

# NORTHERN TERRITORY LICENSING COMMISSION

## Decision on Whether Objection Will Proceed To Hearing

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<b>Premises:</b>	Asian Gateway
<b>Applicant:</b>	Paul Henderson
<b>Licence Number:</b>	80504751
<b>Objectors:</b>	1 objector – Mr Paul Walsh
<b>Legislation:</b>	Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
<b>Decision of:</b>	Cindy Bravos (Commission Member)
<b>Date of decision:</b>	18 July 2014

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### BACKGROUND

- 1) Mr Paul Henderson has applied pursuant to Section 32A of the *Liquor Act* (“the Act”) for a variation of licence conditions to the premises known as Asian Gateway (Licence No. 80504751) located at 58 Aralia Street, Nightcliff.
- 2) The current liquor licence allows for trade between 6.00pm to 23.59pm, seven days a week. The variation of licence conditions being sought is to extend the current trading hours to 12.00 noon to 23.59pm, seven days a week (an increase of six hours each day).
- 3) The Application was advertised in the NT News on Wednesday 7 May 2014 and Friday 9 May 2014 pursuant to Section 32A(3)(a) of the Act.
- 4) The advertisement was as follows:

*Mr Paul Frederick Henderson, HEREBY GIVES NOTICE that he has applied to the Northern Territory Licensing Commission for a “Variation of Licence Conditions” to the premises known as Asian Gateway (Liquor Licence number 80504751) located at 58 Aralia Street, Nightcliff, Darwin N.T.*

*The variation to the liquor licence will consist of extending the trading hours to cater for lunch time trade and is as follows:*

- *12.00 hours – 23:59 hours, seven (7) days a week (an increase of six (6) hours a day, seven (7) days a week).*

*This is the first notice of application. The notice will be published again on Friday, 9 May 2014.*

*The objection period is deemed to commence from Friday, 9 May 2014.*

*The objection period will close on Monday, 9 June 2014.*

*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:*

- (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, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.*

*Dated this 7 May 2014.*

- 5) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty days after the publication of the last notice, namely on or before Monday 9 June 2014. It is relevant to note that pursuant to section 28(2) of the *Interpretation Act*, as 9 June 2014 was a public holiday, lodgement of any objection must occur no later than the next week day being in this case, 10 June 2014.
- 6) Section 47F of the Act prescribes the circumstances in which an objection may be made, specifies the grounds for objection and identifies the persons entitled to object to a particular application -

***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:*
  - (b) *an application for a variation of the conditions of a licenced, as notified under section 32A;*
- (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 sub-Section (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).*
- 7) One objection has been lodged in response to the application and the applicant has provided a response to that objection pursuant to Section 47G of the Act.
- 8) Under Section 47I of the Act the Commission must determine whether the objection received is to proceed to Hearing.

## **CONSIDERATION OF THE OBJECTION RECEIVED**

### **Objection from Mr Paul Walsh**

- 9) Mr Walsh is a resident of the neighbourhood within in which the premise is located and therefore has standing to object.
- 10) The objection was received on 10 June 2014 and is therefore within the time allowed within which to lodge an objection noting as above that 9 June 2014 was a public holiday.
- 11) The objection raises the concern that the current amenity of the objector's home life and neighbourhood *"generally has been severely disturbed by the excessive noise coming from and generated by the Asian Gateway"*;

The objector states that the noise is caused by a number of factors including:

- patrons arriving at and leaving the premise;
- staff who yell loudly in the food preparation areas;
- the use of high pressure water blasters in and outside the premise; and
- staff congregating outside talking and shouting after closing hours.

The objector also comments that there is a constant and increasing amount of traffic travelling past the objector's home and parking in the street, including across the objector's driveway.

- 12) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the neighbourhood, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

## APPLICANT'S RESPONSE TO OBJECTIONS RECEIVED

- 13) The applicant, Mr Henderson has been provided with the objection and pursuant to the requirements of the Act has been afforded the opportunity to respond.
- 14) In this respect, the applicant has responded stating that the objection does not raise any concerns about antisocial behaviour of the patrons of the restaurant, rather it is about the noise created by the staff working in the restaurant. The applicant has advised that he will ask that staff speak more quietly.
- 15) The applicant advises that the service of alcohol is done in a responsible manner. Additionally, the applicant advises that he has spoken to four other families residing nearer to the restaurant than Mr Walsh and that they have no complaint.

## DECISION

- 16) It is noted that other parties who were provided with copies of the application including the Development Consent Authority, the Department of Health, the Darwin City Council, the Northern Territory Police and the Northern Territory Fire and Rescue Service either did not respond or had no adverse comment to make.
- 17) The objection has been assessed according to the requirements of the Act to determine whether the objector has standing to lodge an objection, to determine whether the objection was lodged within the required time and to determine if the grounds specified in the objection meet the requirements of Section 47F(2) of the Act.
- 18) The Commission has determined that the objection lodged is valid and requires a Hearing pursuant to Section 47I(7) of the Act.
- 19) While the Commission is required to conduct a Hearing where a valid objection has been lodged, if the objector does not wish to attend and make oral submissions, the Commission is able to rely solely on the written objection it has before it. In this instance the Commission may determine to conduct the Hearing on papers only.



Cindy Bravos

COMMISSION MEMBER

18 July 2014