primary School Board can be regarded as a community-based organisation or group and may make an objection to the application in accordance with s.47F(3)(f).
17. I am satisfied that the letter was signed on behalf of St Mary's Primary School and the Board since this was asserted by Mr O'Brien under the letterhead of the School. The letter making an objection thereby complies with s.47F(4)(b) of the *Act*. Furthermore, I interpreted Mr O'Brien's signing of the letter on behalf of the School for which he is Principal as indicating his wish to make an objection on his own behalf.
18. Accordingly, I considered whether Mr O'Brien met the requirements of s.47F(3)(a) in that he could be regarded as a person residing or working in the neighbourhood and may therefore make an objection to the application. The letter designated him as 'Principal, St Mary's Primary School' (folio 10) and asserted that the objection is made on behalf of St Mary's Primary School and the Board (folio 7). In the style and tone of the letter Mr O'Brien, as the school Principal, conveys his own concern for the issues the letter raises and his conviction regarding its assertions. The applicant concedes that "... the principal of the school is a person working in the neighbourhood of the proposed outlet.." (folio 29). The map marked up by the Director (folio 31) indicates that St Mary's Primary School is located in the CBD approximately 160 meters from the proposed licensed premises and closer than all but three of those making objections. I am therefore satisfied that Mr O'Brien, the Principal of St Mary's Primary School, is a person working in the neighbourhood where the premises the subject of the application will be located and may make an objection to the application in accordance with s.47F(3)(a).
19. My summary of the substance of the grounds for the objection made is that, should the application be successful, there would be increased risks of anti-social behaviour near and within the school premises. There is also the apprehension of an increase in public drunkenness and anti-social behaviour in the Darwin CBD. In addition, the letter asserts that there would be increased concerns for the safety of staff and students and for security of school property. The applicant appears to take no issue with the concerns Mr O'Brien expressed in his letter which are congruent with the grounds specified in s.47F(2) and which are, moreover, not of a frivolous, irrelevant or malicious nature.
20. I am also satisfied that Mr O'Brien sets out the facts he relies on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
21. I considered the applicant's response and decided to make no further inquiries. I conclude as follows.

- a. With respect to St Mary's Primary School Board, the letter making an objection is relevant to the application in that the Board is a community-based organisation or group who may make an objection to an application pursuant to s.47F(3)(f) of the *Act*. In addition, St Mary's Primary School Board could be regarded as a person working in the neighbourhood where the premises the subject of the application will be located and may make an objection to the application in accordance with s.47F(3)(a) and could be regarded as a person who holds an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application will be located and may make an objection to the application in accordance with s.47F(3)(b). The letter was signed by Mr O'Brien, the Principal, on behalf of St Mary's Primary School Board. The letter sets out the facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). I am satisfied that the substance of the grounds for the objection is not of a frivolous, irrelevant or malicious nature. It follows that s.471(3)(c)(i)(A) does not apply. It is also my view that the letter making an objection complies with s.47F(2) of the *Act* in that it describes circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. From this it follows that s.471(3)(c)(i)(B) also does not apply. Since neither part of s.471(3)(c)(i) applies, I am required to apply s.471(3)(c)(ii).
- I determine that the Commission must conduct a hearing in relation to the objection.
- b. Mr O'Brien is a person working in the neighbourhood who may make an objection pursuant to s.47F(3)(a) of the *Act*. The letter making an objection sets out the facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). Since I am satisfied that the substance of the grounds for the objection is not of a frivolous, irrelevant or malicious nature, it follows that s.471(3)(c)(i)(A) does not apply. It is also my view that the letter making an objection complies with s.47F(2) of the *Act* in that it describes circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. From this it follows that s.471(3)(c)(i)(B) also does not apply. Since neither part of s.471(3)(c)(i) applies, I am required to apply s.471(3)(c)(ii).
- I determine that the Commission must conduct a hearing in relation to the objection.

**Northern Territory Police, Assistant Commissioner Operations Mark Payne**

22. A letter making an objection to the application as advertised on the 17<sup>th</sup> of September 2004, written on Northern Territory Police letterhead, signed and bearing the name Mark L Payne (Assistant Commissioner Operations Command), was received by the Director by facsimile on the 15<sup>th</sup> of October 2004, 28 days after notification of the application (folios 11-13). The letter making an objection complies with s.47F(4)(d) of the *Act* since it was lodged within the prescribed time.
23. Corporate Commission knowledge has it, and Police letterhead indicates (folio 11), that one of Assistant Commissioner Payne's places of work is the Mitchell Centre located near the corner of Mitchell and Knuckey Streets in the CBD, approximately 450 meters in a direct line from the proposed licensed premises (folio 31). It was therefore necessary to consider whether Mr Payne was indicating his own objection to the application by signing his name to the letter. I could find nothing in the letter, however, to clearly suggest that the Assistant Commissioner wished to make an objection on the basis that he is a person who works in the neighbourhood where the premises the subject of the application are or will be located pursuant to s.47F(3)(a), and so I considered this question no further. The Assistant Commissioner instead asserted his "...statutory right of objection as a member of the Police Force under s 47(3)(c)..." of the *Act* (folio 11). I note that the applicant takes issue with this assertion (folio 28), however, the issues raised are not for my determination. I am satisfied that Assistant Commissioner Mark Payne is a member of the NT Police Force and meets the requirements of s.47F(3)(c) of the *Act* and may therefore make an objection to the application.
24. My summary of the substance of the grounds for the objection made is that, should the application be successful, there would be increased risks of anti-social behaviour and public drunkenness in the CBD. In addition there would be increased concerns for public safety and adverse effects on amenity and social conditions in the CBD. I note that the applicant takes issue with the Assistant Commissioner's use of the term 'neighbourhood' (folio 28-29). The applicant's comments, however, do not cause me to alter my view that the 'neighbourhood' where the premises the subject of the application will be located includes the CBD indicated on the map provided by the Director (folio 31).
25. I am also satisfied that Assistant Commissioner Payne sets out the facts he relies on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
26. I considered the applicant's response and decided to make no further inquiries. I conclude as follows.

