

# Northern Territory Licensing Commission

## Reasons for Decisions on whether “Objections” will proceed to Hearing

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<b>Applicant:</b>	David Booth on behalf of Darwin United Sports Club
<b>Premises:</b>	Darwin United Sports Club
<b>Written Response Received from:</b>	Stokes Hill Wharf Traders Association on behalf of the owner operators of retail shops on the Stokes Hill Wharf Thanh D Huynh, HA & M Investments Pty Ltd T/A Wharf Oyster Bar & Takeaway Liquor Mark Payne, Assistant Commissioner Operation Command Northern Territory Police Xavier Desmarchelier on behalf of the Department of Health and Community Services Darwin City Council
<b>Matters under Consideration:</b>	Whether the letters written by the individuals, groups and organisations listed above are “objections” under section 47F of the <i>Liquor Act</i> Whether any of the objections should be dismissed; and Whether there should be a hearing in relation to any of the objections
<b>Relevant Legislation:</b>	Sections 47F, 47G, 47H, 47I, 47J and 127 of the <i>Liquor Act</i> Section 28 of the <i>Licensing Commission Act</i>
<b>Date of Decision:</b>	17 March 2004
<b>Member:</b>	Jill Huck

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### Background:

1. On 19 and 24 September 2003 Mr David Booth (on behalf of the Darwin United Sports Club) placed advertisements in the *NT News* notifying the public of the application for a liquor licence to sell liquor for consumption at the premises known as Darwin United Sports Club to members and bona fide guests and for takeaway to financial members only. It was planned that the Club be located on the first floor of the premises known as The Pumphouse on Stokes Hill Wharf. The advertisement specified that objections to the application were to be lodged with the Director of Licensing within 30 days of the date of the second advertisement. 30 days from Wednesday 24 September 2003 was Friday 24 October 2003.
2. The Director subsequently received five (5) written responses from individuals, groups and organizations, three (3) before and two (2) after the closing date.
3. On 30 October 2003 the responses to the application received by that date were sent to the applicant for comment. On 6 November 2003 Mr Booth responded, on behalf of the Darwin United Sports Club, acknowledging receipt of the objections but primarily addressing the issues raised in the Police objection.
4. The matter was allocated to a Commission Member on 25 November 2003 to consider the “objections” and the response in accordance with sections 47F, 47G and 47I of the *Liquor Act*.

5. The finalisation of this process was somewhat delayed by the need for the Member to make further inquiries regarding some aspects of the objection letters.

## Legislation

6. Section 47F of the *Liquor Act* (the Act) states that a person, group or organisation may make an objection to an application for the grant of a liquor licence in a limited range of circumstances. This section reads in part:
  - (1) *Subject to this section, a person, organisation or group may make an objection to an application for the grant of a licence.*
  - (2) *An objection under subsection (1) may only be made on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located.*
  - (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 of the Police Force;*
    - (d) *a member of the Fire and Rescue Service within the meaning of the Fire and Emergency Act;*
    - (e) *an Agency or a public authority that performs functions relating to public amenities;*
    - (f) *a community-based organisation or group (for example, a local action group or a charity).*
7. Subsections 47F(2) and 47F(3) therefore place limitations on both the grounds for objections and the types of people, groups or organisations that can object.
8. Subsection 47F(4) requires that an objection must be in writing, must be signed by or on behalf of the person, group or organisation, must set out the facts to be relied on to “*constitute the ground on which the objection is made*” and must be lodged with the Director within 30 days of the last advertisement for the application.
9. After providing the applicant with an opportunity to provide a written response to any objections, the Director must forward the objection(s) and response to the Chairperson of the Commission. Pursuant to section 47I the Chairperson must then select a member of the Commission to consider the substance of the objection(s). The Member may also inquire into any circumstances relating to the objection(s) as he or she considers appropriate. The Member must then make a decision (in respect of each objection) to either dismiss the objection or to forward the objection, the response and the Member’s findings to the Commission for hearing.
10. An objection is to be dismissed where the Commission Member is satisfied that it is of a frivolous, irrelevant or malicious nature or that it does not describe circumstances that may or will adversely affect the amenity of the neighbourhood (see subsection 47I(3)(c)(i)).
11. Where the Member dismisses an objection he or she must direct the Director to inform the person, organisation or group who made the objection that the objection has been

dismissed and to provide the Member's reasons for dismissing the objection (subsections 471(4), (5) & (6)).

