

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Malathi's Restaurant-Bath Street Alice Springs
Applicant:	Coprax Pty Ltd
Nominee:	Malathi Stewart
Objectors:	Bartolomeo and Lori Ventura Del Giacco and Avril and Chris Vaughn-Bojangles Saloon and Restaurant
Decision of:	Merran Short
Date of Decision:	13 September 2007

Summary of Decision

Hold a Hearing in respect of the objections received from:

- Bartolomeo and Lori Ventura Del Giacco, and;
- Avril and Chris Vaughn – Bojangles Saloon and Restaurant.

Background

- 1) Ms Malthi Stewart, Licensee of Malathi's in Alice Springs has made an application for a substitution of licence to sell liquor from premises known as Malathi's located at 51 Bath Street, Alice Springs, to 78 Todd Street, Alice Springs ("the Application"). The Application was advertised in the Centralian Advocate on the 8 and 12 June 2007 pursuant to Section 27 of the *Liquor Act* (the *Act*). The advertisements notified that the Applicant seeks a substitution of premises to sell liquor from premises located at 51 Bath Street, Alice Springs to 78 Todd Street Alice Springs ("78 Todd Street").
- 2) The advertisement was as follows:

"To relocate Liquor Licence 80802090 (Malathi's) from the existing premises located at 51 Bath Street to 78 Todd Street Alice Springs, existing licence conditions will remain unchanged.

Hours of Trade and Conditions of Licence

*Sunday 11.30 to Monday 02.00
Monday 11.30 to Tuesday 02.00
Tuesday 11.30 to Wednesday 02.00
Wednesday 11.30 to Thursday 02.00
Thursday 11.30 to Friday 02.00
Friday 11.30 to Saturday 02.00
Saturday 11.30 to Sunday 02.00*

All patrons of the "Outside Dining" area shall be seated at a table.

Meals shall be available between 18.30 and 21.30 in all areas of the venue.

The Licensee is permitted to provide entertainment by the way of live music. Live entertainment is to cease by midnight.

No loud entertainment such as rock bands is permitted.

As a premise (sic) that trades until 02.00, they are to abide by the Northern Territory Licensing Commission Camera Surveillance Requirements and Guidelines.

This application was advertised in the Centralian Advocate on a Friday 8 June and the following Tuesday 12 June 2007.

The objection period is deemed to commence from the publication date of the second advertisement.

Pursuant to Section 47F (2) of the Liquor Act an objection may only be made on the ground that the variation may or will adversely affect –

- *The amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- *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 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.

Objections to this application should be lodged in writing within the Deputy Director Licensing, PO Box 8470, Alice Springs, NT 0871, within THIRTY (30) days of the second (2nd) advertisement.

For further information regarding this application, contact the Deputy Director Licensing on telephone 8951 8452.”

- 3) Pursuant to section 47F (4) (d) an objection must be lodged within thirty (30) days after the publication of the last notice – namely 12 June 2007. The objections the subject of this decision are dated 1 and 6 July respectively and are therefore within the time allowed by the Act.
- 4) The content and substance of the objections are strikingly similar with a few minor differences in the wording of the letters, for this reason I intend that my comments relate to both of the objections.
- 5) **Objection from Avril and Chris Vaughan (“the Vaughn’s”) and Bartolomeo and Lori Del Giacco (“the Del Giacco’s”)**

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

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(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).

- 6) The Vaughn's are the owners and managers of Bojangles Saloon and Restaurant ("Bojangles") which is located next door to 78 Todd Street. The objection on behalf of the owners and managers of Bojangles is signed by Avril and Chris Vaughn. Section 47F(3)(a)(b) of the Act entitles persons residing or working in the neighbourhood of 78 Todd Street or persons owning or leasing land in that same neighbourhood to make an objection. Bojangles is situated beside 78 Todd Street.
- 7) The Del Giacco's are the owners of the estate in fee simple ("the land") that Bojangles is situated upon. The objection is signed by Bartolomeo and Lori Del Giacco. Section 47F(3)(a)(b) of the Act entitles persons residing or working in the neighbourhood of the proposed new premises at 78 Todd Street or persons owning or leasing land in that same neighbourhood to make an objection. The land Bojangles is situated upon is beside 78 Todd Street.
- 8) Turning then to the substance of the objections and whether they fit within section 47F (2).

The grounds of the objections include -

- a) the proposed substitution of the licence is to an area that the Northern Territory Police have identified as a late night 'hot spot' for alcohol related and anti-social behaviour;
- b) the nature of the business cannot be categorised as a restaurant because for the 101.5 hours of trading meals will only be available for 21 hours;
- c) the performance of any live music will have a detrimental impact upon the residential premises nearby, including a hotel that backs onto the proposed new premises;
- d) there is insufficient car-parking provided at the proposed new premises.

Applicant's Response to Objection

- 9) The Applicant has had an opportunity to respond to the objections. The response of the Applicant is that the objections either lack merit, are not understood or are matters for separate authorities such as the Police and the Development Consent Authority.

Determination

- 10) Whilst it is arguable the grounds of objection are not specific and it is perhaps arguable that portions of the objections are borderline as to whether they fulfil the requirements under the section 47F (3) of the Act I am satisfied that when considered as a whole, the basis of objections could impact upon the amenity, health, public safety or the social conditions of the neighbourhood and in those circumstances and the grounds of objections are within those permitted under the Act.
- 11) I find that the objections are valid and require a hearing.

Merran Short
Legal Member

13 September 2007