

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Borroloola Hotel Motel Lot 771 Robinson Road Borroloola
Applicant:	Davis Whiteman Pty Ltd
Dual Nominees:	Andrew Davis and Toya Whiteman
Licence Number:	80517853
Objectors:	Mr Jane Alley, Senior Director, Licensing, Regulation and Alcohol Strategy A/Commander Brent Warren, Northern Territory Police Mr Neil Wright, Senior Policy Adviser, Alcohol and Other Drugs, Department of Health and Families Mr Brian Kimmings, Director Wirriwangkuma Aboriginal Corporation (MAWA) Mr Samueal Evans, Joint Chairman, MAWA Mr Fraser Baker, Nominee, Malandari Store Committee, Borroloola Community Action Group Ms Lizzie Hogan, Manager, Woman's Safe House Borroloola; Mr Brian Kimmings, Director, Malandari Properties Pty Ltd; Mr Fraser Baker, Mabunji Management Committee; Mr Dave Chalmers, AO, CSC, State Manager, Northern Territory Department of Families, Housing, Community Services and Indigenous Affairs; Mr Charlie Radovic and Ms Trish Elmy, Savannah Way Motel, Borroloola; Mr Ettienne Moller, General Manager, McArthur River Mining; Ms Malandirri McCarthy, Minister for Local Government
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision Of:	Philip Timney
Date of Decision:	8 April 2010

Summary of Decision:

That the Commission conduct a hearing in respect of the objections received from:

1. Mrs Jane Alley
2. A/Commander Brent Warren
3. Mr Neil Wright
4. Mr Brian Kimmings
5. Mr Samuel Evans
6. Mr Fraser Baker

7. Borroloola Community Action Group
8. Ms Lizzie Hogan
9. Mr Brian Kimmings
10. Mabunji Management Committee
11. Mr Dave Chalmers
12. Mr Charlie Radovic and Ms Trish Elmy
13. Mr Ettienne Moller
14. Ms Malandirri McCarthy, Minister for Local Government

Background

- 1) Mr Graham Cole on behalf of Davis Whiteman Pty Ltd, Licensee of the Borroloola Hotel Motel, has made an application for a variation of liquor licence number 80517853 to vary the licence conditions pursuant to Section 32A of the *Liquor Act* ("the Act") to amend or remove the current requirement for alcohol to be served ancillary to a meal for the premises situated at Lot 771, Robinson Road, Borroloola ("the Application"). The Application was advertised in the Katherine Times on 27 February 2010 pursuant to Section 32A(3)(a) of the Act.
- 2) The advertisement was as follows:

Davis Whiteman Pty Ltd, hereby give notice that it has applied to the Northern Territory Licensing Commission to vary the conditions of the liquor licence for the Borroloola Hotel Motel located at Lot 771 Robinson Road, Borroloola.

Proposed Variation Details for the sale of liquor are as follows:

- *Operation of the Public Bar and Beer Garden area of the premises as listed below.*

*Sunday 11:00 and Sunday 22:00
Monday 12:00 and Monday 22:00
Tuesday 12:00 and Tuesday 22:00
Wednesday 12:00 and Wednesday 22:00
Thursday 12:00 and Thursday 22:00
Friday 12:00 and Friday 23:59
Saturday 11:00 and Saturday 23:59*

- Only light and mid-strength beverages with an alcohol by volume content **not** exceeding 3.5% volume without the requirement of a meal.
- The Lounge Bar and Garden will remain operating under the current hours and conditions including the requirement for alcohol sales to be ancillary to a meal.

The objection period is deemed to commence from 27 January 2010, the date of publication of this 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 8972 8905. Objections to this application should be lodged in writing with the Director of Licensing PO Box 2138, Katherine, within thirty (30) days of the commencement date of the objection period.

Dated this 21st day of January 2010.

- 3) 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 26 February 2010.
- 4) 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;*
 - (b) *an application for a variation of the conditions of a licence, as notified under Section 32A;*
 - (c) *an application for the substitution of other premises for the premises specified in a licence, as notified under Section 46A;*
 - (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 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).

