

NORTHERN TERRITORY LICENSING COMMISSION

Decision on Whether Objections Will Proceed To Hearing

PREMISES:	Emerald Springs Roadhouse NT Portion 721 Douglas Daly NT 0822
APPLICANT:	Dallukon Pty Ltd
NOMINEE:	Robert Luke Marshall
LICENCE NUMBER:	N/A (New Application)
OBJECTORS:	Brevet Sergeant ES Mitchell (NT Police) Mr Neil Wright, Senior Policy Advisor (Department of Health and Families (“DHF”))
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:	27 August 2008

Summary of Decision:

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

1. Brevet Sergeant ES Mitchell
2. Neil Wright

Background

- 1) Mr Robert Luke Marshall, on behalf of Dallukon Pty Ltd, has made an application for a liquor licence for the sale of liquor from premises situated at Emerald Springs Roadhouse (“the Application”). The Application was advertised in the Northern Territory News on 18 and 20 June 2008 pursuant to Section 27 of the *Liquor Act* (“the Act”). The application states that the applicant applies for a Hotel / Roadhouse licence for consumption of liquor on and away from the premises. The application sought trading hours for the sale of liquor on the premises

from 10:00am until 2:00am (the following day) seven (7) days a week, for the sale of take away liquor from 10:00am to 10:00pm seven (7) days a week and for sales to bona fide lodgers from 7.00am am to 9.00am via mini bar facilities.

2) The advertisement was as follows:

Dallukon Pty Ltd hereby give notice that it has applied to the Northern Territory Licensing Commission for a "PUBLIC HOTEL" Liquor Licence to sell liquor from the premises to be known as the Emerald Springs Road House located at NT portion 721 Douglas Daley, 133 Mile Stuart Highway.

PROPOSED TRADING DETAILS for the sale of liquor as follows:

- *The business proposed to be conducted on the premises will be in the nature of a Public Hotel, also providing tourist accommodation, mining personnel accommodation, and services for the travelling public.*
- *Liquor may be sold for consumption on the premises from 10:00 am until 02:00 am (the following day), seven (7) days per week.*
- *Liquor may be sold at any time to bona fide lodgers of the premises or invited guests of the lodger, (in the presence of the lodger), for consumption on the premises or through the provision of mini bar facilities.*
- *Notwithstanding anything contained in this licence the licensee at all times shall comply with the formally communicated wishes of the Pine Creek Aboriginal Advancement Association in relation to the sale or supply of liquor to members of the Kybrook Community.*
- *A meal shall be available between a 12:00 hours and 14:00 hours and 18:00 hours and 20:00 hours.*

Snacks will be made available at all times the premises are open for trade.

This is the first notice of application. The notice will be published again on Friday, 20 June 2008.

The objection period is deemed to commence from Friday, 20 June 2008. (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 effect:

- (a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- (b) the health, education, public safety or social conditions in the community.*

Only those persons, organizations 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, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 18th day of June 2008.

Note: The advertisements did not refer to trading hours for the sale of liquor for consumption away from the premises nor were they consistent with the details contained in the application in respect of the sale of liquor to bona fide lodgers.

In addition, the second notice published on 20 June 2008 was a copy of the first notice and erroneously stated that it was the first notice.

- 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 21 July 2008. The objections the subject of this decision were dated 21 July 2008 and 18 July 2008 respectively and were therefore lodged within the time allowed by the Act.
- 4) The content and substance of the objections relate inter alia to changing social circumstances, harm minimisation, effect on the community, lack of public transport, road user safety and the proximity of similar licensed premises.

Section 47F of the Act 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;*
 - (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).*

Objection from Police

- 5) Section 47(3)(c) allows members of the Northern Territory Police to object to the Application. Brevet Sergeant ES (Scotty) Mitchell is the OIC / Senior Policy Advisor of the Drug & Alcohol Policy Unit of the Northern Territory Police and is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c). As such Brevet Sergeant Mitchell is a valid objector.
- 6) Turning then to the substance of the objection and whether it fits within Section 47F(2).

The grounds of the objections include -

- a) Objection to the grant of a licence for take away consumption of liquor on the basis of the extension of the Moratorium on Takeaway Restrictions, published in a media release dated 23 May 2007, pending the implementation of a new *Liquor Act*.

