

Northern Territory Licensing Commission

Decision on Whether Objection will Proceed to Hearing

Applicant:	Value Inn Pty Ltd
Premises:	The Tap on Mitchell
Nominee:	Aneeta Clark
Licence Number:	80818038
Legislation:	Section 47F to 47I of the Liquor Act and Section 28 of the Interpretation Act.
Objections:	Superintendent Scott Pollock, NT Police Ms Elaina Smith Ms Gina Donatelli
Decision of:	Mr Richard O'Sullivan (Chairman)
Date of Decision:	28 November 2014

Background

- 1) Value Inn Pty Ltd ("the Applicant") has applied to the Northern Territory Licensing Commission ("the Commission") for variation to licence conditions and material alterations to the premises trading as The Tap on Mitchell, located at 56 Mitchell Street, Darwin. The licence variation is sought pursuant to Section 32A of the *Liquor Act* ("the Act") and the material alterations are applied for under Section 119 of the Act.
- 2) The licence variation sought is the removal of a single word "uncovered" from the Licence Concept, which currently is:
"Licence Concept
The area shall have the appearance of an Alfresco Dining Area or café set in an open air **uncovered** (other than for shade) tropical garden with rock and water features"
- 3) The material alteration applied for is for an extension of the licensed area to incorporate a section of the Mitchell Street footpath into the licensed area. If approved the inclusion of this footpath area would add approximately 50 square metres to the licensed area. The Darwin City Council has agreed to a lease of the footpath space to the Applicant. Consequent to any Commission approval the Applicant will then need to have the approval of the Development Consent Authority.
- 4) The Applicant has advertised the application in the NT News, with the advertisement placed on 5 September 2014 stating:

“Liquor Act

1st Notice of Application for Variation and Material Alteration of Liquor Licence at the Liquor Licensed Premises

The Tap on Mitchell

Value Inn Pty Ltd, hereby give notice that it has applied to the Northern Territory Licensing Commission for a Variation of Licence Conditions and Material Alteration to the premises known as The Tap on Mitchell (Liquor Licence number 80818038) located at 56 Mitchell Street, Darwin, N.T.

The variation and material alteration to the liquor licence will consist of an extension to the existing alfresco dining area on the front of the premises whereby, extending the licensed area in accordance with the plans lodged with the Director of Licensing.

- *Remove the wording “uncovered” from the Licence Concept of the Liquor Licence to read: The area shall have the appearance of an Alfresco Dining Area or café set in an open air (other than for shade) tropical garden with rock and water features. The area will provide a quality tourist attraction with the Crocodile Tourist Theme Park with products and service consistent with the reasonable expectations of that market.*
- *Trading hours shall be 10:00 to 02:00 hours (the following day), seven (7) days a week.*
- *The area will be clearly and physically delineated from the public footpath by balustrading around the exterior of the extended area.*
- *A person who has not attained the age of 18 years shall not enter or remain on or in the area after 22:00 hours, seven (7) days a week.*
- *A person who has not attained the age of 18 years shall not enter or remain on or in the area, unless that person is in the company of his or her parent, guardian or spouse (who has attained the age of 18 years) between the hours of 10:00 to 22:00, seven (7) days a week.*
- *Seating shall be provided for at least 80% of the maximum patron capacity recommended by the NT Fire and Rescue Service.*
- *Table service of liquor is to be available to any seated person in the Alfresco Dining Area at any time the premises shall be open for trade.*
- *Light snacks and meals will be available to patrons in the Alfresco Dining Area upon request between the hours of 12:00 hours to 14:00 hours on all days and 18:00 hours to 21:00 hours Sunday to Thursday, and 18:00 hours to 22:00 hours Friday to Saturday.*
- *Light snacks will be available in the Alfresco Dining Area between 14:00 hours and 18:00 hours.*
- *Entertainment by way of recorded music and live music (not amplified independently of the in-house sound system) of not more than solo artists or duos may be played in the Alfresco Dining Area and shall be limited to easy listening music and shall not include bands, nightclub or disco style music or karaoke. There shall be no designated dance floor on the premises. Drum kits and drum machines may not be used.*

(The above conditions are as per current Alfresco Dining Area conditions).

