

Northern Territory Licensing Commission

Reasons for Decisions on whether Objections to proceed to Hearing

Premises:	Wisdom Bar & Café
Applicant:	AFS Realty & Business Brokers Pty Ltd
Decisions of:	Dr Alan Clough
Date of Decisions:	18 th of July 2005

Summary of Decisions:

Conduct a hearing in relation to the objection:

- Tropics Holdings Pty Ltd
- Shenannigans Irish Pub Pty Ltd
- DNPW Pty Ltd
- Value Inn Pty Ltd

Dismiss the letter making an objection:

- David Williams, Director of Tropics Holdings Pty Ltd
- Minkie (N.T.) Pty Ltd
- Rediscover Pty Ltd
- Malaguena Pty Ltd

Dr Alan Clough
18th of July 2005

Preamble

1. An application for grant of a tavern licence at premises to be known as 'Wisdom Bar & Café located at 48 Mitchell Street Darwin, was advertised in the 'Northern Territory News' on the 22nd and 27th of April 2005. Such notification is required by s.27 of the *Liquor Act (the Act)*, as in force at the 1st of September 2004. The advertisements notify that AFS Realty & Business Brokers Pty Ltd (the applicant) seeks a tavern licence to:
 - sell liquor for consumption on the premises, including the footpath alfresco dining area, seven days a week between the hours of 1000 and 0200 the next day with a meal available upon request on Sundays to Saturdays inclusive between the hours of 1200 and 1400 and again between 1800 and 2100.
 - sell liquor for consumption away from the premises to in-house guests only during the following hours:
 - Monday to Friday between the hours of 1000 and 2200
 - Saturday and Public Holidays between the hours of 0900 and 2200 but not on Sundays, Good Friday or Christmas Day.
2. S.47F(1)(a) of the *Act* permits a person to make an objection to an application for the grant of a licence notified under s.27. Seven letters making objections were received by the Director of Licensing (the Director). After informing the applicant, the Director received one letter by way of the applicant's reply to each objection made. All letters were forwarded by the Director to the Acting Chairman in an 'Objection Report' on the 20th of June 2005.¹
3. On the 22nd of June 2005, the Acting Chairman selected me to consider the substance of each of these objections pursuant to s.47I(2) of the *Act*. My statutory task is delineated by s.47I(3) which reads as follows.
 - (1) *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) *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. I interpret my statutory task in the following ways.
 - S.47I(3)(c) essentially means that an objection made to an application is entitled to go to a hearing as an objection unless I am satisfied that sufficient reasons exist to dismiss it.² Specific criteria for testing this entitlement, are found at s.47F(3) which describes

¹ NT Treasury Internal Minute (Ref: LIC2005/37)

² S.47J provides that a person, organisation or group who made an objection that I dismissed may apply to the Commission for a review of my decision. Since s.47J(4)(b) constrains the Commission to conduct a hearing if it

and delimits the persons, organisations or groups who may make an objection, and at s.47F(4) and s.47F(5) which specify the elements of an objection and how it is to be lodged. S.47F(2) can also be used to test this entitlement since it delimits the grounds on which an objection may be made albeit without specifying constituent criteria.

- At s.47I(3)(c)(i)(A) lies both the power and the obligation to dismiss an objection made if I am sufficiently satisfied that it is of a frivolous, irrelevant or malicious nature. For testing relevance, the substance of the objection made can be a source of useful criteria. Other important criteria for testing relevance include those found at s.47F(3), s.47F(4) and s.47F(5). For example, an objection made by a person, organisation or group who is not a member of one of the categories of those who may make an objection prescribed at s.47F(3), or an objection not lodged with the Director within the time frame prescribed by s.47F(4)(d) and s.47F(5), is open to serious question as to its relevance. The relevance of an objection may also be questioned if it was not signed or suitably authorised by or on behalf of the person, organisation or group making the objection, since it may not strictly comply with s.47F(4)(b). For testing whether an objection made is of a malicious or frivolous nature, however, few such specific criteria are available in s.47F or s.47I. Without suitable criteria for ‘malicious’ and ‘frivolous’, I relied primarily on the substance of the letter making an objection. I was guided by the notion that an objection should be regarded as malicious in nature if it were to contain some kind of wrongful intent disguised as a lawful objection to the application. I was also guided by the notion that if a letter making an objection to the application misrepresented trifling matters as serious concerns for the Commission’s attention than it should be regarded as frivolous in nature and dealt with accordingly. It is not my task to evaluate the merits of an objection made. At any hearing it is for the person(s) making the objection to make out the grounds, and the facts constituting the grounds of objection pursuant to s.47H whereby an objector may not rely on any facts other than the facts specified in the objection. Moreover, at such a hearing, an applicant is likely to have the opportunity to contest the relevance or weight of any aspect of the objection on any basis.
- I am also specifically empowered and obliged by s.47I(3)(c)(i)(B) to dismiss the objection made if I am satisfied that it fails to describe circumstances adversely affecting the health, education, public safety or social conditions in the community or the amenity of the neighbourhood where the licensed premises is to be located. Here too, I turned to the substance of the letter making an objection for information to describe such circumstances. I was guided by my view that should an objection fail to set out the facts relied upon to constitute the ground upon which the objection is made it may not comply with s.47F(4)(c) and will, therefore, be unlikely to adequately describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community and thereby, in turn, fail to comply with s.47I(3)(c)(i)(B).
- Although it is my allotted task to consider the substance of the objection made, pursuant to s.47I(2), the *Act* does not require me to consider the *substance* of the applicant’s reply. Yet I am obliged by s.47I(3)(a) of the *Act* to “...consider [both] the objection and the reply to the objection.” I take this to mean that I am constrained to consider only those matters in the applicant’s reply which may be reflected in my considerations of whether the objection made is of a frivolous, irrelevant or malicious nature or 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. Just as it is not my task to evaluate the merits of an objection made, it is also not my task to evaluate the merits of the applicant’s reply. Assessment of the

