

NORTHERN TERRITORY LICENSING COMMISSION

Decision on Whether Objections Will Proceed To Hearing

PREMISES:	MV James Grant
PURPOSE:	Mandorah Ferry Service
APPLICANT:	Sealink Northern Territory Pty Ltd
NOMINEE:	David Howard Witzke
LICENCE NUMBER:	N/A
OBJECTORS:	16 Objectors
LEGISLATION:	Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
DECISION OF:	Cindy Bravos (Commission Member)
DATE OF DECISION:	8 July 2014

BACKGROUND

- 1) Sealink Northern Territory Pty Ltd has applied pursuant to Section 26 of the *Liquor Act* ("the Act") for the grant of a Liquor Licence to sell alcohol from the Marine Vessel (MV) James Grant.
- 2) Sealink Northern Territory Pty Ltd is contracted by the Northern Territory Government Department of Transport to provide ferry services to both Mandorah and the Tiwi Islands. The Tiwi Island ferry service is a 2 hour ferry service from Cullen Bay to the Tiwi Islands whilst the Mandorah ferry service is a 15 minute ferry service between Cullen Bay and Mandorah.
- 3) The applicant utilises 2 ferries to provide these services, namely the MV James Grant which is to be predominantly used for the Mandorah service and the MV Pacific Cat which is to be predominantly utilised for the Tiwi Island service, however, either vessel could be used for either service.
- 4) The applicant advises that the Mandorah service consists of 13 return services per day on weekdays and 12 return services on weekends.
- 5) The applicant further advises that the MV James Grant, the vessel that is currently utilised for the Mandorah service has a kiosk area on board where snacks and cold beverages are available for purchase. It is the intention of the

applicant should the Liquor Licence be granted that alcohol beverages including low alcohol beer, mid strength beer, full strength beer, wine and 'ready to drink' spirits with mixers will also be available for purchase. Advice from the applicant is that most of the alcoholic beverages will be served in cans or plastic bottles, with wine and champagne being dispensed into plastic cups.

- 6) The Application was advertised in the NT News on Wednesday 26 February 2014 and Friday 28 December 2013 pursuant to Section 32A(3)(a) of the Act.
- 7) The advertisement was as follows:

Sealink Northern Territory Pty Ltd, HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing Commission for a "VESSEL" Liquor Licence to sell liquor from the Vessel MV James Grant, NT, 0800.

PROPOSED TRADING DETAILS for the sale of liquor are as follows:

Trading Hours:

Monday to Sunday, between the hours of 10.00am to 02.00am the next day.

- Liquor may be sold only while the vessel is underway on any waterway within the survey limits of the vessel.*
- The sale or supply of liquor shall cease no later than 5 minutes prior to the expected berthing time.*
- The Licensee, Nominee or any employee, shall not consume liquor at any time when the licence is being operated.*

This is the first notice of application. The notice will be published again on Friday, 28 February 2014.

The objection period is deemed to commence from Friday, 28 February 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 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 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, Gambling and Licensing Services, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 26th day of February 2014.

- 8) 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 31 March 2014.
- 9) 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).*
- 10) Seventeen responses have been received in response to the application and the applicant has provided a response to those objections 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.
- 11) Section 47F(2) of the Act provides the grounds on which an objection can be made. Section 47F(3) provides the categories of persons, organisation or group who may lodge an objection to an application for variation of licence conditions.

