

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Zanadu Rural Retreat Lot 3805 Wanderrie Road Humpty Doo NT 0836
Applicant:	Ms Edith Joyce Hammerberg
Proceedings:	Hearing into Application for the grant of a New Liquor Licence and to Consider Objections Pursuant to Section 47F(2) of the <i>Liquor Act</i> (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
Objectors:	Mr and Mrs Jackson Ms Carol Prichard Mr Ian Snowden Ms Betty Oram Litchfield Council Ms Wendy Brown Naylor Family and Spoward Mr and Mrs Eddy (withdrawn)
Members:	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mrs Kerri Williams
Appearances:	The Applicant Ms Edith Joyce Hammerberg and her daughter Lee Hammerberg Mr and Mrs Jackson Ms Wendy Brown Ms Mary Walsh for Litchfield Council Inspector Travis Te Whata for the Director of Licensing
Date of Hearing:	10 June 2009

Background

- 1) Ms Edith Joyce Hammerberg made application on 12 February 2009, pursuant to Section 26 of the *Liquor Act* ("the Act") for an 'on premise' liquor licence for the premises known as Zanadu Rural Retreat located at Lot 3805 Wanderrie Road, Humpty Doo.
- 2) When advertised, the application was much broader seeking not only the right to provide liquor to in house guests but also the ability to cater for functions. Regrettably also, the first advertisement misquoted fourfold the number of in house guests to be catered for on the premises (it referred to a maximum of thirty-two (32) guests rather than the eight (8) sought).
- 3) The initial liquor licence application was for a Bed & Breakfast business of:
 - Up to eight (8) guests in four (4) units;
 - Provision of pre booked functions as a secondary business;

- Trading from 10.00 hours to 23.59 hours daily;
 - Liquor to be sold for consumption on the premises to in-house guests and their guests.
- 4) The application attracted a large amount of interest and concern in the surrounding neighbourhood and a number of objections were lodged as a result. Most of the concerns expressed in the letters of objection were to the community amenity issues that might arise if licensed functions were allowed.
 - 5) Before hearing, the application was significantly reduced. The initial request for a licence to cater for larger functions was withdrawn when the applicant was advised that she did not have Development Consent Authority approval for such a venture. The amended application for the Bed & Breakfast Guest House is to allow liquor to be supplied to a maximum of eight (8) in house guests, not including any visitors, for consumption on premises. The licence hours sought have been reduced from 10.00 hours to 23.59 hours to now be from 11.30 hours to 21.00 hours.
 - 6) There are eight (8) objectors to this application - mainly drawn from local residents concerned that a new precedent is being set if a bed and breakfast venue in their area is granted a liquor licence. They are also concerned that there will be deterioration in community amenity and that the granting of a licence is not in the public interest. Three (3) objectors appeared in person at the hearing to cross examine the applicant and make their own submissions to the Commission about the proposal. Letters of objection and other correspondence received from all objectors were also considered by the Commission together with a letter from police expressing their views. Mr and Mrs Eddy withdrew their objection when advised of the amended application. The Police did not object but made their comments by letter - most of which related to the original application rather than the revised one.

The Hearing

- 7) At the hearing, both the applicant and the objectors present were given opportunity to address their concerns and to discuss the same with Commission members. This interaction has assisted the Commission greatly in considering the issues.
- 8) The applicant runs a bed & breakfast business called "Zanadu Rural Retreat" from her five (5) hectare property at Lot 3805 Wanderrie Road, Humpty Doo. The business is located adjacent to the applicant's home and consists of four (4) modern, motel-style units each with a double bed, ensuite bathroom and kitchenette. The promotional 'postcard' provided shows the newly built premises to be comfortable and well maintained. Guests also have access to outdoor seating, a plunge pool and barbeque area. If a liquor licence is granted for in-house guests for the hours sought, advice from the Department of Planning and Infrastructure states that "it is considered likely that the requirements of the NT Planning Scheme can continue to be met".
- 9) At hearing, the applicant advised that she was seeking an 'on premise' liquor licence to enable her to sell liquor to a maximum of eight (8) in-house guests between the hours of 11.30 hours and 21.00 hours. Her average occupancy rate at present is 25% which equates to one unit being occupied at any one time. Ms Hammerberg advised that her motivation for seeking a licence was to be able to offer a high class service to her clients as this was expected by guests at an establishment such as her own. The idea is to be able to cater for in-house guests if they want a beer by the pool, a sunset drink or alcohol with dinner or after dinner. Whilst Ms Hammerberg does not advertise Zanadu Rural Retreat as offering meals other than breakfast, she advised that she is willing to provide them upon request. Ms Hammerberg has a bar and dining room in her home and this is where guests have their meals. The home can be securely locked to prevent theft. The applicant wants to be able to supply a wide range of alcohol to suit the requirements of her guests. This might be a cocktail, a wine with dinner or a port after dinner. Ms Hammerberg also suggested that she might on occasion offer a 'happy hour' in the early evening - not to offer

cut priced drinks but to give the guests an opportunity to chat to each other. She imagines that her guests' needs alcohol-wise will be modest but in the unlikely event that a guest becomes unruly, she advised that she has people she can call on for assistance in the area if police are busy. As the local hotel is some kilometres away, she sees some benefits in guests being able to purchase a drink from her without driving to other licensed outlets.