Assistant Commissioner Mark Payne is a member of the Police Force and may make an objection to an application pursuant to

s.47F(3)(c). The letter sets out the facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). I am satisfied that, the substance of the grounds for the objection are not of a frivolous, irrelevant or malicious nature. From this it follows that s.471(3)(c)(i)(A) does not apply. The letter making an objection complies with s.47F(2) of the *Act* in that it describes circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. From this it follows that s.471(3)(c)(i)(B) also does not apply. Since neither part of s.471(3)(c)(i) applies, I am required to apply s.471(3)(c)(ii).

- I determine that the Commission must conduct a hearing in relation to the objection.

## Australian Hotels Association, Ms Sally Fielke

27. A letter making an objection to the application described as “Woolworths Liquor – Cavenagh Street”, written on Australian Hotels Association letterhead, signed on behalf of the ‘Australian Hotels Association, Northern Territory Branch’ (AHA NT Branch) and bearing the name Sally Fielke, designated as ‘Executive Officer’ was received on Monday the 18<sup>th</sup> of October 2004, i.e. 31 days after notification of the application (folios 14-15). The letter appears to have been faxed on Sunday the 17<sup>th</sup> of October, i.e. 30 days after notification of the application which would mean it complies with s.47F(4)(d) of the *Act*. S.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 17<sup>th</sup> of September 2004. The last day for their receipt was the 17<sup>th</sup> of October 2004. The 17<sup>th</sup> of October 2004 was a Sunday. Under these circumstances, s.28(2) of the *Interpretation Act* permits this letter to be lodged with the Director on the first day following this day, viz. Monday the 18<sup>th</sup> of October 2004. Therefore the letter was lodged with the Director within the allotted time, as permitted in s.28(2) of the *Interpretation Act*.
28. I am satisfied that the letter was signed on behalf of the AHA NT Branch given that this was clearly asserted by Ms Fielke under letterhead which featured the AHA logo together with NT addresses and NT telephone numbers. The letter making an objection therefore complies with s.47F(4)(b) of the *Act*.
29. Since the letterhead (folios 14-15) indicates that the AHA NT Branch office is located at 24 Cavenagh St Darwin in the CBD and approximately 360 meters from the proposed licensed premises (folio 31), it was necessary to consider whether Ms Fielke was indicating her own objection to the application by signing her name to the letter. I could find nothing in the letter, however, to clearly suggest that Ms Fielke wished to make an objection on her own behalf as a person who works in the neighbourhood where the premises the subject of the application are or will be located pursuant to s.47F(3)(a), and so I considered this question no further.
30. S.18 of the *Interpretation Act* includes a body corporate as a ‘person’. Since the letterhead (folios 14-15) indicates that the AHA NT Branch office is located within the CBD approximately 360 meters from the proposed licensed premises (folio 31), and given my approach to determining the relevant neighbourhood, it was necessary to consider whether the AHA NT Branch could be regarded as a person residing or working in the neighbourhood where the premises the subject of the application are or will be located and so may make an objection to the application pursuant to s.47F(3)(a). The website of the AHA NT Branch (under construction) indicated the association’s office address as 24 Cavenagh St Darwin.<sup>8</sup> A

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<sup>8</sup> <http://www.ahant.com.au/>

search of the ABR using the key words 'Australian Hotels Association' yielded 24 records listing branches of the AHA in all states and territories, except the NT.<sup>9</sup> A similar search of all names on the ASIC website yielded no clearly relevant references.<sup>10</sup> All 24 entries on the ABR were categorised as: 'Other Unincorporated Entity' having 'club-like' characteristics with a number of people grouped together by a common purpose. Since the AHA NT Branch had no separate business registration that I could readily identify, I was not inclined to conclude, on this information alone, that the AHA NT Branch could be regarded as a body corporate. At my request, the Director asked Ms Fielke about the incorporation of the AHA NT Branch. Ms Fielke advised that AHA NT Branch has no incorporation independent of its affiliation with the national AHA which she described as a 'registered industrial body under the Workplace Relations Act'. The Deputy Industrial Registrar in Darwin confirmed that the AHA is a registered organisation under the *Workplace Relations Act* (1996) of the Commonwealth and is listed on the Australian Industrial Registry (AIR).<sup>11</sup> This raised the prospect that the Commonwealth *Workplace Relations Act* contained a provision requiring or prescribing body corporate status that could be sufficient to establish body corporate status under the NT *Liquor Act*. Upon inspection of the *Workplace Relations Act*, however, I could find no clear prescription that an organisation registered under the Registration and Accountability of Organisations Schedule (1b) of this Act should be a body corporate. I also examined the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act* (2002) and found no such provision. Therefore, in the absence of readily-available, conclusive information regarding the status of AHA NT Branch as a body corporate, I remained unconvinced that the AHA NT Branch should be regarded as a person who resides or works in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a).

31. With their office located in the CBD, and given my approach to determining the relevant neighbourhood, it was also necessary to consider whether the AHA NT Branch could be considered 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 and so may make an objection to the application pursuant to s.47F(3)(b). I requested the Director to inquire of Ms Fielke regarding the nature of the tenure AHA NT Branch holds over their office at 24 Cavenagh Street Darwin. The Director advised that the AHA NT Branch office at this address is owned by the national body, the AHA. The AHA national office advised me that their ABN is 78 756 030 961. This ABN appears on the

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<sup>9</sup> [http://www.abr.business.gov.au/\(zelu1kffkih3d551aq4n445\)/content.aspx?page=advancedSearch](http://www.abr.business.gov.au/(zelu1kffkih3d551aq4n445)/content.aspx?page=advancedSearch)