12. Where the objection is not dismissed, the Member must determine that the Commission must conduct a hearing in relation to the objection and forward the objection, the applicant's reply to the objection and the Member's findings in relation to the objection to the Commission (subsection 471(3)(c)(ii)).

### **Description of the written responses to the application, the applicant's response, the Member's findings and the application of the law**

13. The concept of neighbourhood is often critical to determining the standing of objections lodged pursuant to section 47F of the *Liquor Act*. In this case I have determined that the neighbourhood includes the Wharf Precinct and the residential and business areas immediately adjacent to the Precinct.

#### **Members of the Stokes Hill Wharf Traders Association**

14. This letter of objection is dated 23 October 2003 and was faxed to the Director of Racing, Gaming and Licensing on 24 October 2003. The letter states that it has been written on behalf of the owner operators of various retail shops located on the Wharf. Ten signatures appear on the document, with each signature appearing next to the name of a business. As many of the signatures are very difficult to decipher, further enquiries were made to identify the signatories. The names of each of the signatories, his/her role in the business and the name of the business (as recorded in the letter) are identified below:

- Tran Thanh, wife of the owner of Water Front Café
- Ron Choong, owner, Schnitzel Magic
- Ron Choong, owner, Kim's on the Wharf
- Sandra Coombes, shop assistant, Pirates Pies
- Jenny Miller, sales assistant, Bynoe Harbour Pearl Company
- Max Wainwright, owner, Just Desserts
- Pinijittikaun Surarak, owner, Siam on the Wharf
- Tran Thanh, wife of owner, Liquor Bar
- Christie Musica, sales assistant, Fish & Chips on the Wharf
- Kevin Rogers, manager, Crustaceans

15. Further enquiries identified the names of the people who were being described as the "owner operators" of the various businesses and therefore the persons on whose behalf the objection had been lodged. In the case of the Bynoe Harbour Pearl Company, the manager advised that it would be appropriate to describe Wayne Mangan, one of the three directors, as the person on whose behalf the objection had been lodged. This was because Mr Mangan worked at the shop for periods of time on a daily basis, spending the rest of his time working at the pearl farm. The "owner operators" of the various businesses are therefore as follows:

- Tranh Dung Thanh, Anchorage Café (cited above as the Water Front Café)
- Ron and Kim Choong, Schnitzel Magic
- Ron and Kim Choong, Kim's on the Wharf

- Ken Houghton, Pirates Pies
  - Wayne Mangan, Bynoe Harbour Pearl Company Pty Ltd
  - Max and Sue Wainwright, Just Desserts
  - Pinijkittikaun Surarak, Siam Thai (cited above as Siam on the Wharf)
  - Tranh Dung Thanh, Wharf Oyster Bar and Takeaway Liquor
  - Do Quoc Thanh and Ly Thi Bach, Fish & Chips on the Wharf
  - Vicki Jenkins, Crustaceans
16. My inquiries indicated that all of the above named people personally worked in their businesses on the Wharf, some on a full-time basis and some on a part-time basis. They could each be described, therefore, as “a person working in the neighbourhood” of the proposed premises.
17. Given my view that each of the owner operators could be described as “a person working in the neighbourhood” I did not attempt to refine the concept of “owner operator” and did not make any further enquiries regarding the corporate structures underlying the various businesses or the registered names of companies and businesses. Should the matter go to hearing, some clarifying information may be required.
18. The Stokes Hill Wharf Traders Association letter, on behalf of the owner operators, focuses on the takeaway part of the liquor licence application, points out that the Wharf is exempt from the 2 kilometre law and expresses concern that the sale of takeaway liquor by the Club may detract from the family friendly environment of the wharf precinct, particularly if members of the Club consume their takeaway alcohol on the Wharf. The letter refers to past difficulties with young people, itinerants and drunks. The letter expresses strong support for the establishment of the Club itself and no objection to the on-licence aspect of the application.
19. The applicant was provided with an opportunity to respond to the contents of this and other letters. The relevant section of his response states that the Club did not intend to establish a “formal” takeaway bottle shop or to promote takeaway liquor sales. However the Club did wish to retain the right to a takeaway licence so that it could offer members, on request, a low key takeaway service.
20. The letter from the Stokes Hill Wharf Trading Association, on behalf of the owner operators, clearly raises issues relevant to the amenity of the neighbourhood as required by subsection 47F(2) of the Act and complies with the formal lodgement requirements set out in subsection 47F(4). The less straightforward issue has been that of establishing how the letter complies with the requirements of subsection 47F(3). Subsection 47F(3) describes the type of individuals, groups and organisations that can object to applications.
21. In this case, it would have been administratively attractive to treat the objection letter as having been made by a group or organisation - the Stokes Hill Wharf Traders Association. The problem with this approach is that, for the objection to have standing, it would have required a finding that the Association is a “community-based organisation or group (for example, a local action group or a charity)” and that it therefore complied with section 47F(3)(f) of the Act. The Association is clearly not a charity but it is arguable that it could be considered to be a “community-based” action group. It is equally arguable that the Association is not the type of community action group that section 47F(3)(f) was designed to cover.
22. Given the uncertainty around this issue, I decided to take the safer approach of treating the “owner operators” of each business as the actual objectors. Each of these people physically works in their businesses on the Wharf and therefore has standing to object under section 47F(3)(a). This approach is supported by the fact that the introduction to the Stokes Hill

