

Northern Territory Licensing Commission

Decision on whether Objection will proceed to Hearing

Premises:	Pine Creek Railway Resort
Applicant:	Driftfield Engineering Pty Ltd
Nominee:	Ms Sandie Peters
Licence Number:	80218516
Submissions:	Superintendent Michael White, Northern Territory Police Mr Mark Coffey, State Manager, FaHCSIA Ms Deidre Logie, Director, AOD Programs, Department of Health Mr Antony Downs, NT Law on behalf of four clients
Legislation:	Sections 47F to 47I of the <i>Liquor Act</i>
Decision of:	Richard O'Sullivan (Chairman)
Date of Decision:	4 July 2013

Background

- 1) Ms Sandie Peters, Nominee and Manager of the Pine Creek Railway Resort ("the Resort") situated at 1 Railway Terrace, Pine Creek made an application to the Director of Licensing to vary the licence conditions of the Resort pursuant to Section 32A of the *Liquor Act* ("the Act"). The Resort licence was granted on 7 November 2012 following the development of the complex for the operation of a licensed restaurant in conjunction with the provision of seventeen cabins for visitor accommodation. The application is to remove the condition requiring liquor sales to be ancillary to a meal for guests who are not bona fide resident of the premises.
- 2) The application was advertised in the Katherine Times on Wednesday 13 March 2013 and Wednesday 20 March 2013 pursuant to Section 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

Driftfield Engineering Pty Ltd, hereby gives notice that it has applied to the Northern Territory Licensing Commission for a variation of liquor licence conditions for the premises known as Pine Creek Railway Resort, Pine Creek (Number 80218516) located at 1 Railway Terrace, NT.

The variation to the liquor licence will include the following:

- *Removal of the condition:*

Liquor To Be Sold With Meal *Liquor shall only be sold for consumption on or at the premises to persons not being bona fide lodgers ancillary to a meal.*

This application will be advertised in the Katherine Times on a Wednesday 13 March 2013, and on the following Wednesday 20 March 2013.

The objection period is deemed to commence from the publication date of the second advertisement.

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 8973 8810. Objections to this application should be lodged in writing with the Director of Licensing, PO Box 2138, Katherine, within thirty (30) days of the date of the second advertisement.

- 4) 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 Friday 19 April 2013.
- 5) 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:

(b) an application for a variation of the conditions of a licence, as notified under Section 32A;

(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).
- 6) Four submissions have been lodged in response to the application and the applicant has provided a response pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether submissions received constitute valid objections requiring a Hearing.

Submission from Superintendent Michael White on behalf of the Northern Territory Police

- 7) Section 47F(3)(c) allows members of the Northern Territory Police to object to an Application. Superintendent Michael White is a member of the Police Force within the meaning of Section 47F(3)(c) and stationed at the Katherine Police Station. As such Superintendent White is a valid objector. The objection was lodged on Thursday 18 April 2013 and was therefore lodged within the prescribed time limit.
- 8) Police in their correspondence of 18 April 2013 outline the conditions of the existing licences in the Pine Creek Township and present that from data gained in the 2011 Census there are 380 residents in the Township. Based on these figures Police submit that there does not appear to be a sufficient size population to warrant the variation to licence conditions sought by the Resort as there are three other outlets able to provide on premise service of alcohol without the requirement of an accompanying meal.
- 9) Additionally, the Police submission states that a licence variation to remove the requirement for non-lodgers to have a meal prior to being served alcohol will, in all likelihood, change the nature of the venue from a restaurant to that of a public bar.
- 10) The objection goes on to state:

“This will have a detrimental effect on the current format of the premises and to the community as a whole as it will reduce the amenity of the Resort and also allow for any person to consume liquor at the premises from 11.00 in the morning until 02.00am the next day.”

Submission from Mr Mark Coffey, State Manager, FaHCSIA

- 11) Section 47F(3)(e) provides that an Agency or public authority that performs functions relating to public amenities, including health, education and public safety may make an objection and FaHCSIA falls within this category. The submission was lodged on 18 April 2013, within the prescribed time frame.
- 12) The submission by FaHCSIA raises the issue of excessive consumption and alcohol harm and in particular the risks involved with Aboriginal people and the wider Aboriginal communities. It refers to potential improvements to the amenity of licensed premises where people drink in association with the consumption of good quality food.

