

NORTHERN TERRITORY LICENSING COMMISSION

Decision on Whether Objections Will Proceed To Hearing

PREMISES:	Berry Springs Hotel 795 Cox Peninsula Road BERRY SPRINGS NT 0838
APPLICANT:	Sloaney Pty Ltd
NOMINEE:	Ian Colin Sloan
LICENCE NUMBER:	N/A
OBJECTORS:	Mr Daymon Port Mr Doug Sallis Mr Tony Innes and Mr Dean Innes on behalf of the Innes Family
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:	20 December 2010

Summary of Decision:

- 1) That the Commission conduct a Hearing in respect of the objection received from Mr Daymon Port.
- 2) That the objection lodged by Mr Doug Sallis is invalid on the basis that Mr Sallis does not have standing as a person entitled to lodge an application pursuant to the criteria set out in Section 47F(3) of the Act.
- 3) That the objection lodged by Mr Tony Innes and Mr Dean Innes on behalf of the Innes Family is dismissed, in accordance with Section 47I(3)(c)(i)(B) of the Act, on the basis the objection does not describe circumstances arising from the applications lodged by Sloaney Pty Ltd that may or will adversely affect the amenity of the neighbourhood or the health, education, public safety or social conditions of the community.

Background

- 1) On 21 September 2010, Sloaney Pty Ltd applied pursuant to Sections 41, 46A and 32A of the *Liquor Act*:

- to transfer the Good Fortune Take-Away Mini Mart “Store” liquor licence number 80901818, currently held by Ms Leang Soy Te;
 - to substitute the licence from the existing premises at 157 Ryland Road, Nightcliff into the proposed premises to be known as Berry Springs Hotel, located at 795 Cox Peninsula Road, Berry Springs; and
 - to vary the licence conditions to incorporate the sale of takeaway liquor into the conditional “Tavern” liquor licence previously approved by the Commission.
- 2) The Application was advertised in the NT News on Friday 24 September 2010 and Wednesday 29 September 2010 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 A TRANSFER, SUBSTITUTION AND VARIATION OF LICENCE CONDITIONS FOR A LICENCE TO SELL LIQUOR

BERRY SPRINGS HOTEL

Sloaney Pty Ltd, HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing Commission to transfer the store liquor licence (Licence Number 80901818), substitute it from the premises known as Good Fortune Take-Away Mini Market located at 157 Ryland Road Nightcliff into the proposed premises to be known as Berry Springs Hotel located at Lot 5, 795 Cox Peninsula Road, Berry Springs and vary the licence conditions to incorporate the sale of takeaway liquor into the Conditional (In Principle) “Tavern” liquor licence previously approved by the Northern Territory Licensing Commission.

The Decision for the Conditional (In Principle) “Tavern” liquor licence can be found at www.nt.gov.au/justice/commission/decisions.

THE PROPOSED VARIATIONS TO LICENCE CONDITIONS are as follows:

Amend Authority from Store to Tavern, to incorporate the sale of takeaway liquor into the Conditional (In Principle) Berry Springs Hotel “Tavern” liquor licence.

Remove the following “Store” related conditions from the substituted licence:

- *“Outside authorised trading hours all liquor storage and display areas shall be screened off and secured in such a way that the public has no access to such areas”.*
- *“Liquor shall only be stored and displayed in the area designated and approved on the plan held by the Commission”.*
- *Signage to be Erected and Maintained Condition – “The Licensee is required to erect and maintain, in prominent positions in the store,*

signage in a form approved by the Director of Licensing, confirming that 'book-up' for food and liquor is prohibited".

