

# NORTHERN TERRITORY LICENSING COMMISSION

## Reasons for decision

<b>Applicant for grant of licence:</b>	Ms Shanie Walker, Director of Lorella Springs Station Pty Ltd.
<b>Objector:</b>	Borroloola Community Government Council, Borroloola
<b>Matter under consideration:</b>	Whether an objection lodged under section 47F of the <i>Liquor Act</i> should be dismissed or should proceed to hearing
<b>Relevant legislation:</b>	Sections 47F, 47G and 47I of the <i>Liquor Act</i>
<b>Member:</b>	Jill Huck
<b>Date of decision:</b>	11 August 2003

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### Background:

1. On 16 and 18 April 2003 the applicant for the liquor licence placed advertisements in the *NT News* notifying the public of the application for a licence. The advertisement specified that objections to the application were to be lodged with the Director of Licensing within 30 days of the date of the second advertisement.
2. On 23 May 2003 Borroloola Community Government Council (BCGC) faxed a letter dated 21 May 2003 to the Director. The letter read in part:

*BCGC having discussed the license application and consider the Take Away License might have serious effects on the surrounding Communities and they wouldn't support a Take Away License from these premises.*

3. Licensing Inspector, Paul Laverty, wrote to the BCGC pointing out that one of the conditions of the license as advertised was that "*Liquor shall only be sold to bona fide campers and day visitors who have prior bookings for adventure tours*" and that the applicant had since agreed to conditions suggested by the Police that a register of campers and day visitors be kept, that liquor purchases be restricted to a maximum of 6 cans/bottles per person per sale and that no bulk sales will be permitted. In the event of the BCGC wishing to continue with its objection the Licensing Inspector asked for clarification of what the Council meant by "might have serious effects on the surrounding Communities." On 2 June 2003 the BCGC confirmed that it wished to pursue the objection but did not provide any further information on the grounds for the objection. BCGC's position was again confirmed by phone on 1 July 2003 with again no further information being provided.

4. The applicant for the licence had been informed of the substance of the objection on 23 May 2003 and had spoken directly to David Sidey, Acting Town Clerk, about the matter. She subsequently emailed Paul Laverty on 23 June 2003 to say:

*I am still waiting on a reply from David, when I spoke to him he said they didn't have a problem at all, it was just the takeaway side.*

*As I explained that this wasn't what we were after in any way. He was going to take it to the Council meeting and get back to me.*

5. The matter was subsequently referred to the Licensing Commission for consideration of whether the objections should be dismissed or referred for hearing. At that stage the applicant was asked to provide further information on her plans for the liquor licence, more comprehensive written responses on the substance of the objections and specific information on the distances and population centres in the area. The information she provided in a series of emails is set out below:

*The Walker family have owned Lorella Springs Station for the past 17 years and before that owned the neighbouring property Nathan River Station. The most important issue is to protect our environment and local communities whilst developing the region. Following the Masterplan 2002 - 2005 for Tourism in the Northern Territory and Gulf Region.*

*Whilst setting up our viability plan we implemented in our management procedures to follow the environmental protection legislation to protect our home and surrounding regions. We envisage that in the next 10 years Lorella Springs Station will be one of the largest drawcards for Tourism in the Gulf Region.*

*In our application for a liquor licence we are asking to be able to give wine at night to our adventure tours customers. These customer demographics are for the international market and will be flown from Darwin and then flown out with 100 percent catered for and will not be driving on any public roads.*

*Our second market that we wish to be able to sell liquor to is our fishermen that would be set up at the fishing camp on prior bookings only. These visitors would be obtaining a Restricted Access Permit to be able to enter Lorella Springs Station for access to the River Rosie Fishing camp. These customers are required to pay \$150 for the permit and then \$100 bond to ensure they follow the environment protection legislation and Lorella Springs Station By-Laws. We are asking that if our customers are prior booked and willing to pay these fees one of our additional services would be to provide the sale of liquor to take down to the fishing camp.*

*In our Form A100 (conditions of permit) Lorella Springs By-Laws are strict and many guide lines to follow as it is in the best interest for Lorella Springs owner's, the local communities and the environment to ensure we develop this region in a safe way.*

*I understand the concerns the Council has for Lorella acquiring a liquor*

*licence but only in ignorance because the only way we want the local communities on the station, is as a paying customer or an employee, improving the rural industries.*

*So unless the customers are willing to pay \$250 for permits and bonds and then the nightly camping fees, for six beers I believe that the Borrooloola council has no real substance in their objections. As Lorella would be improving the local communities and rural and tourism industries and in no way negligent to the environment.*

*I am willing to comply with the Police restriction with the six beers per sale. I of course would prefer to be able to sell a larger quantity to the fishermen as some of them are out at the fishing camp for 4 weeks at a time and the travel to come back to the homestead for extras would be an inconvenience for our customers.*

