

NORTHERN TERRITORY LICENSING COMMISSION

Decision on Whether Objections Will Proceed To Hearing

PREMISES:	Comfort Inn Vitina 38 Gardens Road DARWIN NT 0800
APPLICANT:	Alaken Pty Ltd
NOMINEE:	John Neill
LICENCE NUMBER:	80201864
OBJECTORS:	B G and L A Barnes Les and Laurie Palfy Sandy Blain Ray and Susan Parry Bill and Heather Prendergast
LEGISLATION:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
DECISION OF:	Richard O'Sullivan
DATE OF DECISION:	6 May 2011

Background

- 1) On 6 December 2010 Alaken Pty Ltd applied pursuant to Section 32A of the *Liquor Act* ("the Act") for a variation to liquor licence conditions at the premises known as Comfort Inn Vitina, located at 38 Gardens Road, Darwin. The owners of the hotel complex have recently spent approximately \$2 million refurbishing the accommodation facilities and upgrading the administrative and food and beverage areas. The concept behind management of the Comfort Inn Vitana is to market and present the motel as a 3 1/2 star property with improved food and beverage services compared to that provided by the previous operators.
- 2) The Application was advertised in the NT News on Wednesday 2 February 2011 and Friday 4 February 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

LIQUOR ACT

1st NOTICE OF APPLICATION FOR VARIATION OF LIQUOR LICENCE CONDITIONS

COMFORT INN VITINA

I, John Neill on behalf of ALAKEN PTY LTD, HEREBY GIVE NOTICE that I have applied to the Northern Territory Licensing Commission for a variation to the existing Liquor Licence No. 80201864 for the premises known as COMFORT INN VITINA, located at the 38 Gardens Road, Darwin in the Northern Territory.

CURRENT TRADING DETAILS for the sale of liquor are as follows:

- (c) Subject to paragraph (d) the outside bistro area is to be closed to all persons outside the hours of 07:30 and 22:00 Monday to Friday and 08:00 and 22:00 Saturday and Sunday.*
- (d) Staff access to the outside bistro area for cleaning, set up, clean up and maintenance purposes will be confined to the hours 07:00 to 22:30 Monday to Friday and 07:30 to 22:30 Saturday and Sunday save in an emergency.*
- (e) The roller door between the bar in the outside bistro area and the restaurant and the door from the restaurant to the outside bistro area, shall be closed between the hours 22:00 and 07:30 Monday to Friday, and 22:00 and 08:00 Saturday and Sunday, subject to (d) above.*

PROPOSED TRADING DETAILS for the sale of liquor are as follows:

- (c) Subject to paragraph (d) the outside bistro area is to be closed to all persons outside the hours of 06:00 and 24:00 Monday to Friday and 06:00 and 24:00 Saturday and Sunday.*
- (d) Staff access to the outside bistro area for cleaning, set up, clean up and maintenance purposes will be confined to the hours 06:00 to 24:00 Monday to Friday and 06:00 to 24:00 Saturday and Sunday save in an emergency.*
- (e) The roller door between the bar in the outside bistro area and the restaurant shall be closed between the hours 22:00 and 07:30 Monday to Sunday, subject to (d) above.*

This is the first notice of application. The notice will be published again on Friday, 4 February 2011

The objection period is deemed to commence from 4 February 2011.

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 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, Licensing, Regulation and Alcohol Strategy, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 2 February 2011.

- 5) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice, which is in this instance 4 February 2011 and therefore objections are to be lodged by 7 March 2011 (taking into account requirements of the *Interpretation Act* where lodgement of documents is required but with a closing date not to include a holiday period).
- 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 -

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 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;

(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).

7) Five objections have been lodged in response to the application and the applicant has provided a response to the objections 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 B G and L A Barnes:

8) The letter of objection from B G and L A Barnes was lodged on 28 February 2011 and is therefore within time. The objector resides at Raffles Apartments, a high rise residential complex immediately adjoining the Vitira Comfort Inn.

9) The objection is based on the potential for excessive sound which occurred under previous management of the motel. The objection also refers to the impact on the amenity of their residential property and likely detrimental impact on the value of the property, if the variation sought is granted.

9) The matters raised in the complaint conform with requirements of the Act in that the objection was based on the amenity of the neighbourhood.

