

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	The Haven Backpacker Resort
Applicant:	Alice Dreaming Pty Ltd
Nominees	Ken Hart
Licence Number:	N/A
Objectors:	Ms Rita Hellen Rose Mr Joseph Breen Mr Stuart Johnson Petitioners
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Richard O'Sullivan (Chairman)
Date of decision:	16 March 2012

Background

- 1) An application for a new liquor licence was submitted on 1 December 2011 by Mr Ken Hart, Director of Alice Dreaming Pty Ltd for the premises known as The Haven Backpackers Resort ("the Resort") located at 3 Larapinta Drive, Alice Springs.
- 2) The Application was advertised in the Centralian Advocate on Tuesday 6 December 2011 and Friday 9 December 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

I, Ken Hart, Director of Alice Dreaming Pty Ltd, hereby give notice that I have applied to the Northern Territory Licensing Commission for a private hotel Liquor Licence to sell liquor from the premises known as The Haven Backpacker Resort located at 3 Larapinta Drive Alice Springs.

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

- *The business proposed to be conducted on the premises will be in the nature of Private Hotel*
- *Liquor may be sold for consumption on the premises to bona-fide lodgers and their guests in the company of the lodger.*
- *Hours of trade shall be between the hours of 11.30am and 22.00 hours - seven (7) days a week.*
- *Liquor will be restricted to beer, pre-mix spirits and cider in container size no larger than 375mls and wine in plastic cups.*

This is the first notice of application. The notice will be published again on Friday 9th December 2011.

The objection period is deemed to commence from 9th December 2011 (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 Deputy Director of Licensing (Sth) on telephone 8951 5128. Objections to this application should be lodged in writing with the Deputy Director of Licensing, Licensing, Regulation and Alcohol Strategy PO Box 8470 , Alice Springs, within thirty (30) days of the commence date of the objection period.

Dated this 6th Day of December 2011.

- 4) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice, namely on or before Monday 9 January 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. Relevant to this application, section 47F provides:

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;*
- (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)

6) Five objection documents have been lodged in response to the application and the applicant has provided a response to that objection pursuant to Section 47G of the Act. Two of these documents are an identical petition signed by four persons on one petition document and signed by sixteen on the other petition. In effect it is one petition, consisting of two pages and signed by twenty petitioners in total. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing.

Objection from Ms Rita Hellen Rose, Resident of Hong Street:

- 7) Ms Rose is a resident at 2 Hong Street, Alice Springs which abuts the rear fence of the Resort premises. As such Mr Rose is entitled to lodge an objection pursuant to Section 47F(3)(a) or (b). Her objection was received on 9 January 2012 and was therefore lodged within the objection period.
- 8) Ms Rose objects to the application on the grounds that the Resort is located in residential area and as such is inappropriate to hold a liquor licence. She complains of noise disturbances to her and her family, including loud music and outdoor speakers, from the premises as it currently operates without a liquor licence. She also complains of damage to her property by patrons of the Resort as well as those patrons unlawfully entering her property. Ms Rose also notes that she has been subjected to various forms of alcohol related anti-social activities on various occasions. She also complains of rubbish being thrown over her back fence from the Resort premises.
- 9) Her objection concludes with the *“grant any sort of liquor licence to this facility it will only add fuel to the already very troublesome facility”*.

Objection from Mr Joseph Breen, Resident of Hong Street:

- 10) Mr Breen resides at 3/8 Hong Street which abuts the rear fence of the Resort premises. As such he is entitled to lodge an objection pursuant to Section 47F(3)(a) or (b). The objection was received on 9 January 2012 and was therefore lodged within the objection period.
- 11) Mr Breen has resided in Hong Street for nine years and states that he regularly observes guests of the Resort carry cartons of beer and wine back to their accommodation. He complains of noise disturbances emanating from the Resort including screaming, fighting and loud music from the premises and from outdoor speakers. He also complains of rubbish being thrown over his back fence. Mr Breen submits that the easier access to alcohol if the Resort were to obtain a licence will add to any already appalling situation.
- 12) Mr Breen also complains that the notice advertising the application for a liquor licence was not displayed prominently. He objects to the grant of another liquor licence in Alice Springs in circumstances where taxpayer funds have recently been used to buy back liquor licences.

Objection from Mr Stuart Johnson, Resident of Hong Street:

- 13) Mr Johnson resides at 2 Hong Street, Alice Springs which abuts the rear fence of the Resort premises. As such he is entitled to lodge an objection pursuant to Section 47F(3)(a) or (b) of the Act. The objection was received on 9 January 2012 and was therefore lodged within the objection period.

- 14) Mr Johnson objects on the basis that the current operation of the Resort has resulted in his having to endure a barrage of bad behaviour from guests of the premises. He states that his children have been subjected to foul language, nudity and fighting on the part of guests of the resort. He adds that the amount of garbage being thrown over his fence has decreased in the past few years but has not stopped. Mr Johnson also complains about the failure to prominently display the notice relating to the liquor licence application.
- 15) Mr Johnson notes that the problems he and his family have experienced "*are mostly alcohol related ... and will get worse if alcohol is easier to obtain*".