*The closest aboriginal community to Lorella Springs Station is in Borrooloola. This is about 160kms. The next aboriginal community is Roper Bar, this is about 280kms from the Homestead, it takes about 3 hours on the unsealed Rd. There is aboriginal owned land at Berhenia Downs, it is not a community, the Lancen family own this property. I am not sure of how many people reside there. The Rosie River fishing camp is 115kms from the main road and is 80kms from the Lorella Springs homestead.*

6. As the Licensing Commission member responsible for considering the objection, I made several attempts to obtain more information from BCGC about their objection. Such attempts included 2 phone calls to the new BCGC town clerk Steven Anastasi (11 July 2003 and 14 July 2003) during which the nature of the licence application and the need for more information from the Council was explained. On 8 August 2003 a telephone conference was held. This was attended by myself, the applicant and Mr Anastasi. Although there had been a specific request that members of the Council, including the President, should be in attendance for the telephone conference and some people had agreed to attend, no councilors were present during the telephone conference. Mr Anastasi was not able to advise me which communities the Council was referring to in its objection, except that he thought it was not Borrooloola but communities "further out". Ms Walker explained that Borrooloola was, in fact, the nearest community to the Station; the next nearest community was Roper Bar, some 280 kilometres away from the station. Ms Walker explained that the Station is very isolated, with both neighbouring stations having become national parks. There are no Aboriginal communities (including outstations) in the area. She said that the station's closest neighbours were people living on Berhenia Downs station which is Aboriginal land about 100 kilometres away from Lorella Springs. This station was also about 100 kilometres from Borrooloola. She said that, aside from meeting the owners once, she had had no contact with anyone from that station and thought it was extremely unlikely they would travel to Lorella Springs Station for supplies of any kind. She was aware that people from the station went into Borrooloola for supplies on a weekly basis and, as Mr Anastasi had previously pointed out, alcohol was easily available at Borrooloola. The cost of meeting the basic eligibility criteria for purchasing liquor at

Lorella Springs (being a bona fide camper involves payment of a permit fee and camping fees) would be an added disincentive.

7. During the telephone conference, the fact that the applicant was willing to keep a detailed auditable register of liquor sales was discussed. Mr Anastasi asked me to write to the Council advising it that the Commission would require Lorella Springs Station to keep such a register. Mr Anastasi thought that the Council may then withdraw the objection. I explained that, as the member considering only the standing of the objections, I could not make any commitments on behalf of Commission as a whole but agreed to consider whether something else could be done.

### **Legislation:**

8. Section 47F of the *Liquor Act* (the Act) states that a person, group or organisation may make an objection to an application for the grant of a liquor licence in particular circumstances. This section reads in part:
  - (1) *Subject to this section, a person, organisation or group may make an objection to an application for the grant of a licence.*
  - (2) *An objection under subsection (1) may only be made on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located.*
  - (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 of the Police Force;*
    - (d) *a member of the Fire and Rescue Service within the meaning of the Fire and Emergency Act;*
    - (e) *an Agency or a public authority that performs functions relating to public amenities;*
    - (f) *a community-based organisation or group (for example, a local action group or a charity)...*
9. Subsections 47F(2) and 47F(3) place limitations on both the grounds for objections and the types of people, groups or organisations that can object.
10. Subsection 47F(4) requires that an objection must be in writing, must be signed by or on behalf of the person, group or organization, must set out the facts to be relied on to “*constitute the ground on which the objection is made*” and must be lodged with the Director within 30 days of the last advertisement for the application.

11. After providing the applicant with an opportunity to provide a written response to any objection, the Director must forward the objections and responses to the Chairperson of the Commission. Pursuant to section 47I the Chairperson must then select a member of the Commission to consider the substance of any objection lodged under section 47F and any response from the applicant received under section 47G. The member may also inquire into any circumstance relating to the objection as he or she considers appropriate. The member must then make a decision to either dismiss the objection or to forward the objection, response and the member's findings to the Commission for hearing.
12. An objection is to be dismissed where the Commission Member is satisfied that it is of a frivolous, irrelevant or malicious nature or that it does not describe circumstances that may or will adversely affect the amenity of the neighbourhood (see subsection 47I(3)(c)(i)).
13. Where the member dismisses the objection he or she must direct the Director to inform the person, organisation or group who made the objection that the objection has been dismissed and to provide the member's reasons for dismissing the objection (subsections 47I(4), (5) & (6)).

