

NORTHERN TERRITORY LICENSING COMMISSION

Statement of reasons for decision

Applicant for grant of licence:	Ms Shanie Walker, Director of Lorella Springs Station Pty Ltd.
Proposed premises:	Lorella Springs Station
Objector:	Assistant Commissioner John Daulby, Operations Command, Northern Territory Police
Matter under consideration:	Whether a letter sent to the Commission is an objection under section 47F of the <i>Liquor Act</i> and, if it is an objection, whether it should be dismissed or should proceed to hearing.
Relevant legislation:	Sections 47F, 47G and 47I of the <i>Liquor Act</i>
Member:	Jill Huck
Date of decision:	29 July 2003

Background:

1. On 16 and 18 April 2003 Ms Walker placed advertisements in the *NT News* notifying the public of her application for a liquor licence. The trading details of the license were that: *"Liquor may be sold for consumption away from the premises between the hours of Monday to Sunday 10.00 hours to 22.00 hours. Liquor shall only be sold to bona fide campers and day visitors who have prior bookings for adventure tours"*. 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. Assistant Commissioner John Daulby of the Northern Territory Police wrote to the Director on 13 May 2003. The letter, received by facsimile on 14 May 2003, reads in part:

I refer to your [the Director of Licensing's] letter of 15 April 2003 regarding an application for a liquor licence for the premises to be known as Lorella Springs Station in the Gulf of Carpentaria.

Police would not pursue an objection to this application provided that the applicant agrees to the following conditions (in addition to the conditions outlined in the advertisement, namely):

...

The applicant agrees to:

- *Maintain a register of campers and day visitors*
- *Liquor will be restricted to a maximum of 6 cans/bottles per person per sale. No bulk sales will be permitted.*

Lorella Springs Station is located in a remote area of the Northern Territory and is serviced from Borroloola. Consideration needs to be given in granting this licence so as not to contribute to a scenario whereby tourists who are unfamiliar with the area and/or driving on remote Territory roads is compounded through the availability of takeaway liquor.

3. Licensing Inspector, Paul Laverty, emailed the applicant on 23 May 2003, advising her of the Police request for the conditions set out above. Mr Laverty asked her to “...consider their submission and, if [she] agree[s] with them, return this email confirming [her] agreeance”.
4. Ms Walker wrote back to Mr Laverty on 2 June 2003, saying “...I agree to the terms and conditions of the police for six cans per sale and to utilize a register of sale inventory booklet for our customers.”
5. After the matter was referred to the Commission member to consider the objections, further information was sought from Ms Walker about the licence concept. Ms Walker was also asked to provide further written comments on the “objections” lodged against her application. In an email Ms Walker explained the licence concept as follows:

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...

6. Regarding the Police request for agreement to particular licence conditions Ms Walker said:

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 a inconvenience for our customers.

7. Given Ms Walker's comment about the inconvenience of travel between the fishing camp and the homestead and the expressed Police concern about road safety, Ms Walker was asked for information about the distances involved. She advised that the Rosie River fishing camp is 115kms from the main road and 80kms from the Lorella Springs homestead.

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

14. As the member considering the status of the letter from Assistant Commissioner Daulby, I make the following findings of fact:
 - Ms Shanie Walker has applied for a liquor licence for Lorella Springs Station Pty Ltd;
 - the application is for the sale of alcohol to bona fide campers and day visitors who have prior bookings for adventure tours at the Station;
 - the type of alcohol to be sold is not specified in the advertisement for the licence but is planned to include both beer and wine;
 - Assistant Commissioner John Daulby is a member of the Northern Territory Police Force;

- Assistant Commissioner Daulby’s letter commenting on the Lorella Springs Station application for a liquor licence was lodged with the Director within 30 days of the last advertisement placed by Ms Walker;
- the wording of Assistant Commissioner Daulby’s letter is not entirely clear however, on the balance of probabilities, the letter raises concerns for the road safety of tourists in the area if there is a takeaway liquor licence;
- the letter does not specifically state that it is an objection to the licence application;
- the letter refers to the possibility of an objection being pursued if certain licensing conditions are not agreed to; and
- the licensing conditions sought by Assistant Commissioner Daulby include a restriction of sales to 6 cans or bottles per person. The type of alcohol or size of containers is not specified.

