

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Darwin City Waterfront Ground Floor Medina Vibe Hotel Complex Kitchener Drive Darwin NT 0800
Applicant:	Craft Beer Australia Pty Ltd
Nominee:	N/A (Conditional application only)
Licence Number:	N/A (New Application)
Objectors:	Brevet Sergeant ES Mitchell (NT Police) Mr Ian Morris, Chairman, Bridgeport Body Corporate Mr Frazer Henry, 19 The Esplanade Mr Ray Burr, Chairman, L'Esperance Body Corporate Mr Nicholas Mitoros, Arkaba Body Corporate
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Richard O'Sullivan
Date of Decision:	12 May 2009

Summary of Decision

That the Commission conduct a hearing in respect of the objections received from:

1. Brevet Sergeant ES Mitchell (NT Police)
2. Mr Ian Morris, Chairman, Bridgeport Body Corporate, 9/9 The Esplanade
3. Mr Frazer Henry, 19 The Esplanade
4. Mr Ray Burr, Chairman, L'Esperance Body Corporate, 1/7 The Esplanade
5. Mr Nicholas Mitoros, Arkaba Body Corporate

Background

- 1) Craft Beer Australia Pty Ltd ("Craft"), has made an application for an "in principle" (ie conditional) licence approval for a Tavern Licence for the sale of liquor from premises situated at the Ground Floor of the Medina Vibe Hotel Complex, located at the Darwin City Waterfront. Craft advises in the application that it is seeking conditional approval for a liquor licence to assist in leasing, development and fitout of the proposed licensed area with a view to making a full application for a Tavern Licence at a future time.
- 2) The Application was advertised in the Northern Territory News on 18 and 20 March 2009 pursuant to Section 32A of the *Liquor Act* ("the Act"). The application states that the applicant applies for "in principle" approval for a Tavern Licence for consumption of liquor on the premises. The application seeks trading hours for the sale of liquor on the premises from 10.00am until 2.00am the following day seven (7) days a week.

The advertisement was as follows:

Craft Beer Australia Pty Ltd, Hereby Give Notice that it has applied to the Northern Territory Licensing Commission for an "In Principle" "Tavern" Liquor Licence to sell liquor from the premises located at the "Darwin City Waterfront", 7 Kitchener Drive, Darwin City.

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

- *The business proposed to be conducted on the premises will be in the nature of a Tavern where the primary activity at the premises is the sale and consumption of liquor on or at those premises*
- *The Tavern will include a restaurant area (including a cocktail bar), two other bar areas and an alfresco area.*
- *The business will be themed as a sophisticated boutique beer premise providing a range of boutique beers as well as a range of other alcoholic and non alcoholic drinks.*
- *Liquor may be sold for consumption on the premises from 10:00 am until 2:00 am (the following day), seven (7) days per week.*
- *Entertainment will include live and recorded music suitable for the over 25 age market.*
- *A meal shall be available between 12:00 hours and 14:00 hours and 18:00 hours and 20:00 hours.*
- *Snacks will be made available at all times the premises are open for trade.*

This is the first notice of application. The notice will be published again on Friday, 20 March 2009.

The objection period is deemed to commence from Friday, 20 March 2009. (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 grant of the licence 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.*

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 Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, Licensing and Regulation, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 18 Day of March 2009.

- 3) Pursuant to Section 47F (4) (d) an objection must be lodged within thirty (30) days after the publication of the last notice. The objections the subject of this decision were dated 23 March 2009, 3 April 2009, 6 April 2009 and 7 April 2009 and were therefore lodged within the time allowed by the Act. A further objection was received on 20 April 2009. The final day of the thirty (30) day objection occurs on the weekend, Sunday 19 April. Therefore, the final permissible day for objections to be within time is the following working day, that is Monday 20 April 2009 and therefore the objection received on that date meets time requirements.

- 4) The content and substance of the objections relate inter alia to possible anti-social behaviour, harm minimisation, effect on the community amenity, lack of need demonstrated by the application, general noise issues, entertainment noise issues, road user safety, the proximity of similar licensed premises, lack of pick up and dropping off points for vehicles, including taxis and the late hours of licence applied for.

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).*

Objection from Police

- 5) Section 47(3)(c) allows members of the Northern Territory Police to object to the Application. Brevet Sergeant ES (Scotty) Mitchell is the OIC / Senior Policy Advisor of the Drug & Alcohol Policy Unit of the Northern Territory Police and is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c). As such Brevet Sergeant Mitchell is a valid objector.