<sup>10</sup> <http://www.search.asic.gov.au/gns001.html>

<sup>11</sup> <http://www.airc.gov.au/organisations/list/list.html>

ABR for Australian Hotels Association,<sup>12</sup> an 'Other Unincorporated Entity' having 'club-like' characteristics with a number of people grouped together by a common purpose. Since the national AHA holds an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application will be located and since s.24 of the *New Tax System (Australian Business Number) Act* (1999) of the Commonwealth, defines an 'entity' that may be entitled to register an ABN under s.37(f) of this Commonwealth Act to include 'any unincorporated association or body of persons', and since this is consistent with s.9 of the *Corporations Act* (2001) of the Commonwealth which describes a 'body corporate' as including 'an unincorporated registrable body', I was more inclined to believe that the national AHA could be regarded as a body corporate and hence a person who may make an objection to the application in accordance with s.47F(3)(b). However, nothing in the letter making an objection indicated that the national AHA wished to make an objection to the application on its own behalf. It is possible that the known affiliation of the AHA NT Branch with the national AHA<sup>13</sup> somehow encompasses shared interests in ownership of the property at 24 Cavenagh Street, Darwin. If this were the case, then the argument that the AHA NT Branch holds an estate in fee simple in land in the neighbourhood where the premises the subject of the application will be located would become stronger. However, no information became available to me as a result of my inquiries to consider this further. Given this, and given the lack of readily-available, conclusive information regarding the status of AHA NT Branch as a body corporate, I remained unconvinced that the AHA NT Branch could be regarded as a person who holds an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application will be located and may make an objection to the application in accordance with s.47F(3)(b).

32. I note that, at folio 27, the applicant submits that an objection by the AHA NT Branch should not be entertained since it does not have standing to object for reasons advanced in the Commission's decision regarding 'Meleuca on Mitchell' handed down on the 4<sup>th</sup> of August 2004. This determination is acknowledged by the AHA NT Branch in their letter making an objection to the application (folio 15). Mr Withnall, the Legal Member of the Commission and the member selected by the Chairman to consider the substance of objections to an application regarding 'Meleuca on Mitchell', determined that the AHA NT Branch did not satisfy the requirements of s.47F(3) and, therefore, had no standing as an objector to such new liquor licence applications.<sup>14</sup> Subsequently (8<sup>th</sup> of September 2004), Mr Withnall prepared an elucidation of his ruling at the request of the AHA NT Branch in which he expressed the view that the AHA NT

<sup>12</sup> [http://www.abr.business.gov.au/\(zelu1kffkihz3d551aq4n445\)/content.aspx?page=advancedSearch](http://www.abr.business.gov.au/(zelu1kffkihz3d551aq4n445)/content.aspx?page=advancedSearch)

<sup>13</sup> <http://www.aha.org.au/index.php?page=contact/nt.html>

<sup>14</sup> [http://www.nt.gov.au/ntt/commission/decisions/Melaleuca\\_Objections\\_Decision\\_0804.pdf](http://www.nt.gov.au/ntt/commission/decisions/Melaleuca_Objections_Decision_0804.pdf)

Branch is a “... trade association or industry body...” and not a community-based organisation or group as described in s.47F(3)(f).<sup>15</sup> This view, with which I concur, is consistent with corporate Commission knowledge of AHA NT Branch as an entity comprised of a number of licensees grouped together by a common purpose, namely their commercial interests in their industry.

33. At folio 15, the letter making an objection requests that, should the AHA NT Branch be found to have no standing to make an objection to this application under 47F(3), the Commission “... consider our submission pursuant to s.6(3)(a) of the *Liquor Act* on the ground that it [is] a matter relevant to the public interest.” I cannot accede to this request since such consideration is beyond my appointed task as the Commission member selected to consider objections under s.47I(2). I note that at folio 27, the applicant takes issue with this request by the AHA NT Branch suggesting that an objection to an application on the basis of s.6(3)(a) would “...effectively subvert the clear prescription of the legislature as to who is entitled to object to an application for the grant of a liquor licence.” This alludes to a wider debate and further reinforces my conclusion that it is for the corporate Commission, not this single member, to have collective regard to public interest criteria pursuant to s.6 of the *Act*.
34. My summary of the substance of the grounds for the objection made is that, should the application be successful, the amenity of the neighbourhood would be adversely affected and there would be increased risks of anti-social behaviour and increased litter and public drunkenness in the CBD. It is my view that Ms Fielke raises concerns on behalf of the AHA NT Branch that are congruent with the grounds specified in s.47F(2).
35. I am also satisfied that, on behalf of the AHA NT Branch, Ms Fielke sets out the facts she relies on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
36. I turned to consider whether AHA NT Branch’s letter making an objection was malicious or frivolous in nature. There is good reason for this provided by Mr Withnall who reminded us that with respect to liquor licence applications, “...over-time, so-called ‘commercial’ objectors became skilled at crafting and presenting self-protective anti-competitive objections....” which he went on to describe as “...cloaked in altruism..”.<sup>16</sup> Since the AHA NT Branch represents a sector of the Northern Territory liquor industry which protects its members’ commercial well-being, potentially in a competitive relationship with the applicant, it was necessary to consider more closely the substance of the letter making the objection and the applicant’s reply. I note that the applicant suggested

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<sup>15</sup> Mr John Withnall (Chairman) The AHA NT Branch as an objector in new liquor licence applications. NT Licensing Commission, 8<sup>th</sup> of September, 2004, p3.

<sup>16</sup> Mr John Withnall (Chairman) The AHA NT Branch as an objector in new liquor licence applications. NT Licensing Commission, 8<sup>th</sup> of September, 2004, p.2.

that the fourth paragraph of the AHA NT Branch's letter is "mischievous" in that it refers to some liquor stores with low standards of service. The applicant also suggested that matters referable to the Alcohol Framework are more in the nature of a policy statement than grounds for objection to an application (folio 27). I examined the offending fourth paragraph of the AHA NT Branch's letter and concluded that the matters raised by the AHA NT Branch are matters for determination by the corporate Commission in considering licence conditions (should the application be successful) rather than matters for my determination. Furthermore, I agree with the applicant and conclude that the references to the Alcohol Framework support a policy position that offers no relevant grounds for objection to the application. While considerably more substantive information and argument would be required to convince me that the AHA NT Branch is seeking to make an objection to the application out of an altruistic concern for the public interest, I find the substance of the letter not to be malicious or frivolous in nature.

