

Northern Territory Licensing Commission

Decision on Whether Objection Will Proceed to Hearing

| | |
|--------------------------|--|
| Premises: | Evolution Cafe |
| Licensee: | The Pink Bus Pty Ltd |
| Applicant: | Jason Wright (Nominee) |
| Licence Number: | 80303858 |
| Submissions: | Dr John Boffa on behalf of People's Alcohol Action Coalition (PAAC) Senior Sergeant Pauline Polychrone, NT Police |
| Legislation: | Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i> |
| Decision of: | Mr Richard O'Sullivan (Chairman) |
| Date of Decision: | 8 August 2014 |

Background

- 1) Mr John Wright, a Director of The Pink Bus Pty Ltd, on 2 May 2014 via email applied for an extension of the trading hours of Evolution Café, a premise situated at 21 Hartley Street, Alice Springs. The premises is licensed as a Tavern and the applicant has sought that its operating hours be extended from the current hours of 11:00am to 1:00am the following morning to the proposed hours of 11:00am to 2:00am the following morning. The application is for a variation of licence condition pursuant to Section 32A of the Liquor Act ("the Act").
- 2) The applicant in seeking to extend trading hours from 1:00am to 2:00am has advised that there is a large number of patrons, forced to leave the Evolution Cafe premises at 1:00am, who wish to continue entertainment and socialising over a drink. As a response Evolution Café, in conjunction with Lasseter's Casino, have put on a bus service from Evolution after its 1am trading close which takes patrons either back to their accommodation or on to the Casino. The application refers to seeking "an even playing field" with other licensed premises in Alice Springs, which generally are licensed to trade until 2:00am.
- 3) The application was initially advertised in the Centralian Advocate on Wednesday 7 May and Friday 9 May 2014. Due to incorrect formatting of the advertisement it was again advertised on Tuesday 13 May 2014. Taking the last date of the advertisement, the period for lodgement of objection expired on 12 June 2014.

4) The advertisement as placed in the Centralian Advocate on 9 May was as follows:

Liquor Act

2nd Notice of Application for a Licence

to Sell Liquor

(Evolution Cafe)

I, Jason Benjamin Wright, on behalf of The Pink Bus Pty Ltd, **hereby give notice** that I have applied to the Northern Territory Licensing Commission for a variation to a condition of the Liquor Licence to sell liquor from the premises known as Evolution Cafe located at 21 Hartley Street Alice Springs, NT 0870.

Proposed variation details for the sale of liquor are as follows:

- Trading Hours are proposed to be increased by one (1) hour per night to 02:00 hours the following day, seven (7) days per week.
Current trading hours are: 11:00 to 01:00 the following day seven (7) days per week
- Adequate Security is to be provided during the extra hour of trade
- All other licence conditions are to remain in force

This is the second notice of application.

The objection period is deemed to commence from 13th May 2014 (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:

- (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 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 Licensing on telephone 89515195. Objections to this application should be lodged in writing with the Director Licensing, PO Box 8470, Alice Springs, within thirty (30) days of the commence date of the objection period.

Dated this 9th day of May 2014

5) Submissions in response to the advertisement were received from Dr John Boffa on behalf of the People's Alcohol Action Coalition (PAAC) and Ms Pauline Polychrone of NT Police. The applicant has provided a response to these submissions pursuant to Section 47G of the Act. Under Section 47I of the Act the Northern Territory Licensing Commission ("the Commission") must determine whether these submissions are valid objections which are required to proceed to hearing.

- 6) Relevant sections of the Act for the Commission to follow in dealing with objections are provided below:

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;*
- (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).*

47I Decision on whether objection to proceed to hearing

- (1) *The Director must forward an objection and the reply to the objection (if any) to the Chairperson.*
- (2) *On receiving the objection and the reply to the objection, the Chairperson must select a member to consider the substance of the objection.*
- (3) *The member selected under subsection (2):*
- (a) *must consider the objection and the reply to the objection; and*
- (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.*
- (4) *If the member dismisses the objection under subsection (3)(c)(i), he or she must direct the Director to inform the person, organisation or group who made the objection that the objection has been dismissed.*
 - (5) *The Director must inform the person, organisation or group that the objection has been dismissed by notice in writing as soon as practicable after receiving the member's direction.*
 - (6) *The notice to the person, organisation or group is to include the member's reasons for dismissing the objection.*
 - (7) *If the member determines under subsection (3)(c)(ii) that the Commission must conduct a hearing, the Commission must conduct the hearing.*