- *Liquor to be Secondary Business Condition.*
 - (i) *"The sale of liquor at the premises authorised by this licence shall be ancillary to the operation of those premises as a supermarket or general store, by which is meant ancillary both in terms of turnover and of the general shopping environment presented by the store. The main business of the store must always be the sale of stores other than liquor products, and in terms of fitout, facilities, product range, ambience, external and internal signage and all advertising and promotional material in all media, the premises at all times must maintain the appearance of trading predominantly as a supermarket or general store.*
 - (ii) *For the purpose of monitoring compliance with the immediately preceding condition, the Commission shall be given access to all records of the Licensee that relate to any aspect of the turnover of the store, whether in respect of liquor sales or otherwise. The Licensee shall allow inspection of any and all such records upon request by an Inspector of Licensed Premises or by any other person authorised or delegated by the Commission for the purpose. Such Inspector or other authorised or delegated person shall be permitted to temporarily remove any such documents from the possession of the Licensee for the purpose of making such copies as thought fit, or alternatively may be furnished with such copies by the Licensee. The Licensee shall not hinder, impede or fail to co-operate with any such officer or person in the performance of a task in pursuance of this condition.*
 - (iii) *In any assessment of predominant turnover, the Commission shall consider a trading period of not less than a financial quarter."*

All other licence conditions will remain including the prohibition on the sale of four and five litre wine casks.

This is the first notice of application. The notice will be published again on Wednesday, 29 September 2010.

The objection period is deemed to commence from Wednesday, 29 September 2010.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the substitution and variation of the conditions 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 24 Day of September 2010.

- 5) 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 29 October 2010.
- 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) Section 47F(1)(b) provides that a person or organisation may object to an application for variation of licence conditions under Section 32A, and Section 47F(1)(c) allows for objections to an application for substitution of other premises under Section 46A, the types of applications lodged Sloaney Pty Ltd.

8) Turning to the specifics of the objections lodged:

Objection from Mr Daymon Port:

9) Mr Port is the Licensee of the Berry Springs Centre which holds a take away liquor licence and is situated approximately 100 metres from the subject premises. As such Mr Port falls within Section 47F(3)(a) of the Act as person working in the neighbourhood within which the subject premises are located, namely the Berry Springs neighbourhood, and has standing to lodge an objection.

10) Mr Port notes that there is currently no liquor outlet in Berry Springs that provides for take away alcohol sales on Sundays and objects to the grant of a licence that will allow Sunday trading. That component of the objection is irrelevant as the application before the Commission seeks a licence for take away alcohol sales only from Monday to Saturday. Similarly, the objection on the grounds that visitors to Berry Springs Nature Park will be able to purchase take away alcohol before visiting the Park on a Sunday is also irrelevant.

11) Mr Port objects to the grant of a licence that will permit the sale of take away alcohol from 10 am to 10 pm Monday to Friday and from 9.00 am to 10.00 pm on Saturdays. The Licence held by Mr Port permits the same trading hours however Mr Port operates under a self imposed 7 pm curfew on take away alcohol sales. This component of the objection is arguably based on commercial grounds and in any event does not fall within the criteria for objections set out in Section 47F(2) of the Act. The limited trading hours imposed by Mr Port for his licence are voluntary and could be lifted at will, for commercial reasons or otherwise, at any time in the future.

12) Mr Port states there are already sufficient licensed premises in the vicinity of the proposed Berry Springs Hotel that are satisfactory to service the take away alcohol needs of the small community. He objects to the application on the basis that there are already existing problems related to alcohol consumption in the neighbourhood and the grant of an additional take away licence will adversely affect the community through an increase in the availability of alcohol and a resultant increase in domestic violence, drink driving as well as an increase in break ins, thefts and noise disturbances.

- 13) In my opinion this objection satisfies the criteria set out in Section 47F(2) of the Act in that it relates to harm in the community that Mr Port alleges will increase generally in the neighbourhood with additional sales of alcohol should a further license for take away alcohol be granted for the Berry Springs area.
- 14) For the above reasons I find that this objection is valid and should be referred to a hearing.