CONSIDERATION OF THE OBJECTIONS RECEIVED

Objection from R.J. Taylor

- 12) The objector is a resident of Cullen Bay and therefore has standing to object.
- 13) Although not date stamped by the Department of Business' Gambling and Licensing Services (GLS) upon receipt, the objection is dated 26 March 2014 and I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.
- 14) The objection raises concerns about the current levels of criminal activity in Cullen Bay and the objector is of the belief that the granting of the Liquor Licence will increase "*instances of criminal activity around our home.*"
- 15) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on public safety in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Mr Charles Staples

- 16) Mr Staples is a resident of Cullen Bay and therefore has standing to object.
- 17) The objection was received on 25 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 18) The objection raises concerns that some passengers currently waiting for ferries are often intoxicated and that the granting of a licence will lead to increase in the number of intoxicated people at the ferry terminal as well as in the surrounding areas.
- 19) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Mr Robbie Standaloft, General Manager, Cullen Bay Marina Management Corporation (CBMMC)

- 20) The CBMMC is a body corporate constituted by the Cullen Bay Marina Act. It owns, maintains and administers all the common property within the Cullen Bay development and is therefore a person holding an estate in fee simple in land. The Committee therefore has standing under Section 47F(3)(b) of the Act as a group or organisation eligible to make objection.
- 21) Although not date stamped by GLS upon receipt, the objection is dated 27 March 2014 and I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.
- 22) The objection states that the amenity of the Cullen Bay area is already affected through alcohol affected passengers intending to embark on the Tiwi Island ferry

service, waiting at the ferry terminal for long periods of time and passengers returning from fishing charters being under the influence of alcohol.

- 23) The objection raises concerns that granting of a Liquor Licence will generate an increase in the number of persons adversely affected by alcohol entering or remaining in the neighbourhood and that ferry passengers, including unaccompanied school children will be on licensed premises throughout the duration of the ferry service.
- 24) Additional concerns raised in the objection are that no other form of public transport is allowed to serve alcohol in the Northern Territory and questions the need for the licence to be issued until 2.00 am in the morning given that should the licence be granted then it is likely that people affected by alcohol could be *"wandering the streets of our residential suburb looking for a taxi at 2am"*.
- 25) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Ms Helen Prichard

- 26) Ms Prichard is a resident of the Wagait Beach area therefore has standing to object.
- 27) The objection was received on 27 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 28) The objection raises concerns that the granting of a licence will lead to a situation where school children who commute on the ferry service between Cullen Bay and Mandorah will be seated in the same area as persons consuming alcohol. Additionally, the objector has commented that the crew member who is currently responsible for monitoring the safety of the school children will, if the licence is granted be now serving alcohol and thus the school children's safety will not be as adequately monitored.
- 29) Given that the objection raises concerns that the granting of a licence will have an adverse affect on public safety, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Ms Helen Allfree

- 30) Ms Allfree is a resident of Cullen Bay and therefore has standing to object.
- 31) Although not date stamped by GLS upon receipt, the objection is dated 25 March 2014 and I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.

- 32) The objection raises concerns that the granting of a licence will lead to an increase in the number of persons affected by alcohol at the ferry terminal and surrounding areas.
- 33) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Mr Ray Bail

- 34) Mr Bail is a resident of Cullen Bay and therefore has standing to object.
- 35) Although not date stamped by GLS upon receipt, the objection is dated 26 March 2014 I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.
- 36) The objection raises concerns that the granting of a licence will lead to increase in the number of intoxicated people remaining at the ferry terminal and surrounding areas.
- 37) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Ms Kim McClurg

- 38) Ms McClurg is a person working in Cullen Bay and therefore has standing to object.
- 39) The objection was received on 26 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 40) The objection raises concerns that the granting of a licence will lead to increase in the number of intoxicated people at the ferry terminal and surrounding areas and will therefore *“exacerbate an already undesirable situation.”*
- 41) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Ms Sarah Butterworth

- 42) Ms Butterworth is a resident of Cullen Bay and therefore has standing to object.
- 43) The objection was received on 26 March 2014 and is therefore within the time allowed within which to lodge an objection.

