

# Northern Territory Licensing Commission

## Decision on whether Objections will proceed to Hearing

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<b>Premises:</b>	Skycity Darwin Pty Ltd
<b>Applicant:</b>	Skycity Darwin Pty Ltd
<b>Nominee:</b>	Mr Bradley Keith Morgan
<b>License Number:</b>	80100141
<b>Objectors:</b>	Mr Ken Simpson, Chairman Body Corporate, on behalf of all owners and residents of the Villas at 1 Burnett Place, Larrakeyah Mr Chris Hoskin, Chair, Body Corporate Myilly Apartments Ms Angela Lepore and Dr Michael Stacey
<b>Legislation:</b>	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
<b>Decision of:</b>	Philip Timney (Legal Member)
<b>Date of decision:</b>	14 September 2012

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### Background

- 1) By letter dated 11 May 2012, Mr Brad Morgan applied, pursuant to Sections 32A(1) and 119 of the Liquor Act ("the Act") for approval for a variation of the licence conditions and material alterations of the premises associated with the liquor licence for Skycity Darwin Pty Ltd ("SCD"). Mr Morgan is the General Manager of SCD and the Nominee for the licensed premises. The application seeks approval for the erection of a permanent marquee to be named Skycity Beachside Marquee ("the Marquee") and for a variation of licence conditions to allow for the sale of alcohol from the Marquee ancillary to a meal and/or substantial entertainment and to restrict access to the Marquee for persons under 18 years of age.
- 2) The Application was advertised in the NT News on Wednesday 20 June 2012 and Friday 22 June 2012 pursuant to Sections 32A(3)(a) and 119(3) of the Act.
- 3) The advertisement was as follows:

*I, Brad Morgan on behalf of Skycity Darwin Pty Ltd, **hereby give notice** that I have applied to the Northern Territory Licensing Commission to conduct Material Alterations to the premises known as Skycity Darwin Casino (Liquor Licence number 80100141) located at Gilruth Avenue, Darwin.*

*The alterations to the premises will consist of:*

- *Erecting a permanent 40 metre x 25 metre marquee to be called Skycity Beachside Marquee,*
- *The marquee will be located within the current licensed area on the concert lawns,*
- *An additional point of sale/supply of liquor will be within the marquee.*

*Proposed variations of Licence conditions and trading hours will be as follows:*

### **Skycity Beachside Marquee**

*Trading Hours for the marquee shall be between:-*

*Sunday to Saturday 10:00 hours to 04:00 hours*

*Proposed Licence conditions:*

- *A person who has not attained the age of 18 years shall not enter or remain on or in the marquee between the hours of 24:00 and 04:00 when cabarets and private functions are held.*
- *A person who has not attained the age of 18 years shall not enter or remain on or in the marquee between the hours of 10:00 and 24:00 when cabarets and private functions are held, unless that person is in the company of his or her parent, guardian or spouse (who has attained the age of 18 years).*
- **Organised Function** - *The above hours are for an organised function ancillary to a meal and/or substantial entertainment.*

*This is the first notice of application. The notice will be published again on Friday 22 June 2012.*

*The objection period is deemed to commence from Friday, 22 June 2012 (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 material alterations of licensed premises 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, Licensing, Regulation and Alcohol Strategy, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.*

*Dated this 20th Day of June 2012.*

- 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 23 July 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:*

- (b) *an application for variation of the conditions of a licence, as notified under Section 32A*

- (d) *an application for approval to make a material alteration to licensed premises, as notified under Section 119*
- (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)*
- 7) Section 47F(1)(b) provides that a person may lodge an objection to an application for variation of licence conditions and Section 47F(1)(d) provides that a person may lodge an objection to an application for material alteration of licensed premises. Three objections have been lodged 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.
- 8) The application was referred to the Development Consent Authority, Police, Darwin City Council and the Department of Health. Ms Hanna Stevenson, on behalf of the Chairman of the Development Consent Authority, advised that there were no town planning concerns in respect of the application. Superintendent Kris Evan advised, on behalf of Northern Territory Police, that the application was supported. Mr Luccio Cercarelli, on behalf of Darwin City Council, advised that there was no objection to the proposal.
- 9) Mr Neil Wright, on behalf of the Department of Health, queried whether the Marquee would be used for pre-booked functions or simply opened up as another bar. He also raised the issue of SCD's management strategies to prevent the secondary supply of alcohol to minors. SCD responded advising that it was not intended to operate the Marquee as a permanent bar and that the area will only be used for designated functions. In respect of the potential for secondary supply of alcohol to minors, SCD advised that this potential will be closely monitored and covered by SCD's normal operational practices and security.