This is the second and final notice of application.

The objection period is deemed to commence from Friday, 5 September 2014.

The objection period will close on Sunday, 5 October 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 5 September 2014.”

- 5) The period for lodgement of objection to the application closed on 6 October 2014. Submissions were lodged in response to the advertised application, being a letter of objection from Ms Elaina Smith with attached signatures of 8 business operators; a letter of objection from Ms Gina Donatelli; and a submission from NT Police. Under Section 47I of the Act the Chairman of the Commission is to determine if the objections received are to proceed to hearing.
- 6) Section 47F of the Act prescribes the circumstances where an objection may be made, specifies the grounds for objection and identifies persons or organisations eligible to object to a particular application as follows:

“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 licence, as notified under section 32A;*
 - ...
 - (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;*
 - ...
 - (e) *an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;*
- (4) *An objection under subsection (1) is to:*
- ...
 - (c) *set out the facts relied on by the person, organisation or group to constitute the ground on which the objection is made; and*
 - (d) *be lodged with the Director within 30 days after the publication of the notice or the last of the notices referred to in section 27, 32A, 46A or 119 (as applicable)”*

Consideration of the Issues

- 7) Ms Elaina Smith has lodged an objection supported by 8 signatures from the Darwin Transit Centre on 18 September 2014 and therefore meets the time requirements pursuant to Section 47F(4)(d) of the Act. That section requires that an objection be lodged within 30 days after the publication of the last application notice, which was on 5 September 2014.
- 8) Section 47F(3) of the Act provides the categories of persons or entities, which under subsection (a) includes:
- “(a) a person residing or working in the neighbourhood where the premises the subject of the application are or will be located”*
- Ms Smith and the other Darwin Transit Centre tenant’s signatures to the letter meet this requirement.
- 9) An objection may only be made on the grounds that the grant of the application will adversely impact on neighbourhood amenity or the health, education, public safety or social conditions of the community pursuant to Section 47F(2)(a) or (b) as quoted in paragraph 6) above.
- 10) The objection submitted by Ms Smith raises concerns over the *“effects of liquor abuse and misuse”* and maintains that the grant of the application will result in undue noise and have an adverse impact on the neighbourhood. The submission

states that “*crime, disorder and public nuisance*” will increase if the application is approved. These cited grounds for objection meet requirements of the Act.

- 11) Ms Gina Donatelli lodged an objection to the application on 28 September 2014 and is therefore within the time limits prescribed under the Act. The objection is lodged by Ms Donatelli as a Director of SAJ Nominees Pty Ltd, owner and landlord of the Darwin Transit Centre, situated opposite The Tap on Mitchell. She qualifies as an objector under Section 47F(3)(b) as a person holding land in the neighbourhood of the application premises.
- 12) Ms Donatelli’s objection refers to property damage to tenant’s business premises. It details the need to maintain “*the cleanliness after drunks defecating, urinating and vomiting*” and adds “*we also have to supply CCTV to the police regularly due to assaults after the hotels close up. Adding more patrons to fuel and increase this problem cannot be seen as beneficial to anyone within the street*”. She also refers to concern for the safety of business tenants in the Transit Centre.
- 13) In raising the issues of the increased capacity of The Tap on Mitchell causing further problems to neighbourhood amenity and safety, the objection lodged by Ms Donatelli meets the requirements of the Act.
- 14) Superintendent Scott Pollock has made a submission on behalf of NT Police on 24 September 2014. It raises concerns over the narrowing of the street and re-aligning of the footpath which will impede the flow of vehicular traffic when emergency vehicles require access to the area and also restrict pedestrian movement. “*Such congestion may result in negative reactions when persons are bumped or restricted, particularly where alcohol consumption has taken place*”. In referencing the link between congestion and alcohol consumption Police maintain a number of recent incidents in Mitchell Street demonstrate the resultant harm. Police have cited tragic examples in their submission. Due to these reasons, “*NTPF make comment that they do not support the application in its current form*”.
- 15) Police have standing under the Act to make objection; the letter from Superintendent Pollock was received within the required timeframe and the context of the letter makes reference to public safety issues thus meeting the grounds for objection. Although not using the term “objection” the grounds for not supporting the application are sufficiently strongly worded to constitute a valid objection under the Act.
- 16) Under the provisions of Section 47G of the Act the Applicant is to be afforded the opportunity to respond to the objections lodged. Through Mr Ray Murphy, Murphy & Associates Barristers and Solicitors, the Applicant on 15 October 2014 provided a detailed response to the objectors of Ms Smith, Ms Donatelli and NT Police.
- 17) In the application Mr Murphy submitted, if the variations sought are approved, “*the business being conducted at the premises will not change*”. The Application also states “*that the only material consideration with regards this application is whether the increased patron capacity of the premises, would be consistent with the objects of the Act*”.
- 18) In response to the objection of NT Police, Mr Murphy refutes that vehicle traffic will be impeded through the material alterations sought. Also contested is the claim that

