

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	La Parrilla
Applicant:	La Parrilla Pty Ltd
Nominee:	N/A
License Number:	N/A
Objectors:	Ms Patrice Gill
Legislation:	Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Philip Timney (Legal Member)
Date of decision:	29 November 2012

Background

- 1) Mr Guy Dunne, a Director of La Parrilla Pty Ltd and the Nominee for the Beachfront Hotel, applied pursuant to Section 26A of the *Liquor Act* (“the Act”) for approval in-principle for a Restaurant liquor licence for the proposed La Parrilla restaurant, which is to be located at 342 Casuarina Drive, Rapid Creek within the Beachfront Hotel complex. The applicant has applied for a restaurant licence separate from the tavern liquor licence currently held for the Beachfront Hotel premises. It is proposed that the area on which the restaurant will be located will be excised from the licensed area for the Hotel.
- 2) The application is for the in-principle grant of a licence pending the construction and fit out of the proposed restaurant premises pursuant to Section 26(2) of the Act which provides that an application for a liquor licence may be made for premises which are yet to be constructed and in circumstances where the applicant does not intend to carry on any business under the licence being applied for. The purpose of that section is to provide certainty to developers prior to commencing a development that, once the premises are constructed, a licence will be granted.
- 3) The Application was advertised in the NT News on Wednesday 19 September 2012 and Friday 21 September 2012 pursuant to Section 27(1) of the Act.
- 4) The advertisement was as follows:

La Parrilla Pty Ltd, hereby give notice that it has applied to the Northern Territory Licensing Commission for a “restaurant” Liquor Licence to sell liquor from the premises located at 342 Casuarina Drive, Rapid Creek, NT, 0810, within the Beachfront Hotel complex.

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 a Restaurant.*
- *A Menu based meal will be available from a conventional restaurant style dining area with formal seating, lounge and bar area and Alfresco Dining facilities.*

- *Liquor may be sold from 11:30 hours until 23:59 hours, Sunday to Wednesday, and 11:30 hours to 02:00 hours (the following day), Thursday to Saturday.*

The following conditions will apply:

- *The premises shall at all times have the appearance of and shall trade predominantly as a restaurant.*
- *Patrons to be seated at a table or at the bar provided that meals shall be available for consumption at all parts of the bar where liquor is served.*
- *Consumption of liquor without a meal will not be advertised or promoted.*
- *Snack foods will be available at all times.*
- *The word "Bar" shall not be used in any advertising or signage*
- *Premises shall close no later than one and one half hours after the kitchen closes.*

This is the second notice of application.

The objection period is deemed to commence from Friday, 21 September 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 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 Senior Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Senior Director of Licensing, Gaming and Licensing, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 21st Day of September 2012.

- 5) 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 22 October 2012.
- 6) 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 that Section 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;*
 - (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;*
- 7) One objection has been lodged in response to the application and the applicant has provided a response to that objection 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.

Objection from Ms Patrice Gill:

- 8) Section 47F(1)(a) provides that a person may lodge an objection to an application for a liquor licence. Ms Gill resides at 63 Sergison Circuit which is directly abutting the Beachfront Hotel premises. As such Ms Gill is entitled to lodge an objection on the basis she is a person who resides in the neighbourhood where the proposed restaurant will be located. Ms Gill's objection was lodged within the prescribed period.
- 9) Ms Gill objects to the grant of a licence for the proposed restaurant on the basis that licence conditions proposed, combined with the hours of trade applied for, indicate that the applicant intends to operate a nightclub and not a restaurant. She also states that the licence condition stipulating "*The premises shall at all times have the appearance of and predominantly trade as a restaurant*" is ambiguous and infers that the restaurant will trade as a bar or nightclub at other times.
- 10) Ms Gill expresses great concern that patrons of the restaurant will be able to purchase alcohol without the requirement for a meal and thereby result in an increasing number of patrons spilling into the neighbourhood at closing time. Ms Gill's objection also raises concerns regarding the al fresco area attached to the restaurant and the potential for noise from that area to disturb the neighbouring residents. Ms Gill submits that, should the licence be granted, then it should be mandatory that food is consumed with the consumption of alcohol as this is how "any normal restaurant operates". Ms Gill objects on the basis patrons will be permitted to drink as much as they want in the restaurant area without the need to purchase a meal.
- 11) Ms Gill submits that the licence condition prohibiting the use of the word "Bar" in advertising or signage will be ineffective as word will get around that another bar is operating at the Beachfront Hotel, increasing patronage of the premises and increasing problems for neighbouring residents. Ms Gill submits that the licence condition requiring the restaurant to close no later than 1 ½ hours after the kitchen closes will result in patrons remaining at the premises for 1 ½ hours after closing time, that is until 1.30 pm from Sunday to Wednesday and until 3.30 am on Thursday to Saturday. Ms Gill also queries whether there will be any restrictions placed on music being played in the restaurant area.
- 12) Ms Gill states that the proposed restaurant will result in additional patrons attending the premises with the resultant increase in traffic in the car park and increased disturbances to neighbours from noise, drunkenness foul language and anti-social behaviour.