determines to revoke my decision to dismiss, it is important, in terms of natural justice for the applicant, to evaluate *all* letters making an objection using *all* criteria available to me to ensure that a letter making an objection, upon any revocation of my decision, would go to a hearing having been thoroughly assessed as to its entitlement pursuant to s.47I(3).

relative merits of the application and any objections will ultimately be a matter for the corporate Commission in deciding whether or not to grant the application.

- The concepts of ‘neighbourhood’ and ‘community’ are highly problematic with a dearth of clear guidance about what they mean in s.47F(2) ss.47F(3)(a),(b) and (f) and s.47I(3)(c)(i)(B) of the *Act*. Consistent with previous approaches I do not attempt to describe exhaustively the precise congruence between the neighbourhood where the licensed premises is located and the neighbourhood where a person making the objection is a resident or is working (s.47F(3)(a)), or holds an estate in fee simple, or a lease over land (s.47F(3)(b)), for instance. Instead, I spend a reasonable amount of time and resources using accessible criteria to compile sufficient facts to convince me that it *is more likely than not* that the neighbourhood where the person making the objection resides, or works, or holds an estate in fee simple, or lease over land is also the neighbourhood where the licensed premises are located. Finally, unless there were specific reasons leading me to think otherwise, I interpreted references to the ‘community’ as meaning the broader NT community.
5. S.47I(3)(b) permits me to inquire into ‘any circumstance relating to the objection’ as I consider appropriate. I used this power to consult published sources of information, viz. the internet and the NT telephone and business directories, to enlist the assistance of the Director, and to make inquiries by e-mail.
 6. The information placed before me by the Acting Chairman comprised an Internal Minute of NT Treasury signed by the Deputy Director of Licensing dated the 20th of June 2005,³ with an Objections Report attached. The Objections Report contained folios 1-147 inclusive, contact details for those lodging objections and a table of contents. Folios 1-19 included the application, the applicant’s submissions regarding public interest criteria (s.6(2)) and information pertaining to the applicant’s advertisements. Folios 20-25 and 31-56 included the letters making an objection and folios 58-145 included the applicant’s responses. Folio 58a is a further response from the applicant received by the Director on the 20th of June 2005 but after the objections brief was compiled and included by me in the objections brief. Folios 26-29 are letters to the Acting Chairman of the Commission dated the 25th and 26th of May 2005 from the representatives of a group of “... entities [with] potential grounds of objection ...” to the application seeking an extension of time to consider lodging an objection.⁴ Folio 30 is the Acting Chairman’s response granting a seven day extension from the 27th of May 2005 (the date of his letter) for lodging an objection. Folio 146 is a copy of a printed map of the Darwin CBD and nearby precincts. Folio 147 is a site plan of the proposed licensed premises provided by the Director from the applicant’s file. The map at folio 146 does not bear its publisher’s identity although it is ‘© Northern Territory of Australia’. The Director has previously informed the Commission that such a map is from a series entitled ‘Darwin Administrative Maps’ published in 2001 by the NT Department of Lands, Planning and Environment, Land Information Division. The map highlights and labels the Darwin CBD and provides sufficient information to identify the addresses of those seeking to make objections and was marked up by the Director to indicate the proposed location of the licensed premises. I note that all of the seven making objections to the application have addresses within the CBD as indicated by the Director on this map. Five of them have addresses in Mitchell Street, Darwin (folio 146). I regard the map of the CBD provided by the Director as an important tool assisting my consideration of the relevant ‘neighbourhood’. Its importance lies in that it is a published document describing a locality that is widely known and is commonly referred to as the Darwin CBD wherein can be identified the well-known ‘Mitchell Street entertainment precinct’ which is characterised by an assemblage of licensed premises offering a diversity of hospitality to patrons along a single thoroughfare. It is apt to consider the relevant neighbourhood to be the recognised ‘Mitchell Street entertainment precinct’ since all of those seeking to make objections are

³ NT Treasury Internal Minute (Ref: LIC2005/37)

⁴ Although making for much repetition in my determination, each letter making an objection was treated independently for each ‘entity’ strictly in accordance with a literal interpretation of s.47I(3)(a) of the *Act* and in order that each determination may be treated as distinctive and standing alone and since the applicant responded to each letter in turn.

entities with licensed premises in this precinct or in nearby parts of the Darwin CBD with commercial interests that are similar to those of the applicant. Key indicators of the relevant 'neighbourhood' then are the proximity of the proposed licensed premises to the addresses of those making objections, as measured by an address within the Darwin CBD and within the Mitchell Street precinct along with the physical distance from the proposed licensed premises.

7. Given the available grounds for objection, at s.47F(2), and the standing of my considerations underpinning these reasons for decision, I now turn to consider the substance of the objections pursuant to s.47I(2).