- 5) Section 47F(1)(b) provides that a person or organisation may object to an application for variation of licence conditions under Section 32A, the type of application lodged for the Borrooloola Hotel Motel.
- 6) Turning to the specifics of the objections lodged:

Objection from Mrs Jane Alley, Senior Director, Licensing, Regulation and Alcohol Strategy

- 7) Ms Alley's objection was lodged within the prescribed time. Ms Alley is employed with Licensing, Regulation and Alcohol Strategy, an agency falling within the ambit of Section 47F(3)(e). The grounds of objection relate to the public safety and the amenity of the neighbourhood in which the licensed premises are situated. Ms Alley also refers to a previous decision of the Commission in raising concerns regarding the grant of a full licence prior to the introduction of an Alcohol Management Plan (AMP). As a result the objection is valid and requires a hearing.

Objection from A/Commander Brent Warren, Northern Territory Police

- 8) Section 47(3)(c) allows members of the Northern Territory Police to object to an Application. A/Commander Brent Warren is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c) and stationed at the Katherine Police Station. As such A/Commander Brent Warren is a valid objector.
- 9) Turning then to the substance of the objection and whether it fits within Section 47F(2). The grounds of the objections include -
 - The relationship between alcohol consumption and Police attendance on incidents in the Borrooloola township, [particularly domestic violence related incidents;
 - Loss of amenity of the neighbourhood and public safety; and
 - The lack of an Alcohol Management Plan for Borrooloola.
- 10) The objection lodged by A/Commander Warren was lodged within the prescribed time limit, is valid and requires a hearing.

Objection from Mr Neil Wright, Senior Policy Adviser, Alcohol and Other Drugs, Department of Health and Families

- 11) Mr Wright's objection was lodged within the prescribed time and his agency employer is an agency falling within the scope of Section 47F(3)(e).
- 12) The substance of Mr Wright's objection relates to public safety and the effect of alcohol consumption on the amenity of the community. Mr Wright also refers to the lack of a coherent alcohol management framework in the Borrooloola township. As a result the objection is valid and should be referred to hearing.

Objection from Mr Brian Kimmings, Director Wirriwankuma Aboriginal Corporation (MAWA)

- 13) The MAWA is a charitable organisation which uses its income to provide socio-welfare support services to families and groups in the Borrooloola community. MAWA falls within the type of organisations prescribed by Section 47F(3)(f). The objection was lodged within the prescribed time specified by the Act.
- 14) The objection lodged by MAWA relates to the negative effect of the former licensed premises on the amenity and public welfare of the community and expresses concern that

the variation of the license will result in further health, anti-social and public safety issues. The objection is valid and should be referred to hearing.

Objection from Mr Samuel Evans, Joint Chairman, MAWA

- 15) Mr Evans' objection was lodged within the prescribed time and relates to similar issue to those raised in the objection of Ms Kimmings. As such the objection is valid and should be referred to hearing.

Objection from Mr Fraser Baker, Nominee, Malandari Store Committee

- 16) This objection was lodged by Mr Baker on behalf of himself and five (5) other members of the Malandari Store committee. The Malandari Store operates a mixed business and take away liquor store in Borrooloola, Mr Baker is nominee of the licensed premises. As such the objector falls within the ambit of Section 47F(3)(a). The objection was lodged within time.
- 17) The grounds of objection are the negative impact on the amenity of Borrooloola by further alcohol sales within the community giving rise to alcohol related anti-social activity and nuisance to the public. The objection raises the lack of an AMP for Borrooloola and submits that no further licence should be issued in Borrooloola until such time as an AMP is in place. The objection is valid and should be referred to hearing.

Objection from Borrooloola Community Action Group (BCAG)

- 18) The BCAG is an informal community group involved in addressing social problems within the township of Borrooloola and is entitled, pursuant to Section 47F(3)(f) to lodge an objection. The objection was received within the prescribed time frame.
- 19) The substance of the BCAG's objection is that the variation of licence applied for will exacerbate the high level of alcohol related injuries, anti-social behaviour and hardship resulting to Aboriginal families within the community. The objection is valid and should be referred to hearing.