pedestrian movement will be impeded as the new public footpath will be 3 metres in width, identical to the width of the current footpath.

- 19) In response to the objections lodged by Ms Donatelli, Director, GAJ Nominees Pty Ltd, Mr Murphy states the objection has failed to particularise complaints over smashed windows and other property damage to their premises and whether the offenders have been patrons of The Tap on Mitchell. He also states that the reference to drunks defecating, urinating and vomiting does not identify if the perpetrators come from or had been to the Tap on Mitchell.
- 20) In response to the objection lodged by Ms Smith of GG Management, supported by 8 other Darwin Transit Centre tenants, Mr Murphy points out that two (2) of the signatures are themselves holders of liquor licences. His response takes issue with the objection reference to "*the additional conditions*" and maintains that the application to vary the licence condition and approval for the material alterations "*contains not extra or additional conditions*". He points out that the hours of operation and trading conditions will remain unchanged under the application. Mr Murphy also contests claims that alcohol influenced vandalism, loitering and anti-social behaviour is causally related to The Tap on Mitchell.

Consideration of the Issues

- 21) Mr Murphy has raised the issue that of two (2) of the signatures to the objection lodged by Ms Smith are holders of a liquor licence and therefore their objection may be motivated or based on competitive grounds. The degree to which this fact may or may not have influenced the decision to be a signatory to an objection needs to be tested at Hearing.
- 22) Mr Murphy maintains that the objection lodged by Ms Smith contains unsubstantiated assertions that approval of the application would adversely impact on neighbourhood amenity and create an increased source of alcohol. His response to the objection maintains that these aspects of the objection are not substantiated or back by evidence and "*contravene section 47(4)(c) of the Liquor Act*". It is assumed this is in fact a reference to Section 47F(4)(c) which states an objection is to:
 - “(c) *set out the facts relied on by the person, organisation or group to constitute the ground on which the objection is made*”
- 23) Given that the objection which includes that of the signatories, has been lodged by tenants of nearby businesses to the Applicant's venue, there may be personal observations or other evidence relied upon in making the claims outlined in the objections. The Commission is not persuaded to dismiss the claims pursuant to Section 47F(4)(c) but seeks to test the veracity of claims made through Hearing.

Decision

- 24) Following assessment of the objections lodged by the Ms Smith, Ms Donatelli and NT Police the Commission determines that all three (3) objections meet the necessary grounds and criteria to qualify as valid objections under the Act. Accordingly and pursuant to Section 471(7) of the Act, the Commission is required to conduct a Hearing to determine the application.

A handwritten signature in black ink, appearing to read 'Richard O'Sullivan', with a long horizontal stroke extending to the right.

Richard O'Sullivan
Chairman

28 November 2014