

Director-General of Licensing

Decision Notice

Matter:	Review of Decision of Delegate of Director-General of Licensing
Proposed Premises:	Flynn Tavern 127 Flynn Circuit Bellamack NT 0832
Applicant:	Armada Hotels and Leisure Pty Ltd
Proposed Nominee:	Mr David Anthony
Applicant for Review:	Mrs Joanna Taylor
Legislation:	Section 11 of the <i>Licensing (Director-General) Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	14 January 2016

Background

1. By application dated 11 May 2015 Armada Hotels and Leisure Pty Ltd applied for a tavern liquor licence for premises to be known as the Flynn Tavern to be constructed at 127 Flynn Circuit, Bellamack. The application was advertised in the NT News on 12 and 14 August 2015. Seven objections were lodged within the objection period opposing the grant of the liquor licence.
2. A Delegate of the Director-General of Licensing ("the Delegate") assessed the objections for compliance with section 47F of the *Liquor Act* (the Act).
3. Relevant to this review, the Delegate determined that the objection lodged by Mrs Joanna Taylor was invalid as it was not lodged on behalf of a community based organisation nor was it a person for the purposes of the "resident test".

Current Situation

4. Section 11 of the *Licensing (Director-General) Act* provides that an affected person aggrieved by a decision of a Delegate may apply to the Director-General of Licensing ("the Director-General") for a review of the Delegate's decision. Mrs Taylor has sought a review by the Director-General of the Delegate's decision determining that her objection is invalid.
5. In support of her request for a review Mrs Taylor has lodged submissions that may be summarised as follows. Mrs Taylor's original objection was lodged on behalf of herself and 31 named residents who all oppose the grant of a liquor licence to the Flynn Tavern. The majority of persons identified in the objection reside in the suburb of Rosebery with two of those persons residing in nearby suburbs of Palmerston. The objection was lodged in good faith and the method used was based on advice from Licensing NT. She submits that the group of objectors qualify as a "community based group" in the form of a local action group, as prescribed by section 47F(3)(f) of the Act.

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6. Mrs Taylor states that the group decided to lodge a joint objection so as to have a stronger voice. The co-ordinators of the group engaged in a number of community consultations and provided residents of Rosebery with email updates of their activities with the final objection taking account of the research conducted and the resident feedback.
7. The submission refers to the definition of "community" set out in the Act which provides: "**community** includes an individual member and a group of members of a community" and submits that the large number of people residing in a community who wish to object to the application should be sufficient to view the objectors as a community action group. Mrs Taylor also confirmed that all objectors within the group have provided written authority for their names to be provided to Licensing NT if required. A number of the group did however request that their personal details not be provided to the applicant.
8. Mrs Taylor also made submissions in respect of being advised that "*there was no evidence that the residents had provided consent or authority for you to lodge on their behalf*". Those submissions need not be set out in full as consent or authority of the members of the group was not a ground on which the Delegate found the objection to be invalid.
9. Similarly, Mrs Taylor has made submissions in respect to the lodgement of the objection via email and it not being signed in the traditional sense. The lodgement of unsigned objections via email has been the subject of recent consideration by the Director-General, however it was not a ground on which the Delegate found the group objection lodged by Mrs Taylor to be invalid and as such need not be considered for the purpose of this review.
10. Mrs Taylor also submits that the Delegate's decision advised that she was not a "person" for the purpose of the "resident" test as the objection was made as a "group objection on behalf of the residents". Mrs Taylor confirms that she is a resident of Bellamack, the suburb where the Flynn Tavern is proposed to be built. She submits that, if the group objection is rejected then the objection should stand as being made by her individually on the basis she is a person residing in the neighbourhood.

Consideration of the Issues

11. The Delegate found Mrs Taylor's objection to be invalid on the grounds the group of resident objectors referred to in the objection was not a community based organisation and that group was not a "person" for the purpose of the "resident" test.
12. The relevant provision in respect of who can lodge an objection to a liquor licence application is section 47F(3)(f) of the Act which provides:
 - (3) *Only the following persons, organisations or groups may make an objection under subsection (1):*
 - (f) *a community-based organisation or group (for example, a local action group or a charity).*
13. In her request for review Mrs Taylor states that the vast majority of names listed within the objection were people residing in Bellamack, with only two of the named persons residing in other Palmerston suburbs. She submits that the group qualifies as a valid objector under section 47F(3)(f) on the grounds it is a "community based group". Mrs Taylor states further that the group felt the residents would have a stronger voice if they joined together to raise their collective concerns. Mrs Taylor's submission also contains a summary of the types of activities the group engaged in and the input that formulated the basis of the objection.

