

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Beswick Community Store
Applicant:	Mr Steve Moore
License:	Wuduluk Progress Aboriginal Corporation
Nominee:	Mr Peter Mitchell
Licence Number:	80900781
Objector:	Mr Neil Wright, Department of Health
Legislation:	Sections 32A and 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Philip Timney (Legal Member)
Date of decision:	3 October 2012

Background

- 1) By letter dated 24 May 2012, Mr Steve Moore applied pursuant to Section 32A of the Liquor Act ("the Act") for variations to the conditions attached to the liquor licence for the Beswick Community Store ("the Store". The variations sought included a change of the category of licence from a Store Liquor Licence (authorising the sale of take away alcohol) to an On Licence (authorising the sale of alcohol for consumption on the premises in the "Beer Garden"). The Store is owned by Wuduluk Progress Aboriginal Corporation and Mr Moore is the CEO of Outback Stores, who manages the Store on behalf of the owners.
- 2) The Application was advertised in the Katherine Times on Wednesday 4 July 2012 and Wednesday 11 July 2012 pursuant to Section 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

*Wuduluk Progress Aboriginal Corporation, **hereby give notice** that it has applied to the Northern Territory Licensing Commission to vary the conditions of the liquor licence for the Beswick Community Store located at 52 Ngalagan Street, Beswick.*

Proposed variation details for the sale of liquor are as follows:

Beswick Community Store

- *Removal of the requirement for sales to be for consumption away from the premises.*
- *All sale and consumption of liquor is to be within the "Beer Garden" area of the premises.*

Licence type (authority)

- *Variation of the authority from Store (takeaway) licence to an On Licence.*
- *Authority to authorise the sale of liquor, for consumption on or at the licensed premises.*

This is the second and final advertisement of the application and the objection period is deemed to commence from this publication date being Wednesday, 11 July 2012.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the grant of the licence may or will adversely affect:

(a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

(b) health, education, public safety or social conditions in the community.

Only those persons, organisations or groups described in Section 47F(3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.

*For further information regarding this application contact the Director of Licensing on telephone 8973 8810. Objections to this application should be lodged in writing with the Director of Licensing PO Box 2138, Katherine, **within thirty (30) days** of the commencement date of the objection period.*

Dated this day of July 2012.

- 4) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty days after the publication of the last notice, namely on or before Friday 10 August 2012.
- 5) Section 47F of the Act prescribes the circumstances in which an objection may be made, specifies the grounds for objection and identifies the persons entitled to object to a particular application –

47F Person may object to certain applications

(1) Subject to this Section, a person, organisation or group may make an objection to the following applications:

(b) an application for a variation of the conditions of a licence, as notified under Section 32A;

(2) The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –

(a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

(b) health, education, public safety or social conditions in the community

(3) Only the following persons, organisations or groups may make an objection under sub-Section (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)*
- 7) The application was referred to the Northern Territory Police, the Roper Gulf Shire and the Department of Health for comment. Acting Superintendent Kylie Proctor advised, on behalf of Northern Territory Police, that Police had no objection to the application and had a good working relationship with the management of the Store. No response was received from the Roper Gulf Shire.
- 8) One objection has been lodged in response to the application and the applicant has provided a response to that objection pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing

Objection from Mr Neil Wright, Department of Health:

- 9) Section 47F(1)(b) provides that a person may lodge an objection to an application for variation of licence conditions. Mr Wright is the Senior Policy Advisor with the Alcohol and Other Drugs Program, Department of Health. As such he is a person entitled to lodge an objection pursuant to Section 47F(3)(e) of the Act. Mr Wright's objection was lodged within the prescribed period.
- 10) Mr Wright queried how the Store would manage and control on-premise consumption and what will change if the variation of licence conditions were to be approved. He also queried the licence conditions dealing with limitations on the amount of alcohol that may be purchased by an individual during the times the Store is open for the sale of alcohol. Mr Wright suggests that the amounts currently authorised for sale to individuals are excessive given the limited hours within which the Store is authorised to sell alcohol.
- 11) Mr Wright objects to the proposed variation of licence conditions as they relate to the type of alcoholic beverages available for sale and the proposed trading hours. The premises currently trade in the sale of alcohol for a period of 3 hours daily. Mr Wright expresses his concerns in respect of the quantity of alcohol available to patrons in a very limited time frame and suggests this is likely to give rise to or lead to an increase in alcohol related harm. He requests that the Commission also review the conditions relating to supply limits in considering the application.