Tropics Holdings Pty Ltd, Mr David Williams

1. A letter making an "Objection to Wisdom Bar & Café Liquor Licence Application", typed on the letterhead of Morgan Buckley Lawyers, signed and bearing the name 'Duncan McConnel', the firm's 'Managing Partner', was received by the Director on the date it was written, Friday the 27th of May 2005, i.e. 30 days after notification of the application (folios 20-25). The letter was thereby lodged with the Director within the allotted time since s.47F(4)(d) of the *Act* requires letters making an objection to be lodged with the Director within 30 days after the last notice advertising the application, viz. the 27th of May 2005.

2. The letter states:

"We act for:

- 1) Tropics Holdings Pty Ltd ACN 109 071 543, proprietor of "Rorke's Drift Bar & Café" and lessee of Lot 3711 Town of Darwin, 46 Mitchell Street, Darwin, immediately next door to the Applicant's premises;
- 2) David Williams, Director of Tropics Holdings Pty Ltd ACN 109 071 543"

Since the letter was signed on behalf of both Tropics Holdings Pty Ltd and Mr David Williams it complies with s.47F(4)(b) of the *Act*.

3. The NT Licensing Commission database indicates that Rorke's Drift Bar & Café is a licensed premises within the meaning of the *Act* (licence number 80315790) and that the licensee is Tropics Holdings Pty Ltd.⁵ At 46 Mitchell Street, next door to the premises the subject of the application, Rorke's Drift Bar & Café is located within the relevant neighbourhood.
4. S.18 of the *Interpretation Act* includes a body corporate as a 'person'. According to the ASIC website, Tropics Holdings Pty Ltd (ACN 109 071 543) is an Australian Proprietary Company, Limited by Shares with registered offices located in Perth.⁶ With licensed premises located within the CBD in Mitchell St Darwin, and next door to the proposed licensed premises, Tropics Holdings Pty Ltd can be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a). With tenure over the licensed premises 'Rorke's Drift Bar & Café' already recognised by the Commission, Tropics Holdings Pty Ltd also complies with s.47F(3)(b) and may therefore make an objection to the application on the grounds that it is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located.
5. I turned to consider the standing of Mr David Williams as an objector under s.47F(3). I could not readily confirm, using the available information, whether Mr Williams lives and works in the relevant neighbourhood. However, the Director confirmed from his records that Mr David Williams is a Director of Tropics Holdings Pty Ltd. The Director also informed

⁵<http://notes.nt.gov.au/nttdibrglllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/7f188c8f160c456669256e0f0027a30b?OpenDocument&Highlight=2,rorke>

⁶ <http://www.search.asic.gov.au/cgi-bin/gns030c>

me, however, that his principal place of work is Perth. On its face, this would mean that he would not have standing as a person who lives and works in the relevant neighbourhood (s.47F(3)(a)). Because of his address remote from the relevant neighbourhood I was reluctant to consider further that he might have status as a Director of a body corporate which can be regarded as a 'person' defined by s.18 of the *Interpretation Act*. While he may draw some consolation from the fact that Tropics Holdings Pty Ltd can be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) and who can also be regarded as a person who may make an objection to the application pursuant to s.47F(3)(b), it is my conclusion, based on the information provided, that Mr Williams may not.

6. The letter sets out 30 facts relied on to constitute the ground on which the objection is made and this appears to comply with s.47F(4)(c) of the *Act*.
7. I considered the applicant's response. The applicant asserts (folio 60) that the facts enumerated in the letter are not facts related to any permissible ground of objection under s.47F(2) but are instead mere assertions and not 'facts' for the purposes of s.47H. I also note (folio 58a) the applicant takes umbrage to allegations in the letter regarding the applicant's financial and managerial incapacity. In this light I turned to consider whether the letter making an objection was malicious or frivolous in nature. There is further good reason to do this provided by the late Mr Withnall who reminded us in a recent Commission determination that with respect to liquor licence applications in this setting within Darwin's CBD, "...over time, so-called 'commercial' objectors became skilled at crafting and presenting self-protective anti-competitive objections...." which he went on to describe as "...cloaked in altruism..".⁷ Since Tropics Holdings Pty Ltd is very likely to be in a competitive relationship with the applicant, it was necessary to consider more closely the substance of the letter making the objection and the applicant's reply. I reconsidered the facts set out to constitute the ground for the objection made and formed the view that while some of the facts are, indeed, mere assertions, enough of them contain substantive information to constitute the ground on which the objection is made. Several, however, fail to describe a nexus between the cause inferred and the adverse effect asserted, rendering these assertions trifling and leaving me disabused that such 'facts' set out as constituting the ground for the objection are matters for the Commission's serious consideration. It is not my task, however, to evaluate their merit or weight since such facts will be rigorously tested at any hearing of the objection where, pursuant to s.47(H) facts specified as constituting the objection will delimit inquiry into an objection. The applicant goes on to submit (folio 60) that the Commission should reconsider its procedural ruling published on the 2nd of April 2004 in the course of considering other matters⁸ in the wake of amendments to the *Act* which came into force since that time. The relevant paragraphs of the procedural ruling (paragraphs 22-27) outline the Commission's determination that financial and managerial incapacity can adversely affect the amenity of the neighbourhood and can be considered as ground for an objection to an application. The amendments brought about by Act No. 14 of 2004 expanded the grounds for objection to include health, education, public safety, or social conditions in the community, introduced objects (s.3) and also a range of public interest criteria in respect of licensed premises (s.6) to which the Commission must have regard when exercising its powers and performing its functions under the *Act*. The applicant provided no clear guidance regarding what aspects of the Commission's ruling should be reconsidered and so I could comment on the matter no further. However, it is my view that any reconsideration of the Commission's previous ruling would be a task for the Commission panel appointed to hear relevant evidence regarding the application and not, in any event, for my determination. For these reasons, while considerably more substantive information and argument would be required to convince me that Tropics Holdings Pty Ltd is seeking to make an objection to the application out of an altruistic concern for, especially, the health, education, public safety or

