

# Northern Territory Licensing Commission

## Decision on whether Objections will proceed to Hearing

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<b>Premises:</b>	<b>Gapview Resort Hotel</b>
<b>Applicant:</b>	Gap View Holdings Pty Ltd
<b>Dual nominees:</b>	Raymond and Diane Loechel
<b>Licence number:</b>	80102399
<b>Objectors:</b>	De Wit Holdings Pty Ltd t/a Alice Springs Airport Motel People's Alcohol Action Coalition
<b>Legislation:</b>	Sections 47F 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>	8 February 2012

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### Background

- 1) On 29 September 2011 an application was received from Mr and Mrs Loechel, Dual Nominees and Directors of Gap View Holdings Pty Ltd, Licensee of the Gapview Resort Hotel ("the Gapview") for material alterations of the premises and variation of licence conditions to allow for an extension of trading hours.
- 2) The Applications were advertised in the Centralian Advocate on Friday 7 October 2011 and Tuesday 11 October 2011, pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

*I, Raymond Loechel, on behalf of Gap View Holdings Pty Ltd, hereby give notice that I have applied to the Northern Territory Licensing Commission to make material alterations to the licensed area and extend trading hours at our existing premises known as, Gapview Resort Hotel, Cnr Gap Road and South Terrace, Alice Springs, Liquor Licence No 80102399.*

*The material additions/alterations and trading hours applied for include:*

- *Fully enclose the covered portico at the front of the premises making it part of the internal structure and move the current saloon bar slightly forward into this area;*
- *Extend the outer wall of the portico, at a height of 2 to 2.5 metres solid brick, to meet the current Southern boundary wall. This will create a completely enclosed courtyard, only accessible from inside the premises, which will contain outdoor smoking & non-smoking areas on both a decking and paved area;*
- *Relocate the current office to a front storeroom and create a new entrance into the premises;*
- *Relocate the Gaming Room into the previous saloon bar space;*
- *Upgrade the current front bar and toilet facilities;*

- *Renovate the current TAB room by moving the TAB facilities to the saloon bar and removing a stud and partial adjoining wall to incorporate it into the lounge dining area;*
- *Install an outdoor Children's play area adjacent to the pool area;*
- *To accommodate anticipated future functions, extend the closing hours of the Lounge/dining and pool areas from 02:00am to 03:00am and the closing hours for the Front bar and Saloon bar from midnight to 02:00am. As the venue can already trade until 02:00am this will only increase the overall trading hours of the premises by 7 hours a week.*

*Plans can be sighted at the premises.*

*This is the first notice of application. The notice will be published again on Tuesday 11<sup>th</sup> October 2011.*

*The objection period is deemed to commence from 11th October 2011.*

*Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions 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, Regulation and Alcohol Strategy on telephone 89515128. Objections to this application should be lodged in writing with the Deputy Director of Licensing, Regulation and Alcohol Strategy, PO Box 8470, Alice Springs, within thirty (30) days of the commencement date of the objection period.*

*Dated this 3rd October 2011*

- 4) *The notices relating to the applications were published in the Centralian Advocate on 7 and 11 November 2011. 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 Thursday 10 November 2011.*
- 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 –*

***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 a 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) 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) Section 47F(1)(b) provides that a person may lodge an objection to an application for variation of licence conditions and an application for material alterations.

7) Two objections have been lodged in response to the applications 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 the objections received are to proceed to Hearing.

#### **Objection from Mr Erwin Schweitzer, De Wit Holdings Pty Ltd, t/a Alice Springs Airport Motel**

8) Mr Schweister is the Managing Director of De Wit Holdings Pty Ltd, trading as Alice Springs Airport Motel. The premises from which that business operates are located at 150 Gap View Road, Alice Springs, adjacent to the Gapview Resort Hotel premises. As a consequence Mr Schweister is authorised to lodge a complaint by Section 47F(3)(a) of the Act on the basis he is a person working in the neighbourhood where the premises the subject of the application are or will be located and Section 47F(3)(b) as a person who holds an interest in land in the neighbourhood where the licensed premises are located.

9) Mr Schweister's objection is dated 19 October 2011 and was received within the prescribed objection period.

10) Mr Schweister objects to the applications for extension of trading hours and material alterations on the basis of potential disturbances to guests of the Motel by patrons leaving the Gapview at closing time. He states that an extension of trading hours will exacerbate the problems with patrons leaving the premises at even later hours than presently occurs. Mr Schweister also complains regarding the requirement for regular Police attendances to disperse and control patrons leaving the Gapview. He recommends that the Gapview's trading hours be reduced from 2.00 am to 12 midnight.