Wharf Traders Association letter reads: “*We, as the owner operators of the various retail shops located on Stokes Hill Wharf, object to....*”. While not all of the owner operators personally signed the objection letter, subsection 47F(4)(b) allows an objection to be signed on behalf of a person making an objection.

23. As the Commission member considering the status of this objection I make the following findings:

- the objection letter was signed by, or on behalf of owner operators of businesses on the Wharf;
- the owner operators are Vicki Jenkins, Max and Sue Cartwright, Ron and Kim Choong, Thanh Dung Huynh, Ken Houghton, Pinijittikaun Surarak, and Wayne Mangan;
- the owner operators are people working in the neighbourhood where the premises the subject of the application are to be located and therefore they meet the requirements of subsection 47F(3)(a);
- the signed letter of objection was lodged with the Director within 30 days of the last advertisement placed by the applicant and therefore meets the requirements of subsection 47F(4);
- the letter raises a range of concerns about the effect of the grant of the takeaway aspect of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

24. This means that the objection cannot be dismissed under subsection 47I(3)(c)(i) of the Act and the Commission must conduct a hearing in relation to the objections (subsections 47I(3)(c)(ii) and 47I(7)). In making this decision I make no findings as to the relative merits of the owner operators’ views and the Club’s views about the potential impact of the licence. That is a matter for the Commission members who conduct the objections hearing.

#### **Thanh D Huynh, HA & M Investments Pty Ltd T/A Wharf Oyster Bar & Takeaway Liquor**

25. This letter is dated 23 October 2003 and was received by the Director on 24 October 2003. Thanh Huynh states that he objects as the owner of businesses on the wharf and as a resident of Fannie Bay. I was able to confirm that Mr Huynh personally works in his businesses on the Wharf.
26. Thanh Huynh objects on grounds that a takeaway licence will have an adverse effect on the immediate neighbourhood. He cites an increased risk to children and other visitors of the Precinct with the potential for uncontrolled excessive drinking on the Wharf.
27. He also states that there is no demand by the community for another takeaway liquor licence and that it would not be in the public interest for a further takeaway licence at the proposed location since there are already numerous liquor takeaway outlets within the proximity of the proposed location.
28. The relevant part of the applicant’s response states that the Club does not intend to establish a “formal” takeaway bottle shop or to promote takeaway liquor sales.
29. The first reason Mr Huynh cites for objecting to the licence application clearly meets the requirements of subsection 47F(2), that objections be permitted only on the ground of concern about the impact of a licence on the amenity of the neighbourhood. While on its face the second reason is not based on the amenity of the neighbourhood, it is possible that a link could be drawn. Mr Huynh will need to demonstrate at the hearing of the objections how his concerns about lack of community demand for another takeaway licence

and his concern that the application for such a licence is not in the “public interest” relate to the amenity of the neighbourhood.