37. I considered the applicant's response which gave me no cause to change my views or to make further inquiries. I conclude as follows.

The AHA NT Branch's letter making an objection is not malicious or frivolous in nature. The letter has relevance in that it was signed by Ms Fielke on behalf of the AHA NT Branch and thereby complies with s.47F(4)(b). The letter sets out the facts relied upon to constitute the grounds on which the objection is made pursuant to s.47F(4)(c). Moreover, the letter complies with s.47F(2)(a) of the *Act* in that it asserts that the grounds for the objection are adverse effects on the amenity of the neighbourhood. On this basis s.47I(3)(c)(i)(B) does not apply. However, I am not satisfied that the AHA NT Branch has standing to make an objection to this application pursuant to s.47F(3) and so, the letter making an objection has diminished relevance to the application.

- On this basis s.47I(3)(c)(i)(A) applies and I must dismiss the letter making the objection.
- Accordingly, pursuant to s.47I(4) I direct the Director to inform the AHA NT Branch that their objection has been dismissed.

## Ms Kylie Arthur, The Victoria Hotel

38. A letter making an objection to the “Application for Licence by Woolworths Limited”, typed with no letterhead or other identifying marks, signed and bearing the name ‘Kylie Arthur’ designated as the ‘Manager/Nominee The Victoria Hotel’, was received by the Director on Monday the 18<sup>th</sup> of October 2004, i.e. 31 days after notification of the application (folio 16). The letter appears to have been faxed on Sunday the 17<sup>th</sup> of October, i.e. 30 days after notification of the application which would mean it complies with s.47F(4)(d) of the *Act*. S.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 17<sup>th</sup> of September 2004. The last day for their receipt was the 17<sup>th</sup> of October 2004. The 17<sup>th</sup> of October 2004 was a Sunday. Under these circumstances, s.28(2) of the *Interpretation Act* permits this letter to be lodged with the Director on the first day following this day, viz. Monday the 18<sup>th</sup> of October 2004. Therefore the letter was lodged with the Director within the allotted time, as permitted in s.28(2) of the *Interpretation Act*.
39. The NT Licensing Commission database indicates that the Victoria Hotel is a licensed premises within the meaning of the *Liquor Act* (licence number 80300989), that the nominee is Ms Kylie Louise Arthur and that the licensee is Minkie (N.T.) Pty Ltd.<sup>17</sup> The signature on the letter is comprised of the initials of a person whose identity is not specified followed by the handwritten word ‘for’ indicating that the letter was signed by someone other than Ms Arthur. The letter was faxed from 89815754 (folio 16). The fax number listed on the NT Licensing Commission database for The Victoria Hotel is different, viz. 89811537. The letter contains no other identifying information to assist to determine its authorisation. I am therefore unable to conclude that the letter was signed by or on behalf of the Victoria Hotel, or Minke (N.T.) Pty Ltd, or by or on behalf of Ms Arthur and, since it is not clear who has signed the letter, I am not satisfied that the letter making an objection complies with s.47F(4)(b) of the *Act*. I considered telephoning Ms Arthur but decided against this since I believed that a response to any question of mine regarding an inadequately authorised letter making an objection would potentially encourage the person making the objection and place the applicant in the unfair position of not being able to scrutinise any post hoc authorisation of such letter.
40. Although the letter was not adequately authorised, it is clear that its author wished to make an objection to “... the application by Woolworths Limited to sell liquor for consumption away from the premises..” as the nominee of The Victoria Hotel (folio 16). I also note that the Victoria Hotel is located

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<http://notes.nt.gov.au/ntt/dibrglllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/1c2576800394985de9256e9e00100719?OpenDocument&Highlight=2,victoria>

within the CBD at a distance of approximately 450 meters in a straight line from the proposed licensed premises (folio 31). While the letter does not indicate an address (folio 16), the NT telephone directory shows that The Victoria Hotel is located at 27 Smith St Darwin. Although the identity of the person who initialed the letter is unclear, I am satisfied that the nominee of The Victoria Hotel, Ms Kylie Arthur, is a person who meets the requirements of s.47F(3)(a) in that she is a person residing or working in the neighbourhood and may therefore make an objection to the application. The applicant's suggestion that The Victoria Hotel is not part of the relevant neighbourhood (folio 26) does not dissuade me from this conclusion.

41. S.18 of the *Interpretation Act* includes a body corporate as a 'person'. I therefore considered whether Minke Pty Ltd wished to make an objection to the application. However, except for the assertion that the letter was written and authorised by the nominee of The Victoria Hotel, there is no information in the letter to suggest that Minke Pty Ltd wished to make such an objection. Therefore I considered the matter no further.
42. My summary of the substance of the grounds for the objection made is that, should the application be successful, the amenity of the neighbourhood would be adversely affected and there would be increased risks of anti-social behaviour and increased litter and noise problems in and around the CBD. It is my view that the letter raises concerns that are congruent with the grounds specified in s.47F(2).
43. I am also satisfied that the letter sets out the facts relied on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
44. I considered the applicant's response and decided to make no further inquiries. I conclude as follows.

With respect to the nominee of The Victoria Hotel, Ms Kylie Arthur, the letter making an objection is not malicious or frivolous in nature. The letter sets out the facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter making an objection complies with s.47F(2) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.47I(3)(c)(i)(B) does not apply. The letter making an objection has relevance in that the nominee of the Victoria Hotel is a person residing or working in the neighbourhood where the licensed premises the subject of the application is located (s.47F(3)(a)). However, the letter cannot be regarded as relevant to the application since it was not possible to determine whether the letter was signed by or on behalf of the person making the objection. This means that it does not comply with s.47F(4)(b) of the *Act*.