⁷ Mr John Withnall (Chairman) "The AHA NT Branch as an objector in new liquor licence applications". NT Licensing Commission, 8th of September, 2004, p.2-3.

⁸ http://www.nt.gov.au/ntt/commission/decisions/040206_Driver_Supermarket_Objections_Decision.pdf

social conditions in the community (folio 20), and while I am not entirely convinced that allegations of the applicant's financial and managerial incapacity are devoid of malicious or frivolous intent, I find the substance of the letter, on balance, not to be malicious or frivolous in nature.

8. Notwithstanding limitations of the facts set out to constitute the grounds of the objection made, I was able to summarise their substance thus: should the application be successful, the amenity of the 'Mitchell street entertainment precinct' would be adversely affected, there would be increased noise, increased risks of some types of crime and anti-social behaviour and increased security risks and threat to the safety of the public and to patrons of other nearby licensed premises. It is my view that these concerns are congruent with the grounds specified in s.47F(2).

9. I conclude as follows.

- With respect to Tropics Holdings Pty Ltd, the letter making an objection is not malicious or frivolous in nature. The letter sets out facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter has relevance in that Tropics Holdings Pty Ltd can be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) and is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located who may make an objection pursuant to s.47F(3)(b). The letter also has relevance to the application since it was signed on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. On this basis, s.471(3)(c)(i)(A) does not apply. The letter making an objection complies with s.47F(2) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.471(3)(c)(i)(B) also does not apply. Since neither part of s.471(3)(c)(i) applies, I am required to apply s.471(3)(c)(ii).
 - I determine that the Commission must conduct a hearing in relation to the objection.
- With respect to Mr David Williams, Director of Tropics Holdings Pty Ltd, the letter making an objection sets out facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c) and it complies with s.47F(2) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.471(3)(c)(i)(B) does not apply. However, the letter making an objection is not relevant to the application in that Mr Williams is not a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) or is not a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located who may make an objection pursuant to s.47F(3)(b). Although the letter has relevance to the application since it was signed on behalf of the person making the objection pursuant to s.47F(4)(b) of the *Act* and, despite its not being malicious or frivolous in nature, s.471(3)(c)(i)(A) applies.
 - Accordingly, pursuant to s.471(4) I direct the Director to inform Mr Duncan McConnel of Morgan Buckley Lawyers that the objection lodged on behalf of Mr David Williams has been dismissed.

Minkie (N.T.) Pty Ltd, Malaguena Pty Ltd

10. A letter addressed to the Chairman of the Commission dated the 25th of May 2005 typed on the letterhead of Morgan Buckley Lawyers signed and bearing the name 'Des Crowe, Solicitor', informed the Commission that Morgan Buckley lawyers are advising a group of entities, including Minkie (N.T.) Pty Ltd and Malaguena Pty Ltd, on their potential grounds

of objection to an application for 'Wisdom Bar & Café' (folio 26). These two entities are similar in that the licensed premises over which they hold tenure are not located within the Mitchell St entertainment precinct. They were therefore considered together. Among other submissions, the letter sought an extension of time to lodge objections. Pursuant to s.127 of the *Act*, the Acting Chairman approved an extension of time by seven days (folio 30) which meant in effect that the last day for lodging objections to the application became Friday the 3rd of June 2005.