- 11) Mr Schweister also objects on the grounds of a change in the nature of the business conducted by the Gapview from a family orientated venue to a “bands’ venue and nightclub” and resultant noise issues affecting both his staff and his clients. He recommends the imposition of a licence condition restricting noise emanating from the premises after 11.30 pm or 12 midnight.

### **Objection from Ms Vicki Gillick on behalf of People’s Alcohol Action Coalition (“PAAC”)**

- 12) The Peoples Alcohol Action Coalition (PAAC) is a local action group that works towards reducing alcohol related harm in the Alice Springs area. As such PAAC has standing to object to an application for variation of licence conditions and an application for material alterations as an objector under Section 47F (3) (f) of the Act.
- 13) Ms Gillick’s objection is dated 11 November 2011. This falls outside the objection period, which expired at close of business on 10 November 2011. On 11 November 2011 Ms Gillick applied for an extension of time within which to lodge the PAAC objection. Section 127 of the Act provides that, where the Act requires that an act or thing be done within a specified time the Commission may, within its discretion, extend the time within which to do that act or thing. On 14 November 2011, the Chairman, under delegated authority of the Commission, extended the time within which PAAC could lodge an objection until 11 November 2011 with the result the PAAC objection is deemed to have been lodged within the objection period.
- 14) PAAC objects to the extension of trading hours applied for by the Licensee on the grounds this would represent an additional twenty-one hours of trade by the various bars within the premises and give rise to an increase in alcohol fuelled assaults and other alcohol related problems, including exacerbating problems currently existing in Alice Springs.
- 15) PAAC also objects to an extension of trading hours on the grounds that patrons drinking at other venues will travel to the Gapview to continue drinking when the first venue ceases trade, adding to the overall consumption of alcohol and associated problems for the patrons and the neighbourhood in general. Also, PAAC believes that late night drinkers at the Gapview will make their way to the Todd River when the premises close with the potential to add to the antisocial behaviour that occurs regularly in that location in the early hours of the morning.
- 16) PAAC is of the view that if the extended trading hours were approved the Licensee would not be committed to conducting its late night trading in a socially responsible manner given the fact the licensee has to date declined to voluntarily cease the sale of cask wine as has been the case for other licensees. PAAC also submits that the addition of another late night venue in the Gap area of Alice Springs would mean a greater risk of more grog-fuelled, socially intolerable and dangerous behaviour.
- 17) PAAC does not object to the application for material alterations to the premises.

### **Applicant’s Response to Objections**

- 18) The Licensee responded to the objections by letter dated 24 November 2011. In response to Mr Schweister’s objection, the Licensee advised that security is employed five days per week and they carry out patrols at 2.00 am each night to ensure patrons leaving the Gapview do not bother guests of the Motel. The entrance to the Front Bar was moved in an attempt to alleviate problems experienced by Motel staff and guests and this attracted negative publicity for the Licensee with inferences of the creation of a “secret entrance” for some patrons. The Licensee also notes that many guests of the Motel patronise the Gapview for meals and entertainment and that negotiations between the management of the Motel and the management of the Gapview have taken place in respect of the current applications.
- 19) In response to the concerns raised by both objectors regarding the extended trading hours, the Licensee has withdrawn the application for an additional hour of trade from 2.00 am to

3.00 am. The Licensee does however wish to proceed with the application for extended trade for all bars within the Gapview to 2.00 pm to bring those bars in line with the rest of the premises. The Licensee also states that security in future will be instructed to stay on duty until all patrons have left the vicinity of the Gapview so as to minimise noise and antisocial behaviour. The response also notes that security officers have no powers to control patrons outside the licensed area of the Gapview.

- 20) The Licensee notes that better lighting and security camera's, capable of filming out to the road, are components of the material alterations. In addition, the Nominees of the Gapview are members of the Australian Hotels Association and the Alcohol Reference Group and are actively involved in identifying solutions to alcohol related issues. The Nominees have regular meetings with Licensing Inspectors and Police who have not advised of any particular issues with the Gapview that need to be resolved

### **Response from the Objectors to the further submissions of the Licensee**

- 21) The Act makes no specific provision for further comment by objectors to a response from the Licensee, however in this instance that opportunity was provided to both Mr Schweister and Ms Gillick. This is considered an appropriate course given that the Licensee's response included the withdrawal of a contentious component of the application for variation of licence conditions to allow trading until 3.00 am. The modified application still includes an application to extend the hours of all bars in the Gapview premises to a uniform 2.00 am closure.