- On this basis s.471(3)(c)(i)(A) applies and I must dismiss the letter making the objection.
- Accordingly, pursuant to s.471(4) I direct the Director to inform the nominee of The Victoria Hotel (Ms Kylie Arthur) that her objection has been dismissed.

**Mr Richard Hartshorn, Quest Darwin**

45. A letter making an objection to the “Application for Licence by Woolworths Limited”, typed on Quest Darwin letterhead, signed and bearing the name ‘Richard Hartshorn’ designated as the ‘Manager Quest Darwin’, was received by the Director on Monday the 18<sup>th</sup> of October 2004, i.e. 31 days after notification of the application (folio 17). The letter appears to have been faxed on Sunday the 17<sup>th</sup> of October, i.e. 30 days after notification of the application which would mean it complies with s.47F(4)(d) of the *Act*. S.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 17<sup>th</sup> of September 2004. The last day for their receipt was the 17<sup>th</sup> of October 2004. The 17<sup>th</sup> of October 2004 was a Sunday. Under these circumstances, s.28(2) of the *Interpretation Act* permits this letter to be lodged with the Director on the first day following this day, viz. Monday the 18<sup>th</sup> of October 2004. Therefore the letter was lodged with the Director within the allotted time, as permitted in s.28(2) of the *Interpretation Act*.
46. I am satisfied that the letter was signed on behalf of Quest Darwin since this was inferred by Mr Hartshorn under Quest Darwin letterhead and through his implied ownership of the objectives the company has for its guests. It is also clear from the letter that Mr Hartshorn wished to make an objection to the application on his own behalf. The letter making an objection therefore complies with s.47F(4)(b) of the *Act*.
47. Mr Hartshorn declares that he is ‘...currently the resident owner/manager at Quest Apartments, Darwin’ (folio 17). Inspecting the map of the CBD, the Director indicates that Mr Hartshorn’s business is situated approximately 70 meters from the proposed licensed premises, the closest of all those seeking to make an objection to the application (folio 31). The letterhead indicates that Quest Darwin is located at 55 Cavenagh Street Darwin (folio 17). I note that Mr Hartshorn’s concerns are related to the CBD (folio 17) delineated in the map provided by the Director (folio 31). The applicant made no response to Mr Hartshorn’s concerns. On this basis, I am satisfied that he is a person who resides and works in the neighbourhood and who may therefore make an objection to the application in accordance with s.47F(3)(a).
48. In addition Mr Hartshorn, who asserts ownership of Quest Darwin, has successfully portrayed himself as someone who may make an objection to the application pursuant to s.47F(3)(b) on the grounds that he is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located. The website [www.questapartments.com.au](http://www.questapartments.com.au), indicated at folio 17, is ‘© Quest Apartments Pty Ltd’ which is listed as an Australian Proprietary Company (ACN 070 467 828) on the ASIC database with registered offices located

in Victoria.<sup>18</sup> A search of [www.questapartments.com.au](http://www.questapartments.com.au) for Quest Apartments Pty Ltd properties reveals that Quest Darwin is located at 55 Cavenagh Street, the same address as that provided on the Quest Darwin letterhead (folio 17). S.19 of the *Interpretation Act* includes a body corporate in its definition of a 'person'. However the ownership of Quest Darwin by Quest Apartments Pty Ltd implied at their website appears, on its face, to conflict with the ownership asserted by Mr Hartshorn (folio 17). Except for the assertion that the letter was written and authorised by the owner/manager of Quest Apartments Darwin, there is no information in the letter to suggest that Quest Apartments Pty Ltd wished to make an objection to the application. Given Mr Hartshorn's assertion of ownership and its apparent contradiction with the tenure of Quest Apartments Pty Ltd, and in the absence of further information, I considered it prudent to conclude that Quest Apartments Pty Ltd did not wish to make such an objection.

49. My summary of the substance of the grounds for the objection made is that, should the application be successful, the amenity of the neighbourhood would be adversely affected and there would be increased risks of anti-social behaviour and increased litter and noise problems in and around the CBD. Moreover there is an apprehension that the guests of Quest Darwin would experience this adversely altered amenity. It is my view that the letter raises concerns that are congruent with the grounds specified in s.47F(2).
50. I am also satisfied that the letter sets out the facts relied on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
51. I considered the applicant's response which gives me no cause to change my views or to make further inquiries. I conclude as follows.

Mr Hartshorn's letter making an objection is not malicious or frivolous in nature. The letter sets out the facts relied upon to constitute the grounds on which the objection is made pursuant to s.47F(4)(c). The letter making an objection has relevance in that Mr Hartshorn is a person residing or working in the neighbourhood (s.47F(3)(a)) who also asserts that he is a person holding an estate in fee simple, or a lease over land, (s.47F(3)(b)) in the neighbourhood where the licensed premises the subject of the application is located. From this it follows that s.471(3)(c)(i)(A) does not apply. The letter complies with s.47F(2) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis, s.471(3)(c)(i)(B) also does not apply. Since neither part of s.471(3)(c)(i) applies, I am required to apply s.471(3)(c)(ii).

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<sup>18</sup> [http://www.search.asic.gov.au/cgi-bin/gns030c?acn=070\\_467\\_828&juris=9&hdtext=ACN&srchsrc=1](http://www.search.asic.gov.au/cgi-bin/gns030c?acn=070_467_828&juris=9&hdtext=ACN&srchsrc=1)

- I determine that the Commission must conduct a hearing in relation to the objection.