30. It is worth noting in passing that Mr Huynh’s business holds an existing liquor licence on the Wharf. It is a widespread myth that the current objection process prevents such a person or their staff members from lodging valid objections to applications from other premises. As long as the objector can demonstrate that he/she meets the requirements of one of the categories set out in section 47F(3) of the Act (for example, he/she works or lives in the neighbourhood) and the objection is based on concerns about the amenity of the neighbourhood, the objection can be referred to hearing. A specific provision preventing objections on the basis of an adverse effect on other licensed premises (section 48(1A)) was repealed when the new objection process was introduced.
31. As the Commission member considering the status of this objection I make the following findings:
- Thanh Huynh works at his businesses on the Wharf and is a person working in the neighbourhood where the premises the subject of the application are to be located. His letter therefore meets the requirements of subsection 47F(3)(a);
  - his residence in Fannie Bay is not relevant to this matter as Fannie Bay is not in the relevant neighbourhood;
  - his signed letter of objection was lodged with the Director within 30 days of the last advertisement placed by the applicant and therefore meets the requirements of subsection 47F(4);
  - the letter raises concerns about the effect of the grant of the takeaway aspect of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2);
  - its is unclear whether Mr Huynh’s concerns about community demand for another takeaway licence and the public interest are matters that meet the current requirements of subsection 47F(2); and
  - on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.
32. This means that the objection cannot be dismissed under subsection 47I(3)(c)(i) of the Act and the Commission must conduct a hearing in relation to the objection (subsections 47I(3)(c)(ii) and 47I (7)). In making this decision I make no findings as to the relative merits of Mr Huynh’s views and the Club’s views about the potential impact of the licence on the amenity of the neighbourhood. That is a matter for the Commission members who conduct the objections hearing.
33. It was noted that Mr Huynh had already gained the status of an objector through the letter from the Stokes Hill Wharf Traders Association. The only implication flowing from the acceptance of this second objection is that Mr Huynh will be able to talk to the facts specified in both objection letters in the hearing of this matter.

**Mark Payne, Assistant Commissioner Operation Command, Northern Territory Police**

34. This letter, dated 24 October 2003, is marked as having been faxed to the Director of Licensing on 24 October 2003. Ass Com Payne states that he objects to the application on the basis that it may well adversely affect the public amenity of the neighbourhood in the following ways: potential traffic, policing and security issues arising from the location and construction of the premises; inadequate car parking facilities with the potential to exacerbate parking shortages in the area; potential effect on amenity of the area of intoxicated patrons; public safety issues related to intoxicated people or those engaged in

horse play, falling off the wharf; and the effect on amenity of making the area safer with railings and barriers.

35. In his letter Ass Com Payne states:

*I note that the current statutory regime does not expressly permit Police, Fire and Emergency Services to raise issues other than public amenity, such as public safety and potential harm to patrons. Nonetheless I would like to draw the Commission's attention to these issues.*

36. The applicant provided a detailed written response to Ass Com Payne's letter, addressing each of the points raised, and also met with a delegation of Police. On 28 November 2003 the Director received a faxed letter from Ass Com Payne reaffirming his concerns.

37. As the Commission member considering the status of this objection I make the following findings:

- Ass Com Payne is a member of the Police Force, therefore he meets the requirements of subsection 47F(3)(c) of the Act;
- his signed letter of objection was lodged with the Director within 30 days of the last advertisement placed by the applicant and therefore meets the requirements of subsection 47F(4);
- the letter raises a range of concerns about the effect of the grant of the takeaway aspect of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2);
- I am satisfied that Ass Com Payne has sufficiently related his various concerns to the amenity of the neighbourhood; and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

38. This means that the objection cannot be dismissed under subsection 47I(3)(c)(i) of the Act and the Commission must conduct a hearing in relation to the objection (subsections 47I(3)(c)(ii) and 47I (7)). In making this decision I make no findings as to the relative merits of Ass Com Payne's views and the Club's views about the potential impact of the licence. That is a matter for the Commission members who conduct the objections hearing.

### **Xavier Desmarchelier on behalf of the Department of Health and Community Services**

39. This document, dated 5 November 2003, consists of a short unsigned email to the licensing inspector handling the matter, "expressing concern" about the application on the grounds that the grant of the licence has the potential to change the amenity of the wharf precinct from family orientation to Club associated activities. In particular, concern was expressed regarding the establishment of an alcohol takeaway facility. This email was sent some 12 days outside the 30 day period specified in section 47F(4).

40. As it was unclear to me whether the author intended this email to be treated as an objection, I made my own inquiries as permitted under subsection 47I(3)(b) of the Act. Mr Desmarchelier provided verbal advice that the email was not intended to be a formal objection and on 8 December 2003 he confirmed this position in an email. The email reads as follows: "*The status of the comment is as a concern to be taken into account in the consideration of the liquor licence application, not a formal objection*".

