

Northern Territory Licensing Commission

Reasons for Decision

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| Licensee: | Liquorland (Australia) Pty Ltd |
| Premises: | Liquorland Casuarina |
| Licence Number: | 80903600 |
| Legislation: | Sections 47F to 47I of the <i>Liquor Act</i> |
| Objection Submission: | Mr Matthew Salter |
| Decision of: | Mr Richard O'Sullivan (Chairman) |
| Date of Decision: | 4 September 2014 |

Background

- 1) Pursuant to Section 46A of the Liquor Act ("the Act") Ward Keller Solicitors on behalf of Liquorland (Australia) Pty Ltd on 17 April 2014 made application for the substitution of the Liquorland Casuarina Village liquor licence to Liquorland Coolalinga Shopping Village.
- 2) Coles Supermarkets Australia Pty Ltd ("Coles") has an agreement to lease retail premises from Gwelo Developments Pty Ltd at the new Coolalinga Shopping Village currently under construction. Under the lease agreement there is provision for Coles to enter into a further lease with Liquorland for a retail liquor outlet. Liquorland intend substituting (or relocating) its Casuarina Village store liquor licence to the newly developed Coolalinga Shopping Centre.
- 3) Through Ward Keller Solicitors, public interest criteria relating to the substitution and operation of the licence are addressed in the application as required pursuant to Section 6(2) of the Act. Section 6 states:

"6 Public interest criteria in respect of licence or licensed premises

- (1) *When the Commission has regard to the objects of this Act in:*
 - (a) *considering or determining an application under this Act in respect of a licence or licensed premises; or*
 - (b) *determining the conditions of a licence, the Commission must, when taking into account the public interest in the sale, provision, promotion and consumption of liquor, consider any of the criteria specified in subsection (2) that are relevant to the application or conditions.*
- (2) *For subsection (1), the criteria are the following:*
 - (a) *harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;*
 - (b) *liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;*

- (c) *public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;*
- (d) *the safety, health and welfare of persons who use licensed premises must not be put at risk;*
- (e) *noise emanations from licensed premises must not be excessive;*
- (f) *business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;*
- (g) *a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:*
 - (i) *by-laws made under the Local Government Act; and*
 - (ii) *provisions of or under the Planning Act;*
- (h) *each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;*
- (i) *the use of credit in the sale of liquor must be controlled;*
- (j) *practices which encourage irresponsible drinking must be prohibited;*
- (k) *it may be necessary or desirable to limit any of the following:*
 - (i) *the kinds of liquor that may be sold;*
 - (ii) *the manner in which liquor may be sold;*
 - (iii) *the containers, or number or types of containers, in which liquor may be sold;*
 - (iv) *the days on which and the times at which liquor may be sold;*
- (l) *it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;*
- (m) *it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;*
- (n) *it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.*

(3) *Also, the Commission must consider:*

- (a) *any other matter the Commission believes is relevant to the public interest in the sale, provision, promotion and consumption of liquor in respect of the application or conditions under consideration; and*
- (b) *any information or matter contained in an application, or otherwise provided or raised by the applicant, which is relevant to the public interest in the sale, provision, promotion and consumption of liquor.”*

4) The application was subsequently advertised, as required under the Act, on 9 and 14 May 2014 as follows:

“**Liquorland** (Australia) Pty Ltd, **hereby give notice** that we have applied to the Northern Territory Licensing Commission for a substitution of the premises from which liquor is sold under a **store licence**, from **Liquorland Casuarina Village** located at Casuarina Village Shopping Centre, to the new Coolalinga Shopping Village, currently being constructed and located at Coolalinga NT.

Proposed trading details for the sale of liquor are unchanged and are as follows:

- This licence authorises the sale of liquor for removal and consumption away from the licensed premises.

Trading hours

- Monday to Friday between the hours of 10:00 and 22:00 hours;
- Saturday and Public Holidays between the hours of 09:00 and 22:00; and
- No trading on Sunday, Good Friday or Christmas Day.

This is the first notice of application. The notice will be published again on Wednesday, 14 May 2014.

The objection period is deemed to commence Wednesday, 14 May 2014 (date of publication of second notice).

The objection period will cease on Friday, 13 June 2014.

Pursuant to Section 47F(2) of the *Liquor Act* an objection may only be made on the ground that the substitution of licensed premises 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, Gambling and Licensing Services, GPO Box 1154, Darwin, within thirty (30) days of the commence date of the objection period.

Dated this 10th Day of May 2014.”