#### D. Foy, Mr Brett Simmonds, The Cavenagh

52. A letter making an objection to the “Liquor Licence Application by Woolworths Limited”, typed on Malaguena Pty Ltd letterhead, signed by one ‘D.Foy’ designated ‘Nominee on behalf of Brett Simmonds General Manager The Cavenagh’, was received by the Director on Monday the 18<sup>th</sup> of October 2004, i.e. 31 days after notification of the application (folio 18). The letter appears to have been faxed on Monday the 18<sup>th</sup> of October, i.e. 31 days after notification of the application which would mean it does not strictly comply with s.47F(4)(d) of the *Act*. S.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 17<sup>th</sup> of September 2004. The last day for their receipt was the 17<sup>th</sup> of October 2004. The 17<sup>th</sup> of October 2004 was a Sunday. Under these circumstances, s.28(2) of the *Interpretation Act* permits this letter to be lodged with the Director on the first day following this day, viz. Monday the 18<sup>th</sup> of October 2004. Therefore the letter was lodged with the Director within the allotted time, as permitted in s.28(2) of the *Interpretation Act*.
53. The NT Licensing Commission database indicates that Mr David Michael Foy is the nominee of The Cavenagh and that the licensee is Malaguena Pty Ltd.<sup>19</sup> I note that the name of the manager of The Cavenagh did not appear in the Licensing Commission database pursuant to s.25(5) of the *Act*. However, since Mr Simmonds name and title as ‘General Manager’ are affixed to the licensee’s letterhead and since the Director advised me that Mr Simmonds is known to him as the General Manager of The Cavenagh, s.25(3) of the *Act* permits me to conclude that Mr Simmonds may be deemed to be the person licensed in respect of The Cavenagh. I am satisfied that the letter was signed on behalf of Mr Simmonds by Mr Foy. It is also clear from the letter that Mr Simmonds wished to make an objection to the application. The letter making an objection thereby complies with s.47F(4)(b) of the *Act*.
54. I note that The Cavenagh is located within the CBD at 12 Cavenagh Street Darwin, and at a distance of approximately 450 meters in a straight line from the proposed licensed premises (folio 31). I am satisfied that the General Manager of the Cavenagh, Mr Brett Simmonds, is a person who meets the requirements of s.47F(3)(a) in that he is a person residing or working in the neighbourhood and may therefore make an objection to the application. I note that, at folio 29, the applicant suggests that the letter making an objection “...is not submitted by a person allowed to lodge an objection pursuant to Section 47F(3)...” However, the applicant offers no reasons why I should alter my conclusion.

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55. While I am satisfied that Mr David Foy, is a person who meets the requirements of s.47F(3)(a), it is exclusively Mr Simmonds, and not Mr Foy, who is identified in the letter and who asserts that he is the person making the objection. I therefore gave no further consideration to whether Mr Foy, by signing the letter, wished to make an objection to the application on his own behalf as a person residing or working in the neighbourhood.
56. S.18 of the *Interpretation Act* includes a body corporate as a 'person'. I therefore considered whether Malaguena Pty Ltd wished to make an objection to the application. However, I am not satisfied that the letter was signed on behalf of Malaguena Pty Ltd since this was not clearly asserted by Mr Simmonds and since there is no specific mention in the letter that the objection was made on behalf of Malaguena Pty Ltd. I therefore considered the matter no further.
57. My summary of the substance of the grounds for the objection made is that, should the application be successful, the amenity of the neighbourhood would be adversely affected and there would be increased risks of anti-social behaviour and increased litter and noise problems in and around the CBD. It is my view that the letter raises concerns that are congruent with the grounds specified in s.47F(2).
58. I am also satisfied that the letter sets out the facts relied on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
59. I considered the applicant's response which gives me no cause to change my views or to make further inquiries. I conclude as follows.

With respect to the General Manager of The Cavenagh, Mr Brett Simmonds, the letter making an objection is not malicious or frivolous in nature. The letter sets out the facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter has relevance in that Mr Simmonds is a person residing or working in the neighbourhood where the licensed premises the subject of the application is located and who may make an objection pursuant to s.47F(3)(a). The letter also has relevance to the application since it was signed by or on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. On this basis, s.47I(3)(c)(i)(A) does not apply. The letter complies with s.47F(2) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis, s.47I(3)(c)(i)(B) does not apply. Since neither part of s.47I(3)(c)(i) applies, I am required to apply s.47I(3)(c)(ii).

- I determine that the Commission must conduct a hearing in relation to the objection.

**Mr Michael Scott, Mirambeena Resort, Darwin (Leisure Investments Pty Ltd)**

60. A letter dated the 13<sup>th</sup> of October 2004, expressing "...our company's wish and I believe the wishes of others in the immediate vicinity of the new Woolworth's supermarket at Cavenagh St Darwin, to restrict the sale of takeaway alcohol in this area" typed on Mirambeena Resort Darwin letterhead, signed by one Michael Scott designated 'General Manager Mirambeena Resort Darwin, and Vice President Tourism Top End, and President Skal International Darwin', was received by the Director on Thursday the 21<sup>st</sup> of October 2004, i.e. 34 days after notification of the application (folio 19-21). The letter appears to have been faxed on Monday the 18<sup>th</sup> of October, i.e. 31 days after notification of the application which would mean it does not comply with s.47F(4)(d) of the *Act*. S.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 17<sup>th</sup> of September 2004. The last day for their receipt was the 17<sup>th</sup> of October 2004. The 17<sup>th</sup> of October 2004 was a Sunday. Under these circumstances, s.28(2) of the *Interpretation Act* permits this letter to be lodged with the Director on the first day following this day, viz. Monday the 18<sup>th</sup> of October 2004. Therefore the letter was lodged with the Director within the allotted time, as permitted in s.28(2) of the *Interpretation Act*.
61. The NT Licensing Commission database indicates that the Mirambeena Tourist Resort is a licensed premises within the meaning of the *Liquor Act* (licence number 80204199), that the nominee is Mr Michael William Scott and that the licensee is Leisure Investments Pty Ltd.<sup>20</sup> While the letter is clear in its intent to restrict the sale of takeaway alcohol "... in this area." (folio 20), it is arguable whether it constitutes an objection to this application given the indirect language used in the letter and the references to "... earlier written objections..." (folio 20) which, as the applicant points out (folio 25), are not provided. Having said this, Mr Scott's letter conveys the sense that he wished to make an objection even though he did not clearly state so. I note that the facsimile cover sheet (folio 19) bears the reference "Liquor Licence Objection". This together with the strong sense of an objection conveyed in the letter gave me more comfort that the letter was, in fact, making an objection. It is also clear from his implied ownership of the concerns his company has for its guests that Mr Scott wished to make an objection to the application on his own behalf. The letter making an objection therefore complies with s.47F(4)(b) of the *Act*.