- b) The extent of the trading hours applied for given the potential impact on drivers using the licensed premises and consuming alcohol.
- c) The proximity of the proposed licensed premises to existing licensed premises trading for similar periods.
- d) The lack of public transport in the vicinity of the proposed licensed premises.
- e) The location of the proposed licensed premises in respect of Prescribed Areas, namely Kybrook Farm and Pine Creek Compound.
- f) The frequency of alcohol related traffic accidents in the vicinity of the proposed licensed premises.

The grounds of objection relate to the amenity of the neighbourhood where the premises the subject of the application will be located and the health, education, public safety or social conditions of the community. On that basis the grounds of objection are valid and require a hearing.

Objection from the Department of Health and Community Services

- 7) Section 47(3)(e) allows an Agency or public authority that performs functions relating to public amenities, including health, education, and public safety to object to the Application. Mr Neil Wright is the Senior Policy Adviser, Alcohol and Other Drugs Program, Department of Health and Families. As such, Mr Wright is a valid objector.
- 8) Turning then to the substance of the objection and whether it fits within Section 47F(2):

Mr Wright's "objection" raises a number of questions in respect of the licence application rather than providing specific grounds of objection to the grant of the licence. Those questions relate to restrictions to be applicable to indigenous people, strategies to manage the sale of alcohol to residents, tourists and visitors to the proposed licensed premises and the management of driver fatigue.

A specific ground of objection relates to:

- (a) the proximity of the proposed licensed premises to existing licensed premises and the benefit to the community in granting a further licence in the area.

The grounds of objection (as well as the issues raised by Mr Wright's questions) relate to the amenity of the neighbourhood where the premises the subject of the application will be located and the health, education, public safety or social conditions of the community. On that basis the grounds of objection are valid and require a hearing.

Applicant's Response to Objections

9) Mr Des Crowe responded, on behalf of the applicant, to the objections received from Police by letter dated 6 August 2008. Mr Crowe responded specifically to the objections as follows:

- (a) Whilst there is no legislative impediment to the grant of a take away liquor licence, the applicant is prepared to adjourn consideration of the take away liquor licence conditions until the *Liquor Act* is amended;
- (b) the Licensee is willing to abide by special measures to be inserted as conditions of the liquor licence at the request of the local indigenous community;
- (c) the applicant is agreeable to amend the proposed trading as follows:

Sales to General Public:

Sunday - Thursday: 10:00am to 23:00am

Friday - Saturday: 10:00am to 1:00am (the following day)

Sales to Lodgers:

Seven (7) days a week 7:00 am to 9:00am

Sales to Lodgers and Invited Guests

Sunday - Thursday: 23:00pm to 1:00am (the following day)

10) Mr Des Crowe responded, on behalf of the applicant, to the objections received from the DHF by letter dated 6 August 2008. Mr Crowe noted that DHF had not lodged objections but rather raised questions. Mr Crowe responded to the "comments" of DHF as follows:

- (a) Whilst there is no legislative impediment to the grant of a take away liquor licence, the applicant is prepared to adjourn consideration of the take away liquor licence conditions until the *Liquor Act* is amended;
- (b) The Licensee is willing to abide by special measures to be inserted as conditions of the liquor licence at the request of the local indigenous community;

(c) the applicant is agreeable to amend the proposed training as follows:

Sales to General Public:

Sunday - Thursday: 10:00am to 23:00am

Friday - Saturday: 10:00am to 1:00am (the following day)

Sales to Lodgers:

Seven (7) days a week 7:00am to 9:00am

Sales to Lodgers and Invited Guests:

Sunday - Thursday: 23:00pm to 1:00am (the following day)

Determination

- 11) In my opinion the objection made by Police to the application is a valid objection and requires a hearing. Whilst the response from the Licensee addresses a number of the grounds of objection (such as the take away licence and trading hours) a number of the grounds of objection remain unanswered.
- 11) In my opinion the objection made by DHF is certainly valid to the extent of the objection relating to the proximity of the proposed licensed premises to existing licensed premises in the vicinity. On that basis it is my opinion that the objection is valid and requires a hearing. So far as the questions raised in Mr Wright's letter of objection are concerned, those matters fall within the ambit of Section 47F(2) of the Act and should, in my view, be regarded by the Commission as objections to be considered at the hearing.
- 12) On the basis of the matters set out above, I find that the objections are both valid and require a hearing.

Philip Timney
LEGAL MEMBER

27 August 2008