Objection from Ms Lizzie Hogan, Manager, Woman's Safe House Borrooloola (WSH)

- 20) The WSH provides support and lodging for victims of domestic violence together with ancillary related services. The objector falls within Section 47F(3)(f) of the Act. The objection was received within the prescribed time.
- 21) Ms Hogan submits that WSH is currently barely able to cope with the demands for service and that an expansion of the availability of alcohol in Borrooloola will further increase the demand to deal with alcohol related violence and injury. The objection refers to the negative impact on the community and public safety issues should the variation be granted.
- 22) The objection is valid and should be referred to hearing.

Objection from Mr Brian Kimmings, Director, Malandari Properties Pty Ltd

- 23) Mr Kimmings is a Director of Malandari Properties Pty Ltd, the registered owner of lot 768 Borrooloola. As such Malandari Properties is entitled to lodge an objection pursuant to Section 47F(3)(b) of the Act. The objection was received within time.
- 24) The objection received from Malandari Properties reflects the concerns raised in Mr Kimmings letter on behalf of MAWA (refer paragraph 10) above. On that basis the objection is valid and should be referred to hearing.

Objection from Mabunji Management Committee (MMC) lodged by Mr Fraser Baker

- 25) MMC is a registered charitable organisation responsible for the provision of a range of community services within Borrooloola and the surrounding areas. MMC falls within the

ambit of Section 47F(3)(f) and is entitled to lodge an objection. The objection was received within the prescribed time frame. The objection is signed by members of the management committee, including Mr Baker who also objected on behalf of the Malandari Store Committee.

- 26) The objection closely relates to and raises the same issues as those contained in the objection at paragraph 14 above. As such the objection is valid and should be referred to hearing.

Objection from Mr Dave Chalmers, AO, CSC, State Manager, Northern Territory Department of Families, Housing, Community Services and Indigenous Affairs (FACSIA)

- 27) FACSIA is an agency falling within the scope of Section 47F(3)(e) and the objection was received within the prescribed time frame.
- 28) Mr Chalmers' objection relates to the negative effects caused by increased liquor outlet density within the community and the resulting detrimental impact on public amenity and safety, particularly alcohol related assaults and child neglect. The objection is valid and should be referred to hearing.

Objection from Mr Charlie Radovic and Ms Trish Elmy, Savannah Way Motel, Borroloola

- 29) Mr Radovic and Ms Elmy are the operators of the Savannah Way Motel, located opposite the applicant's premises. As such they are entitled to lodge an objection by virtue of Section 47F(3)(a). The objection was lodged in time and amended by further submission lodged on 27 March 2010.
- 30) The objection relates to the loss of amenity on the part of the Savannah Way Motel together with objection to the proposed opening hours under the subject variation application. The correspondence from the objectors indicates a conditional withdrawal of the objection subject to a restriction on the operating hours applied for by the applicant. The response submitted on behalf of the applicants suggests the issues raised by Mr Radovic and Ms Elmy have been resolved between the parties, presumably on the basis of revised trading hours. No formal withdrawal of the objection has been received to date. In addition, as no formal notice of variation of the proposed trading hours has been lodged by the applicant the objection should stand and be referred to hearing.

Objection from Mr Etienne Moller, General Manager, McArthur River Mining

- 31) Mr Moller's objection was lodged within time and McArthur River Mining is a valid objector pursuant to Section 47F(3)(a).
- 32) The objection refers to historical evidence of the negative social impact of the former hotel on the community and further raises public safety, health and employment concerns. The objection is valid and should be referred to hearing.

Objection from Ms Malandirri McCarthy, Minister for Local Government

- 33) Ms McCarthy's objection was received on 26 February 2010. The objection was received within the prescribed time limit, noting that the cut off for submission of objections was close of business on 26 February 2010 (and not 25 February as advised in the objections report presented to the Director). Ms McCarthy is the Minister for Local Government, Regional Development and Indigenous Policy and Borroloola falls within her electorate. As such she is entitled to lodge an objection in pursuance of Section 47F(3)(a).
- 34) Ms McCarthy's objection relates to the detrimental impact on the amenity of the community arising from the extension of the current licence and the fact that no AMP has yet been introduced for Borroloola. As a consequence the objection is valid and should be referred to hearing.