### **Response from Ms Vicki Gillick on behalf of PAAC**

- 22) Ms Gillick responded on behalf of PAAC to the Licensee's response by letter dated 20 December 2011. She advised that, despite the concession made by the Licensee, PAAC wished to maintain its objection on the basis the amended application still entailed an additional 14 hours per week of alcohol sales in respect of the bars that currently cease trade prior to 2.00 am.
- 23) PAAC submits that if the Licensee wishes to open late and provide entertainment on occasion it should be required to apply for a special licence to do so. PAAC maintains that another regular late night drinking venue in the Gap area of Alice Springs "would present a greater risk of grog-fuelled, socially intolerable and dangerous behaviour and that the new slightly earlier proposed closing time in relation to one part of the venue does not negate this argument".

### **Response from Mr Erwin Schweitzer, De Wit Holdings Pty Ltd, t/a Alice Springs Airport Motel**

- 24) Mr Schweister responded by letter dated 27 December 2011. He noted that he was pleased with the withdrawal of the application to extend trading hours to 3.00 am and had no objection to the 2.00 am trading extension for those bars that currently closed earlier. Mr Schweister submitted "that the new licence should be a provisional licence to be reviewed periodically to ensure the hotel trades in a more responsible manner".
- 25) In respect of potential noise disturbances affecting the staff and guests of the Motel, Mr Schweister submits that there should be no entertainment in the outdoor areas of the Gapview after a prescribed time, say 10.00pm, and function and entertainment noise levels should be kept to an acceptable level after 12.00pm. He also submits that there should be a review aimed at improving crowd control measures outside the premises after closing time.

### **Consideration of the issues**

- 26) The current trading hours, excluding Good Friday and Christmas day, for the various bars within the Gapview premises are as follows:

- Zoey's Wine Bar & Tedegans Restaurant: 10.00 am to 2.00 am each day;
- Pool Area: 10.00 am to 2.00 am each day
- Public bar: 10.00 am to 11.59 pm each day;
- Saloon bar: 10.00 am to 11.59 pm each day;

- 27) The application to standardise closing time to 2.00 am for all bar areas affects only the Public Bar and Saloon Bar. The Zoey's Wine Bar & Tedegans Restaurant and Pool Area are entitled to sell alcohol until 2.00 am as a condition of the existing licence conditions.
- 28) Mr Schweister does not object to extended trading hours for the bars within the premises that currently close earlier than 2.00 am. Nor does he object to the proposed material alterations per se. He does however maintain his objection that the alterations, and particularly in the future use of the outdoor areas of the Gapview for entertainment, have the potential to create or exacerbate noise disturbances which may affect his clients. Mr Schweister submits that if the Commission were to approve the material alterations it should impose conditions on the licence designed to minimise that potential for disturbance to staff and guests of the Motel.
- 29) That component of the objection relates to the amenity of the neighbourhood in which the Gapview is located and is therefore a valid ground of objection pursuant to Section 47F(2)(a) of the Act.
- 30) The component of Mr Schweister's objection in respect of crowd control issues does not relate directly or impliedly to the material alterations and as such is not a valid ground of objection.
- 31) It is noted PAAC does not object to the application for material alterations. The PAAC objection, as amended following the response from the Licensee, concerns the application to extend the trading hours for the early closing bars within the Gapview premises on the basis of the potential to impact on the amenity of the neighbourhood where the Gapview is located and on the health, public safety or social conditions in the community. That component of the objection is therefore a valid ground of objection pursuant to Section 47F(2)(a) of the Act.
- 32) The component of the complaint relating to the Licensee's refusal to ban the sale of cask wine is not relevant to the applications presently before the Commission and should be dismissed. Similarly, the ground of objection suggesting that the Licensee should be required to apply for a special licence to cater for entertainment events, as opposed to a permanent variation of licence conditions, is not a valid ground of objection as the existing licence conditions for the Gapview allow for trade until 2.00 am and the Licensee has withdrawn the application to extend trade beyond that time.

## Decision

- 33) The Commission has determined that the objection lodged by Mr Schweister on behalf of the Alice Springs Motel and the objection lodged by Ms Gillick on behalf of PAAC are valid, to the limited extent referred to above, and require a Hearing pursuant to Section 47I(7) of the Act.

Philip Timney  
Legal Member

8 February 2012