

# Northern Territory Licensing Commission

## Decision on whether Objections will proceed to a Hearing

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<b>Applicant:</b>	The Northern Territory Brewing Company P/L
<b>Proposed Nominee:</b>	Denis B Durham
<b>Premises:</b>	A Hotel/Tavern with Micro Brewery at Section 2353 Stuart Highway Coolalinga
<b>Objectors:</b>	Bree Hansell and Damian O'Brien of Howard Springs; Dowling Holdings Pty Ltd, lessee of Howard Springs Tavern and NT Pubco Pty Ltd, sublessee OMAD Pty Ltd, lessee of Virginia Tavern Rayjo Nominees Pty Ltd, lessee of Virginia Store; Carol Walker-Moffatt of Virginia Road; PLS (NT) Pty Ltd trading as Pit Lane Liquor Yarrowonga Epsomm Pty Ltd trading as Humpty Doo Tavern Gerry Wood, MLA Member for Nelson
<b>Relevant Legislation:</b>	Sections 47F, G & I of the <i>Liquor Act</i>

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### Background

- 1) An application has been made by Mr Des Crowe on behalf of The Northern Territory Brewing Company P/L (the developer) for a liquor licence (tavern) for the proposed Coolalinga Brewery situated at 375 Stuart Highway, Coolalinga.
- 2) In applying for a liquor licence at a very early stage, the developer seeks some certainty that a liquor licence will be granted before proceeding with the development. The application for a conditional liquor licence was advertised on 10 and 12 December 2008 in the following terms:

*The Northern Territory Brewing Company Pty Ltd HEREBY GIVE NOTICE that it has applied to the Northern Territory Licensing Commission for an "in principle" 'PUBLIC HOTEL' Liquor Licence to sell liquor for consumption on the premises located at 375 Stuart Highway Coolalinga NT 0835.*

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

- *The business proposed to be conducted on the premises will be in the nature of a Public Hotel with a "micro brewery" operating.*
  - *Meals will be available on request between the hours of 12:00 and 14:00 and again between the hours of 18:00 and 22:00, seven days a week.*
  - *Snacks will be available at all times the premises are open for trade.*
  - *Liquor may be sold from 10:00 hours until 02:00 hours (the following day), seven days a week.*
  - *No trading Good Friday or Christmas Day.*
- 3) There are comments that should be made at the outset.
    - a) There has been some delay in progressing with this matter as a result of the applicant seeking an adjournment for a few months to clarify their proposal before proceeding.

Had they changed their proposal, further advertising would have been required. The Commission has recently advised the applicant, however that no further delay will be considered and the matter will now proceed to hearing in its advertised form.

- b) The objectors all seek standing on the grounds that they live, work, own or lease land in the neighbourhood of the proposed premises. Section 47F(3)(a) and (b) of the *Liquor Act* states:

*Only the following persons, organisations or groups may make an objection under subsection (1):*

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

*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;*

The objectors live, work, own or lease land in the following locations:

- i) Bree Hansell and Damian O'Brien of 10 Yates Road Howard Springs;
- ii) Dowling Holdings Pty Ltd, lessee of Howard Springs Tavern and NT Pubco Pty Ltd which subleases the tavern;
- iii) OMAD Pty Ltd, lessee of Virginia Tavern at 30 Virginia Road Virginia;
- iv) Rayjo Nominees Pty Ltd, lessee of Virginia Store, Virginia Road , Virginia and Carol Walker-Moffatt of 280 Virginia Road;
- v) PLS (NT) Pty Ltd trading as Pit Lane Liquor, Middleton Street, Yarrowonga;
- vi) Epsomm Pty Ltd trading as Humpty Doo Tavern, Humpty Doo; and
- vii) Gerry Wood, MLA Member for Nelson.

It is often difficult in rural locations to define what the neighbourhood should be and this case is no exception. To confine it strictly to the Coolalinga area, as suggested by the applicant's solicitor, would not be appropriate in a rural setting where many of the residents of neighbouring communities travel to Coolalinga as their nearest shopping and service centre. Their interest in the community amenity and proper development of Coolalinga will be relevant and of interest to the Commission. For this reason, I have elected to take a broader view of neighbourhood so as to include objectors who live, work, own or lease land nearby in Howard Springs and Virginia. I have not included those who are located in Humpty Doo and Yarrowonga. This is an "on premises" liquor licence not a takeaway licence and the distance between those areas and the proposed premises is simply too great.

- c) Most of the objectors have commercial interests in licensed premises in the region. Their objections also mirror each other in form and content. Whilst there is no bar against commercial enterprises in the same marketplace lodging objections, the Commission at the final hearing will take account of the quality and validity of the objections made.
- d) Some concerns have been expressed by Mr Downs, solicitor for a number of the applicants that the sign advising the public of the application was not prominently and conspicuously displayed and was not noticeable while travelling on the highway. He also complained that the objection period was over the Christmas Period. Inspectors are satisfied that the sign was appropriately positioned. Further, this is not the only form of advertising as two (2) notices to the public were placed in the paper giving details of the proposal. Finally, an extension of time was granted to every person who intimated a wish to object outside the thirty (30) day period.

