

# Northern Territory Licensing Commission

## Reasons for Decision on whether Objection to proceed to Hearing

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<b>Premises:</b>	The Archival and Nirvana Restaurant Palmerston
<b>Proceeding:</b>	Consideration of objection pursuant to s47I of <i>Liquor Act</i>
<b>Applicant:</b>	Not Another Sports Club or Irish Pub Pty Ltd
<b>Decision Of:</b>	Mr John Withnall
<b>Date of Decision:</b>	06 September 2004
<b>Objector:</b>	Supt Greg Dowd

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1. On 1 June 2004 the Licensee of the Archival and Nirvana Restaurant at Palmerston applied for a variation of licence conditions to enable late trading to 4.00am on Thursday nights. The venue already trades to 4.00am (the next morning) on Friday and Saturday nights.
2. On 4 June 2004 the Commission determined that the application should be advertised.
3. The appropriate advertisement appeared in the NT News on 9 June 2004 and again on 11 June 2004.
4. On 8 July 2004 the Director of Licensing received by fax an objection from Greg Dowd, Superintendent of Police, Palmerston and Rural Operational Service Division. The hard copy original of the faxed objection was received by the Director on 9 July 2004.
5. On 10 August 2004 the Director forwarded the objection to the Chairperson pursuant to s.47I(1) of the *Liquor Act*, together with the reply of the Licensee to the notification of the objection. The Director reported at that time that there had been no other objections to the application.
6. 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) of the *Act*. 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.*
7. In my view the objection is a complying objection which should go to hearing pursuant to s.47I(3)(c)(ii) of the *Act*.

8. The application is one to which an objection may be made (s.47F(1)(b) of the *Liquor Act*), the objection complies with the requirements of the formalities of Section 47F(4), the applicant is a person permitted to be an objector by s.47F(3)(c), and the grounds of objection are drafted in terms of the impact of the additional trading hours on public safety and social conditions and the amenity of the neighbourhood where the premises are situated. The objection prima facie complies with Section 47F(2).
9. Having considered the objection and the reply to the objection, I find that the objection:
  - is not of a frivolous, irrelevant or malicious nature, and
  - does describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community.
10. I therefore determine that the Commission must conduct a hearing in relation to the objection pursuant to Section 47I(3)(c)(ii) of the *Liquor Act*.
11. I confirm that I have made no assessment of the merits of the objection relative to the application for variation of trading conditions, but have dealt with it only in terms of the s.47I(3) statutory brief, which is to say that I have in effect “vetted” its entitlement to go to a hearing. It will be for the objector to make out his grounds of objection at the hearing, and as a general proposition it will remain open to the applicant at any hearing of the objection to contest the relevance or weight of any aspect of the objection on any basis. The assessment of the relative merits of the application and the objection will be a matter for the corporate Commission in deciding whether or not to grant the application.

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

06 Sept 2004