### **Objection from Mr Ken Simpson, Chairman Body Corporate**

On Behalf of all Owners and Residents of the Villas at 1 Burnett Place, Larrakeyah:

- 10) Mr Simpson is a resident of 1 Burnett Place Larrakeyah, which is located approximately 400 metres from the proposed site of the Marquee. Mr Simpson is the Chairman of the

Body Corporate for residential premises located at 1 Burnett Place and objects on behalf of all residents of those premises ("the Residents"). Mr Simpson, and the Residents, are entitled to lodge an objection pursuant to Sections 47F(3)(a) and (b) of the Act, being persons residing in and holding an estate in land in the neighbourhood where the premises the subject of the application will be located. The objection was lodged within the prescribed period.

- 11) Mr Simpson objects on the grounds that he and the Residents are subject to unreasonable noise emanating from the current entertainment functions on SCD lawns and the Little Mindil area. He states that the construction of a Marquee of the proposed size, with entertainment continuing until 4.00 am, will affect the reasonable enjoyment of the amenity of the area by the Residents.
- 12) Mr Simpson also objects on the grounds that direct access to the Little Mindil area via the footbridge will lead to increased pedestrian traffic late at night and lead to more noise disturbances to the Residents and a further increase in anti-social behaviour in the area.
- 13) Mr Simpson submits that the erection of the Marquee and the application for an additional liquor outlet should not be approved on the basis to do so will invariably affect the amenity of the neighbourhood and the public safety and social conditions in the community. He also submits, should the application be approved by the Commission, then the following licence conditions should be imposed:
  - Limitation of trading hours for Sunday – Thursday up to 10.00 pm and Friday – Saturday up to 12.00 am;
  - Entry to an egress from the Marquee to be via the Casino main entrance only and not via the Little Mindil bridge/pathway;
  - If approval is granted for access via the footbridge/path the Licensee should be required to ensure that patrons arrive and leave promptly and do not congregate on Little Mindil;
  - The design of the Marquee should include effective sound deadening material; and
  - Noise limitation conditions should be included as a condition of the liquor licence.

**Objection from Mr Chris Hoskin, Chair, Body Corporate, Myilly Apartments:**

- 14) Mr Hoskin is the Chair of the Myilly Apartments Body Corporate, residential premises located at 4 Myilly Terrace, Larrakeyah, located approximately 400 metres from the site of the proposed Marquee. Mr Hoskin objects to the application on behalf of the Body Corporate. Mr Hoskin, as representative of the Body Corporate, is entitled to lodge an objection pursuant to Sections 47F(3)(a) and (b) of the Act being a person residing in and holding an estate in land in the neighbourhood where the premises the subject of the application will be located. The objection was lodged within the period stated in the advertisements.
- 15) Mr Hoskin objects on the grounds of increased noise from the SCD premises over the past years as a result of more frequent outdoor events and increased volume and the exposure of nearby residents to noise from bands and entertainment. He notes that with the addition of the overflow car park neighbours suffer from noise disturbances in the early hours of the morning, including loud music from departing vehicles.
- 16) Mr Hosking states that with the addition of the all-weather Marquee it is anticipated that there will be a dramatic increase in the number of events hosted, resulting in increased disturbance to neighbours, particularly for events finishing after 12.00 am. He notes that the structural nature of the Marquee will not adequately restrict noise emanation and that there is no justification for the licence for the Marquee to authorise the sale of alcohol from 10.00 am until 4.00 am daily.
- 17) Mr Hoskin submits that, in the event of approval for the erection of the Marquee the trading hours for the sale of alcohol should be restricted to 10.00 pm from Sunday to Thursday and

to 12.00 am on Friday and Saturday, that the Marquee should be insulated to restrict noise disturbance and an appropriate noise condition should be imposed on the licence. He also submits that access to the Marquee should be via the SCD main entrance and not via the Little Mindil bridge / pathway.