Objection from Mr Doug Sallis

- 15) Mr Sallis is a Director and shareholder of Epsomm Pty Ltd, trading as the Humpty Doo Tavern which is located approximately 22 km from the subject premises. The objection is made by Mr Sallis in his personal capacity and also on behalf of Epsomm Pty Ltd.
- 16) A question arises as to whether Mr Sallis, given the distance between the Humpty Doo Tavern and the Berry Springs area, has standing pursuant to Section 47F(3)(a) of the Act to lodge an objection as a person residing or working in the “neighbourhood” or pursuant to Section 47F(3)(b) as a person with an estate in property in the “neighbourhood” where the premises the subject of the application will be located. Ms Sallis does not satisfy any of the other criteria for objectors specified in Section 47F(3).
- 17) The word “neighbourhood” was considered by the Supreme court of New South Wales in the matter of *O’Sullivan & Ors v Woodford & Ors* [1983] 2 NSWLR 9, coincidentally a case concerning the removal of a liquor licence from one location to another within NSW. The Court determined that the word “neighbourhood” in relation to Section 29(1)(e) (of the NSW *Liquor Act*) relates to and has to be based on the physical, geographical site of the proposed premises and is not to be equated with goodwill or a trade or business area, or to the scope or extent of the business.
- 18) The NSW Supreme Court also noted that “neighbourhood” was not defined in the NSW *Liquor Act* and referred to a number of cases in which that word had been judicially considered, including the case of *Lucas v Mooney* (1909) 9 CLR 231 where O’Connor J said:

“Neighbourhood is, no doubt , a word of very general application, and in the sense it is used in the Act, entirely relative. What is neighbourhood in one set of circumstances would not be in another set of circumstances”.

- 19) In the same case Higgins J determined:

“The word “neighbourhood” is vague and that has lead to the chief difficulty. But I think it was meant to be vague. I think the main inquiry of the magistrates was meant to be applied to their discretionary powers for public convenience”.

20) In *Ex Parte Abeshouse; Re Latham* (1950) 68 WN (NSW) 83 Maxwell J stated:

"I entertain no doubt that the "neighbourhood" must be ascertained by having regard to the site on which the premises are to be erected as the focal point from which the reasonable requirements are to be ascertained. It cannot be fixed by metes and bounds; it will of necessity vary according to the nature of the locality, the density of population and, as well the geographical features generally".

21) *The Shorter Oxford Dictionary* is also of assistance and defines neighbourhood as follows:

"The vicinity, or near situation of, something. The people living near to a certain place. A district frequently considered in reference to the character or circumstances of its inhabitants".

22) As noted above, Humpty Doo is situated approximately 22 km from the proposed Berry Springs Tavern. At the 2006 census, Humpty Doo had a population of 5,413. The town has seen much commercial and residential development in recent years, including the construction of a shopping centre, fire and emergency services station, as well as new schools and housing subdivisions. It is essentially a stand alone community that enjoys the standard of services that would be expected to exist in a small rural community. The community is inhabited by people who generally regard themselves as residents of Humpty Doo.

23) It is unlikely, in my opinion, that a resident of Humpty Doo would consider Berry Springs to be in their neighbourhood to the point that they would travel to Berry Springs for routine purposes, such as shopping or the like. More relevant to the current application, I find it extremely unlikely that a resident of Humpty Doo would travel to Berry Springs to purchase take away alcohol where there are a number of liquor outlets that are far more proximate, including within the neighbourhoods of Humpty Doo, Noonamah and Coolalinga.

24) A further indication that Humpty Doo and Berry Springs are different neighbourhoods or communities can be gleaned from the fact they have distinct postal codes. Postal codes are usually assigned to geographical areas with the clear inference that Humpty Doo and Berry Springs are distinct geographical areas, one of the criteria specified by the legal authorities as an indicator of "neighbourhood".

