

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Mbargo at Parap
Applicant:	NT PUBCO Pty Ltd
Application:	Transfer, Variation and Substitution of Liquor Licence
Proceedings:	To Consider the Objections of the Application in Accordance with Section 471(3) of the <i>Liquor Act</i>
Objectors:	Mr D Moody Ms C George for Parap Residents' Association Inc Mr S & Mrs G Thornton Mr I & Mrs M Philip Mr L & Mrs J Maddalozzo Ms R Henderson Ms K Brown
Date of Decision:	26 October 2006

Background:

- 1) NT PUBCO Pty Ltd applied for a transfer and variation of licence and substitution of the premises from which liquor was sold under a Tavern Liquor Licence (number 80315850) formerly known as Bogarts 25's located at 52 Gregory Street, Parap to a premises to be known as Mbargo at Parap located at Shop 14, 36 Parap Road, Parap.
- 2) The application was advertised on 8 and 11 days of August 2006 in the Northern Territory News in the appropriate form. Objectors have thirty (30) days to lodge their objection. The thirty day period concluded on Monday 11 September 2006.
- 3) Seven (7) objections were received, some of which were in joint name, representing ten (10) objectors.
- 4) I have been selected by the Acting Chairperson to consider the substance of these objections pursuant to Section 471(2) of the *Liquor Act*. As such selected member of the Commission my statutory task is delineated by Section 471(3) et seq of the *Act*.
- 5) Section 471 of the *Liquor Act* reads as follows:
 - (1) *The Director must forward an objection and the reply to the objection (if any) to the Chairperson.*
 - (2) *On receiving the objection and the reply to the objection, the Chairperson must select a member to consider the substance of the objection.*
 - (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) *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.*

Consideration of the Issues

- 6) The application is for the substitution of the tavern licence at the premises Bogart's 25 Mbargo At Parap which will feature a cocktail lounge, lounge area, restaurant and gaming room for a maximum of 165 patrons with hours of trading from 10:00 to 02:00 hours the following day, seven (7) days a week.
- 7) In assessing the validity of the objectives to this application I am obliged under the *Liquor Act* to take into account the grounds of the objection, the standing of the objector to make an objection and the content and timing of the objections in accordance with Sections 47F(2) (3) and (4) of the *Act*, namely:

Section 47F(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.*

Section 47F(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).*

Section 47F(4) -*An objection under subsection (1) is to –*

- (a) *be in writing;*
- (b) *be signed by or on behalf of the person, organisation or group making the objection;*
- (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).

- 8) All objectors state that their objection is to both the liquor and gaming licences applied for by Mbargo At Parap. The main form of the objections is that the proposed licence will exacerbate the current anti-social behaviour and traffic problems in the neighbourhood. However, these proceedings relate solely to the application made under the *Liquor Act* and the objections have been assessed accordingly. No objection has been assessed as being of a frivolous, irrelevant or malicious in nature.
- 9) It should be noted that some of the objections have been sent as e-mails. Precedent has been set that e-mail correspondence is an acceptable alternative to a signed letter. However, to be accepted as a valid objection, the information provided in e-mails must meet the requirements of the *Liquor Act* as set out above.
- 10) All objections were forwarded to the applicant for comment on 18 September 2006 and a response was received via the applicant's solicitor Darveniza, Barron Wood & Associates on 2 October 2006. The response, in addressing the concerns about increased anti-social behaviour quotes the Community Impact Assessment and maintains that there will be responsible service of alcohol and a zero tolerance policy to disorderly behaviour under any liquor licence granted. The response on the perceived traffic problems relies on the availability of adequate parking and the fact that there are currently "no high traffic volumes on surrounding roads". In conclusion the response states that "The expressions of concern to which this response relates are for the most part based on the personal opinions expressed by a limited number of members in the local community..." "Without explaining how the locality is perceived to be at risk of an adverse impact, or how, in persuasive or verifiable terms, the expressions fo (of) concern cited above do not amount to one which may be reasonably relied upon when making a decision in relation to this application".
- 11) I note the applicant's response and have reached my decision on each objection based on whether :
 - the objection is such that it meets the criteria set down by the *Liquor Act*,
 - there should be a hearing into the objection;
 - and the objector should have standing at that hearing.

12) My assessment of the seven (7) objections is:

Mr D Moodie resides at Urquhart Street, Parap which is in close vicinity of the premises Mbargo At Parap. His signed, written objection was received on 6 September 2006 and his submission covers the current and possibly future problems which the grant of this application may have on the neighbourhood.

Mr Moodie's objection is considered valid.

Ms C George represents a community based organization in the neighbourhood, namely the Parap Residents' Association Inc. The signed, written objection was received on 10 September 2006 and expressed concern about the move from a restaurant at the premises (Sonsie) to a tavern. It is felt that this will target a type of clientele which will add to the anti-social behaviour that plagues the area and will have a detrimental impact on the amenity of the neighbourhood.