- e) Concern has been expressed by some of the objectors that the applicant appears to be seeking more licensed hours than he outlined in his planning application to the Development Consent Authority. Objectors can be reassured that any grant of a liquor licence is always subject to and conditional upon appropriate planning approval.
  - f) At least one of the objectors queried the fitness of a named individual to be involved in a licensed premise. That person does not appear as the proposed Licensee or Nominee and the objectors can be assured that the Commission considers carefully the appropriateness of persons to hold a licence.
  - g) Objectors are given thirty (30) days under the *Liquor Act* (the Act) to forward their objections to the Director of Licensing. As thirty days expired on Sunday 11 January 2009, the *Interpretation Act* allows objections to be received at the latest on Monday 12 January 2009. Two (2) objections were received within the objections period from Gerry Wood and a joint objection from Damian O'Brien and Dr Bree Hansell. Mr Downs, solicitor sought and was granted an extension of time of one (1) week to allow further objections to be received from Dowling Holdings Pty Ltd, lessee of Howard Springs Tavern and NT Pubco Pty Ltd which subleases the tavern, OMAD Pty Ltd, lessee of Virginia Tavern at 30 Virginia Road Virginia, Rayjo Nominees Pty Ltd, lessee of Virginia Store, Virginia Road, Virginia and Carol Walker-Moffatt of 280 Virginia Road, PLS (NT) Pty Ltd trading as Pit Lane Liquor, Middleton St, Yarrowonga and Epsomm Pty Ltd trading as Humpty Doo Tavern, Humpty Doo. Their objections were received within the extended time frame provided.
- 4) In the light of the above comments, I now consider the individual letters of objection as follows:

#### **Gerry Wood, MLA**

- a) An undated objection was received within time by email from Mr Gerry Wood MLA, Member for Nelson. Mr Wood has standing under Section 47F (3) (a) of the Act as a person working within the neighbourhood. He comments in very general terms about the number of taverns within a fifty (50) km radius of the proposed premises but gives conditional support for the application provided the applicant's intention is to develop a 'boutique micro brewery selling boutique beers and wine' aimed at the tourist market and providing wine with food during 'tourist hours not public hotel hours'. The objection expressed in these terms however does not fulfil the requirements of Section 47F(2) which states:
  - (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 was sought*
    - (b) *health, education, public safety or social conditions in the community. (my emphasis)*

As the response fails to provide any information of adverse effect, the objection is not valid and is dismissed. I direct the Director to inform Mr Wood of my decision.

#### **Pit Lane Liquor and Humpty Doo Tavern**

- b) I refer to my comments in paragraph 3b) above. I do not consider that persons or premises situated in Yarrowonga and Humpty Doo are within the neighbourhood of the proposed premises. These objections are dismissed. I direct the Director to inform the relevant entities of my decision.

### **Damian O'Brien and Dr Bree Hansell**

- c) The second objection received within the objection period was made by Damian O'Brien and Bree Hansell who reside at Howard Springs which I find to be in the neighbourhood of the proposed premises. The response was signed and dated 10 January 2009 and was received within time. The objectors also sought and were granted an extension of time to expand on their concerns and did so by letter dated 19 January 2009. The content of the submissions address both community amenity and public safety issues including concerns about noise, traffic, waste and odours, litter, antisocial behaviour, increased demands on infrastructure and density of liquor outlets in the neighbourhood. The second submission follows closely in form and content the objections made by all other objectors except Gerry Wood. The objection complies with the form requirements under the Act and is a valid objection requiring a hearing.

### **Howard Springs Tavern, Virginia Tavern, Virginia Store and Carol Walker-Moffatt.**

- d) Mr Antony Downs, Solicitor, lodged letters of objection on behalf of Dowling Holdings Pty Ltd, lessee of Howard Springs Tavern and NT Pubco Pty Ltd which subleases the tavern, OMAD Pty Ltd, lessee of Virginia Tavern at 30 Virginia Road Virginia, Rayjo Nominees Pty Ltd, lessee of Virginia Store, Virginia Road, Virginia and Carol Walker-Moffatt of 280 Virginia Road. I find these persons to be in the neighbourhood of the proposed premises. All the objections were received within the extended time frame provided by the Commission. They were all in a form that met with the requirement of the Act. The 'mirror image' content of the submissions address both community amenity and public safety issues including concerns about noise, traffic, waste and odours, litter, antisocial behaviour, increased demands on infrastructure and density of liquor outlets in the neighbourhood. The objections are valid and require a hearing.

### **Decision**

- 5) As the member of the Commission appointed to consider the objections to this application for a new liquor licence, I consider that the following objectors are valid and require a hearing:
- a) Bree Hansell and Damian O'Brien of 10 Yates Road Howard Springs;
  - b) Dowling Holdings Pty Ltd, lessee of Howard Springs Tavern and NT Pubco Pty Ltd which subleases the tavern;
  - c) OMAD Pty Ltd, lessee of Virginia Tavern at 30 Virginia Road Virginia;
  - d) Rayjo Nominees Pty Ltd, lessee of Virginia Store, Virginia Road , Virginia; and
  - e) Carol Walker-Moffatt of 280 Virginia Road.
- 6) The following persons are not valid objectors for the reasons set out above and I direct the Director to inform them of my decision.
- a) PLS (NT) Pty Ltd trading as Pit Lane Liquor, Middleton St, Yarrawonga;
  - b) Epsomm Pty Ltd trading as Humpty Doo Tavern, Humpty Doo; and
  - c) Gerry Wood, MLA Member for Nelson.

August 2009