

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Applicant:	Blaxland Star Pty Ltd
Premises:	The NT Rock Bar-Located at 78 Todd St Alice Springs NT 0870
Objectors:	Annie Mulga Ventures Pty Ltd Julie and Kel Martin of Elkira Motel Bojangles Saloon Pty Ltd t/a Bojangles Saloon and Dining Room Red Centre Investments Pty Ltd t/a Diplomat Alice Springs
Relevant Legislation:	Sections 47F, 48G, 47I & 126 of <i>Liquor Act</i> and Section 28(2) of the <i>Interpretation Act</i>
Member:	Brenda Monaghan
Date of Decision:	28 April 2009

Background

- 1) Blaxland Star Pty Ltd has made application for an 'on premise' liquor licence for the premises known as The NT Rock Bar located at Lot 108 78 Todd Street, Alice Springs.
- 2) The application was advertised in the Centralian Advocate on Tuesday 18 November and Friday 21 November 2008.
- 3) Under Section 47F(4)(d) of the *Liquor Act* (the Act), an objection must be lodged with the Director within thirty (30) days after publication of the last advertisement - namely Sunday 21 December 2008. By application of Section 28 of the *Interpretation Act* however, the last day for receipt of objections by the Director was Monday 22 December 2008.
- 4) The advertised notice of application provided the following proposed trading details:

We, Robert John Cowan and Jolyon William George on behalf of Blaxland Star Pty Ltd, Hereby Give Notice that we have applied to the Northern Territory Licensing Commission for an On-Licence Liquor Licence to sell liquor from the premises known as The NT Rock Bar located at 78 Todd Street Alice Springs, NT 0870.

Proposed Trading Details for the sale of liquor are as follows:

- *Trading Hours are proposed to be 11:30 to 02:00 hours the following day, seven (7) days per week*
- *Liquor will be available without the necessity of a meal*
- *Meals shall be available from 11:30 to 15:00 hours and 18:30 to 21:30 hours for service to any part of the licensed area*
- *Snack foods and complimentary 'tap' water will be available at all times*
- *Camera surveillance will be operating on the premises*
- *Live Entertainment is proposed to be by way of live music (in the form of acoustic sets) and is to cease at midnight*
- *The maximum patron numbers will be 250 persons*

- *Adequate Security is to be provided*

This is the first notice of application. The notice will be published again on Friday 21 November 2008.

The objection period is deemed to commence from 21 November 2008 (date of publication of second notice).

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions may or will adversely affect:

the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

health, education, public safety or social conditions in the community.

Only those persons, organisations or groups described in Section 47F(3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.

For further information regarding this application contact the Deputy Director of Licensing and Regulation on telephone 89518452. Objections to this application should be lodged in writing with the Deputy Director of Licensing and Regulation, PO Box 8470, Alice Springs, within thirty (30) days of the commence date of the objection period.

- 3) Four (4) letters of objection were received on or before 22 December 2008. They were from:
 - a) Mr Matt Mulga, director of Annie Mulga Ventures Pty Ltd;
 - b) Julie and Kel Martin of Elkira Motel;
 - c) Bojangles Saloon Pty Ltd t/a Bojangles Saloon and Dining Room;
 - d) Red Centre Investments Pty Ltd t/a Diplomat Alice Springs.
- 4) The substance of the objections relates inter alia to anti-social behaviour, public safety, community amenity and in particular noise issues and outlet density.

Section 47F of the Act provides -

47F. Person may object to certain applications

- (1) *Subject to this Section, a person, organisation or group may make an objection to the following applications:*
 - (a) *an application for the grant of a licence, as notified under Section 27;*
 - (b) *an application for a variation of the conditions of a licence, as notified under Section 32A;*
 - (c) *an application for the substitution of other premises for the premises specified in a licence, as notified under Section 46A;*
 - (d) *an application for approval to make a material alteration to licensed premises, as notified under Section 119.*
- (2) *The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –*

- (a) *the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- (b) *health, education, public safety or social conditions in the community.*
- (3) *Only the following persons, organisations or groups may make an objection under subsection (1):*
- (a) *a person residing or working in the neighbourhood where the premises the subject of the application are or will be located;*
- (b) *a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located;*
- (c) *a member or employee of the Police Force acting in that capacity;*
- (d) *a member or employee of the Fire and Rescue Service within the meaning of the Fire and Emergency Act acting in that capacity;*
- (e) *an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;*
- (f) *a community-based organisation or group (for example, a local action group or a charity).*
- 5) The applicant was provided with copies of all objections and submitted a detailed response dated 6 February 2009. Part of the response provides the Commission with a general background on the history of the NT Rock Bar and those associated with it over to past couple of years. This background information will be ultimately included in the hearing brief. Further, the applicant's response details why the concerns raised by the objectors are unfounded and why some of the objectors should have their objections dismissed.
- 6) It is important to note that objectors with a commercial interest in the neighbourhood are not prevented from objecting to a new licence so long as they address the criteria set out in Section 47F(2) of the Act. The weight that the Commission ultimately places on their objection, however will depend on the validity of their concerns or whether the Commission finds their competing business interests have clouded their judgment.
- 7) I also find that all of the premises referred to in the letters of objection are within the neighbourhood. Some may be a few streets away but all are close enough for the amenity of their premises to be impacted upon by future activity at the Rock Bar site. As such, they should have the opportunity to raise relevant issues of concern at any hearing subject to the limits placed upon objectors by the Act.