- 13) FaHCSIA also raises the liquor supply restrictions expressed through the Pine Creek Aboriginal Advancement Association (“PCAAA”) in relation the sale of alcohol to Kybrook Community members. This agreement, commonly referred to as the Kybrook Agreement, limits the amount of alcohol able to be purchased by such community members in the Pine Creek Township and wider region.
- 14) The submission points out that the Resort liquor licence and the Resort itself does not require application of the Kybrook Agreement restrictions. The submission points out that to vary the licence as per the application without reference to the Kybrook Agreement would increase the risk of alcohol related harm to the Aboriginal community.
- 15) In summary:

“FaHCSIA, on behalf of the Commonwealth, submits that due to the devastating impact of alcohol on many individuals and families in Aboriginal communities and the number of liquor outlets in the region already providing on-premises drinking and takeaway alcohol options, the current application for a variation by Pine Creek Railway Resort not be supported.”

Submission from Ms Deidre Logie, Director, AOD Programs, Department of Health

- 16) Section 47F(3)(e) provides that an Agency or public authority that performs functions relating to public amenities, including health, education and public safety may make an objection and the Department of Health falls within this criteria. The submission was lodged on 27 March 2013, well within the prescribed time frame.
- 17) The nature of the submission is directional to the Commission rather than an objection to the application. The submission states: *“Health has no adverse comment to the application”*. The submission then goes on to request the Commission to consider the safety and amenity of the community and patrons in the likelihood that a variation to the licence would enable additional patron numbers to consume alcohol on the premises.
- 18) The submission goes on further to raise concerns over the adequacy of the current liquor licence in ensuring that the premises operates predominantly as a restaurant. The submission then continues to suggest licence conditions to ensure that the premises continues to operate as a restaurant. It advises that conditions such as patrons to remain seated, snack foods to be available at all times and for the premises to have the appearance of a restaurant, should be included in licence conditions.

Submission from Mr Antony Downs, NT Law on behalf of the following clients

- **Mr Chris Mason, Resident of Pine Creek**
- **Karinga Pty Ltd, Licensee of the Pine Creek Hotel**
- **Mr Anthony Jenkins, Resident of Pine Creek**
- **KATT (NT) Pty Ltd, Licensee of The Lazy Lizard Caravan Park**

- 19) Section 47F(3)(a) provides that a person residing or working in the neighbourhood where the subject premises of the application, is or will be located, may make an objection. Mr Downs is representing clients who reside and whose businesses are

in Pine Creek and these clients therefore meet residential and employment requirements of the Act. The submission was received on 19 April 2013 and was therefore within the time frame as required under the Act.

- 20) The submission states that the grant of the application will adversely impact on the neighbourhood and health, education and public safety of the community.
- 21) Mr Downs, on behalf of his clients, refers to potential for licence creep given that it comes soon after the licence was granted in late 2012. Mr Downs also refers to the Pine Creek population and that given this population the applicant has not demonstrated community need for the type of licence applied for.
- 22) Additionally Mr Downs' submission also refers to there being a lack of public interest in the application. It also refers to the proximity of the Resort to other licensed premises and to community and educational centres.

