Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Zanadu Rural Retreat
Applicant:	Ms Edith Joyce Hammerberg
Objectors:	Mr and Mrs Jackson Ms Carol Prichard Mr Ian L Snowden Ms Betty Oram Litchfield Council Ms Wendy Brown Naylor Family and Spoward Mr and Mrs Eddy
Legislation:	Sections 4F to 47I of the *Liquor Act* and Section 28 of the *Interpretation Act*
Decision of:	Richard O'Sullivan
Date of Decision:	14 May 2009

Summary of Decision

Hold a Hearing in respect of the objections received from:

- Mr and Mrs Jackson
- Ms Carol Prichard
- Mr Ian L Snowden
- Ms Betty Oram
- Litchfield Council
- Ms Wendy Brown
- Naylor Family and Spoward
- Mr and Mrs Eddy

Background

1) Ms Edith Joyce Hammerberg made application on 12 February 2009, pursuant to Section 26 of the *Liquor Act* ("the Act") for an 'on premise' liquor licence for the premises known as Zanadu Rural Retreat located at Lot 3805 Wanderrie Road, Humpty Doo.

2) The application was advertised twice in the NT News. It now appears that there was an error in the first advertisement of 11 February 2009 which advised the public that "the premises consists of four (4) double units capable of accommodating up to eight (8) persons per unit". A correction was made in the second advertisement dated Wednesday 18 February 2009 as follows: "the premises consist of four (4) double units capable of accommodating up to (2) persons per unit." The corrected second advertisement read as follows:

I, Edith Joyce Hammerberg, Hereby Give Notice that I have applied to the Northern Territory Licensing Commission for an On-Licence Liquor Licence to sell liquor from the premises known as Zanadu Rural Retreat located at Lot 3805, Wanderrie Road, Humpty Doo.

Proposed Trading Details for the sale of liquor are as follows:

- *The core business proposed to be conducted on the premises will be in the nature of a Bed and Breakfast Guest House.*
- *The secondary business proposed to be conducted on the premises will be in the nature of providing for booked functions and invited guests.*
- *Liquor may be sold for consumption on the premises to in house guests and their guests and guests attending booked functions only between the hours of:*
- *Sunday to Saturday 10:00 hours to 23:59 hours.*
- *The premises consists of four double units capable of accommodating up to 2 persons per unit, a dining, lounge, pool and bar room, kitchen, under cover verandah and parking along with landscaped gardens and a plunge pool.*

This is the second notice of application.

The objection period is deemed to commence from Wednesday, 18 February 2009.

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, Racing, Gaming and Licensing GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 11th Day of February 2009

3) A letter was received from Superintendent Hollamby of the NT Police on 9 March 2009 advising that Police have significant concerns with this application. Police request that their concerns be taken into consideration in the Commission's deliberations. While the Police submission raises a wide range of issues, they have raised those matters not in the form of an objection, but for the information of the Commission to be taken into consideration in deliberation on the application.

4) On 23 February 2009 the Development Consent Authority ("DCA") advised that the premises are not able to be used as a function centre. The DCA also advised that the approval was specifically limited to a maximum of eight (8) guests at any one time. This clarification of DCA Development Permit approval does not constitute an objection.

5) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice. An objection must be lodged with the Director within thirty

(30) days after publication of the last advertisement - namely by Friday 20 March 2009. Objections were received from the following persons:

- Warren and Kim Jackson – objection dated 26 February 2009 and received within time. They reside on the corner of Wandarrie Road and Bundey Road and are within the neighbourhood.

- Carol Pritchard – objection received 2 March 2009 and is within time. Ms Pritchard resides at 150 Cavalcade Rd Humpty Doo which is within the neighbourhood.

- Ian L Snowden - objection received 3 March 2009 and is within time. Mr Snowden resides at 255 Wanderrie Road Humpty Doo which is within the neighbourhood.

- Betty Oram - objection dated 25 January 2009 and received within time. Ms Oram resides at 10 Gamba Road which is within the neighbourhood.

- Litchfield Council- letter of objection received 5 March 2009 and is within time. Objection on council letterhead and signed by Derrick Trantor, Acting CEO. Council has standing as an objector under Section 47F(3)(e) of the *Liquor Act.*

- Wendy Brown – objection dated 5 March 2009 and received 19 March 2009 which is within time. Ms Brown resides at Wanderrie Road which is within the neighbourhood.

- Neil and Trent Naylor and Aldeana Spowart – objection signed dated 18 March 2009 and received 23 March 2009. They reside at 92 Bundey Road and are within the neighbourhood. On the issue of whether the objection was lodged within the thirty (30) day objection period, it is outside the cut off date. However, given that there is evidence that the objection was signed on 18 March 2009, I am inclined to grant an extension of time pursuant to Section 127(1) of the Act. The issues raised in this objection relate to neighbourhood amenity and as such are not significantly or materially different from other objections and given that the criterion of this objection is valid, it is able to heard at hearing without prejudice to the application.

- Jenny and Paul Eddy of 110 Nolan Road – objection was received Tuesday 24 March. The Commission is advised that this objection was posted on 20 March 2009, the final day for receipt of objections. Under Section 47F(5) of the Act, the objection is lodged when delivered to an office of Australia Post. This objection is therefore within time. The Eddys reside at Nolan Road which is within the neighbourhood.

3) The content and substance of the objections relate inter alia to changing social circumstances, harm minimisation, effect on the neighbourhood due to noise and traffic, school children safety, proposed function business, licence hours applied for and the number of guests (up to thirty-two). A number of the concerns raised are based on the incorrect advertised capacity of the B & B in the initial advertisement of 11 February 2009, which implies up to thirty-two (32) guests will be accommodated.