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14. Mrs Taylor notes that the group has not registered as a charity or officially named group with any organisation. Whilst there is no committee structure in place Mrs Taylor submits that a reasonable person would classify the group as a "community action group" based on the number of residents involved and the activities undertaken. Mrs Taylor also refers to the definition of "community" in the Act namely; *"community" includes an individual member and a group of members residing within the community.*
15. In my view that definition simply defines community and does not support Mrs Taylor's submission nor does it advance the question of whether this group of residents qualifies as a community-based organisation or group in the sense contemplated by section 47F(3)(f).
16. What needs to be determined is whether this group of people, some of whom may not individually qualify to lodge an objection against the grant of a liquor licence in the suburb of Bellamack, is a community based organisation or a community based group. Community organisations are formal or informal groups of people based in or around a "community" with a local area presence that are organised in some way, usually having some structure, rules or systems of ways or working.
17. None of those conditions are satisfied in terms of the group of people named in the objection lodged by Mrs Taylor. Of significance in that regard is the fact, as conceded by Mrs Taylor, that at least some of the persons named in the objection do not reside or work in the suburb (community) of Bellamack. As a result, those persons would not be entitled to lodge an objection in their own right as they would not have standing to do so under the Act. As such I do not agree that those people should be able to somehow engage in the objection process by simply joining forces with a group of residents of the community.
18. For those reasons, I agree with and confirm the decision of the Delegate that the group of people named in the objection does not satisfy the requirements for a community based organisation or group and so does not fall within the scope of section 47F(3)(f) of the Act.
19. In her request for review Mrs Taylor also takes issue with the Delegate's decision that she was not a "person" for the purpose of the "residents test" as her objection was styled as a group objection. She submits that she personally is a resident of Bellamack and that if the group objection is assessed as invalid then her individual objection should continue to be considered as valid.
20. In my view, that submission has merit. There is no doubt Mrs Taylor personally has standing as an objector being a person residing in the neighbourhood to which the Flynn Tavern application relates. The preferable course would have been for the Delegate to contact Mrs Taylor on noticing the issue with the group objection and inviting her to lodge an individual objection. Clearly that did not occur and the first time Mrs Taylor heard of the rejection of her objection was on receipt of the Delegate's decision. By that stage the objection period had closed.
21. One of the primary objects of the Act, as set out in section 3, is to regulate the sale, provision, promotion and consumption of liquor in a way that takes into account the public interest. The most effective means of determining the public interest in respect of a particular liquor licence application is to canvass and take into account the views of residents, businesses and members of the public who reside or work in the community to which the application relates.
22. Applying the public interest test, I am of the view that the objection lodged by Mrs Taylor should be assessed as an individual objection and one that she had standing to lodge as a resident of the relevant neighbourhood. I have determined to revoke the component of the Delegate's decision in which it was determined that Mrs Taylor did not pass the resident test. Clearly she does pass that test and it is in the public interest that the matters raised in her objection should be taken into account in the substantive decision relating to the grant or refusal of the application for a liquor licence.

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23. It must be noted that this review did not involve me considering the substance or merits of the objection subject to this review. Those matters are clearly considerations that will now be taken into account in the context of the substantive decision that will follow this review.

The Decision

24. For the reasons set out above, I have determined to confirm the decision of the Delegate that the objection lodged by Mrs Taylor was not a group objection falling within the ambit of section 47F(3)(f).
25. However, I have determined however that Mrs Taylor has standing as an objector in respect of the application for a liquor licence for the proposed Flynn Tavern. Mrs Taylor's objection is assessed as a valid objection lodged by her in her individual capacity and as such, that objection is now to be taken into account in the consideration of the application for the grant of a liquor licence to the proposed Flynn Tavern.
26. Section 47G of the Act requires that where objections are lodged with the Director-General the applicant must be informed of the substance of the objection and provided with an opportunity to provide a written reply. In this case that requirement has been met as Mrs Taylor's objection was in fact provided to the Applicant prior to the Delegate determining it to be invalid. The Applicant, through its legal representative has provided a response to the substance of the objection. The response from the Applicant will be taken into account in the substantive decision as to whether or not a liquor licence should be granted for the Flynn Tavern.

Review of Decision

27. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision by the Director-General to declare an objection to the grant of a liquor licence as being valid or invalid in accordance with the requirements of section 47F of the Act is not specified in the Schedule and is therefore not a reviewable decision. As a consequence there can be no persons affected by this decision who may seek a review before the NTCAT. The opportunity for an affected person to seek a review before NTCAT will not arise until such time as the substantive decision relating to the grant or refusal of the liquor licence pursuant to section 29 of the Act is published.



Cindy Bravos
Director-General of Licensing

14 January 2016