

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Hot Rock Restaurant and Bar 28 Mitchell Street Darwin NT 0800
Licensee:	Anne Maree Oates, Graeme Oates and Max Oldfield
Objectors:	Darwin City Council
Legislation:	Sections 47F to 47I of the <i>Liquor Act</i>
Decision Of:	Mr Richard O'Sullivan
Date of Decision:	10 March 2010

Background

- 1) On 4 January 2010, Ms Anne Maree Oates applied pursuant to Section 32A of the *Liquor Act* ("the Act") for a variation of the current licence conditions to extend trading hours from 02:00 (the following day) to 04:00 (the following day) seven (7) days per week for the Hot Rock Restaurant and Bar, 28 Mitchell Street, Darwin.
- 2) The application was advertised twice in the Northern Territory News on Wednesday 13 January 2010 and Friday 15 January 2010. Copies were also forwarded to the Alcohol and Other Drugs Program, Northern Territory Police, Development Consent Authority and Darwin City Council for their comments. The advertisement was as follows:

Hot Rock Restaurant And Bar, Hereby Give Notice that it has applied to the Northern Territory Licensing Commission for an extension of trading hours for the premises, Hot Rock Restaurant and Bar, Liquor Licence (number 80817696), located at 28 Mitchell Street, Darwin, NT, 0800.

The current trading hours of the venue are:

- *11:30 hours to 02:00 hours seven days per week*
- *The proposed trading hours of the venue are:*
- *11:30 hours to 04:00 hours seven days per week.*
- *A quality a-la-carte menu will be available through the night with last orders to be taken at 03:00 hours.*
- *The extended hours are to cater for the general public who may work late and/or evening shift, want a meal after attending an event or who are arriving or departing on late night flights.*
- *A secure luggage room will be provided for travellers who may be waiting for a late night flight.*
- *Late night trading conditions apply:*
 - *No complimentary drinks shall be supplied between midnight and closing times.*
 - *The Licensee shall provide to the satisfaction of the Director:*

- *Adequate security, effective illicit drug control measures, snack foods at all times, and complimentary “tap” water.*
 - *The Licensee shall obtain and observe maximum patron limits*
 - *The Licensee shall take all measures necessary to ensure that noise from the premises does not cause undue disturbance or discomfort to residents of the neighbourhood.*
 - *The Licensee shall enforce a ‘lockout’ of patrons from Hot Rock Restaurant and Bar from 03:00 hours on any night the premises operates past 03:00 hours.*
 - *The premises other licence conditions will remain unchanged.*
- 3) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice. An objection must be lodged with the Director within thirty (30) days after publication of the last advertisement - namely by Sunday 14 February 2010. Submissions were received from the following:
- The Development Consent Authority has advised that the use of the property for a restaurant/hotel has approval and the Development Permit issued does not impose any conditions in relation to the hours of operation. Their correspondence does not constitute an objection.
 - Police have made submission on the licence variation application but have not done so in the form of an objection. The Police submission questions how the granting of an extension of licence hours will promote the minimisation of harm and be in the public interest. The Police also question whether there is any evidence to support that the applicant will be more successful if they traded until 04.00am instead of the existing licence which provides for a 2.00am closure. Further, the Police have requested a thorough investigation by the Commission, should the licence be extended, of existing issues relating to alcohol consumption in Mitchell Street.
 - The Department of Health have provided comment but not in the form of an objection. The submission maintains that *“granting such an extension would seem to be contradictory of the NT Government’s efforts to reduce the harms and impact of alcohol consumption through reduced availability and access”*. The Health submission also queries whether there is a requirement on the applicant to produce a more detailed response to the Public Interest criteria required under the Act to enable a more comprehensive assessment of the potential harms in granting the extension of hours.
 - Darwin City Council (“DCC”) – objection dated 10 February 2010 and was received within time.
- 4) The grounds for or the nature of the objections must meet the requirements of Section 47F(2) of the Act, which defines the content or substance for an objection to be valid. Section 47F(2) states:
- (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.*
- 5) Additionally, Section 47F(3) of the Act lists the categories of persons who have standing to object to an application such as this. It provides -

- (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).*

Objection

Darwin City Council

- 6) The letter of objection from the DCC has been assessed against the relevant criteria and has standing under Section 47F(3)(e) of the Act as a *“public authority that performs functions relating to public amenities .”*
- 7) In terms of meeting requirements of Section 47F(4) of the Act relating to neighbourhood amenity or health, education, public safety or social conditions in the community the Commission has determined that the objection has validity.
- 8) The Council submission specifically objects to the extended trading hours sought on the basis of community amenity and health, education and public safety. The Council letter of objection goes on to further state that this decision is consistent with its submission to the Licensing Commission’s “Review of Cheap and Problem Liquor Products in Darwin, Palmerston and Rural Areas”, and goes on to quote parts of that submission which inter alia refers to its commitment to the provision of the safety and health environment of the community.

Applicant’s Response to Objections

- 9) The applicant contests that the DCC objection is valid under the Act. The applicant states that the DCC have given no indication as to how the amenity of the neighbourhood be affected should the licence extension be granted.
- 10) The applicant further states that the DCC have given no indication of how their application will affect the health, safety and social conditions of the community.
- 11) In summary the applicant states that the DCC have quoted the *Liquor Act* as *“their excuse for an objection but have really given no indication as to how the amenity of the neighbourhood will be affected with the extension of the licence”*. The applicant seeks that the Commission dismiss the objection.
- 12) As outline above the Commission has determined that the DCC objection has validity as it has raised concerns over amenity and public safety. Moreover the DCC has referred to its submission to the Licensing Commission “Review of Cheap and Problem Liquor Products in Darwin, Palmerston and Rural Areas”, wherein the DCC view and commitment to community safety and healthy environment are outlined. This letter of objection, together to

the earlier DCC submission to the Commission, clearly conveys the Council's opposition to 4.00am trading on the grounds including the public safety and amenity.

Determination

- 13) For an objection to have validity it must raise the adverse impact of the proposed licence in terms of the amenity of the neighbourhood and the health, education, public safety and social conditions in the community.
- 14) On the basis of this requirement I consider the objection raised by the Darwin City Council is valid and require a Hearing.
 - Darwin City Council

Richard O'Sullivan
Chairman

10 March 2010