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62. I note that the Mirambeena Resort Darwin is located within the CBD at 64 Cavenagh Street, and at a distance of approximately 45 meters across the road from the proposed licensed premises and closer than all but one of those making an objection to the application (folio 31). I am satisfied that the General Manager of the Mirambeena Resort Darwin, Mr Michael Scott, is a person who meets the requirements of s.47F(3)(a) in that he is a person residing or working in the neighbourhood and may therefore make an objection to the application.
63. Since s.19 of the *Interpretation Act* includes a body corporate in its definition of a 'person', I also considered whether Leisure Investments Pty Ltd wished to make an objection to the application. According to the ASIC website, Leisure Investments Pty Ltd is an Australian Proprietary Company (ACN 009 633 532) with registered offices located in Darwin.<sup>21</sup> With licensed premises located within the CBD in Cavenagh St Darwin, and at a distance of approximately 45 meters across the road from the proposed licensed premises (folio 31), Leisure Investments Pty Ltd could be regarded as a person living or working in the neighbourhood and complies with s.47F(3)(a) and may therefore make an objection to the application. With tenure over the licensed premises known as the Mirambeena Tourist Resort already recognised by the Commission, Leisure Investments Pty Ltd also complies with s.47F(3)(b) and may therefore make an objection to the application on the grounds that it is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located. I am satisfied that the letter was signed on behalf of Leisure Investments Pty Ltd since Mr Scott asserted that the concerns expressed were '... our company's wish ...' (folio 20), which complies with s.47F(4)(b) of the *Act*, and suggests that the company wished to make an objection to the application.
64. I also considered whether Tourism Top End and Skal International Darwin (folio 21) and "... others in the immediate vicinity of the new Woolworths supermarket ..." (folio 20) wished to make an objection to the application. I note that the applicant suggests that the "... objector can only object on its own behalf." (folio 25). While Mr Scott's colleagues in the tourism industry may "... share very similar views as to the effects of drunkenness on the streets of Darwin.." (folio 21), and even though Mr Scott may hold office in tourism industry associations, there is no information in his letter to suggest that these associations wished to lodge an objection to the application on their own behalf. Furthermore, with respect to the "... others in the immediate vicinity of the new Woolworths supermarket ..." (folio 20), Mr Scott's belief that they wished to lodge an objection, whoever they may be, is not sufficient to convince me that his letter makes an objection on their behalf.

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<sup>21</sup> [http://www.search.asic.gov.au/cgi-bin/gns030c?acn=009\\_633\\_532&juris=9&hdtext=ACN&srchsrc=1](http://www.search.asic.gov.au/cgi-bin/gns030c?acn=009_633_532&juris=9&hdtext=ACN&srchsrc=1)

65. My summary of the substance of the grounds for the objection made is that, should the application be successful, there would be increased risks of anti-social behaviour and increased public drunkenness in and around the CBD. Moreover there is an apprehension that the guests of the Mirambeena Tourist Resort would experience this adversely altered amenity. It is my view that the letter raises concerns that are congruent with the grounds specified in s.47F(2).
66. I am also satisfied that the letter sets out the facts relied on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
67. I considered the applicant's response which suggests that the letter does not "... describe grounds of objection allowed by Section 47F(2) nor facts constituting those grounds but, rather, amount to an objection based on commercial grounds." (folio 25). However, since the applicant provided no reasons for me to alter my views, I conclude as follows.
- a. With respect to the General Manager of the Mirambeena Tourist Resort, Mr Michael Scott, the letter making an objection is not malicious or frivolous in nature. The letter sets out the facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter has relevance in that Mr Scott is a person residing or working in the neighbourhood where the licensed premises the subject of the application is located and who may make an objection pursuant to s.47F(3)(a). The letter also has relevance to the application since it was signed by or on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. On this basis, s.47I(3)(c)(i)(A) does not apply. The letter complies with s.47F(2) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis, s.47I(3)(c)(i)(B) does not apply. Since neither part of s.47I(3)(c)(i) applies, I am required to apply s.47I(3)(c)(ii).
    - I determine that the Commission must conduct a hearing in relation to the objection.
  - b. With respect to Leisure Investments Pty Ltd, the letter making an objection is not malicious or frivolous in nature. The letter has relevance to the application since it was signed by or on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. The letter also has relevance in that Leisure Investments Pty Ltd is a person residing or working in the neighbourhood where the licensed premises the subject of the application is located and who may make an objection pursuant to s.47F(3)(a). Leisure Investments Pty Ltd also complies with s.47F(3)(b) and may therefore make an objection to the application

on the grounds that it is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located. On this basis, s.471(3)(c)(i)(A) does not apply. The letter sets out the facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter complies with s.47F(2) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis, s.471(3)(c)(i)(B) does not apply. Since neither part of s.471(3)(c)(i) applies, I am required to apply s.471(3)(c)(ii).

- I determine that the Commission must conduct a hearing in relation to the objection.