- 44) The objection raises concerns about the current situation in Cullen Bay whereby intoxicated passengers disembarking from fishing charter vessels cause undue noise and disruption to the residents of Cullen Bay. The objection raises concerns that the granting of a licence will lead to increase in the number of intoxicated people using and remaining at the ferry terminal and surrounding areas causing disruption to the community.
- 45) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from G. Jettner

- 46) G. Jettner is a person working in Cullen Bay and therefore has standing to object.
- 47) The objection was received on 26 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 48) The objection raises concerns that the granting of a licence will lead to increase in the number of intoxicated people at and remaining at the ferry terminal and surrounding areas.
- 49) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Mr John Berryman

- 50) Mr Berryman is a person working in Cullen Bay and therefore has standing to object.
- 51) The objection was received on 26 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 52) The objection raises concerns that the granting of a licence will lead to increase in the number of intoxicated people at and remaining at the ferry terminal and surrounding areas and that these intoxicated people are likely to *“exacerbate an already undesirable situation”* whereby undue noise and fighting occur.
- 53) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from four business owners (Eat-A-Pizza, Goldens Orchid, The Bay Seafood Café, Time out Fitness)

- 54) The four business owners from Eat-A-Pizza, Goldens Orchid, The Bay Seafood Café, Time Out Fitness have lodged an objection. The signatories to the objection have provided first names only, however have each provided an address and signed the objection and as such are considered to be persons working in Cullen Bay and therefore have standing to object.
- 55) Although not date stamped by GLS upon receipt, the objection is dated 28 February 2014 and I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.
- 56) The objection raises concerns regarding current disturbances caused by intoxicated people visiting Cullen Bay and that should the licence be granted, it will lead to increase in the number of persons affected by alcohol entering the community.
- 57) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Ms Anne Clifford

- 58) Ms Clifford is a resident of Cullen Bay as well as an owner of a business located in Cullen Bay and therefore has standing to object.
- 59) Although not date stamped by GLS upon receipt, the objection is dated 28 February 2014 and I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.
- 60) The objection raises concerns that the granting of a licence will lead to increase in the number of persons affected by alcohol entering the community and thereby lead to an increase in the number of disturbances in the community caused by intoxicated people.
- 61) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from 28 residents of Wagait Beach in the form of a petition (Bryan Male, Chris Johnson, Dean Kessling, Liz Barry, Jo-Ann King, Neil King, Liana Gray, Sheree Arratta, Jeremy Bull, Shelley Gray, Barry Demasson, Rovie Garcia, David Elliott, Jennifer Papong, Ian Manahan, Jim Allcorn, Denise Wormell, Tim Gearin, Barry Oshea, Yvette Garcia, Sheena Dunne, Ben Miller, Julie Thurston, Matt Prouse, Judith Egan, Tim Egan, Bruce Lament & Kellie Johns)

- 62) The petition signatories are all residents of Wagait Beach and therefore have standing to object.
- 63) The objection was received on 31 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 64) The objection by way of a petition states that the signatories:
- a. do not believe a liquor licence is necessary on such a short trip;
 - b. a number of Cox Peninsula residents already exhibit alcoholic problems on the ferry and they do not want this to worsen; and
 - c. those wishing to drink on the ferry already buy their own.
- 65) The first and third reasons for objection to the granting of a liquor licence do not set out the facts relied on to constitute the grounds on which the objection is made and therefore do not qualify under the Act. However, I have formed the view that the second point which raises concerns that there will be an increased level of intoxicated persons displaying inappropriate behaviours whilst utilising the ferry service does meet the necessary threshold of an objection in that it raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, thus the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Mr Peter Hourigan

- 66) Mr Hourigan is a resident of Cullen Bay and therefore has standing to object.
- 67) The objection was received on 31 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 68) The objection raises concerns that the granting of a licence will lead to increase in anti-social behaviours at the terminal and surrounding areas.
- 69) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Mr Peter Clee

- 70) Mr Clee is a resident of the Cox Peninsula and therefore has standing to object.

- 71) The objection was received on 31 March 2014 and is therefore within the time allowed within which to lodge an objection.
- 72) The objection raises concerns that the granting of a licence will lead to a situation where alcohol will be served at a time when the ferry service is being utilised by school children.
- 73) Given that the objection raises concerns that the granting of a licence will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

ADDITIONAL RESPONSES

- 74) On 25 March 2014, the Department of Business Gambling and Licensing Services sought comment in relation to the application from a number of other Northern Territory government departments. Several responses were received and are discussed below.