Applicant's Response to Objections

- 23) The applicant, in an undated letter, subsequent to being provided with the already mentioned submissions or objections, has provided a detailed response to the issues raised by Police, Health, FaHSCIA and Mr Antony Downs.
- 24) In relation to the Police submission the Resort Nominee, Ms Sandie Peters, states that the demography of the Township is not the only consideration in terms of patron demand for the facilities and services as through the new application the Resort is also attempting to attract and grow the number of tourists and travellers to the region. In support of this Ms Peters has outlined the marketing of their facilities with bus and tour companies to attract this clientele to the Resort.
- 25) Ms Peters concedes that the Resort is adjacent to an existing licensed outlet, The Lazy Lizard Caravan Park and is close by to pensioner flats and the Pine Creek School. She states that this is also the case with The Lazy Lizard Caravan Park whose licence conditions includes that of takeaway sales, without evident harm arising from proximity to the pensioner flats and the nearby school.
- 26) The Police objection makes reference to anecdotal evidence of sales of alcohol to persons not consuming a meal at the Resort and Ms Peters strongly refutes this; *"we absolutely and emphatically deny any breach of our licence conditions as we do nothing but adhere to them at all times"*.
- 27) In response to the submission of FaHSCIA that the Resort is not a participant to the Kybrook Agreement, Ms Peters states that the Resort would be willing to meet any such condition and be a party to the Kybrook Agreement and concurs with the need to be mindful of social issues arising from excessive alcohol consumption.
- 28) The FaHSCIA submission also refers to tavern style licence conditions including the provision of CCTV coverage of the licensed area and Ms Peters has responded by stating the Resort already has CCTV installed.
- 29) Ms Peters refers to consultation with local organisations and communities and has attached to the Resort's application a petition with 170 signatories in support of the licence application (her correspondence refers to over 200 signatures, however the Commission could only tabulate a number of 170). Additionally Ms Peters has provided minutes of the meeting of the Victoria Daly Shire Council local Board where the minutes record *"That the local Board has no objections to changes to the Railway Resort's liquor licence"*.

- 30) Ms Peters response to FaHSCIA's submission raises that socially responsible drinkers in the Township will be catered for in a pleasant place to have a drink and relax while tourists would be catered for through the ability to purchase an alcoholic beverage before or after a tour around the railway memorabilia complex.
- 31) In response to Health concerns that granting the application could lead to the premises no longer operating and having the appearance of a restaurant, Ms Peters refutes that the premises will be downgraded as the business plan includes restaurant food and beverages as an integral aspect of the Resort designed to attract tourists.
- 32) The response of Ms Peters to the submission of Mr Downs in relation to the proximity of the resort to "*community and educational centres*" is that if there were going to be any adverse effects due to where the Resort is situated, these impacts would have already occurred through The Lazy Lizard Caravan Park operations in this area.
- 33) The response, noting objectors are owners and Nominees of competing businesses, namely the Lazy Lizard Caravan Park and Pine Creek Hotel, states "*both of these establishments have been selling alcohol, including takeaway, for many years with very minimal effects 'on the local market'*". Her response goes on to state in relation to quality of premises and the serving of customer needs; "*we feel that the only adverse effect maybe that other businesses in town may have to raise their business standards and the quality of their premises*".
- 34) Ms Peters' response contests the licence creep argument referred to in Mr Downs' submission and contends that the application is merely seeking to expand and create more opportunities for the business and the Township. In terms of the community needs, Ms Peters refers to the petition signed by over 200 people (which the Commission calculates at 170 petitioners), represents over forty percent of the Township population and signals that a good proportion of the community is happy to support the new licence conditions applied for.
- 35) In summarising her response to the submissions, Ms Peters states that through the engineering business she and her partner have operated in the Township for over twenty-five years, they know and support community aspirations. She states that the Licensee company, Driffield Engineering Pty Ltd, purposely built the Resort to complement the railway precinct, incorporating the railway memorabilia and heritage of the area.
- 36) She refers to having to tell tourists who come to the precinct and the Resort, simply wanting to have a drink during their experience in the precinct, that if they want an alcoholic drink they must go elsewhere in the Township to facilities she considers are substandard to that which the Resort provides.
- 37) In a further response to the objections raised by Mr Downs, Ms Peters refers to his clients' businesses being on the market, inferring that the objectors are motivated by commercial considerations.

Consideration of the Issues

- 38) The Commission (Chairperson or nominated Member) under the Act is required to turn its mind to the objection submissions received and the applicant's response to that objection in order to determine if the objection should be dismissed or is valid and requires a Hearing.