Ms George's objection is considered valid.

Mr S & Mr G Thornton reside at Little Street, Fannie Bay. Whilst the postal address of this objector is a different suburb to Mbargo At Parap, the location is only some 500 metres from the premises and is just off Gregory Street, a main thoroughfare passing the premises. As such, it is considered as part of the neighbourhood. Mr & Mrs Thornton's signed, written objection was received on 11 September 2006 and submits that the operating hours of

10:00 to 02:00 hours for a liquor outlet will increase anti-social behaviour and significantly affect the traffic volumes along Gregory Street.

Mr and Mrs Thornton's objection is considered valid.

Mr I Philip and Mrs M Phillip reside at Little Street, Fannie Bay which, as outlined above, is considered as part of the neighbourhood. This objection was sent by e-mail and a signed, written letter was received on 11 September 2006. Mr and Mrs Philip submit that a tavern licence is not appropriate and will exacerbate the anti-social behaviour in the area.

Mr and Mrs Philip's objection is considered valid.

Mr L Maddalozzo and Mrs J Maddalozzo reside at Leichardt Crescent, Fannie Bay. Similar to Little Street, Leichardt Street is off Gregory Street and approximately 600 metres from Mbargo At Parap. It is assessed as being part of the neighbourhood. The objection was sent by e-mail and a signed, written letter was received on 11 September 2006. The objection outlines concerns that the proposed changes will increase anti-social behaviour and after hours traffic volume with resultant problems to the neighbourhood.

Mr and Mrs Maddalozzo's objection is considered valid.

Ms R Henderson resides at Macarney Street, Fannie Bay. Similar to Little Street, Macarney Street is off Gregory Street some 400 metres from Mbargo At Parap. It is assessed as part of the neighbourhood. Ms Henderson's objection was received as a detailed letter attached to an e-mail and endorses all the items of concern raised by Mr & Mrs Thornton's objection.

Ms Henderson's objection is considered valid.

Ms K Brown resides at Crush Street, Fannie Bay which is off Ross Smith Avenue, adjacent to Parap Road and some 700 metres from Mbargo At Parap. Although further away than other objectors, this area is assessed as being part of the neighbourhood. Ms Brown registered her objection by e-mail on 11 September 2006 which stated:

"I will fax signed objection to liquor an gaming licence at 'Sonsie's' site tomorrow."

An unsigned letter outlining the details of the objection was dated 18 September 2006 and received by the Director, Licensing shortly thereafter.

The email received on 11 September

The original e-mail, although received within the designated time period, did not conform to the requirements of s47I (4), namely:

"An objection under sub section (1) is to

(c) set out the facts relied on by the person, organization or group to constitute the ground on which the objection is made."

It contained no facts to be relied upon and is not accepted as a valid objection.

The letter dated 18 September

The letter complies with s47I(3)(c)(i) in that it is not of *a frivolous, irrelevant or malicious nature* and it *describes circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community.*

The letter fails however to comply with s47F(4)(b) as it was not signed by the objector. This is a ground to dismiss it.

The letter is also seven (7) days out of time as set out by s47F(4)(d) of the *Liquor Act* and cannot be accepted as a valid objection.

The Commission has power to extend time pursuant to Section 127 that states:

127. Commission may extend or abridge time

(1) *Where this Act provides that an act or thing may or is required to be done –*

(a) within a specified time; or

(b) not before the expiration of a specified time,

the Commission may, in its discretion, extend or abridge that time.

(2) *The Commission may extend time under subsection (1) notwithstanding that the time prescribed by this Act for the doing of an act or thing has expired.*

In an effort to expedite matters, I put this matter before a Commission of three (3) members (B Monaghan, V McClintic and P Costigan) for them to consider whether or not they would extend time to allow Ms Brown's letter to be accepted as a valid objection. The Commission considered the matter on 24 October 2006 and they refused to extend time on the basis that there is no precedent for accepting an objection after such a long, unexplained delay.

Summary

13) As the member of the Commission appointed to consider the following objections to the application for a transfer, substitution and variation of a liquor licence at Mbargo At Parap as valid objections it is my assessment that:

a) The following objectors are considered to have valid objections and require a hearing as required under Section 471(c)(ii):

Mr D Moodie

Ms C George on behalf of the Parap Residents' Association Inc

Mr S and Mrs G Thornton

Mr I Philip and Mrs M Philip

Mr L Maddalozzo and Mrs J Maddalozzo

Ms R Henderson

b) The objection lodged by Ms K Brown is unsigned and out of time and is dismissed. Further, the Commission has refused to extend time to allow the letter dated 18 September 2006 to be considered a valid objection. The objection is dismissed.

Mrs J M Large
Member