41. Given Mr Desmarchelier's clarification of his intentions in sending the original email, there needs to be no further consideration of that email for the purposes of this "objections decision". The email is simply not an objection and therefore does not need to be addressed under Part IV of the Act. If, however, Mr Desmarchelier disagrees with this

approach, he is able to request a review of my decision under section 28 of the *Licensing Commission Act*.

### **Darwin City Council**

42. The Darwin City Council (DCC) letter of "objection" was signed and faxed to the Director of Licensing on 3 November 2003. This was 10 days outside the 30-day period specified in section 47F(4). Whilst there was some contact with the licensing inspector on 27 October 2003 advising him of when comments on the application could be expected, I was unable to find any information that an extension of time to lodge an objection was sought. In any event, no application for an extension of time under section 127 of the Act was received by the Commission.
43. The letter states that DCC "objects" to the proposal to sell take-away alcohol from 9.00am on Saturdays and on public holidays. The DCC letter further states that the DCC would have no objection to the application if both the takeaway and on-licence sales were to commence at 10.00am and there be no trading on Good Friday and Christmas Day. No rationale for seeking this change is given.
44. On 19 November 2003 (26 days after the end of the objection process) the Director received another letter from the DCC advising that the Town Planning Committee had also resolved at its 3 November 2003 meeting to advise the Commission of car parking issues related to the proposal and to request that the Commission take these into consideration. This letter is not expressed in the form of an objection.
45. The Director has treated the DCC letters as objections and provided copies for comment to the applicant.
46. As the member considering this objection, I have made the following findings in relation to these documents and have applied the law accordingly:
  - the Darwin City Council is a public authority that performs functions relating to public amenities and therefore meets the requirements of subsection 47F(3)(e);
  - neither of the letters from the DCC were lodged with the Director within 30 days of the last advertisement placed by the applicant and no extension of time was formally sought. Therefore the letters do not meet the requirements of subsection 47F(4);
  - the 3 November 2003 letter is expressed as an objection but does not raise any concerns about the effect of the grant of the licence on the amenity of the neighbourhood and therefore does not meet the requirements of subsection 47F(2); and
  - the letter dated 19 November 2003 is not expressed as an objection but does raise a concern that potentially could relate to the amenity of the neighbourhood;
47. On the basis of these findings I am obliged by subsection 47I(3)((c)(i) to dismiss the 3 November 2003 letter of objection on the grounds that it does not describe circumstances that may or will adversely affect the amenity of the neighbourhood. If the DCC disagrees with this decision, the DCC can ask for a review of my decision under section 47J of the Act. In order for such a review to be successful, DCC would also have to overcome the additional problem of the 3 November 2003 letter having been lodged outside the prescribed time for objections.
48. In respect of the 19 November 2003 letter, I have concluded that this letter was not an objection within the meaning of Part IV of the *Liquor Act*. This decision can be appealed pursuant to section 28 of the *Licensing Commission Act*.
49. It should be noted that my conclusions in this matter do not mean that the Council's concerns will be ignored. The information DCC has provided can still be used to inform the investigation of the application. My decisions at this stage are only whether the letters

entitle DCC to the formal status of “objector” and therefore being a party in a hearing process.

## Decision

50. As the Member of the Commission appointed to consider the objections to the Darwin United Sports Club application for a liquor licence, I have decided that the letters lodged by or on behalf of Thanh D Huynh, Mark Payne, Ron Choong, Kim Choong, Ken Houghton, Wayne Mangan, Max Wainwright, Sue Wainwright, Pinijittikaun Surarak, Do Quoc Thanh, Ly Thi Bach and Vicki Jenkins are objections under section 47F of the *Liquor Act*. I have also decided that there are no grounds for dismissing these objections, and that the Commission must conduct a hearing in relation to the objections.
51. I have decided that the email from Xavier Desmarchelier and the 19 November 2003 letter from DCC are not objections within the meaning of 47F of the *Liquor Act*. These decisions can be reviewed under section 28 of the *Licensing Commission Act* if there is an application for this to occur.
52. In respect of the 3 November 2003 letter from the DCC I have dismissed this under subsection 47I(3)(c)(i) as not describing circumstances that may or will adversely affect the amenity of the neighbourhood. DCC has the right to request a review of this decision under section 47J of the *Liquor Act*.
53. It should be noted that my decisions regarding these objections are confined to threshold issues and cannot be taken as judgments about the merits of any particular objection or the appropriate outcome of the licence application.

Ms Jill Huck

Member selected by the Chairman pursuant to subsection 47I(2) of the *Liquor Act*