11. Two letters each making an objection signed by Mr Crowe declared that Morgan Buckley Lawyers acted for Minkie (N.T.) Pty Ltd and Malaguena Pty Ltd which had each instructed them to lodge an 'Objection to Wisdom Bar and Café – Liquor Licence Application' (folios 31 and 48). The letters making objections to the application were signed on behalf of Minkie (N.T.) Pty Ltd and Malaguena Pty Ltd which mean that they comply with s.47F(4)(b) of the *Act*. The letters were received by the Director on the date they were written, Friday the 3rd of June 2005, which means that they were lodged within the time extended pursuant to s.127(1).
12. The NT Licensing Commission database indicates that Minkie (N.T.) Pty Ltd is the licensee of 'The Victoria Hotel' (licence number 80300989)⁹ and that Malaguena Pty Ltd is the licensee of 'The Cavenagh' (licence number 80101040)¹⁰ which are licensed premises within the meaning of the *Act*. Located respectively in the Smith St Mall within the CBD (300 metres from the proposed licensed premises) and at 12 Cavenagh Street (450 metres from the proposed licensed premises), neither 'The Victoria Hotel' nor 'The Cavenagh' can be regarded as lying within the relevant neighbourhood since they do not have an address in the Mitchell Street entertainment precinct.
13. S.18 of the *Interpretation Act* includes a body corporate as a 'person'. According to the ASIC website, both Minkie (NT) Pty Ltd (ACN 104 784 858) and Malaguena Pty Ltd (ACN 100 525 353) are Australian Proprietary Companies, Limited by Shares with registered offices located in Darwin.^{11, 12} Although their licensed premises are located within the CBD in Smith St Darwin, and just 300 metres and 450 metres in a straight line respectively from the proposed licensed premises, since neither is located within the Mitchell Street entertainment precinct, Minkie (N.T.) Pty Ltd and Malaguena Pty Ltd cannot be regarded as persons living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a). For the same reason, despite their tenure over the licensed premises 'The Victoria Hotel' and 'The Cavenagh' already recognised by the Commission, Minkie (N.T.) Pty Ltd and Malaguena Pty Ltd do not comply with s.47F(3)(b) since they cannot be regarded as persons who may make an objection to the application on the grounds that they hold an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located.
14. The letters each set out 43 facts relied on to constitute the ground on which the objection is made and this appears to comply with s.47F(4)(c) of the *Act*.
15. The applicant asserts in response (folios 78 and 120) that the facts enumerated in their letters are not facts related to any permissible ground of objection under s.47F(2) but are instead mere assertions and not 'facts' for the purposes of s.47H. Identical issues were raised by the applicant as were outlined in point 7 (above) in response to assertions that financial and managerial incapacity cause adverse effects on the amenity of the relevant neighbourhood and in regard to a procedural ruling on these matters earlier published by the Commission. The same issues of possible self-protective and anti-competitive objections which I raised in point 7 (above) are also relevant to considering this objection.

⁹<http://notes.nt.gov.au/nttdibrglllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/6ba78e4e37cdca9669256e0f0027a293?OpenDocument&Highlight=2,victoria>

¹⁰<http://notes.nt.gov.au/nttdibrglllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/8b3f9217b064d82b69256e0f0027a194?OpenDocument&Highlight=2,cavenagh>

¹¹ http://www.search ASIC.gov.au/cgi-bin/gns030c?acn=100_525_353&juris=9&hdtext=ACN&srchsrc=1

¹² http://www.search ASIC.gov.au/cgi-bin/gns030c?acn=104_784_858&juris=9&hdtext=ACN&srchsrc=1

In this light, I reconsidered the facts set out to constitute the ground for the objections made and formed the view that a majority of them are, indeed, mere assertions. Furthermore, many fail to describe a nexus between the cause inferred and the adverse effect asserted, rendering the assertions trifling and leaving me disabused that the 'facts' set out as constituting the ground for the objection are matters for the Commission's serious consideration. It is not my task, however, to evaluate their merit or weight since such facts will be rigorously tested at any hearing of the objection where, pursuant to s.47(H) facts specified as constituting the objection will delimit inquiry into an objection. Considerably more substantive information and argument would be required to convince me that either Minkie (N.T.) Pty Ltd or Malaguena Pty Ltd is seeking to make an objection to the application out of an altruistic concern for, especially, health, education, public safety or social conditions in the community (folios 32 and 49), and I am not entirely convinced that allegations of the applicant's financial and managerial incapacity are devoid of malicious or frivolous intent. I therefore cannot be satisfied that the substance of their letters is not malicious or frivolous in nature.

16. While it is not my task to evaluate the merit or weight of the enumerated facts in detail, I could not find sufficient facts in their letters to enable me to summarise the substance of the grounds for the objections. Although their letters each set out a litany of facts relied upon to constitute the ground upon which the objection is made, appearing to comply with s.47F(4)(c) of the *Act*, the facts do not adequately describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. I therefore could not determine conclusively whether the concerns raised were congruent with the grounds specified in s.47F(2).

17. I conclude as follows.

- With respect to Minkie (N.T.) Pty Ltd, the letter making an objection is not relevant to the application in that Minkie (N.T.) Pty Ltd is not a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) or is not a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located who may make an objection pursuant to s.47F(3)(b). The letter has relevance in that it was signed on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. The letter sets out facts relied upon to constitute the ground on which the objection is made which appears to comply with s.47F(4)(c). However, I am unable to determine that the letter making an objection is not, on balance, malicious or frivolous in nature. On this basis, s.47I(3)(c)(i)(A) applies. The letter making an objection does not comply with s.47F(2) of the *Act* in that it does not adequately describe circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.47I(3)(c)(i)(B) also applies and I must dismiss the letter making the objection.
 - Accordingly, pursuant to s.47I(4) I direct the Director to inform Mr Des Crowe of Morgan Buckley Lawyers that the objection lodged on behalf of Minkie (N.T.) Pty Ltd has been dismissed.
- With respect to Malaguena Pty Ltd, the letter making an objection is not relevant to the application in that Malaguena Pty Ltd is not a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) or is not a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located who may make an objection pursuant to s.47F(3)(b). The letter has relevance in that it was signed on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. The letter sets out facts relied upon to constitute the ground on which the objection is made which appears to comply with s.47F(4)(c). However, I am unable to determine that the letter making an objection is not, on balance, malicious or frivolous in nature. On this basis, s.47I(3)(c)(i)(A) applies. The letter making an objection does not comply with s.47F(2) of the *Act* in that it does not adequately

describe circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.47I(3)(c)(i)(B) also applies and I must dismiss the letter making the objection.