Applicant's Response to Objections:

- 12) Mr Moore responded to the objection on behalf of the Licensee by letter dated 17 August 2012. He reiterated that the application for variation of conditions was simply to change the authority of the licence from take away to on premise consumption so as to rectify the discrepancies in the current licence. He stated that the Store has not actually been operating as a take away premises for some considerable time as all alcohol sold is consumed in the Beer Garden which is part of the Stores' premises which is in line with the intention to restrict possession and consumption of alcohol in the Beswick Community to only the Beer Garden of the Social Club.
- 13) In response to Mr Wright's concerns regarding the management of on premises consumption, Mr Moore advised that the Social Club ensured that food was available to patrons at all times that alcohol was sold and that sufficient security personnel were engaged during trading hours. In addition, limitations on the amount of alcohol that could be sold to an individual were enforced and patrons are only permitted to purchase one can of alcohol at a time.
- 14) Mr Moore added that since the Federal Intervention the trading hours of the Store had been limited to 4.30 to 6.30 pm on Wednesdays and 4.30 to 7.00 pm on Fridays with no trading

on Saturdays. The management of the Store has implemented measures that require all patrons to undergo breath analysis and return a reading of less than 0.05% BAC prior to being admitted to the premises. He noted also that the present application makes no request to vary the limitations currently in place in respect of the amount of alcohol that may be sold to an individual or to vary the hours of trade.

Consideration of the Issues

- 15) The background to the grant of the liquor licence to the Beswick Community Store and the conduct of business under that licence requires examination in some detail in order to place the current application into perspective. In 1993 the Licensing Commission declared the area surrounding the Beswick Community as a General Restricted Area ("GRA") with the result it became an offence to possess, sell or consume alcohol within the GRA. The Store was first granted a liquor licence in 1998 and the Store premises were subsequently excised from the GRA with the result land occupied by the Store was exempt from the liquor restrictions attached to GRA. However, an anomaly remained within the licence conditions in that the Store was authorised to sell take away alcohol to patrons however it was unlawful for the patrons to remove the alcohol from the licensed premises, as would normally be the case for a take away licence but for the impact of the GRA restrictions.
- 16) This anomaly led to what appear to be conflicting conditions attached to the current liquor licence issued to the Store. Namely, that liquor shall be sold only for consumption away from the premises and that liquor shall only be consumed away from the premises in the fenced area known as "The Beer Garden". A further anomaly arises as the Beer Garden is actually part of the premises of the Beswick Community Store and is included within the defined licensed area. Under the existing arrangements patrons of the Store are actually purchasing alcohol for on-premise consumption, not for the purpose of take away.
- 17) The clear intent of the conditions relating to take away sales is to prevent offences being committed through patrons taking alcohol purchased from the Store into the GRA by limiting consumption to the Beer Garden area only, with the Beer Garden being part of the area excised from the GRA. Whilst not apparent from the licence document itself due to the anomalies, the existing Store liquor licence in effect authorises the sale of alcohol for on premises consumption, namely within the Beer Garden. It does not actually authorise take away sales in the sense that term is normally used as to do so would place any patron who removes alcohol from the Beer Garden area at risk of prosecution for committing an offence under the GRA provisions.
- 18) In addition in October 2007, the Department of Families, Housing, Community Services and Indigenous Affairs ("FaHCSIA") advised the Licensee that the licence conditions had been varied under the terms of the *Northern Territory National Emergency Response Act* ("the *NTER Act*"), including restrictions on trading hours and product types available for sale. The revised licence conditions imposed a restriction limiting sales to mid strength and light alcohol only and restricting trading hours to 4.30 pm to 7.30 pm on Tuesday, Wednesday, Friday and Saturday only. The variations imposed to the licence conditions under the *NTER Act* also directed that "No take away alcohol sales will be allowed".
- 19) The licence conditions imposed under the *NTER Act* came into effect on 20 November 2007. Despite the condition prohibiting take away sales the licence continued to operate under the authority of a Store Licence, including the condition authorising the sale of liquor for removal and consumption away from the licensed premises. The reason for this is obvious when viewed in the context of the historical background to the licence set out above. The Store was authorised to sell "take away" alcohol under the terms of its licence so long as the alcohol was consumed in the Beer Garden, which was exempt from the GRA conditions. However, a purchaser would be in breach of the GRA restrictions and the *NTER Act* provisions as soon as they removed the alcohol from the licensed premises and into the GRA.