Objection from Dr John Boffa on behalf of PAAC

- 7) Dr Boffa has lodged the objection on behalf of PAAC, an organisation comprised of individuals and groups with an interest in minimising alcohol harm in the community. PAAC has standing to object under Section 47F(3)(f) which gives recognition to community based groups.
- 8) The objection is dated 12 June 2014 which is within time for lodgement of an objection.
- 9) While providing generic information and research findings over alcohol harm generally, the objection does address the public health and safety matters which could arise if the application is granted. It outlines that Alice Springs already has a very strong drinking culture that in its submission "*must be changed*".
- 10) In the submission PAAC states:

"PAAC believes that extended liquor trading hours would likely attract young people who have already been drinking. If they are allowed entry, they will consume more alcohol late into the night, with all the accompanying potential for alcohol-fuelled trouble."

"We submit that the application to extend trading hours is aimed at making profit regardless of the potential for harmful effects on health, public safety or social conditions, and that to grant it would be to ignore the evidence of the ill effects of latter closing times."

- 11) As the objection raises concerns over health, safety and community impacts of the application it meets the necessary grounds prescribed in Section 47F2 (a)&(b) to qualify as an objection.

Submission by NT Police

- 12) While Police have standing under the Act to lodge an objection, the submission from Senior Sergeant Pauline Polychrone of NT Police is couched by way of conditional support for the application. It was lodged via email on 20 May 2014 and is within time to qualify, were it an objection.

- 13) The submission states:

“Alice Springs Police support the application with the following conditions:

- 1. A three month trial to ensure that Police resources are not impacted upon, and that safety and social amenity is maintained to a standing preventing harm to the community*
- 2. A 1:00am lock out – to prevent patrons attending premises after this hour*
- 3. That existing security conditions etc. are maintained.”*

- 14) Qualified support, conditional on defined licence conditions being applied, does not constitute an objection. The immediate matter for Commission consideration is whether there is a valid objection which needs to be considered through a Hearing of the Commission. It is not known at this stage whether measures proposed by Police will, or will not, be included in the applicant’s licence conditions.

Applicant’s Response to Objection

- 15) The applicant has made response to both the Police submission and the objection from PAAC. In the matter of Police comments the applicant advises:

3 Month Trial – the applicant is happy to accept a 3 month trial period as it maintains it runs a responsible venue applying responsible service of alcohol (RSA) principles.

1:00am Lockout – the applicant points out that no other licensed outline in Alice Springs is required to adhere to a “lock out” condition. The response seeks that Evolution Café has an “*even playing field*” with competing venues in Alice Springs. It also maintains that a 1:00am lock out will force patrons seeking to enter their premises at this time to walk the streets to seek other venues which can trade without such a restriction until 2:00am.

Maintenance of Security – the applicant advises it does not intend to alter its operations and existing security will extend to 2:00am if the licence variation is granted.

- 16) In response to the PAAC objection the applicant contests that adding 1 hour trading each day will cause alcohol fuelled harm. The response argues that a venue that

adopts sensible and RSA compliant practices will supervise patron behaviour “to prevent any violent or anti-social behaviour”. The applicant contests that an extension of trading hours will aggravate drinking problems referring to this as a “*blanket statement that suggests **all** pub and club owners are incapable of running a responsible business*”.

- 17) In reference to PAAC comments on the shuttle bus service provided at closing time, the applicant advises that on busy nights they “*are moving more than two thirds of our patrons to the Casino or their accommodation*”. The applicant maintains that its patrons are being transported without incident as an indication that they are neither intoxicated nor troublesome.

Consideration of the Issues

- 18) There has been one valid objection lodged in response to the application, that being by PAAC.
- 19) Police have not objected but has sought conditions be applied to the licence if the variation sought by the applicant is granted. Only following a Hearing can such conditions be imposed by the Commission. It may be that at Hearing the Commission may wish to consider evidence from Police, but not as an objector.

Decision

- 20) The objection lodged by PAAC meets the requirements prescribed under Section 47F(2) of the Act in that it raises concerns over health, public safety and social conditions in the community should the additional trading hour be granted by the Commission. The Commission therefore determines that the objection is valid and is required to go to Hearing pursuant to Section 47I(7) of the Act.



Richard O'Sullivan
Chairman

8 August 2014