Applicant's Response to Objections:

- 13) Mr Dunne responded to Ms Gill's objection by letter dated 1 November 2012. He stated that the proposed La Parilla restaurant is the first stage of a complete redevelopment of the Beachfront Hotel premises, taking account of the Hotel's location in a residential area and providing a greater range of services for patrons. Mr Dunne states that the redevelopment, to be completed in stages, includes a refit of the bottle-shop, establishment of a sports and entertainment bar and a cocktail lounge, development of a front deck bistro and removal of the rear beer garden and the addition of a café. Mr Dunne submits that the change in concept of the Beachfront Hotel premises will result in a more upmarket venue and one in which management will insist on a better standard of behaviour from patrons in terms of dress code, conduct and attitude.
- 14) In response to the issue of entertainment and noise disturbances, Mr Dunne states that the sound proofing and acoustic testing will be included in the architectural plans should approval in principle be granted for the restaurant. Mr Dunne refutes that assertion that the restaurant will become a nightclub and states that the aim is to compete with existing upmarket restaurants in the Darwin region. He states that the inclusion of an upmarket restaurant in the Beachfront Hotel will result in a change to the type of entertainment currently provided at the venue and a shift in the type of patrons who will attend the premises.
- 15) In response to the concerns raised by Ms Gill in respect of the proposed licence conditions to be attached to the restaurant, Mr Dunn makes the following submissions and observations:
 - **Business to be conducted in the nature of a restaurant:** Mr Dunne notes that this condition is in accordance with the terminology used by the office of Gaming and Licensing Services and is in accordance with the Licensee's intent to operate the venue as a restaurant at all times.
 - **Trading Hours:** the trading hours applied for are consistent with those that currently apply to other areas of the Beachfront Hotel and the trading hours for the restaurant do not infer that it will operate as a nightclub. Mr Dunne notes that the hours of trade applied for are consistent with the majority of restaurant licences in the Darwin region, including the Happy Gardens that formerly operated from the Beachfront Hotel premises.
 - **Alfresco Dining:** Mr Dunne states that the alfresco area of the restaurant will be located on the lawn area in front of the bottle shop and will cater for approximately forty people. The area will be designated for seated dining and quiet enjoyment with only background music being provided, reducing the potential for disturbances to neighbours.
 - **Patrons to be seated at a table or bar provided that meals shall be available for consumption at all parts of the bar where liquor is available:** Mr Dunne states that it is common practice with restaurants for people to be seated at a bar prior to moving to their table, particularly during busy times. He states that it is also normal for restaurant patrons to enjoy a drink at a bar prior to moving to be seated at their table.
 - **Consumption of liquor without a meal will not be promoted or advertised:** Mr Dunne states that marketing will focus on the food and service of the restaurant.
 - **Snack foods will be available at all times:** Mr Dunne states that this licence condition is included at the insistence of the office of Gambling and Licensing Services for the entire premises and that food from the menu will be available at all times the restaurant is open for trade.

- **The word “Bar” shall not be used in any advertising or signage;** Mr Dunne states that La Parilla will operate as a restaurant and not a bar and that this will be reflected by the advertising for the venue.
- **Premises shall close no later than one and a half hours after the kitchen closes:** Mr Dunne states that the objector’s comments are misguided and misunderstand the licensing laws as La Parilla will operate within the authorised trading hours.
- **Live and amplified music:** Mr Dunne states that music will not be a feature of the restaurant other than as background ambience. Live music will be restricted to family friendly performers in line with the theme of the restaurant. There will be no nightclub style entertainment at the venue.