25) For the reasons set out immediately above I find that Mr Sallis does not satisfy the criteria of being a person residing or working in the "neighbourhood" where the premises the subject of the application are or will be located, as required by Section 47F(3)(a) of the Act. Nor does he satisfy the "neighbourhood" criteria for the purpose of acquiring standing under Section 47F(3)(b). Mr Sallis does not satisfy any of the other criteria contained in Section 47F(3) for objectors. I find that Mr Sallis is not a person

who has standing to lodge an objection to the application before the Commission and, as a result, the objection is invalid.

- 26) Whilst I find the objection of Mr Sallis to be invalid I make the following observation in respect of the first ground of Mr Sallis' objection. Mr Sallis' states that the application for variation of licence conditions is not in accordance with the requirements of Section 32A(1) of the Act as the applicant (Sloaney Pty Ltd) is not the current holder of the licence for which the variation of licence conditions is sought. Mr Sallis' letter of objection refers to several legal authorities on the point. A similar ground of objection is raised in respect of the application for substitution of the licensed premises.
- 27) Neither of those grounds of objection falls within the ambit of Section 47F(2) of the Act and, had it been necessary I would have found that component of the objection to be based on invalid grounds. Having said that, the Commission will no doubt take the validity of the applications as lodged and the statutory requirements of the Act into account in considering the applications for substitution and variation of licence conditions.

Objection from Mr Tony Innes and Mr Dean Innes on behalf of the Innes Family.

- 28) Mr Tony Innes and Mr Dean Innes are residents of the Noonamah area. Although not identified in their letter of objection, they are also the proprietors of the Noonamah Tavern which includes a take away liquor outlet trading seven days per week. As for Mr Sallis' objection, a question arises as to whether they have standing to lodge an objection pursuant to Section 47F(3)(a) or (b) of the Act as persons residing, conducting business or holding an estate in land in the "neighbourhood". The Noonamah Tavern is located approximately 12 km from the subject premises. For the purposes of this decision it is not necessary to determine whether Noonamah is within the Berry Springs "neighbourhood" as, for the reasons set out below, I find that the objection is invalid on different grounds.
- 29) The objectors claim that the grant of an additional liquor licence in the area is contrary to current government initiatives regarding the responsible consumption of alcohol. This component of the objection does not identify how the subject application will adversely affect the amenity of the neighbourhood or the health, education, public safety or social conditions in the Berry Springs community and is therefore an invalid ground of objection.
- 30) The objectors also claim that it would be irresponsible to issue a second take away outlet within 100 of an existing take away outlet given Government proposals to bar problem drinkers (from purchasing take away alcohol). No indication or specifics are provided as to how the subject application would adversely impact on the Government's initiatives in respect of alcohol consumption reforms and their impact on the Berry Springs community. Clearly, if the Government's initiatives are implemented through legislative

amendment they will apply equally to the proposed Berry Springs Tavern as to all other licensed premises.

- 31) This objection does not relate or refer to the grounds set out in Section 47F(2) of the Act and, as a consequence, is an invalid objection. The objection does not link the application with any identified or potential harm to the Berry Springs community nor does it identify any evidence as to how this application, if granted, would adversely impinge on the Government initiatives aimed at curbing irresponsible consumption of alcohol and related anti social behaviour.
- 32) In my opinion this objection is not based on the criteria specified in the Act and is therefore invalid.

Applicant's Response to Objections

- 33) As a general response, Mr Sloan pointed out that the only 3 objectors to his applications were the owners, directors or leaseholders of licensed premises located in the rural area and that each of those premises holds a licence for the sale of take away alcohol. Mr Sloan also notes that no residents of the community who do not have a commercial interest in the sale of alcohol have raised any objection, nor have community groups such as Police, Fire and Emergency Services.