- Accordingly, pursuant to s.47I(4) I direct the Director to inform Mr Des Crowe of Morgan Buckley Lawyers that the objection lodged on behalf of Malaguena Pty Ltd has been dismissed.

Rediscover Pty Ltd

18. A letter addressed to the Chairman of the Commission dated the 25th of May 2005 typed on the letterhead of Morgan Buckley Lawyers signed and bearing the name 'Des Crowe, Solicitor', informed the Commission that Morgan Buckley lawyers are advising a group of entities, including Rediscover Pty Ltd, on their potential grounds of objection to an application for 'Wisdom Bar & Café' (folio 26). Among other submissions, the letter sought an extension of time to lodge objections. Pursuant to s.127 of the *Act*, the Acting Chairman approved an extension of time by seven days (folio 30) which meant in effect that the last day for lodging objections to the application became Friday the 3rd of June 2005.
19. The letter making an objection signed by Mr Crowe declared that Morgan Buckley Lawyers acted for Rediscover Pty Ltd which had instructed them to lodge an 'Objection to Wisdom Bar and Café – Liquor Licence Application' (folio 40). I am therefore satisfied that the letter making an objection to the application was signed on behalf of Rediscover Pty Ltd which means that it complies with s.47F(4)(b) of the *Act*. The letter was received by the Director on the date it was written, Friday the 3rd of June 2005, which means that it was lodged within the time extended pursuant to s.127(1).
20. The NT Licensing Commission database indicates that Rediscover Pty Ltd of Eastwood in South Australia, is the licensee of 'Discovery' which is a licensed premises within the meaning of the *Act* (licence number 80316240).¹³ At 89 Mitchell, and within the Mitchell Street entertainment precinct, 'Discovery' is located approximately 350 metres in a straight line from the proposed licensed premises and, on this basis, should be regarded as lying within the relevant neighbourhood.
21. S.18 of the *Interpretation Act* includes a body corporate as a 'person'. A search of the Australian Business Registry (ABR), using the ABN 82 875 413 213 (folio 40) indicated that an entity named 'The Trustee for Rediscover Trust' is a fixed unit trust with its main business location in the NT.¹⁴ According to the ASIC website Rediscover Pty Ltd (ACN 103 954 883) is an Australian Proprietary Company, Limited by Shares with business offices located in Eastwood SA.¹⁵ With licensed premises located within the CBD and in the entertainment precinct of Mitchell Street Darwin, and 350 metres from the proposed licensed premises, Rediscover Pty Ltd can be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a). With tenure over the licensed premises 'Discovery' already recognised by the Commission, Rediscover Pty Ltd also complies with s.47F(3)(b) and may therefore make an objection to the application on the grounds that it is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located.
22. The letter sets out 43 facts relied on to constitute the ground on which the objection is made and this appears to comply with s.47F(4)(c) of the *Act*.
23. The applicant asserts in response (folio 100) that the facts enumerated in the letter are not facts related to any permissible ground of objection under s.47F(2) but are instead mere

¹³<http://notes.nt.gov.au/ntt/dibrglllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/edb06a0311f456af69256e0f0027a323?OpenDocument&Highlight=2,discovery>

¹⁴ [http://www.abr.business.gov.au/\(10vh5y55hxbssxmb1d3yqc55\)/abnDetails.aspx?abn=82875413213](http://www.abr.business.gov.au/(10vh5y55hxbssxmb1d3yqc55)/abnDetails.aspx?abn=82875413213)

¹⁵ http://www.search.asic.gov.au/cgi-bin/gns030c?acn=103_954_883&juris=9&hdtext=ACN&srchsrc=1

assertions and not 'facts' for the purposes of s.47H. Identical issues were raised by the applicant as were outlined in point 7 (above) in response to assertions that financial and managerial incapacity cause adverse effects on the amenity of the relevant neighbourhood and in regard to a procedural ruling on these matters earlier published by the Commission. I raised the same issues of possible self-protective and anti-competitive objections in point 7 (above) and these are also relevant to considering this objection. In this light, I reconsidered the facts set out to constitute the ground for the objection made and formed the view that a majority of these are, indeed, mere assertions. Furthermore, many fail to describe a nexus between the cause inferred and the adverse effect asserted, rendering the assertions trifling and leaving me disabused that the 'facts' set out as constituting the ground for the objection are matters for the Commission's serious consideration. It is not my task, however, to evaluate their merit or weight since such facts will be rigorously tested at any hearing of the objection where, pursuant to s.47(H) facts specified as constituting the objection will delimit inquiry into an objection. While considerably more substantive information and argument would be required to convince me that Rediscover Pty Ltd is seeking to make an objection to the application out of an altruistic concern for, especially, health, education, public safety or social conditions in the community (folio 41), I am not entirely convinced that allegations of the applicant's financial and managerial incapacity are devoid of malicious or frivolous intent. I therefore cannot be satisfied that the substance of the letter is not malicious or frivolous in nature.

24. While it is not my task to evaluate the merit or weight of the enumerated facts in detail, I could not find sufficient facts in the letter to enable me to summarise the substance of the grounds for the objection. Although the letter sets out a litany of facts relied upon to constitute the ground upon which the objection is made, appearing to comply with s.47F(4)(c) of the *Act*, the facts do not allow me to adequately describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. I therefore could not determine conclusively whether the concerns raised were congruent with the grounds specified in s.47F(2).

