

Northern Territory Licensing Commission

Reasons for Decision

Licensee:	The Precinct Tavern
Applicant:	Craft Beer Australia Pty Ltd
Nominee:	Mr Ryan Jenkins
Licence Number:	80318470
Objectors:	Mr Ross Baynes & Miss Avril Vaughan
Legislation:	Sections 47F to 47I of the <i>Liquor Act</i>
Decision of:	Mr Richard O'Sullivan (Chairman)
Date of Decision:	24 July 2014

Background

- 1) Mr Ryan Jenkins, Nominee of The Precinct Tavern ("the Tavern") has applied for a variation to the Tavern's licence conditions pursuant to section 32A of the Liquor Act ("the Act"). The application seeks the removal of five (5) of the current licence conditions applicable to the Tavern as detailed in dot point below:

"Restaurant

- *Liquor shall only be sold by way of wait staff to patrons who are seated at a table.*
- *No high tables or bar stools permitted in the Restaurant Area.*

Alfresco Area

- *With the exception of those persons entering or exiting the venue through the Alfresco Area, all patrons to be seated.*
- *No high tables or stools permitted in the Alfresco Area.*

Special Conditions – Entertainment

- *No speakers or live performances permitted in the Alfresco Area."*

- 2) The applicant has provided information in relation to Public Interest Criteria pursuant to section 6(2) of the Act. In summary the applicant submits that there will be no change on the criteria of harm and ill-health, sale of liquor in a responsible manner, public order and safety, and the safety, health and welfare of patrons. On the issue of noise the applicant advises that he recognises the sensitivity of controlling noise in a precinct which includes residential tenancies.
- 3) The applicant has advertised the application in the NT News on Thursday 24 April 2014 and Saturday 26 April 2014 pursuant to Section 32A(3)(a) of the Act. The advertisement was as follows:

Craft Beer Australia Pty Ltd, hereby given notice that it has applied to the Northern Territory Licensing Commission for a "Variation of Licence Conditions" to the premises known as The Precinct Tavern (Liquor Licence number 80318470) located at 7 Kitchener Drive, Darwin Waterfront Precinct, NT 0800.

Proposed variations are; to remove the following conditions from the licence:

- *"Liquor shall only be sold by way of wait staff to patrons who are seated at a table in the Restaurant Area".*
- *"No high tables or bar stools permitted in the Restaurant Area".*
- *"With the exception of those persons entering or exiting the venue through the Alfresco Area, all patrons to be seated".*
- *"No high tables or stools permitted in the Alfresco Area".*
- *"No speakers or live performances permitted in the Alfresco Area".*

This is the first notification of application. The notice will be published again on Saturday, 26 April 2014.

The objection period is deemed to commence from Saturday, 26 April 2014 (date of publication of second notice).

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions 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 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this Thursday 24th April 2014

- 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 Monday 26 May 2014.
- 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:*
 - (a) an application for the grant of a licence, as notified under Section 27;*
 - (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).*

(4) *An objection under subsection (1) is to:*

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

6) One objection has been lodged in response to the application and the applicant has provided a response to this 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. Police on 10 July 2014 have advised that they do not support removal of the “no speakers or live performance” condition applicable to the Alfresco Area. This correspondence was received well beyond the objection timeline of 26 May 2014 and was therefore not submitted to the applicant for response.

7) Section 47F(3) provides the categories of persons, organisation or group who may lodge an objection to an application for variation of licence conditions. Section 47F(2) provides the grounds on which an objection can be made.

Objection from Mr Ross Baynes and Miss Avril Vaughan

8) Section 47F(3)(a) of the Act allows an objection to be made by:

“a person residing or working in the neighbourhood where the premises the subject of the application are or will be located.”

As Mr Baynes and Miss Vaughan, who have jointly submitted an objection, live at a Unit in 19B located at Wharf 1 Kitchener Drive they may be considered as residing in the neighbourhood of the licensed premises.

- 9) The objection was lodged on 16 May 2014 and was therefore within time as required under Section 47F(4)(a).
- 10) Mr Baynes and Miss Vaughan cite and amplify the reasons for their objection which relates to only one aspect of the variation sought by the Tavern. Their objection is confined to the removal of the following condition:
- “No speakers or live performances permitted in the Alfresco Area”.*
- 11) The objectors maintain that “allowing speakers or live music in the Alfresco Area will impact on their quiet enjoyment of their residence”. They refer to the impacts of the changed operations of other licensed venues in the broader Waterfront Precinct area as indicative of the consequences likely to occur if the Tavern’s “no speakers or live performances” condition is removed.
- 12) References by the objectors to health consequences are generic in nature and not specific to the Tavern application.
- 13) Grounds to the objection relating to amenity or neighbourhood being adversely impacted on by broadcast music or live performances meet the requirement of Section 47F(2) of the Act and are therefore valid for the purposes of requiring a Hearing.