### Ms Meg Cotter, Darwin City Promotions (Darwin City Heart Promotions Ltd)

68. A letter dated the 13<sup>th</sup> of October 2004, regarding “Objection to Woolworths Application for a Licence to Sell Liquor” typed on Darwin City Promotions letterhead, signed by one Meg Cotter designated ‘General Manager’, was received by the Director on Thursday the 25<sup>th</sup> of October 2004, i.e. 38 days after notification of the application (folio 22). The letter appears to have been posted on Tuesday the 22<sup>nd</sup> of October (folio 23), i.e. 35 days after notification of the application which would mean it does not strictly comply with s.47F(4)(d) or s.47F(5) of the *Act*. S.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 17<sup>th</sup> of September 2004. The last day for their receipt was the 17<sup>th</sup> of October 2004. The 17<sup>th</sup> of October 2004 was a Sunday. Under these circumstances, s.28(2) of the *Interpretation Act* permits this letter to be lodged with the Director on the first day following this day, viz. Monday the 18<sup>th</sup> of October 2004. S.47F(5) allows that if a letter is delivered to an office of Australia Post for transmission to the office of the Director within the period referred to in s.47F(4)(d), the letter making an objection is taken to be duly lodged. Even taking this provision into account, the letter does not appear to have been lodged with the Director within the allotted time, as permitted in s.28(2) of the *Interpretation Act*. No information was available at folios 22 and 23 to explain why the letter was dated the 13<sup>th</sup> of October but not mailed until the 22<sup>nd</sup> of October 2004. Therefore, I cannot conclude that the letter complies with s.47F(4)(d) or s.47F(5) of the *Act* which means that its relevance to the application is seriously diminished.
69. The letter asserts that the “... Board of Darwin City Promotions Ltd...” has requested that an objection be raised with regard to the application (folio 22). I am satisfied that the letter was signed on behalf of Darwin City Promotions since this was declared by Ms Cotter under Darwin City Promotion letterhead. The letter making an objection therefore complies with s.47F(4)(b) of the *Act*.
70. Darwin City Promotions is a registered business name in the NT (Registered state/no. NT 75098B).<sup>22</sup> Darwin City Heart Promotions Ltd is an Australian Public Company (ACN 064 567 157).<sup>23</sup> I note that the applicant advises that Darwin City Promotions is owned by Darwin City Heart Promotions Ltd and describes it as a commercial organisation whose aim is to promote and market the CBD (folio 25). I take it from this that Ms Cotter’s reference to the ‘Board of Darwin City Promotions Ltd’ (folio 22) means the Board of Darwin City Heart Promotions Ltd (DCHP).
71. I note that Darwin City Promotions is located within the CBD at 48-50 Smith Street Darwin, and at a distance of approximately 340 meters in a

<sup>22</sup> [http://www.search.asic.gov.au/cgi-bin/gns030c?state\\_number=75098B&juris=8&hdtext=NT&srchsrc=1](http://www.search.asic.gov.au/cgi-bin/gns030c?state_number=75098B&juris=8&hdtext=NT&srchsrc=1)

<sup>23</sup> [http://www.search.asic.gov.au/cgi-bin/gns030c?acn=064\\_567\\_157&juris=9&hdtext=ACN&srchsrc=1](http://www.search.asic.gov.au/cgi-bin/gns030c?acn=064_567_157&juris=9&hdtext=ACN&srchsrc=1)

straight line from the proposed licensed premises (folio 31). It was therefore necessary to consider whether Ms Cotter was indicating her own objection to the application by signing her name to the letter. Her use of collective terms describing the concerns of the Board of DCHP did not clearly suggest that Ms Cotter held those concerns herself and that she wished to make an objection on her own behalf as a person who works in the neighbourhood where the premises the subject of the application are or will be located pursuant to s.47F(3)(a). So I considered this question no further.

72. S.18 of the *Interpretation Act* includes a body corporate as a 'person'. Since the letterhead (folio 22) indicates that the Darwin City Promotions office is located within the CBD approximately 340 meters from the proposed licensed premises (folio 31), it was necessary to consider whether the Board of DCHP could be considered a person residing or working in the neighbourhood where the premises the subject of the application are or will be located and so may make an objection to the application pursuant to s.47F(3)(a). Since the search of the ASIC website disclosed that Darwin City Heart Promotions Ltd is an Australian Public Company, I am satisfied that the Board of DCHP should be regarded as a person who resides or works in the neighbourhood and who may make an objection to the application pursuant to s.47F(3)(a). The Board of DCHP could also be regarded as a person who may make an objection to the application under s.47F(3)(b) if it holds an estate in fee simple in land, or lease over land, in the neighbourhood where the premises the subject of the application are located. This seems more likely than not since the business office of Darwin City Promotions listed in the NT telephone directory is 'Paspalis Centrepoint' which is the same as the office address shown on the letterhead (folio 22).
73. My summary of the substance of the grounds for the objection made is that, should the application be successful, there would be increased risks of anti-social behaviour. There is also an apprehension of reduced public safety and adverse impacts on the ambience of the CBD. It is my view that Ms Cotter raises concerns on behalf of the Board of DCHP that are congruent with the grounds specified in s.47F(2).
74. I am also satisfied that, on behalf of the Board of DCHP, Ms Cotter sets out the facts she relies on to constitute the ground on which the objection is made and this complies with s.47F(4)(c) of the *Act*.
75. I considered the applicant's response which gives me no cause to change my views or to make further inquiries. I conclude as follows.

The letter from the Board of DCHP making an objection is not malicious or frivolous in nature. The letter has relevance in that it was signed by Ms Cotter on behalf of the Board of DCHP and thereby complies with s.47F(4)(b). The letter sets out the facts relied upon to constitute the grounds on which the objection is

made pursuant to s.47F(4)(c). Moreover, the letter complies with s.47F(2) of the *Act* in that it asserts that the grounds for the objection are adverse effects on the amenity of the neighbourhood. On this basis s.471(3)(c)(i)(B) does not apply. I am also satisfied that the Board of DCHP can be regarded as a person who resides or works in the neighbourhood and who holds an estate in fee simple in land, or lease over land, in the neighbourhood where the premises the subject of the application are located. The Board of DCHP therefore could make an objection to this application pursuant to s.47F(3)(a) or (b). However the letter making an objection did not comply with s.47F(4)(d) or s.47F(5) in that it was not lodged with the Director within the prescribed time which, on balance, means that the letter is irrelevant to the application.

- On this basis s.471(3)(c)(i)(A) applies and I must dismiss the letter making the objection.
- Accordingly, pursuant to s.471(4) I direct the Director to inform the Board of DCHP that their objection has been dismissed.