

Northern Territory Licensing Commission

Reasons for Decision on whether Objection to proceed to Hearing

Premises:	La Casalinga
Proceeding:	Consideration of objection pursuant to s47I of <i>Liquor Act</i>
Applicant:	Fernando Ozimo
Decision Of:	Mr John Withnall
Date of Decision:	06 September 2004
Objector:	Alice Springs Town Council

1. On 19 May 2004 application was made on behalf of La Casalinga Restaurant in Alice Springs for a variation of licence conditions to enable the restaurant to serve liquor to persons without the need for consumption of a meal.
2. The application was advertised in the "Centralian Advocate" on 11 and 15 June 2004.
3. On 9 August 2004 the Director notified the Chairman that an objection from the Director of Corporate and Community Services of the Alice Springs Town Council was the only objection to have been received, which was forwarded to the Chairperson pursuant to s.47I(1) of the *Liquor Act*.
4. On 12 August 2004 I was selected to be the member of the Commission to consider the substance of the objection pursuant to s.47I(2). As such selected member of the Commission my statutory task is delineated by s.47I(3) of the *Act*, which reads as follows:
 - (3) *The member selected under subsection (2) –*
 - (a) *must consider the objection and the reply to the objection;*
 - (b) *may inquire into any circumstance relating to the objection as he or she considers appropriate; and*
 - (c) *must –*
 - (i) *if the member is satisfied that the objection is of a frivolous, irrelevant or malicious nature, or does not describe circumstances that may or will adversely affect the amenity of the neighbourhood – dismiss the objection; 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.*
5. I now turn to the objection.
6. The last day for the receipt of objections was 15 July 2004 (vide s.47F(4)(d) of the *Act*). On 13 July 2004 the Director received a letter from the Director of Corporate and Community Services of the Alice Springs Town Council.
7. This letter was neither an objection by the Corporate and Community Services Committee of the Council nor an objection by the Council itself. The Corporate and Community Services Committee advised within the letter that it does not have any delegation to make decisions on behalf of Council (and in my view could not have standing under the *Act* to be

an objector in any event). The letter of 13 July 2004 was clearly couched as merely an advice that the Committee had *recommended* to Council that the Council object to variation of the liquor licence.

8. Council did not object. By further letter dated 13 July 2004 (*sic*, but an obvious typographical error) the Committee further advised that the Committee's recommendations had been accepted by the Alice Springs Town Council at its meeting on 26 July 2004.
9. This second letter from the Corporate and Community Services Committee was received in the office of the Deputy Director of Licensing (South) on 27 July 2004. Even accepting that letter as intended to be the actual objection by the Alice Springs Town Council (which I do not) it was nevertheless well out of time (see s.47F(4)(d) of the *Act*), and indeed the objection period had expired long before even the Council meeting on 26 July 2004 at which the Committee's recommendations were accepted.
10. In my view there is no objection from either the Council or from its Committee which can or should go to hearing pursuant to Section 47I(3)(c)(ii). The attempted objection is dismissed as a non-complying objection, on the basis of it either being
 - not receivable as an objection, in that an objection can *only* be made "subject to" s.47F, or being -
 - of an irrelevant nature (s.47I(3)(c)(i)), taking the statutory notion of irrelevancy to mean irrelevant to the further progress and consideration of the application for the licence variation rather than irrelevant only in terms of its permitted substance.
11. In accordance with s. 47I(4) of the *Act*, I direct the Director of Licensing to inform the Director Corporate and Community Services Alice Springs Town Council that the objection has been dismissed.
12. It follows from my foregoing decision that the corporate Commission is now free to consider the application as unobjected.

John Withnall
Commission Member selected under s47I(2) of the *Liquor Act*

06 Sept 2004