Department of Health – Alcohol and Other Drugs Services

- 75) A response was received on 3 April 2014 from the Department of Health's Alcohol and Other Drugs Services (AODS) in which they advise that following consideration of the application, they have no adverse comment to make with respect to the issuing of a Liquor Licence.
- 76) AODS requested that the Commission consider patron and community safety and amenity when determining the application and also requested that appropriate signage is displayed regarding available smoking areas.
- 77) This correspondence is not considered to qualify as an objection under the Act.

A/Superintendent Stephen Heyworth on behalf of Northern Territory Police – Drug and Alcohol Policy Unit

- 78) A response was received on 11 April 2014 from the Northern Territory Police's Drug and Alcohol Policy Unit advising that upon consideration of the application the Northern Territory Police object to the application made.
- 79) The objection is based on the following grounds:
- (a) The ferry terminals will be subject to anti-social behavior incidents by persons who may be affected by alcohol at the point of embarkation or disembarkation;
 - (b) There is likely to be an escalation of incidents at each terminal and there is no security presence identified within the application to address this thus requiring Northern Territory Police to attend and patrol these areas in an effort to minimize alcohol-related harm and to increase community safety;
 - (c) Persons subject to an Alcohol Protection Order will be committing an offence should they utilise ferry services that are considered to be a

licensed premise which will impact significantly on those persons. This may be considered discriminatory;

- (d) Given the time for the trip to and from Mandorah is only 15 minutes, this may encourage rapid consumption of alcohol onboard; and
 - (e) Concern regarding how alcohol will be secured whilst the vessel is docked.
- 80) Section 47(3)(c) allows members of the Northern Territory Police to object to an Application. A/Superintendent Heyworth is a member of the Police Force acting in that capacity within the meaning of Section 47F(3)(c) and stationed at the Darwin Metropolitan Division. As such Superintendent Heyworth is a valid objector.
- 81) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area at both ferry terminals and that it will have an adverse affect on the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.
- 82) However as noted above, the objection was lodged on 11 April 2014 which falls outside the prescribed time for the lodgement of an objection. In this respect, section 127 of the Act allows for the Commission in its discretion to extend the time required for a thing to be done under the Act notwithstanding that the time prescribed by the Act has expired. As such, I have determined in this instance due to the reasons of objection lodged by the Northern Territory Police to extend the time and as a result, this objection qualifies under the Act as an objection requiring a Hearing.

APPLICANT'S RESPONSE TO OBJECTIONS RECEIVED

- 83) Sealink Pty Ltd has been provided with the objections and pursuant to the requirements of the Act has been afforded the opportunity to respond.
- 84) In this respect, the applicant has appeared to have thoughtfully considered the substance of some of the concerns expressed within the objections and has advised that in their view, many of these concerns could be addressed by the placing of a number of conditions on the licence which could include:
- a. non-service of alcohol on the 3.00pm Monday to Friday Darwin to Mandorah ferry service during school terms;
 - b. no service of alcohol on any ferry service between Darwin and Tiwi Island;
 - c. only low and mid-strength alcohol to be served on the Tiwi Island to Darwin ferry service; and
 - d. alcohol purchased must be consumed on-board prior to disembarkation.

DECISION

- 85) Each response received has been assessed according to the requirements of the Act to determine whether the objector has standing to lodge an objection, to determine whether the objections were lodged within the required time and to determine if the grounds specified in the objection meet the requirements of Section 47F(2) of the Act.
- 86) The Commission has determined that the objections lodged and outlined above excepting the response received from the Department of Health are valid and require a Hearing pursuant to Section 47I(7) of the Act.



Cindy Bravos
COMMISSION MEMBER

8 July 2014