25. I conclude as follows.

- With respect to Rediscover Pty Ltd, the letter making an objection has relevance to the application in that Rediscover Pty Ltd can be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) and is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located and who may make an objection pursuant to s.47F(3)(b). The letter also has relevance since it was signed on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. The letter sets out facts relied upon to constitute the ground on which the objection is made which appears to comply with s.47F(4)(c). However, I am unable to determine that the letter making an objection is not, on balance, malicious or frivolous in nature. On this basis, s.47I(3)(c)(i)(A) applies. The letter making an objection does not comply with s.47F(2) of the *Act* in that it does not adequately describe circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.47I(3)(c)(i)(B) also applies and I must dismiss the letter making the objection.
 - Accordingly, pursuant to s.47I(4) I direct the Director to inform Mr Des Crowe of Morgan Buckley Lawyers that the objection lodged on behalf of Rediscover Pty Ltd has been dismissed.

Shenannigans Irish Pub Pty Ltd, DNPW Pty Ltd and Value Inn Pty Ltd

26. A letter addressed to the Chairman of the Commission dated the 25th of May 2005 typed on the letterhead of Morgan Buckley Lawyers signed and bearing the name 'Des Crowe, Solicitor', informed the Commission that Morgan Buckley lawyers are advising a group of entities, including Shenannigans Irish Pub Pty Ltd, DNPW Pty Ltd and Value Inn Pty Ltd on their potential grounds of objection to an application for 'Wisdom Bar & Café' (folio 26).

Among other submissions, the letter sought an extension of time to lodge objections. Pursuant to s.127 of the *Act*, the Acting Chairman approved an extension of time by seven days (folio 30) which meant in effect that the last day for lodging objections to the application became Friday the 3rd of June 2005.

27. The letters were signed by Mr Crowe who declared that Morgan Buckley Lawyers acted for Shenannigans Irish Pub Pty Ltd, DNPW Pty Ltd and Value Inn Pty Ltd which had each instructed them to lodge an 'Objection to Wisdom Bar and Café – Liquor Licence Application' (folios 36, 45 and 53). I am therefore satisfied that the letters making objections to the application were each signed on behalf of Shenannigans Irish Pub Pty Ltd, DNPW Pty Ltd and Value Inn Pty Ltd which means that they comply with s.47F(4)(b) of the *Act*. The letters were received by the Director on the date they were written, Friday the 3rd of June 2005, which means that they were lodged within the time extended pursuant to s.127(1).
28. The NT Licensing Commission database indicates that Shenannigan's Irish Pub Pty Ltd is the licensee of 'Shenannigans Irish Pub' (licence number 80315480)¹⁶ and that DNPW Pty Ltd is the licensee of both the 'Fox N Fiddle British Inn' and the 'Ducks Nuts Bar & Grill' (licence numbers 80316631 and 80304395 respectively)¹⁷ which are licensed premises within the meaning of the *Act*. Located at 69 Mitchell Street (150 metres from the proposed licensed premises) and at 85 and 76 Mitchell Street (approximately 275 metres from the proposed licensed premises) within the CBD, and within the Mitchell Street entertainment precinct, they can be regarded as lying within the relevant neighbourhood.
29. The NT telephone directory indicates that the Value Inn is located at 50 Mitchell Street Darwin which is indicated by the Director on the map at folio 146. At 50 Mitchell Street in the CBD, within the Mitchell Street entertainment precinct, and adjacent to the proposed licensed premises Value Inn lies within the relevant neighbourhood.
30. S.18 of the *Interpretation Act* includes a body corporate as a 'person'. According to the ASIC website, Shenannigans Irish Pub Pty Ltd (ACN 071 891 588),¹⁸ DNPW Pty Ltd (ACN 107 484 711, ABN 86 107 484 711)¹⁹ and Value Inn Pty Ltd (ACN 009 596 589) are all Australian Proprietary Companies, Limited by Shares with registered offices located in Darwin.²⁰ With licensed premises located within the CBD and in the entertainment precinct of Mitchell Street Darwin, and respectively 150 metres, 275 metres and adjacent to the proposed licensed premises, Shenannigans Irish Pub Pty Ltd, DNPW Pty Ltd and Value Inn Pty Ltd can each be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a). With tenure over the licensed premises 'Shenannigans Irish Pub', 'Fox N Fiddle British Inn' and the 'Ducks Nuts Bar & Grill' already recognised by the Commission, Shenannigans Irish Pub Pty Ltd and DNPW Pty Ltd also comply with s.47F(3)(b) and may therefore make an objection to the application on the grounds that each is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located. With tenure over the premises 'Value Inn' at 50 Mitchell Street, Value Inn Pty Ltd also complies with s.47F(3)(b) and may therefore make an objection to the application on the grounds that it is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located.