16) In conclusion Mr Dunne referred to the Environmental Management Plan for the premises and the procedures stipulated for dealing with poor behaviour by patrons and itinerants who frequent the foreshore. He states that any new tenant of the premises will be required to comply with the terms of the EMP. Mr Dunne also notes that Ms Gill is the only objector from the 7,969 people residing in the Nightcliff electorate and that her views should not be taken as reflecting the values of the wider community.

Consideration of the Issues

- 17) The Beachfront Hotel currently operates under the authority of a Tavern Liquor Licence which authorises the sale of alcohol from 10.00 am to 23.59 pm Sunday to Wednesday and from 10.00 am to 2.00 am the following day on Friday and Saturday. Those hours of trade currently apply to all areas within the premises licensed for on-premise consumption of alcohol including the Turtles Bar and Beer Garden, the Cues Bar and the Trophies Room. The Hotel currently includes a restaurant within the licensed premises which is open for trade from midday to 2.00 pm and 6.00 pm to 9.00 pm daily and for breakfast on weekends.
- 18) The application currently before the Commission for a separate restaurant liquor licence comprises stage 1 of a planned redevelopment of the Beachfront Hotel premises. Future stages of the proposed redevelopment of the venue include renovations to include an entertainment area, TAB and gaming bar, a cocktail lounge and a franchised coffee shop. The Licensee has applied for approval in principle for a separate restaurant licence with a view to the restaurant area being excised from the licensed area of the Beachfront Hotel so as to allow the restaurant to be independently licensed and operated by a third party Licensee. The application for material alterations has not been referred to the Commission at this stage and is not a consideration so far as the application for the separate licence for the restaurant is concerned.
- 19) Ms Gill’s objection relates to the amenity of the neighbourhood in which the Beachfront Hotel is located. She has been a resident of the neighbourhood for some thirty years and has previously appeared before the Commission to give evidence in respect of noise complaints lodged by neighbours against the Licensee. Ms Gill objects to the grant of a separate restaurant licence for the premises on the basis that restaurant patrons will exacerbate noise emanations and anti-social behaviour in and around the Hotel as she anticipates that the restaurant will operate as a nightclub.
- 20) That anticipation is completely at odds with the application presented to the Commission and the clear statements as to the nature of the restaurant business, should the approval in principle be granted. The business plan for La Parilla restaurant, which forms an integral part of the licence application, sets out clearly that the proposal is to establish an upmarket Argentinean restaurant and identifies the category of patrons the Licensee hopes to attract and the types of services that will be provided. In the event the restaurant licence is granted the business plan and proposed concept of the restaurant will be incorporated in the licence conditions.