Applicant's Response to Objections

- 35) A response to the objections was provided by Mr Anthony Downs of NT Law, now the legal representative of the applicants. As noted by Inspector Wood in his report to the Director, the response creates some confusion as to the operating hours that would apply should the application for variation be approved.
- 36) The variation application as lodged seeks approval for the sale of alcohol without a meal for the same hours as those under which the licence currently operates. This was subsequently confirmed in correspondence from Mr Cole, the applicant's former legal representative, to Inspector Wood.
- 37) The current restaurant licence permits the sale of alcohol, ancillary to a meal, during the following hours:
- Monday – Thursday 12.00 – 22.00 hours
 - Friday 12.00 – 23.59 hours
 - Saturday 11.00 – 23.59 hours
 - Sunday 11.00 – 22.00 hours
- 38) Mr Downs' response to the objections indicates that the applicant intends to apply a self-imposed restriction on the trading hours as follows:
- Monday – Thursday 16.00 – 22.00 hours
 - Friday 16.00 – 23.59 hours
 - Saturday 16.00 – 23.59 hours
 - Sunday No trading
- 39) However, to date no formal application to revise the trading hours in line with the "self-imposed restriction" has been lodged with the Director. As such, for the purposes of this decision the response to the objections must be read in light of actual hours applied for under the original application.
- 40) Mr Downs' letter includes specific responses to each of the objections, many of which are very similar in content and substance. For the purpose of this report the overall responses to the issues raised by the objectors may be summarised as follows:
- The licence will apply self-imposed restrictions on the trading hours of the premises;
 - Meals will be available at all times whilst the premises are operating;
 - No additional licence or licensed premises will result from the variation, the sale of alcohol without a meal would occur in a specific area of the current premises;
 - The Licensee will ensure that two (2) security personnel are present during trading hours to address potential anti-social behaviour (again it should be noted that security arrangements were not included in the original application for variation nor has any formal amendment been lodged);
 - The Licensee will consider the provision of a courtesy bus for patrons;
 - The Licensee is actively participating in the development of the Borroloola AMP;
 - There have been no adverse incidents involving the current Licensee, who should not be held responsible for the behaviour of the previous licensee nor the impact the former

hotel had on the Borroloola community the last time the hotel operated with a full hotel licence;

- The application seeks only a mid-strength beverage licence. The Licensee will implement support strategies and services to ensure the responsible service of alcohol (the specific strategies the licensee has in mind are not identified in the response);
- Statistics provided by several of the objectors are non-specific in terms of whether the incidents referred to resulted from the consumption of alcohol on licensed premises or from take-away sales;
- There is no evidence to support the claim that the variation sought will in fact increase the volume of alcohol consumed in the community;
- There is no evidence to support the claim that the variation of licence will impact on the prevalence of alcohol related disease and injury or the demand for medical services in Borroloola;
- The comments from several objectors that a not for profit club would be a preferable alternative are anti-competitive and contrary to provisions of the *Trade Practices Act*.

41) Mr Downs' response also raises the issue of the bona fides of a number of the objectors in respect of compliance with Section 47F of the Act. For the reasons set out above I am satisfied that each of the objectors satisfies the requirements of those provisions in terms of their standing to lodge an objection and the grounds on which the objection is based. Similarly, I am satisfied that the objection by Ms McCarthy MLA was lodged within the prescribed time limit, for the reasons set out above.

Determination

- 42) The applicant's response to the objections relies significantly on "the responsible service of mid strength beverages with support strategies and services within a controlled environment". Those "support strategies and services" are not specified or articulated in the applicants' response to the objections. As a result it is not possible, on the basis of the written response to the objections alone, to determine whether the concerns of the objectors have been adequately addressed.
- 43) In addition, the Commission noted in its decision relating to the previous application for a liquor licence (decision of the Licensing Commission re an application by TRFCK Pty Ltd dated 18 December 2007) that it would defer consideration of the public bar component of that application until such time as an AMP was in place. Whilst the applicants emphasise that they are actively engaged in the development of an AMP for Borroloola, no such Plan is in place at present.
- 44) On the basis of the matters set out above, I find that the fourteen (14) objections are valid and require a hearing. Hearing briefs should be provided to all of the objectors prior to the hearing.

Philip Timney
Legal Member

8 April 2010