- 10) Ms Mary Walsh made submissions and questioned the applicant on behalf of the Litchfield Shire Council who opposes the application. The Council's clear priority is to protect community amenity and to avoid seeing a precedent set by condoning the granting of a liquor licence to a bed & breakfast establishment in the area. It appeared to the Commission that the Council's objection would be ameliorable to a degree if Zanadu offered alcohol to guests as you would your family in your own home, a concept which the application states was her intention to follow.
- 11) Mr Warren Jackson and his wife expressed many concerns - principally relating to the risk of deterioration in community amenity if the licence is granted. Their main concerns were the risk of noise and alcohol fuelled antisocial behaviour emanating from Zanadu Rural Retreat if a licence is granted. Like many people in the area, the Jackson's purchased a rural block to get away from city life and to bring their children up in what they see as a better environment. They note the original intention of the applicant to cater for functions and see this narrower application as the first instalment in the growth of a liquor related business on the property. They consider that such a grant would create an unnecessary precedent in their area and question Ms Hammerberg's ability to manage an intoxicated guest in an area where police assistance is not readily available. They also question the need for her to seek nearly ten (10) hours of trade a day. Ms Wendy Brown supported the submissions made by Mr Jackson.

Matter to be considered

- 12) It is not often that the Commission has such a large number of objectors to a comparatively conservative licence request in terms of the likely quantity of alcohol to be sold. The concerns of residents are understandable however as they are principally focussed on protecting their rural community from noise, antisocial behaviour and unwanted development.
- 13) The Commission's task is to consider whether we are satisfied on the balance of probabilities that a licence should be granted. The Objects of the *Liquor Act (below)* are paramount when making decisions.

3 Objects

- (1) *The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:*
- (a) *so as to minimise the harm associated with the consumption of liquor; and*
 - (b) *in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.*
- (2) *The further objects of this Act are:*
- (a) *to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;*
 - (b) *to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and*
 - (c) *to facilitate a diversity of licensed premises and associated services for the benefit of the community.*

- 14) Before considering the specific matter related to this application, it is worth mentioning the Commission's general attitude towards applications such as these. It is the Commission's view that drinking on a licensed premise where a Licensee has the responsibility of ensuring that persons are served liquor in a responsible manner is preferable to an unlicensed situation where there are far fewer constraints on the manner of consumption of BYO alcohol. Licensees must complete a liquor course so that they know their obligations under the *Liquor Act* and they must also be trained in responsible service of alcohol. If they breach their licence conditions, Licensees can find themselves facing a Police prosecution and ultimate fine and conviction against their name together with Commission action to consider whether they remain an appropriate person to hold a licence. If Ms Hammerberg is granted a licence, then these are the responsibilities she takes on. If she is not granted a licence, then no doubt some of her guests will bring their own liquor with them and Ms Hammerberg will have much less control over their consumption.
- 15) A few years ago, the previous Commission in fact encouraged such establishments to apply for liquor licences as they were concerned that a number of businesses were breaching the Act by supplying liquor to guests without a licence. As a result, there are a number of licensed bed & breakfast establishments across the NT who were granted "continuing special" licences - albeit not in Howard Springs.
- 16) In summary, the Commission is not averse to the granting of controlled liquor licences to bed & breakfast establishments so long as they are satisfied that community amenity is protected and that the grant is in the public interest. In this current application the Commission is faced with the concerns of rural residents in the area that any grant of a liquor licence to the applicant is not only unnecessary but is risky as regards community wellbeing. Weighed against that is a business proprietor wanting to be able to provide a service to her in house guests, many of whom would be tourists visiting Kakadu National Park and other attractions in the area.
- 17) The licence being sought is a small one as licences go, in terms of likely sale of alcohol. It will only allow the licensee to sell liquor to a maximum of eight (8) in-house guests on premises and between 11.30 hours and 21.00 hours. The Commission is not persuaded that there will be a negative impact on the community amenity if this licence is granted and in fact considers that the applicant will be in a better position to monitor and control her guest's alcohol consumption than she would otherwise be. Whilst there are no Licensed B&B's in the area, there is no precedent set by granting this application.

Decision

- 18) The Commission is satisfied that a licence should be granted on the following conditions:
- An On premise licence for the sale and supply to in house guests only;
 - Licensed hours to be between 11.30 hours and 21.00 hours;
 - The area to be licensed to be that area of Lot 3805 that has been cleared and landscaped including but not restricted to the applicant's home, the four (4) units and the pool area;
 - The following noise condition:
 - The Licensee shall not permit or suffer the emanation of noise from the licensed premises of such type or volume as to cause such annoyance or disturbance to the ordinary comfort of lawful occupiers of surrounding residential property as shall be a reasonable reaction to the noise on the part of any occupier. In determining whether any occupier alleging such annoyance or disturbance is being reasonable and in determining whether to uphold such a complaint against the Licensee, the Commission shall have particular regard to the following matters:

- any history or pattern of reoccurrence or continuance of noise similar to that which is subject of complaint;
- management initiatives implemented by the Licensee to attenuate or contain such noise.
- A review after twelve (12) months or at an earlier time at the request of the Director. The review to be in the form of a report prepared by the Director for the Commission to consider whether any variations need to be made to the licence.

Richard O'Sullivan
Chairman

19 June 2009