

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Hog's Breath Café, Mitchell Street, Darwin
Applicant:	Hoggies Darwin Pty Ltd
Joint Nominees:	Cormac MacCarthy and Troy Timmins
Objectors:	Mr Terry Dowling and Mr Michael Canaris, DNPW Pty Ltd Ms Meredith Elliot, DNPW Pty Ltd and Darwin City Council
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Merran Short
Date of Decision:	1 October 2007

Summary of Decision

Hold a Hearing in respect of the objections received from:

- DNPW Pty Ltd – Mr Terry Dowling and Mr Michael Canaris and;
- DNPW Pty Ltd – Ms Meredith Elliott;
- Darwin City Council.

Background

- 1) On 11 May, Mr Damien Peterson, the then Nominee of Hog's Breath Café in Darwin ("the premises"), lodged an application pursuant to section 32A of the *Liquor Act* ("the Act") seeking approval to vary the premises liquor licence from a Restaurant to an On-Licence ("the Application"). The reason provided for the variation was to allow for greater flexibility in trading conditions in order to cater for changing demands being experienced in the market place.
- 2) It would also, if approved, bring the theme/concept of the premises into line with Hog's Breath Café southern franchises which enjoy a more flexible trading arrangement, as well as several other Darwin inner city restaurants that have recently had their liquor licence varied to that of an On-Licence.
- 3) On 22 July 2007, the premises were sold to Hoggies Darwin Pty Ltd, who were aware of Mr Peterson's application to vary the licence and advised that wanted to continue with the application.
- 4) Notice of the Application was published in the NT News on 6 and 8 June 2007 in the following terms:

I, Damian Peterson, Of Hog's Breath Cafe, Hereby Give Notice that I have applied to the Northern Territory Licensing Commission for a Variation Of Liquor Licence, for Liquor Licence 80504717 for the premises located at 85 Mitchell Street, Darwin, NT.

Current Liquor Licence and Trading Hours are as follows:

“Restaurant Liquor Licence”

Monday to Sunday between 11:30 hours and 02:00 hours the following day.

Proposed Liquor Licence and Trading Hours are as follows:

“On Liquor Licence”

Monday to Sunday between 11:30 hours and 02:00 hours the following day.

The concept of the new licence will be to allow for patrons to consume liquor on the premises without the requirement of it having to be ancillary to a meal. There will not be any changes to the trading hours and food will remain as the core business.

This is the first notice of application. The notice will be published again on Friday, 8 June 2007.

The objection period is deemed to commence from Friday, 8 June 2007.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of conditions 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, Racing, Gaming and Licensing GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 4th Day of June 2007

- 5) In addition, a sign advertising the application to vary the licence was displayed within the front fence of the premises secured by cable ties, although it seems agreed that the sign was not displayed for the entirety of the required period having been forcibly removed by a person or persons unknown. Upon notification from the Licensing Division that the sign was not displayed it was immediately replaced by Mr Peterson.
- 6) There were initially three (3) objections received –
 1. from DNPW Pty Ltd trading as Ducks Nuts Bar and Grill and The Fox Ale House, signed by Mr Terry Dowling and Mr Michael Canaris;
 2. Ms Meredith Elliott the General Manager of Ducks Nuts Bar and Grill and The Fox Ale House - DNPW Pty Ltd;
 3. The Darwin City Council dated 25 June 2007.
- 7) Pursuant to section 47F (4)(d) of the Act an objection must be lodged within thirty (30) days after the publication of the last notice – namely 8 June 2007. The objections the subject of this decision were received by the Office of Racing Gaming and Licensing on or about 7 July 2007 and are therefore within the time allowed by the Act.

- 8) The content and substance of the objections one and two are understandably similar and for this reason I intend to deal with them as one objection.

Objection from Mr Terry Dowling, Mr Michael Canaris and Ms Meredith Elliott (“DNWP”)

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).

- 9) Mr Dowling and Mr Canaris are Directors of DWNP Pty Ltd and are owner/operators and Ms Elliott is the General Manager of the premises known as Ducks Nuts Bar and Grill and the Fox Ale House.
- 10) Turning then to the substance of the objections and whether they fit within section 47F (2). The grounds of the objections include allowing service of alcohol without a meal, safe guarding minors dining without an adult, sound emissions and the impact on the surrounding neighbourhood. Adequate security and CCTV coverage, the impact of increasing the number of licensed premises and the availability of alcohol products in Mitchell Street. The benefit to tourism and the impact of the variations on the amenity of the

neighbourhood, for things such as car parking, security, neighbouring properties, safe pedestrian access and noise emanation.

- 11) As neighbours to Hog's Breath Café I find that objectors 1 and 2 are valid within Section 47F (2) (a) of the Act and require a hearing.

Objection from Darwin City Council

- 12) As to objector 3, the Darwin City Council (DCC), the applicant submits that as they have 'agreed' to the DCC 'conditions' regarding the variations the objection is withdrawn by DCC.

The Darwin City Council, in a letter dated 18 July 2007, advised that at its meeting on 17 July 2007 it had resolved as follows:

"That the letter to the Liquor Commission be amended to reflect the Council's decision that the on-licence if granted should be restricted to activities within the confines of the building and exclude the open area fronting Mitchell Street,"... The letter went on to enumerate various matters which, if made conditions of the licence, would remove the Council's in principle objection to the variation. Broadly those matters were to ensure food and table service was available, noise levels were limited and no standing in the open area.

- 13) Whilst the comments of the DCC are welcome, it is not for the DCC to set conditions for licences. On that basis I intend to deal with the DCC objection as an objection, noting the comments made by the DCC.
- 14) I find that DCC are valid objectors within Section 47F (3) of the Act and require a hearing.
- 15) The objections were put to the applicant and they were given an opportunity to respond.

Decision

- 16) Whilst I discount some of the grounds of objection as unsupported or not relevant I am satisfied, when considered as a whole, the basis of the objections could impact upon the amenity, health, public safety or the social conditions of the neighbourhood and that the grounds of objections are within those permitted under the Act.
- 17) In those circumstances I find that the objections are valid and require a hearing.

Merran Short
Legal Member

1 October 2007