- 21) The normal conditions applicable to a restaurant licence are determined by the Commission and do not provide for or permit the operation of a nightclub venue. Restaurant licence conditions are totally unsuitable in terms of risk management for the operation of a nightclub. Put simply, it would be a breach of the conditions for a Licensee of a restaurant licence to conduct the business under the licence as a nightclub. Ms Gill has stated, both in the current objection and in evidence given at the hearing before the Commission in September and October 2011, that the Beachfront Hotel is operated as a nightclub style venue which is not amenable to the community environment within which the Hotel is located. She has noted previously that the Hotel advertises itself as a nightclub rather than a community hotel. It should be noted however that the type of business currently conducted by the Licensee of the Beachfront Hotel, the trading hours and the types of entertainment provided are authorised under the existing tavern licence.
- 22) Ms Gill objects to the grant of a restaurant licence on the basis that is likely to exacerbate the noise and disturbances associated with the conduct of an entertainment and nightclub style venue in a residential neighbourhood as the restaurant will simply become another nightclub within the Beachfront Hotel. Ms Gill's concerns in that regard are ill-founded in that the licence conditions, as advertised, will not permit the operation of a nightclub under the guise of a restaurant licence.
- 23) As noted above, Mr Dunne denies that there is any intention that the restaurant will operate as a nightclub and states that the aim is to establish an upmarket restaurant that will be operated by a third party Licensee following the excision of the restaurant footprint from the licensed area of the Hotel. He states that the addition of an upmarket restaurant in the Beachfront Hotel will result in a change to the type of entertainment currently provided at the venue and, at least potentially, attract a different type of client to those that currently frequent the premises.
- 24) Ms Gill's objections to the licence conditions that would be attached to the restaurant are, with respect, ill-considered and based on a number of incorrect premises. The licence conditions identified in the advertisement, and set out above, are generic in nature and apply to most restaurant licences issued in the Northern Territory since 1998 when the concept of a restaurant licence without the requirement to consume a meal was first introduced. The licence conditions for that type of licence are determined by the Commission, not the applicant for the licence. The aim of the conditions attached to that category of licence is to ensure that Licensees who apply for and are granted a restaurant licence conduct their business predominantly as restaurant and not as de facto taverns or nightclubs.
- 25) A number of the assumptions made by Ms Gill in respect of the proposed licence conditions are clearly wrong. By way of example, if the restaurant kitchen closed at 11.30 pm on a week night patrons would still be required to leave the premises at closing time, that is, by midnight. If the restaurant was to close at 9.00 pm on a week day patrons would be required to leave the restaurant by 10.30 pm. Ms Gill's assertion that for "any normal restaurant operates" it is mandatory that food is consumed in conjunction with the consumption of alcohol is incorrect. The majority of licensed restaurants in the Darwin region are permitted to sell alcohol without the requirement to purchase a meal so long as the premises operates predominantly as a restaurant and complies with the specific conditions applicable to that category of licence.
- 26) Ms Gill's objection relates to the potential for noise disturbances and anti-social behaviour arising from the manner in which she anticipates the restaurant will operate and be managed, namely as a nightclub. The objection does not identify any potential for noise disturbances or anti-social behaviour to arise from the grant of a restaurant licence and the operation of the premises as a restaurant, as opposed to the concern that it may operate as a nightclub.
- 27) The application for a restaurant licence comprises the first stage of a proposed redevelopment of the Beachfront Hotel premises by the current Licensee, Trojanmede Pty

Ltd. Should the restaurant licence be granted the restaurant will be located within the Beachfront Hotel building and the incoming Licensee will operate the restaurant as a separate entity from the operation of the Hotel business. The licence conditions set out in the public advertisement for the licence application will be applicable to the restaurant and, as stated above, will authorise the conduct of a restaurant business not a nightclub.

- 28) In respect of the application for a restaurant licence, the Commission is required to consider that application on the basis of the proposal and concept put forward by the applicant. The application before the Commission is not for a nightclub licence, which is the main concern identified by Ms Gill in her objection. In addition to the assurances provided by the applicant as to the manner in which the restaurant will operate, the conditions that would be attached to the licence were it to be granted would preclude the operation of a nightclub in the proposed restaurant area. As a consequence Ms Gill's objection is not relevant in terms of the actual application for an in-principle restaurant licence that is currently before the Commission.
- 29) To accept Ms Gill's objection as being relevant to the actual application lodged by Mr Dunne it would be necessary to reach the conclusion that the application is deliberately misleading and deceptive in that the real intention is to open a nightclub and not a restaurant. There is no evidence before the Commission to support that proposition, apart from Ms Gill's assertion to that effect which is not supported by any cogent or independent evidence. In fact, Mr Dunne's response to the objection reiterates categorically that the application seeks the grant of a restaurant licence and that there is no intent to operate the premises as a nightclub should a licence be granted. In those circumstances the objection must be found to be invalid on the grounds it is not relevant to the actual application that is before the Commission.

Decision

- 30) The objection lodged by Ms Patrice Gill relates to her concerns that, should a restaurant licence be granted, the Licensee will operate the venue as a nightclub. The applicant has firmly denied that will be the case. In addition, the licence conditions that will attach to the restaurant licence, if granted, would prohibit activities in the style of a nightclub and render the Licensee liable for disciplinary action, including loss of the licence, were it to operate the premises in contravention of the stated concept and the licence conditions that will apply to the restaurant.
- 31) For the reasons set out above, the objection lodged by Ms Gill is irrelevant in terms of the actual application before the Commission and must be dismissed in accordance with Section 47I(3)(c)(i)(A) of the Act.
- 32) Pursuant to Section 47I(4) of the Act I direct the Director to inform Ms Patrice Gill that her objection has been dismissed.

Philip Timney
Legal Member

29 November 2012