- 20) It is apparent that, as a result of the anomalies in the various licence conditions, the Store in reality continued to operate as an on-premise consumption venue due to the introduction of the GRA and the *NTER Act* restriction prohibiting take away sales.
- 21) With this application the Licensee is attempting to bring the licence conditions into line with the actual manner in which the business under the licence is conducted, specifically to amend the licence to allow for on-premise consumption only with the consumption to take place in the Beer Garden, which is within the Store's licensed premises.
- 22) The application before the Commission requests a change of the licence authority from "take away" to "on-premise consumption" and removal of the conditions requiring all sales of alcohol to be for consumption away from the Store premises. As set out above, this is in reality the manner in which the business has operated for some significant time, primarily as the Store is surrounded by a GRA which prohibits the possession and consumption of alcohol other than on the Store premises.
- 23) From a Commission perspective, on-premise consumption of alcohol in circumstances where a patron's behaviour and level of intoxication are able to be monitored by staff and security personnel is preferable to take away sales where the patron is able to consume the alcohol in an uncontrolled and unsupervised environment. The Commission, together with various other bodies involved in the regulation of alcohol sales, has noted consistently and regularly that whilst there are issues with the regulated sale of alcohol for on-premise consumption the greater level of alcohol related harm is generated from take away sales. In light of that position there would appear to be no reason to refuse the within application which seeks to ratify the existing arrangement where alcohol is available for on-premises consumption only.
- 24) Mr Wright does not object to the specific application to restrict sales to on premise consumption only, with the exception of the query regarding management control of that activity. That concern has been adequately addressed in the response to the objection submitted by Mr Moore. It should also be noted that the Licensee of the Store has not been the subject of any adverse findings or criticism arising from the fact that it has, for some considerable time, actually been involved in the sale of alcohol for on-premise consumption.
- 25) Mr Wright specifically asks that his concerns in respect of the licence conditions dealing with the volume of alcohol permitted to be sold to an individual be reviewed by the Commission in the context of its consideration of the subject application. With respect, that option is not open to the Commission. The Commission's options in considering the specific application before it are to either approve or refuse the variation of licence conditions to authorise on-premise consumption of alcohol. Should the Commission, or any other person for that matter, have concerns over the volume of alcohol permitted to be sold to individuals then the appropriate avenue is for the Commission to pursue the course prescribed by Section 33 of the Act which enables the Commission to vary licence conditions following notification to the Licensee. Put another way, an application instigated by a licensee to vary specific conditions attached to the licence via the Section 32A process is not a trigger for a global review of licence all conditions or those conditions that are not directly associated with the conditions sought to be varied.
- 26) Mr Wright's objection does not relate to the specific application currently before the Commission nor does it relate to the specific take away conditions the Licensee is seeking to have amended. As such the objection should be dismissed on the grounds it is irrelevant to the application before the Commission and it is recommended that the Chairman appoint a panel of three Commissioners to consider the application on its merits without the requirement for a Hearing.

Decision

- 27) For the reasons set out above, the Commission has determined, in accordance with Section 47I(3)(c)(i)(A) of the Act that the objection of Mr Wright be dismissed on the grounds that it is not relevant to the specific application currently before the Commission. As a result the objection need not be referred to a Hearing.
- 28) Pursuant to Section 47I(4) of the Act I direct that the Director of Licensing inform Mr Wright that his objection has been dismissed and request that the Director inform Mr Wright of this decision as required by Section 47I(5) of the Act. Mr Wright is also advised, in accordance with Section 47J(1) of the Act, that he may apply to the Commission for a review of this decision. Section 47J(2) sets out the requirements for an application for review.

Philip Timney
Legal Member

3 October 2012