Objection from Annie Mulga Ventures Pty Ltd

- 5) Standing is sought by this objector as the owner of Lot 906 (95 Todd St) which I find to be in the neighbourhood of the proposed premises. The written objection is signed and received within time. It raises concerns about the impact of the proposed licence being sought on the current restaurant business conducted from Lot 906, namely Bluegrass Restaurant. The facts relied on relate to public drunkenness which it is alleged emanated from the Rock Bar when it was trading in early 2008.
- 6) The Licensee and current lessee of the Bluegrass Restaurant is not an objector and has advised the Commission in writing that it does not wish to be one. The applicant submits that the objection from the registered owner of the land is of a frivolous, irrelevant and malicious nature and is made for competitive self-protective reasons as Mr Mulga has competing business interests in town. When contacted, Mr Matt Mulga on behalf of Annie Mulga Ventures Pty Ltd has advised that the company as a land owner in the neighbourhood of the proposed premises maintains its objection. As owner of land and

irrespective of any commercial interests, Annie Mulga Ventures Pty Ltd has standing as an objector provided it meets certain criteria under the *Liquor Act* as addressed below.

- 7) The question is whether the objection has the substance required by the *Liquor Act* to be considered valid. Pursuant to Section 47F(4)(C), an objection must “set out the facts relied on by the person to constitute the ground on which the objection is made”. The alleged facts relied upon are an increase in public drunkenness in early 2008 when the Rock Bar was open which reduced the pleasure of dining at Bluegrass. A further concern expressed was that the increase in public drunkenness lowered the image in town. The grounds of objection relate to the amenity of the neighbourhood and public safety issues in the locality where the premises are located. Whilst the objection is based on limited facts, it is sufficient to qualify them as an objector and they have standing to address the Commission on those limited issues at the hearing.

Joint Objection from Julie and Kel Martin t/a Elkira Motel

- 8) Section 47(3)(a) allows a person residing or working in the neighbourhood to lodge an objection. AO Resorts Pty Ltd is the Licensee of this liquor outlet and Ms Martin is the Nominee. I find that both Ms Martin in her capacity as Nominee and Mr Martin have standing as persons who work at the Elkira Motel, which I find to be in the neighbourhood. The written objection is signed by both persons and was received within time.
- 9) Turning then to the substance of the objection and whether it fits within Section 47F(2), Mr and Ms Martin express concerns about excessive noise in the early hours of the morning which impacted on their guests when the Rock Bar was open in early 2008.
- 10) The ground of objection is valid and the objectors require a hearing on the limited grounds contained in their objection.

Objection from Bojangles Saloon Pty Ltd t/a Bojangles Saloon and Dining Room

- 11) Avril and Chris Vaughan, proprietors of Bojangles have standing to object on behalf of Bojangles Saloon Pty Ltd pursuant to Section 47F(3)(b). The signed, written objection was received by the Director within time and complies with the requirements of Section 47F (4) of the Act. Bojangles Saloon & Dining Room is located at 80 Todd St and is within the neighbourhood of the applicant.
- 12) The objection letter lists a number of concerns which may impact on community amenity and public safety including antisocial and drunken behaviour of patrons and noise. The letter refers to the recent history of The Rock Bar and outlines the concerns and issues the objector had (and still has) about this venue. It clearly outlines the facts relied upon.
- 13) The applicant accepts that Bojangles Saloon Pty Ltd is a valid objector but submits that the objection should be dismissed on the grounds that it is malicious, frivolous, irrelevant and the facts relied on do not support the objection as there is no evidence to demonstrate that the grant of a licence will adversely affect community amenity of health and safety issues. The objector at this stage does not have to provide all of their evidence. So long as they have provided the facts relied on in general terms, then that is sufficient. I consider there is sufficient clarification of the issues to make this a valid objection and the objector requires a hearing.

Red Centre Investments Pty Ltd t/a Diplomat Alice Springs

- 14) An objection was also received from Red Centre Investments Pty Ltd. The applicant has challenged the validity of the objection on the grounds that this company does not have standing to object as it did not hold the licence for the Diplomat. Investigations by the Commission have brought to light the fact that the liquor licence remained in the name of

Outback Qld Pty Ltd when the business was in fact being operated by Red Centre Investments Pty Ltd. It is noted that Red Centre Investments Pty Ltd is the sole shareholder of Outback Qld Pty Ltd. In short, at the time the objection was lodged, Red Centre Investments was 'working in the neighbourhood' but without a liquor licence in its name. Since the objection was lodged, the liquor licence for Diplomat Hotel has been transferred to Red Centre Investments Pty Ltd with the consent of the Commission. This company now conducts the business of the Licensee and holds the liquor licence. As a person who is working within the neighbourhood, the objector has standing to object on the facts set out in the objection. In this case, the objection is not frivolous or vexatious but is however limited to noise issues affecting neighbourhood amenity and the objector has standing to address this issue at hearing.

Determination

- 15) On the basis of the matters set out above, I find that the four (4) objections are valid and require a hearing.

Brenda Monaghan
Legal Member

28 April 2009