Objection from Mr Daymon Port:

- 34) Mr Sloan acknowledges that an additional take away outlet in the Berry Springs area will result in an increase in the availability of alcohol in the area. However, he also states that the population growth in the rural area justifies the introduction of a further take away liquor outlet and that an additional outlet will not necessarily result in an increase in volumes of sales but rather provide a wider range of licensed premises for people residing in Berry Springs.
- 35) Mr Sloan submits that, if approved, his application will result in the removal of a problematic licence from Nightcliff to the rapidly growing rural area and that this is in the spirit of the current moratorium on the grant of new take away licences. He also notes that when the moratorium was introduced it was with the specific intention of ceasing the grant of take away licences to supermarkets, not to hotels and clubs.
- 36) Mr Sloan notes that the objections based on alcohol related issues and harms are generic and not linked to his application. He also states that Mr Port provides no evidence that the criminal activity he refers to in his objection is related to alcohol consumption in Berry Springs or elsewhere.

37) Mr Sloan asserts that Mr Port's objection is commercially motivated and malicious and, at least in part, a result of a failed agreement between the 2 parties to negotiate for the sale and substitution of Mr Port's take away licence to the proposed Berry Springs tavern. Mr Sloan states that Mr Port did not object to the granting of the in-principle licence for the Berry Springs Tavern and that the objection to the addition of a take away licence is further evidence that the objection is commercially motivated.

Objection from Mr Doug Sallis:

38) Mr Sloan submits that the Humpty Doo Tavern is approximately 22 km from the subject premises and therefore not within the neighbourhood of Berry Springs so as to enliven Mr Sallis' entitlement under Section 47F(3) of the Act to object.

39) Mr Sloan reiterates his response to the objection that his application is contrary to the intent of the current moratorium on the grant of take away licences (refer to paragraph 35 above). He also notes that his application does not require the grant of a new take away licence but rather the substitution of an existing licence to alternative premises.

40) Mr Sloan states that the strategies and initiatives incorporated in his business plan and Public Interest Strategies document included with the applications will ensure that the sale of take away liquor will be managed responsibly and with the aim of minimising alcohol related harm.

41) Mr Sloan asserts that the objection lodged by Mr Sallis is commercially motivated and should be dismissed.

Objection from Mr Tony Innes and Mr Dean Innes on behalf of the Innes Family:

42) Mr Sloan states that this objection does not satisfy the criteria for objections specified in Section 47F(2) of the Act. He reiterates that initiatives incorporated in his business plan and Public Interest Strategies document will ensure that the sale of take away liquor will be managed responsibly and with the aim of minimising alcohol related harm.

43) Mr Sloan notes that he is aware of the issues surrounding problem drinking in the NT and has outlined in his application how he intends to proactively address those issues.

44) Mr Sloan states that the Innes family are the owners of the Noonamah Tavern, located some 12 km from the subject premises, and that the objection is commercially motivated and should be rejected.

Determination

- 45) The grounds of objection lodged by Mr Daymon Port are valid in that they relate to the grounds of objection specified in Section 47F(2) of the Act. Mr Port alludes, in a generalised way, to the harm that may arise from the grant of an additional take away licence in the Berry Springs area and identifies specific harm or detriment that he alleges will be caused if the applications before the Commission were to be granted. In my opinion the objection lodged by Mr Port is valid and requires a Hearing.
- 46) In my opinion, based on the reasons set out above, Mr Doug Sallis does not have standing to lodge an objection against an application concerning a liquor licence in Berry Springs. On that basis I find that the objection is invalid and should be dismissed, in accordance with Section 47I(3)(c)(i)(B) of the Act.
- 47) The objection lodged by Mr Tony Innes and Mr Dean Innes on behalf of the Innes Family does not address the grounds of objection specified in Section 47F(2) of the Act and does not specify how the application, if granted would adversely effect the amenity of the neighbourhood of Berry Springs or the health, education, public safety or social conditions in the community. For those reasons I find the objection is invalid and should be dismissed in accordance with Section 47I(3)(c)(i)(B) of the Act.
- 48) Pursuant to Section 47I(4) of the Act I direct the Director to inform Mr Doug Sallis, Mr Tony Innes and Mr Dean Innes that their objections have been dismissed.

Philip Timney
LEGAL MEMBER

20 December 2010