- 5) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty days after the publication of the last notice, which for this application requires an objection be lodged by 13 June 2014.
- 6) Section 47F of the Act prescribes the circumstances under 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;*
- (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).*
- (4) *An objection under subsection (1) is to:*
 - (a) *be in writing; and*
 - (b) *be signed by or on behalf of the person, organisation or group making the objection; and*
 - (c) *set out the facts relied on by the person, organisation or group*

to constitute the ground on which the objection is made; and

(d) be lodged with the Director within 30 days after the publication of the notice or the last of the notices referred to in section 27, 32A, 46A or 119 (as applicable)."

- 7) One objection has been lodged in response to the application and the applicant has provided a response to the issues raised pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether objections lodged with respect to an application are to proceed to Hearing. The Commission must therefore determine if the person is eligible to object, whether the objection was received within the requisite timeframe and whether the reasons for the objection meet the grounds specified in the Act.

Objection from Mr Matthew Salter

- 8) An objection was lodged by Mr Matthew Salter of 220 Madsen Road, Howard Springs on 28 May 2014. Being lodged on 28 May 2014 the objection is within time and meets the requirements of Section 47F(4)(d). Mr Salter's address in Howard Springs is some four (4) kilometres distance as the crow flies from the proposed operation of the substituted licence at Coolalinga. The Act under Section 47F(3)(a) qualifies that a person to be a valid objector must be:

"a person residing or working in the neighbourhood where the premises the subject of the application are or will be located."

- 9) While for the rural area outside Darwin the term "neighbourhood" can embrace quite a large area, Madsen Road is within closer proximity the Howard Springs Tavern and shopping precinct than to the more distant Coolalinga. It is noted that the direct distance between the proposed licensed premises and the objector's residence is approximately four (4) kilometres, but to access Coolalinga from the objector's residence would involve travel of a greater distance. Under these circumstances the objector does not necessarily meet the "neighbourhood" requirement of the Act and further consideration of this issue is required.

- 10) Pursuant to Section 47F(2) of the Act an objection must cite as grounds that the amenity of the neighbourhood and the health, education, public safety and social conditions will be adversely affected if the application for licence substitution is granted. Mr Salter's submission states:

"The proposed takeaway liquor outlet will be open until 10pm at night and will reduce the 'quiet amenity' of those living in this built up area. Quiet amenity is a hallmark of living in the Litchfield Municipality (Rural area)."

His submission further adds:

"It is not the time to add a cheap takeaway liquor outlet into the mix as it will add further pressure on the 'quiet enjoyment' of residents in the development."

- 11) In raising 'quiet amenity' and 'quiet enjoyment' of neighbourhood residents being impacted on, the submission meets the requirements of the Act. Additionally the objection posits that "vagrancy and lawless will creep into this area of Coolalinga if

the application is granted and that itinerants purchasing alcohol could pose a danger when crossing the Stuart Highway at night”.

Applicant's Response to Objection

- 12) As required under Section 47G of the Act the applicant has been afforded an opportunity to respond to the objection lodged by Mr Salter. In responding the applicant has not provided a specific response to all the issues raised in the objection but has drawn attention to information provided in addressing public interest criteria as required by Section 6(2) of the Act.

Consideration of the Issues

- 13) While Mr Salter has provided valid grounds for objection in raising concerns over neighbourhood amenity and public safety, the key issue in this matter is Mr Salter's place of residence and whether it qualifies as being in the neighbourhood of the proposed substitution premises. As outlined in paragraph 9) of this Decision, the objector resides some four (4) kilometres in a direct line from the proposed Liquorland Coolalinga premises. The distance for practical means of access by road is even further. It is arguable that in the “rural area” the term “neighbourhood” encompasses a greater area than it would in suburban Darwin. However Mr Salter's residence at 220 Madsen Road has as a neighbourhood the area around Howard Springs Post Office, the Tavern, Supermarket and a range of shops. This would give some meaning and logic to describe Mr Salter as living in the Howard Springs Neighbourhood. Adding to geographic boundaries and furthering the “neighbourhood” to encompass Coolalinga is problematic and unlikely to be valid.
- 14) For this reason the Commission determines that Mr Salter does not meet the requirements pursuant to Section 47F(3)(a) as a person residing in the neighbourhood of the proposed premises under application.

Decision

- 15) As Mr Salter has been determined as a person not residing in the neighbourhood of the proposed premises the objection is dismissed and the application for licence substitution by Liquorland to relocate the former Liquorland Casuarina Village to Coolalinga can be considered by the Commission without requirement to conduct a Hearing.
- 16) Pursuant to Section 47I(4) of the Act, I direct the Director to inform Mr Salter that his objection has been dismissed.

Richard O'Sullivan
Chairman

3 September 2014