6) Turning then to the substance of the objection and whether it fits within Section 47F(2).

The grounds of the objections include -

- a) The grant of a licence may or will adversely affect the amenity of the neighbourhood,
- b) The Commission has insufficient information to make a decision to grant a licence,
- c) Objection to the proposed trading hours of 10.00am to 3.00am seven (7) days a week,
- d) Proximity of the proposed premises to existing and similar licensed premises,
- e) Proximity of the proposed premises to residential areas and potential for noise and property damage issues,
- f) Security and safety issues, including security for the safety of patrons leaving the premises late in the evening on foot, and
- g) Potential of licence requested to require Police resourcing after 10.00pm to deal with noise and resident complaints.

The grounds of objection relate to the amenity of the surrounding neighbourhood and the health and public safety of the community and patrons of the proposed licensed premises. On that basis the grounds of objection are valid and require a hearing.

Objection from Bridgeport, L'Esperence and Arkaba Body Corporate

- 7) Section 47(3)(a) allows a person residing or working in the neighbourhood where the premises the subject of the application will be located to object to the Application. Mr Morris, Mr Barr and Mr Mitaros are residents (or representatives of such residents) of apartment buildings in close proximity to the proposed licensed premises, and all are office bearers of Body Corporates and as such, all three (3) are valid objectors.
- 8) The objections of Mr Morris, Mr Barr and Mr Mitaros are similar in nature and for the purposes of this decision will be dealt with collectively. Turning then to the substance of the objections and whether they fit within Section 47F(2); the three (3) objections raise issues of:
 - Objections to the proposed trading hours of 10.00am to 2.00am seven (7) days a week,
 - The proximity of the proposed premises to residential properties and the potential for noise and anti-social behaviour problems, including property damage, likely to effect residents,
 - The lack of a suitable area for dropping off and picking up patrons from the proposed premises and potential traffic hazards,
 - The potential for noise issues for residents given the extended trading hours and possibility of "outside" entertainment,
 - Lack of demonstrated need for facilities and trading conditions applied for, and
 - Lack of specificity and detail of proposed operation attaching to the "in principle" or conditional licence sought.
- 9) The grounds of each objection relate to the amenity of the neighbourhood where the objectors reside and the public safety or social conditions of the community. On that basis the grounds of each of the three objections are valid and require a hearing.

Objection from Mr Henry

- 10) Mr Henry raises concerns over potential noise and anti social activity. He has objected to potential "outdoor activities" to the eastern and northern side of the tavern.
- 11) This objection is on the grounds of neighbourhood amenity and as the objector resides within the area it is valid and requires a hearing.

Submission of Mr P Coleman, CEO, Darwin Waterfront Corporation

- 12) This submission was provided at the request of a Licensing Inspector. It provides comment on levels of security to be employed and the need for physical barriers to control the movement of patrons and the direction they take on exiting the premises.
- 13) Reference is made to a recent event where patrons congregated on the public thoroughfare outside of the existing licensed premises of the Medina Hotel. Although the term "concern" is used, the material provided does not constitute an objection. It does, however raise issues of relevance to the Commission in its consideration of the application.

Applicant's Response to Objections

- 14) The objections were forwarded to the applicant and a response has been provided by Mr Des Crowe, representing the applicant, by letter dated 24 April 2009. Mr Crowe in response provided "additional information" as follows:
 - (a) The neighbourhood should be restricted to the immediate surrounds of the proposed licence, that is "the Waterfront Precinct including The Esplanade in front of the footbridge and down to L'Esperance".
 - (b) At hearing his client can provide further details on the applicant's harm minimisation measures and measures proposed to be employed to deal with issues raised by objectors.
 - (c) Many of the objection issues are re-iterations of previously raised matters which his client can address at hearing.

Determination

- 15) In my opinion the objection made by Police to the application is a valid objection and requires a hearing.
- 16) The three (3) objections received from Bridgeport, L'Esperance and Arkaba Body Corporates are valid objections concerning the impact of the proposed licensed premises on the amenity of their neighbourhood. As such, those objections are valid and require a hearing.
- 17) The objection of Mr Henry in that it relates to potential noise and neighbourhood amenity disturbance is valid and requires a hearing.
- 18) On the basis of the matters set out above, I find that all five (5) objections are valid and require a hearing.

Richard O'Sullivan
Chairman

12 May 2009