Objections from Petition:

- 16) The petition is signed by twenty persons with the vast majority residing at Hong Street, Larapinta Drive or George Crescent. These locations are directly surrounding the Haven Backpackers' premises and therefore the petitioners would have standing under Section 47F(3)(a) or (b). The petition was received on 9 January 2012 and is therefore lodged within the objection time.
- 17) However, it is noted that one petitioner, Mr Kilpatrick, has provided his address as Priest Street, which is somewhat distant from the premises of the applicant. Licensing Inspector Erin Moodie has advised that Mr Kilpatrick has provided no information in support of his ownership of an estate in fee simple in land or lease over the land in closer proximity to the premises. Therefore this petitioner, unless advice is provided over ownership/lease of land in the near vicinity to the Resort, does not have standing under Section 47F(3)(a) or (b).
- 18) The objection petition refers to guest behaviour and noise levels which have not been responded to by Resort Management. The petition adds that "*the introduction of Alcohol will only add to issues around guests' physical and verbal behaviour as well as noise levels from Resort broadcast systems and the careless disposal of waste over neighbourhood fences*". The petition maintains that crime in the area is likely to increase if the application is granted. Additionally, it adds that the neighbourhood will be subject to unreasonable noise levels as a consequence of any liquor licence being granted.

Applicant's Response to Objections:

- 19) Correspondence from the Resort dated 10 January 2012 outlines that the current General Manager, Ms Amanda Johnson, has only been employed for the last two years and in that time has only received two complaints from neighbours. One related to noise levels of music being played from the balcony of the building and following complaint the speaker was disconnected. The other complaint was in relation to noise and the complainant received an apology.
- 20) In relation to allegations of guests jumping the fence and throwing rubbish over the fence, the response advises that the fence in question has been raised from a two metre height to a three metre height. The letter disputes that rubbish in neighbouring yards comes from the Resort.
- 21) The response also alleges that complaints about screaming, fighting and other anti-social behaviour would date back to former management when the premises traded as Larapinta Lodge and since that time an \$800,000 upgrade of the premises has been undertaken under new management.
- 22) A further response on 10 February 2012 was provided by Counsel for the Resort, Mr John Stirk of Povey Stirk. His correspondence advises that Ms Amanda Anderson's response of 10 January 2012 demonstrates action taken to address disputes highlighted by objector complaints. His correspondence advises that "*the truth or otherwise of these assertions can only be properly dealt with at a Hearing of the matter*".
- 23) He also states that if the application was to be granted, the Nominee would have responsibilities under the *Liquor Act* requiring standards and adherence to RSA.

Consideration of the Issues:

24) The application seeks a Private Hotel liquor licence under terms as follows:

Liquor may be sold for consumption on the premises to bona-fide lodgers and their guests in the company of the lodger.

Hours of trade shall be between the hours of 11.30am and 22.00 hours - seven (7) days a week.

Liquor will be restricted to beer, pre-mix spirits and cider in container size no larger than 375mls and wine in plastic cups.

- 25) The hours of operation are restricted and assumedly guests would cease being served at 10.00pm with thirty minutes of time granted to consume last drinks following which the bar area would be closed. There is no in house takeaway proposed. Currently it is logical to conclude that guests who are drinking have purchased their alcohol from takeaway outlets elsewhere, with little or no control over consumption or the hours in which alcohol can be consumed on the premises.
- 26) Objectors have all conveyed a similar history of behaviour from the Resort and under its former trading name of Larapinta Lodge. It is possible that nearby residents have good grounds for concern based on this history and the nature of their concerns and the legitimacy of the complaints needs to be tested at Hearing. The issue of appropriateness of a liquor licence in a residential neighbourhood as raised by a number of objectors needs to be assessed.
- 27) Objectors, Ms Rose, Mr Breen and Mr Johnson all have right to be heard as individual objectors at Hearing in relation to their submission of objection. Their submissions and comments at Hearing are to be confined to those made in their original objections as required under Section 47H of the Act.
- 28) All the objections, including that contained within the petition, relate to the amenity of the neighbourhood in which the Resort is located and is therefore a valid ground of objection pursuant to Section 47F(2)(a) of the Act.
- 29) In relation to the petitioners (with the exception of Mr Kilpatrick, unless he is able to demonstrate an interest in property in the neighbourhood of the Resort), the Commission will not need to hear of each and every one of the signatories as they are all bound to the material conveyed in that one petition.
- 30) The Commission therefore considers it would be appropriate for Licensing Inspector Erin Moodie to make contact with those petitioners she is able to access and advise that a Hearing will proceed and that only a limited number of the petitioners will be granted leave to make oral submission at the Hearing and therefore be subject to potential cross examination from Counsel for the applicant.

Decision:

- 31) The Commission has determined that the objections lodged by Ms Rose, Mr Breen and Mr Johnson are valid and require a Hearing pursuant to Section 47I(7) of the Act.
- 32) Furthermore the Commission has determined that the petition as lodged on 9 January 2012 also has standing under the Act but due to the need to conduct Hearings in a fair but expeditious manner, the Commission seeks to limit the number of petitioners able to make submission in accordance with the contents of the objection submission. The Commission considers it appropriate that one or two "spokespersons" only be available to present at Hearing to establish the content and bona fide of the objection.

Richard O'Sullivan
Chairman

16 March 2012