### **Objection from Ms Angela Lepore and Dr Michael Stacey:**

- 18) Ms Lepore and Dr Stacey reside at 30/4 Myilly Terrace, Larrakeyah, premises located approximately 400 metres from the proposed site for the Marquee. As such they are entitled to lodge an objection pursuant to Sections 47F(3)(a) and (b) of the Act being persons residing in or holding an estate in land in the neighbourhood where the premises the subject of the application will be located. The objection was lodged within the prescribed time period.
- 19) Ms Lepore and Dr Stacy object to the application on the grounds of loss of amenity, increased littering of the area, including broken glass etc., and disturbances to their premises from loud patrons accessing the venue via walkways adjacent to their residence. They note that they currently experience disturbances from drunken, unruly patrons using the overflow car park and they expect this type of disturbance to worsen with the addition of the Marquee. They also object on the basis of the potential for an increase in vandalism and interference with their property by patrons leaving the premises and the impact on their health from an increase in loud noise seven days a week until 4.00 am.

### **Applicant's Response to Objections:**

- 20) Mr Chris Potter, Compliance and Host Responsibility Manager, responded to the objections on behalf of SCD via an email dated 22 August 2012. He submitted that the objections relating to an increase in vandalism, littering and drunken patron behaviour have no substance as the Little Mindil area will not be used any more than the current usage. He also notes that it is proposed to erect the Marquee on the existing event lawns and not on Little Mindil and that SCD has a very good record of catering for guests in a safe and responsible environment. He states that entry to the Marquee was always proposed to be via the main Casino entrance and that a point of entry via Little Mindil is not proposed.
- 21) Mr Potter states that generally the Marquee would not be utilised past midnight, in consideration of neighbours, and that SCD has a policy dictating that events on the lawns from Sunday to Thursday must be finished by 10.30 pm, with sound reduced for the final thirty minutes. For Friday and Saturday nights events are limited to an 11.30 pm finish with the same sound reduction condition for the last 30 minutes. He notes that the facility is required for 7 days per week as some events do not take place on weekends and that the Marquee will be used predominantly for conferences, weddings and dinners where the normal standards of security and responsible service of alcohol will apply. He notes that SCD does not intend to operate the Marquee as a liquor outlet until 4.00 am every day.
- 22) Mr Potter submits that SCD makes every effort to minimise noise disturbance, as is required for in-house guests. He notes that the existing outdoor stage will be moved into the Marquee which will reduce existing music levels and that the Marquee will face towards the beach, further reducing the potential for noise to impact on neighbouring properties. He states that SCD's patrons usually attend the venue via private vehicles, taxis and public transport and it is not intended to use Little Mindil and the footbridge as access points. Mr Potter states that SCD has a proven track record in regard to Responsible Service of Alcohol best practice which should allay the concerns of the objectors. He concluded by stating that SCD contends that the Marquee will not have any adverse effect on the neighbourhood.

### **Consideration of the Issues**

- 23) The objections lodged by Mr Simpson, Mr Hoskin and Ms Lepore and Dr Stacey relate to the amenity of the neighbourhood in which the Marquee is proposed to be located and the

public safety or social conditions in the community. As such they fall within the ambit of Sections 47F(2)(a) and (b) of the Act. As set out above, the objectors are persons who are entitled to lodge an objection under the terms of Sections 47F(3)(a) and (b) of the Act. The three objections were received within the time frame stipulated in the published notices.

## **Decision**

- 24) The Commission has determined that the objections lodged by Mr Ken Simpson, Mr Chris Hoskin and Ms Lepore and Dr Stacey are valid in terms of the Act and require a Hearing pursuant to Section 47I(7) of the Act.

Philip Timney  
Legal Member

14 September 2012