Application of the law:

15. Assistant Commissioner Daulby, as a member of the Northern Territory Police, is clearly a person who has standing to lodge an objection to a liquor licence application under section 47F of the Act. Subsection 47F(3)(c) specifically refers to a member of the Northern Territory Police as having such standing.
16. The grounds of concern cited in Assistant Commissioner Daulby’s letter could also arguably satisfy the requirement set out in subsection 47F(2) of the Act that the ground of any objection must be that the grant of a licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located.
17. The real problem in this matter is whether Assistant Commissioner Daulby’s letter is a formal objection to the application for a liquor licence or whether it is something else. The letter states, in part, that: “*Police would not pursue an objection to this application providing that the applicant agrees to the following conditions...* [emphasis added].” The underlined phrase is the only reference in the letter to the objection process and is ambiguous at best. The wording of the letter is such that the letter appears to serve a number of purposes: it appears to be a comment on the application; it appears to be advice that the Police are considering lodging an objection to the application; and it appears to be an attempt to negotiate the conditions of the licence. The letter sets out a negotiating position whereby the Police would not proceed with an objection if the applicant agrees to the specific licence conditions set out in the letter. It is far from clear whether Assistant Commissioner Daulby intended the 13 May 2003 letter to be treated as an objection under section 47F of the Act and, if he did, just how he envisaged the negotiation process would fit into the current legislative framework for objections to licence applications or the setting of licence conditions. Presumably if Ms Walker had failed to agree to the suggested conditions, the Police would have sought an extension of time to lodge an objection to her application and then lodged a formal objection. In

this case, this did not happen and I am satisfied, on the balance of probabilities, that no formal objection has been lodged.

18. Part IV of the Act sets out a detailed process for the lodging of objections to new licence applications and for their evaluation by a Commission member prior to any referral to hearing. It does not currently include any provision for the raising of concerns outside the objection process, the informal resolution of the concerns of objectors or the negotiation of licence conditions between the “parties”. Whilst it could be argued that access to some of these processes may be desirable, the legislation must be applied as it currently stands.
19. A further point worth noting is that the legislation provides that it is the role of the Licensing Commission to set licence conditions once all the relevant information is before it (see Division 2 of Part III of the Act). Licence conditions are therefore not things to be bargained away by the parties to avoid a formal objection or a Licensing Commission hearing. Certainly, suggestions can be put forward by applicants, objectors, complainants and witnesses but ultimately the Commission must make the decision about the specific licence conditions once all the facts are before it. The Commission also must make the decision, in the absence of objectors, as to whether to hold a hearing. It is therefore misleading to give an applicant an expectation that a hearing will be avoided if objections are withdrawn as a result of the applicant agreeing to licence conditions suggested by an objector.
20. In making this decision, I am not in any way suggesting that the Police concerns and suggestions in this case are without basis or merit. The concerns of the Police have been taken seriously, as is demonstrated by the additional inquiries I have made in this matter. Some aspects of the Police suggestions may indeed be picked up by the Commission when it makes a final decision on the application.

Decision:

21. As the member of the Commission appointed to consider the standing of objections to the Lorella Springs Station application, I have decided that Assistant Commissioner Daulby’s letter dated 13 May 2003 is not an objection under section 47F of the *Liquor Act* because it is not clearly expressed as a formal objection to the application. I therefore direct the Director of Licensing to advise Assistant Commissioner Daulby of my decision and of the reasons for the decision. A copy of this statement of reasons should be provided to him. Assistant Commissioner Daulby should also be advised of his right to seek a review of my decision under section 47J of the Act.

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Jill Huck
Member selected by the Chairman pursuant to s.47I (2)
29 July 2003