Section 47F of the Act provides -

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 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 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).*

Objections

Warren and Kim Jackson

7) The objection provided by the Jackson's is on the grounds of

- Five (5) liquor outlets in the area are sufficient;
- The proposed liberal trading hours of 10.00 hours – 23.59 hours;
- Traffic issues;
- Proximity of school children to the licensed premises;
- Proposed function use in contravention of Development Permit;
- Large number of guests, *"upward of 40 people expected at any one time*";
- Parking issues;
- Noise and social order issues;
- Potential for intoxicated people in the neighbourhood;
- Reference to Happy Hour prices; and
- Inconsistency with Litchfield Planning Use Objectives and Land Use Concepts, ie introducing commercial activity into a predominantly residential area.

Carol Pritchard

8) Ms Pritchard's objection raises issues of:

- Inconsistency with Litchfield Planning Use Objectives and Land Use Concepts which provides for service nodes for commercial activities;
- Number of potential clients, mentioning approximately forty (40) people at any given time;
- Disturbance and inconvenience in the neighbourhood;
- Children safety; and
- Police attendance issues given the location of the proposed licensed business.

Ian Snowdon

9) Mr Snowdon's objection raises the following issues:

- Inadequacy of parking provided;
- Traffic issues;
- Hours of licence *"seems more like a pub";*
- No demonstrated need; and
- Safety of children given the premises is close to a bus pickup and dropoff zone.

Betty Oram

10) Ms Oran's objection raises the following issues:

- Premises close to a number of neighbours;
- Potential for large number of guests at any one time;
- Proposed functions;
- Increased traffic and safety issues;
- Music noise from functions; and
- Requirement for additional Police resourcing.

Litchfield Council

11) Following a General Meeting on 25 February 2009, the Council has made objection on the following grounds:

- The Council has referred to Lot 3805 Wanderrie Road as being zoned RL, ie principally for low density rural living;
- The Council's objection also mentions unsewered lots requiring effluent disposal on site to avoid ground pollution; and
- The principal objection is on the grounds that the proposal will *"adversely affect the amenity of the neighbourhood inclusive of public safety and social conditions"*.

Neil and Trent Naylor and Aldeana Spoward

12) The objection is made on the following grounds:

- Noise and anti social behaviour related to booked functions and *"invited guests"*;
- *"Yet another liquor outlet"*;
- Loss of lifestyle enjoyment and area amenity.

Jenny and Paul Eddy

13) The Eddy's objection relates to:

- Number of people able to be accommodated (thirty-two);
- Licensed alcohol hours (fourteen hours); and
- Proposal to hold functions.

Applicant's Response to Objections

14) Ms Hammerberg responded to objections in two (2) letters, first dated 27 February 2009 and second dated 20 March 2009. In the first letter, Ms Hammerberg has given indications of significant changes to her original application which include withdrawing the part of the application referring to conducting the use of the premises for booked functions. Further, culling hours of trade from what was originally requested; that is from Sunday to Saturday 10:00 hours to 23:59 hours as originally sought to now apply for trading between Sunday to Saturday 11:30 hours to 21:00 hours.

15) Ms Hammerberg also advises that her premises has only one (1) abutting neighbour, who does not object to her proposal.

Current Status of Application and Objections

16) Due to there being a significant amendment to the application for a liquor licence which includes:

a) reduction of the trading hours from that initially applied for;

b) clarification that the premises would only hold eight (8) guests at any one time, not thirty-two (32) as implied in the initial advertisement; and

c) the applicant's withdrawal of the proposal to cater for booked functions,

the Legal Member of the Commission, Ms Brenda Monaghan wrote to all objectors on 7 May 2009 seeking to confirm the continuation of their objection or whether they wished to make amendment to their objection.

17) It has emerged that there is some confusion over the process followed with liquor applications and the process followed in this specific instance. It would be normal practice in relation to an application for a new liquor licence that where an advertisement incorrectly outlines the nature of an application, that it is replaced with two (2) further advertisements of the corrected and final application at that stage. Therefore the advertisement which appeared on 18 February 2009 should have again been advertised.

18) In relation to the further amendment of the application by Ms Joy Hammerberg to reduce licence hours and discontinue with the proposed prebooked function activity, this is a significant variation to the initial application and to a degree is a response to objections received. The significance is such that it may have an impact on the nature and grounds for a number of the objectors and this was the reason the Commission Legal Member wrote to all objectors on 7 May 2009. This has given rise to queries over procedural issues and the legality of process of the application so far. Rather than engage in protracted correspondence over the issues raised and further delay as a consequence Commission

consideration of the application, I have determined to proceed with a decision on the validity of the objections and to proceed to hearing of the licence application without further delay.

19) The Commission frequently deals with applications that undergo significant revision following objection and these are usually dealt with at the commencement of hearing. It is in the interest of the applicant at hearing to advise at the outset of the proposed trading conditions (particularly if trading hours are reduced) to be the subject of the hearing.

20) In the matter before the Commission it is anticipated that Ms Hammerberg will undertake this course of action. It is therefore proposed that immediately following the handing down of this decision that a date for hearing of the application be set and all parties advised of the date and arrangements advised for their appearance before the Commission, should they wish to do so.

Determination

21) All of the objectors have made objections that meet the requirements of the Act and are therefore valid and require hearing.

Richard O'Sullivan
Chairman

14 May 2009