- 39) All four objection submissions meet the criterion of being lodged within time pursuant to Section 47F(4)(d) and all meet the relevant qualifying conditions of persons or organisations eligible to submit objections pursuant to Section 47F(3).
- 40) The determination of the validity of the objection must also consider the grounds on which the objection has been raised to the application for variation of a licence condition. These grounds require the objector to relate the objection to the adverse effect and the amenity of the neighbourhood or the adverse effect on the health, education, public safety or social conditions of the community.
- 41) Commentary on the need for a type of licence or licence condition does not fulfil the requirements of the Act as the requirement of an applicant to address the community need for the type of licence applied for was removed from the Act several years ago.
- 42) The Police objection refers to takeaway liquor sales which are not really relevant in this instance as such sales relate to the purchase of liquor by bona fide lodgers, ie the takeaway condition does not allow alcohol purchased to be taken from the premises.
- 43) The reference by the Police objection to anecdotal evidence of non-lodgers being served alcohol without a meal cannot be taken into consideration as it is not backed up by any evidence and indeed the applicant strongly refutes this claim which she states has only surfaced since the application for licence variation.
- 44) The main thrust of the Police objection is that the change to the licence condition to remove the requirement for the service of alcohol to be ancillary to a meal will enable the restaurant area to morph into a public bar or tavern allowing any person to consume liquor at the premises from 11:00 am until 02:00 am (the following day). This allegation certainly addresses the issue of neighbourhood and community amenity and therefore fulfils the requirement of the Act in being admitted as an objection required to be dealt with at a Hearing.
- 45) The FaHCSIA submission points out the existence of a Kybrook Agreement applicable to the town and surrounding area Licensees, as a means to restrict the sale of alcohol to members of the Kybrook Community. The objection raises the potential for alcohol related harm to Aboriginal people and their related communities if the Kybrook Agreement is not incorporated in the Resort licence conditions.
- 46) The FaHCSIA submission also refers to excessive consumption and alcohol harm being more likely if people are able to purchase alcohol without the requirement to consume a meal. The applicant has responded to this and a number of the issues raised by FaHCSIA and in particular has stated that the Resort is willing to be a party to the Kybrook Agreement. Nonetheless the issues raised by FaHCSIA of community harm and wellbeing do meet the requirements of the Act and therefore the objection is valid and requires a Hearing.
- 47) The Department of Health has made submission, not an objection and its very wording states, "*Health has no adverse comment to the application*". The Department of Health has made a request to the Commission to consider licence conditions to help ensure that the venue continues to operate and trade as a restaurant and have the appearance of a restaurant.
- 48) The applicant has responded to the Department of Health concerns by stating that they are a restaurant and a motel but in carrying out the business they are seeking to grow patron numbers with providing a facility that will attract tourists and the local

community alike. The provision of food and the operation of a restaurant the applicant advises is an integral aspect of the business plan.

49) Notwithstanding this commentary, the Health submission does not constitute an objection and therefore is not required to go to Hearing.

50) Mr Antony Downs has made objection on behalf of the following clients:

- Mr Chris Mason, resident of Pine Creek;
- Karinga Pty Ltd, Licensee of the Pine Creek Hotel situated in Pine Creek;
- Mr Anthony Bruce Jenkins resident of Pine Creek; and
- KATT (NT) Pty Ltd, Licensee of the Lazy Lizard Caravan Park also situated in Pine Creek.

51) It is noted that the objectors can be refined down to two principal parties, Mr Chris Mason, besides being a resident of Pine Creek, is also the owner and operator of the Pine Creek Hotel through the Licensee, Karinga Pty Ltd. Likewise Mr Anthony Jenkins, while a resident of Pine Creek, is also a Director and proprietor of the Licensee company of the Lazy Lizard Caravan Park, KATT (NT) Pty Ltd.

52) The objection makes reference to licence creep and opines that the application is premature given that the licence was only granted some six months ago. The applicant in response has referred to ongoing development of the business and the expansion of the client base, particularly through marketing to tourists and coach companies.

53) The objection also refers to the absence of public interest and the lack of need for such expanded operations given the population of Pine Creek. The Commission must take into account that it is no longer the requirement of an applicant to demonstrate community need with the lodging of an application.

54) Mr Downs' correspondence refers to his clients' objection being related to the adverse impact of the amenity of the neighbourhood and the health, education and public safety of the community, were the variation to licence conditions be granted. This aspect of the objection meets the criteria laid out in the Act and is therefore valid and requires a Hearing.

Decision

55) The Commission has determined that the objections lodged by

- Northern Territory Police;
- FaHCSIA;
- Mr Antony Downs on behalf of clients;

are valid and require a Hearing pursuant to Section 471(7) of the Act.

56)The submission by the Department of Health was not represented as, and is not, a valid objection. However the Commission may draw on material submitted in this correspondence in determining its Decision following the Hearing.

Richard O'Sullivan
Chairman

4 July 2013