**Findings of fact:**

14. As the Commission member appointed to consider the standing of this objection, I made the following findings of fact:
  - The BCGC letter was lodged on 23 May 2003, 4 days outside the objection period. There is nothing in the documents before the Commission to indicate that the BCGC had an extension to lodge the objection;
  - BCGC is a public authority that performs functions relating to public amenities;
  - Lorella Springs Station is situated on the Gulf of Carpentaria, approximately 160 kilometres from Borroloola;
  - Borroloola is the closest service centre to Lorella Springs Station and the nearest Aboriginal community;
  - The closest populated station is Berhenia Downs which is 100 kilometres from Lorella Springs and about 100 kilometres from Borroloola. There is little to no contact between the two stations;
  - BCGC's objection was that a takeaway licence at Lorella Springs Station might have a serious effect on "surrounding Communities";
  - No details have been provided by BCGC regarding the names of the communities about which they have concerns nor about how community members might be affected by the particular type of licence applied for;
  - BCGC has had a number of opportunities to provide this information;
  - The application was for a licence specifically to sell alcohol to bona fide campers and day visitors who have prior bookings for adventure tours;
  - Customers will have had to have paid for adventure tours or have paid for a permit and overnight camping fees before accessing liquor sales at Lorella Springs; and
  - The applicant is willing to have a detailed register of sales as part of her licence conditions.

### Application of the law:

15. The first point to be determined is whether BCGC is a person, group or organisation who may object to the application for a liquor licence under section 47F of the Act. The BCGC meets the criteria of 47F(3)(e) of the Act and therefore has standing to lodge an objection.
16. The second issue to be determined is whether the grounds of the objection satisfy the requirement set out in subsection 47F(2) that the ground must be that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are, or will be, located. Although not defined in the Act, it is clear from the relevant second reading speech that Parliament intended the concept of neighbourhood to be a flexible one, covering considerable distances in some situations. The second reading speech reads, in part:

*The term “neighbourhood” is a subjective one and should be taken to mean the area likely to be affected by the premises the subject of the application. The area affected will of course be determined by the type of licence applied for and the nature of the vicinity of the application. For example, the neighbourhood around a proposed city tavern will be at most a few city blocks whilst the neighbourhood surrounding a takeaway liquor facility in a remote place may encompass an area of hundreds of kilometres. In each case, it will be a question of fact to be determined by the Licensing Commission.*

17. In this case, the BCGC’s expressed concern is for the wellbeing of communities “surrounding” Lorella Springs Station. Despite many opportunities to do so, BCGC has not provided any definite information on the identity of the communities about which it is concerned. The information provided by the applicant is, essentially, that, aside from another station 100 kilometres away, Borroloola (160 kilometres away) is the closest “community” to Lorella Springs Station. The town clerk’s evidence was that, given that Borroloola already had a number of more accessible liquor outlets, he did not think the councilors were concerned about the impact on Borroloola itself but communities “further out”. In this case, I am therefore left in the position of having little idea of whether the communities about which BCGC has expressed concern are anywhere near the “neighbourhood” of Lorella Springs Station homestead, even if that neighbourhood could be considered to cover a fairly wide area. In such circumstances, not only would it be grossly unfair on the applicant to refer the matter to hearing but I cannot find, even on the balance of probabilities, that the BCGC’s objection meets the statutory criteria for an objection.
18. The problems referred to above, combined with the fact that BCGC’s letter was lodged outside the objection period, have led me to conclude that BCGC’s letter is not a valid objection to the application and should be dismissed.
19. It should be noted that the Licensing Division and Licensing Commission have gone to considerable lengths in this matter and I have been very reluctant to dismiss the BCGC objection on the basis of technicalities alone. I wish to assure the BCGC that both the Division and the Commission take community concerns about liquor licenses very seriously. However, as a member of the Commission I must also apply the law

accurately and fairly based on the facts of a particular case and cannot refer an objection to hearing when it falls outside the criteria set by the legislation.

**Decision:**

20. As the member of the Commission appointed to consider the standing of objections to the Lorella Springs Station application, I have decided that the Borroloola Community Government Council's letter of objection dated 21 May 2003 is not an objection under section 47F of the *Liquor Act* because it was not lodged within the specified time frame. The grounds for the objection also fail to meet the requirements that it is about the amenity of the relevant neighbourhood. I therefore direct the Director of Licensing to advise the Council of my decision and of the reasons for the decision. A copy of this statement of reasons should be provided to the Council. The Council should also be advised of its right to seek a review of my decision under section 47J of the Act.

**Recommendation:**

21. I shall be recommending to the Licensing Commission that a special licence condition requiring the applicant to keep a register of sales be included in any licence which may be eventually issued. Such a register should include the names of customers and some identifying details (for example, an address, driver's licence number or car registration number) and should be available for inspection by Licensing Inspectors or members of the Licensing Commission as required. Please note that this is a recommendation only and the Commission is under no obligation to accept my recommendation.

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Jill Huck

Member selected by the Chairman pursuant to s.47I (2)

*11 August 2003*