Police Submission

- 14) Police have standing under Section 47F(3)(c) to lodge objection. Police have provided comment on the application through an email from the Senior Policy Officer Drug and Alcohol Unit dated 10 July 2014. For the purposes of qualifying as an objection the correspondence needs to have been submitted to the Director by 26 May 2014. While the Commission can extend time pursuant to Section 127 of the Act in this instance there are no grounds or submissions for doing so. Therefore the comments from Police are not valid grounds giving rise for need to conduct a Hearing on the application. Notwithstanding this, the Commission may consider in its deliberations on the licence variation sought, relevant comments from an organisation such as Police.

Applicant’s Response to Objection

- 15) As required under Section 47G of the Act the applicant has been afforded an opportunity to respond to the objection from Mr Baynes and Miss Vaughan. The response points out the error contained in the heading of the objection submission where the applicant is referred to as “Craft Beer Australia Pty Ltd trading as Il Lido Italian Restaurant”. It goes on to state that the objection should be dismissed under Section 47I(3)(c)(i)(B) in that it

“does not describe the circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community”.

- 16) The applicant argues that all references in the objection are to hospitality venues below the residential apartments of Wharf 1. It maintains that the Tavern is in a different building to the venues referred to in the objection and that their premises is approximately 450 metres away.

Consideration of the Issues

- 17) The applicant argues that the objection of Mr Baynes and Miss Vaughan is not valid as the grounds submitted relate to licensed venues some distance from the Tavern. The applicant points to the very heading wherein “trading as Il Lido Restaurant” is referenced.
- 18) Notwithstanding the reference to “Il Lido” the objectors have identified the Tavern licensee, Craft Beer Australia Pty Ltd and the correct licence number, 80318470, as the licence application objected to. This leaves little doubt as to what premise is being referred to.
- 19) In the objection submission there is opposition to only 1 of the 5 licence variations sought, that being the application to remove “No speakers or live performances permitted in the Alfresco Area”. The objection states:

“The objectors have reasonable grounds to believe allowing speakers or live music in the Alfresco Area will impact on their quiet enjoyment of their residence”.

Further:

“The objectors believe that the amphitheatre design of the Waterfront guarantees that if The Precinct is allowed to play amplified music either by speaker or live performance in its Alfresco Area, it will travel to residential buildings and no doubt turn the existing clamour of noise into a cacophony causing annoyance, disturbance...”

- 20) From the above it is clear that the objectors are describing the circumstances of how the amenity of the neighbourhood will be adversely impacted as required under the Act for an objection to be valid. Notwithstanding the objection validity, much of the narrative of disturbance in the neighbourhood relates to the circumstances of other licensed venues, particularly Il Lido and Fiddles Green. The applicant has responded that the objection is more against these premises than that of the Tavern. In the Commission’s mind this information is provided as illustrative of deterioration in neighbourhood amenity which in their submission has occurred elsewhere in the Waterfront Precinct with the variation or relaxation of licence conditions.
- 21) It is noted that at the time the application was advertised no responses to the application were sought through specific correspondence to Health, Police or the Waterfront Corporation as has usually occurred with licence applications or variations previously applied for at the Waterfront Precinct. In this regard while Police are not a formal objector, on being advised of the application they have responded by advising:
- “No speakers or live performances permitted in the Alfresco Area: NT Police do not support this element as the venue is located in close proximity to hotel guests, and noise travels vertically. Further, the issue of undue noise is a Summary Offences matter, and it is in appropriate for Police to support removal of a condition which promotes adherence to the Summary Offences Act”.*
- 22) On the matter of proximity of the objector’s residence to the alfresco area of the Tavern the applicant has referred to a distance of 450 metres. Using a straight line trajectory the Darwin Waterfront Corporation advised the distance is 180 metres.

Decision

- 23) The Commission has determined that the objection lodged by Mr Baynes and Miss Vaughan in relation to the application to remove the “No speakers or live performances permitted in the Alfresco Area” condition is valid and requires a Hearing pursuant to Section 471(7) of the Act.
- 24) While the Commission is required to conduct a Hearing where a valid objection has been lodged, if the objector does not wish to attend and make oral submissions, the Commission is able to rely solely on the written objection it has before it. In such circumstances the Commission may determine to conduct the Hearing on papers only.

A handwritten signature in black ink, appearing to read 'Richard O'Sullivan', followed by a long horizontal line extending to the right.

Richard O'Sullivan
Chairman

24 July 2014