Objection from Les and Laurie Palfy:

10) The objection was lodged on 10 February 2011. The objector resides in Buffalo Court and therefore is within the neighbourhood of the application.

11) Les and Laurie Palfy refer in their objection to many years of unacceptable behaviour from residents of the motel complex. The objector additionally raises the placement of the application notice which was not, in their view, placed at a location for the majority residents, principally from Raffles Plaza, to see.

12)The objector refers to late night commercial activity not being conducive to a residential environment and therefore meets the requirements of the Act.

Objection from Sandy Blain:

13)Sandy Blain lodged an application on 14 February 2011 as a resident and owner of a unit at Raffles Plaza. The objection refers to potential impact on lifestyle if the variation is granted.

14)It also refers to elevated noise levels likely to occur should the application proceed.

15)As this objection meets the criteria established by the Act in both content and timeline it is determined as valid.

Objection from Ray and Susan Parry:

16)Ray and Susan Parry lodged their objection on 28 February 2011. The objection refers to the extended trading hours and the practice of the previous manager of the motel in allowing undesirable persons to frequent the area creating drunken brawls and disturbances to the adjoining residential premises in the immediate vicinity.

17)The hours proposed under the variation are also objected to.

18)The objection of Mr Ray and Mrs Susan Parry meets the criteria established under the Act in both substance and timeframe.

Objection from Bill and Heather Prendergast:

19)Bill and Heather Prendergast lodged their objection on 3 March 2011. The objectors advise that they own three properties at Raffles Plaza, two of which overlook the outside bistro area of the Comfort Inn Vitina.

20)The objection outlines the history of problems, including partying, excessive noise and fighting under previous management of the motel complex. It expresses concern that the revised hours will foster greater use of the motel by people wishing to party and drink until closing time.

21)In raising noise and amenity issues, the objection meets the requirements of the Act and was lodged within time.

Applicant's Response to Objections:

22)The applicant has responded to the objections by advising of their intention to upgrade the operations of the premises to that of a nationally rated 3 1/2 star. The hours of service of food and beverages are designed to meet the requirements of the tourist industry and the applicant has advised that the marketing of the property will be heavily geared towards the travelling market and differ significantly from the market attracted by former management.

- 23) The applicant states that the operation of the premises over the last eighteen months confirms commitment to professional management and delivery of quality product can prevent adverse impact to neighbouring residents from the operation of the motel.
- 24) The response refers to meeting with Raffles Plaza Body Corporate and discussions of the intentions of the applicant and assurances of high quality of management applied by them in contrast with former management of the motel premises.

Determination:

- 25) The applicant has outlined the reasons for seeking the variations which appear consistent with their intention to provide amenities and services to a higher standard than previous managers of the motel. The veracity of this is added to by the fact that the owners of the motel complex have spent considerable funds in upgrading the accommodation units, reception and food and beverage areas, as well as improvements to the external landscaping.
- 26) It appears all of the objectors are fearful that the changes sought by the applicant to both hours of operation of the outside bistro area and the access between the bar, bistro and restaurant areas could result in increased noise and disturbance from the motel to the adjoining Raffles Plaza residents.
- 27) Most of the objectors base this fear on their previous experience with previous managers of the motel, who evidently had a client base which used the outside bistro area and bar and created excessive noise, engaged in anti-social activity and were sometimes served until or while intoxicated.
- 28) These objections all relate to the amenity of the area and are consistent with grounds for objection contained in Section 47F of the Act.
- 29) All objectors reside in the neighbourhood and also meet requirements of the Act.
- 30) All objections were also lodged within the thirty day period following advertisement.

Decision:

- 31) The Commission has determined that objections lodged by all five objectors, namely:
- B G and L A Barnes
 - Les and Laurie Palfy
 - Sandy Blain
 - Ray and Susan Parry
 - Bill and Heather Prendergast

are valid and require a Hearing pursuant to Section 47I(7) of the Act.

32) All parties, both the applicant and objectors, will be advised of this Decision and notified of the Hearing date, their rights under Hearing process and be given a copy of a Hearing Brief prepared by Licensing, Regulation and Alcohol Strategy.

Richard O'Sullivan
CHAIRMAN

6 May 2011