¹⁶<http://notes.nt.gov.au/nt/dibrllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/c94f81b94f13e20b69256e0f0027a2fe?OpenDocument&Highlight=2,shenannigans>

¹⁷<http://notes.nt.gov.au/nt/dibrllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/cc515a66b4d5575e69256e0f0027a333?OpenDocument>

¹⁸<http://notes.nt.gov.au/nt/dibrllr.nsf/dd1ae6e9618c7bd5e9256c4c000bbae0/a3b068918769e39a69256e0f0027a2d2?OpenDocument>

¹⁹ http://www.search.asic.gov.au/cgi-bin/gns030c?acn=071_891_588&juris=9&hdtxt=ACN&srchsrc=1

²⁰ http://www.search.asic.gov.au/cgi-bin/gns030c?acn=107_484_711&juris=9&hdtxt=ACN&srchsrc=1

²⁰ http://www.search.asic.gov.au/cgi-bin/gns030c?acn=009_596_589&juris=9&hdtxt=ACN&srchsrc=1

31. The letters set out 20 facts (Shenannigans Pty Ltd), 16 facts (DNPW Pty Ltd) and 26 facts (Value Inn Pty Ltd) relied on to constitute the ground on which each objection is made and this appears to comply with s.47F(4)(c) of the *Act* in each case.
32. With respect to the letters making objections by Shenannigans Irish Pub Pty Ltd and DNPW Pty Ltd, the applicant asserts in response (folios 92, 114 and 134) that the facts enumerated in the letters are not facts related to any permissible ground of objection under s.47F(2) but are instead mere assertions and not 'facts' for the purposes of s.47H. Identical issues were raised by the applicant as were outlined in point 7 (above) in response to assertions that financial and managerial incapacity cause adverse effects on the amenity of the relevant neighbourhood and in regard to a procedural ruling on these matters earlier published by the Commission. I raised the same issues of possible self-protective and anti-competitive objections in point 7 (above) and these are also relevant to considering these objections. In this light, I reconsidered the facts set out to constitute the ground for each objection made and formed the view that some of the 'facts' are, indeed, mere assertions. Some fail to describe a nexus between the cause inferred and the adverse effect asserted. It is not my task, however, to evaluate their merit or weight since such facts will be rigorously tested at any hearing of the objection where, pursuant to s.47(H) facts specified as constituting the objections will delimit inquiry into an objection. For these reasons, while considerably more substantive information and argument would be required to convince me that Shenannigans Irish Pub Pty Ltd, DNPW Pty Ltd and Value Inn Pty Ltd is each seeking to make an objection to the application out of an altruistic concern for, especially, the health, education, public safety or social conditions in the community (folios 37, 46 and 53), and while I am not entirely convinced that allegations of the applicant's financial and managerial incapacity are devoid of malicious or frivolous intent, I find the substance of the letters, on balance, not to be malicious or frivolous in nature.
33. Notwithstanding limitations of the facts set out to constitute the grounds of the objections made, I was able to summarise their substance as follows. Shenannigan's Irish Pub Pty Ltd, DNPW Pty Ltd and Value Inn Pty Ltd are concerned that there would be increased noise and litter in the Darwin CBD and they are apprehensive that more alcohol would be available in the community leading to more alcohol-related harm. It is my view that these concerns are congruent with the grounds specified in s.47F(2)(b).
34. I conclude as follows.
- With respect to Shenannigans Irish Pub Pty Ltd, the letter making an objection is not malicious or frivolous in nature. The letter sets out facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter has relevance in that Shenannigans Irish Pub Pty Ltd can be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) and is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located and may make an objection pursuant to s.47F(3)(b). The letter also has relevance to the application since it was signed on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. On this basis, s.47I(3)(c)(i)(A) does not apply. The letter making an objection complies with s.47F(2)(b) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.47I(3)(c)(i)(B) also does not apply. Since neither part of s.47I(3)(c)(i) applies, I am required to apply s.47I(3)(c)(ii).
 - I determine that the Commission must conduct a hearing in relation to the objection.
 - With respect to DNPW Pty Ltd, the letter making an objection is not malicious or frivolous in nature. The letter sets out facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter has relevance in that DNPW Pty Ltd can be regarded as a person living or working in the neighbourhood who

may make an objection to the application pursuant to s.47F(3)(a) and is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located and who may make an objection pursuant to s.47F(3)(b). The letter also has relevance to the application since it was signed on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. On this basis, s.47I(3)(c)(i)(A) does not apply. The letter making an objection complies with s.47F(2)(b) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.47I(3)(c)(i)(B) also does not apply. Since neither part of s.47I(3)(c)(i) applies, I am required to apply s.47I(3)(c)(ii).

- I determine that the Commission must conduct a hearing in relation to the objection.
- With respect to Value Inn Pty Ltd, the letter making an objection is not malicious or frivolous in nature. The letter sets out facts relied upon to constitute the ground on which the objection is made pursuant to s.47F(4)(c). The letter has relevance in that Value Inn Pty Ltd can be regarded as a person living or working in the neighbourhood who may make an objection to the application pursuant to s.47F(3)(a) and is a person holding an estate in fee simple, or a lease over land, in the neighbourhood where the premises the subject of the application are located who may make an objection pursuant to s.47F(3)(b). The letter also has relevance to the application since it was signed on behalf of the person making the objection which means that it complies with s.47F(4)(b) of the *Act*. On this basis, s.47I(3)(c)(i)(A) does not apply. The letter making an objection complies with s.47F(2)(b) of the *Act* in that it describes circumstances that may affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community. On this basis s.47I(3)(c)(i)(B) also does not apply. Since neither part of s.47I(3)(c)(i) applies, I am required to apply s.47I(3)(c)(ii).
 - I determine that the Commission must conduct a hearing in relation to the objection.