

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Bathurst Island Lodge
Applicant:	Tiwi Islands Adventures Pty Ltd
Nominee:	N/A
License Number:	N/A
Objectors:	Mr Mark Coffey, State Manager, Department of Families, Housing, Community Services and Indigenous Affairs
Legislation:	Sections 26, 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Richard O'Sullivan (Chairman)
Date of decision:	17 December 2012

Background

- 1) Mr Nigel Baxter, General Manager of Tiwi Islands Adventures Pty Ltd has made application pursuant to Section 26 of the *Liquor Act* ("the Act") for a new Liquor Licence for the Bathurst Island Lodge ("the Lodge"). The Lodge is to be located at the site of the former Barra Base which had a Liquor Licence up until its closure in 1999 when the licence was cancelled.
- 2) It is expected that the lodge development will be complete in March 2013. Development works include restoration of the former Barra Base dining and bar area, together with the construction of new accommodation facilities for a maximum of twelve guests. The Commission is advised that based on the new upmarket facilities, it will attract a daily tariff for clients of approximately \$1,300.00 per day.
- 3) The applicant advises that the Lodge will be operated similarly to a fishing lodge the company runs on Melville Island (the Melville Island Lodge).
- 4) The Application was advertised in the Northern Territory News on Wednesday 3 October 2012 and Friday 5 October 2012 pursuant to Section 27(1) of the Act.
- 5) The advertisement was as follows:

*Tiwi Islands Adventures Pty Ltd, **hereby give notice** that it has applied to the Northern Territory Licensing Commission for an "On Licence" Liquor Licence to sell liquor from the premises located at Port Hurd, Bathurst Island NT,*

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 fishing lodge.*
- *Lodgers will receive a selection of foods for breakfast and lunch and a chef prepared meal for dinner.*
- *The Lodge will stock a range of beers, wines, spirits and a small selection of liqueurs to cater for domestic and international guests.*

- *Trading hours for alcohol will be from 12:00 hours until 23:59 hours, Sunday to Saturday, and shall only be sold to bona fide guests of the Lodge and Lodge staff.*
- *Alcohol will only be consumed within the restaurant and bar area or by Lodge staff in their respective living quarters.*

This is the second notice of application.

The objection period is deemed to commence from Friday, 5 October 2012. (Date of publication of second notice).

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 Senior Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Senior Director of Licensing, Gaming and Licensing, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 5th Day of October 2012.

- 6) 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 Monday 5 November 2012.
- 7) 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

(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)*

8) One objection has been lodged in response to the application and the applicant has provided a response to that objection pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing. Police and the Department of Health have been asked to comment on the application and their responses indicate no concerns over the development.

Objection from Mr Mark Coffey:

State Manager, Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)

- 9) Section 47F(1)(a) provides that a person may lodge an objection to an application for the grant of a licence.
- 10) FaHCSIA has standing to make an objection under Section 47F(3)(e) being:

“An agency or public authority that performs functions relation to public amenities, including health, education and public safety.”
- 11) Mr Mark Coffey, State Manager of FaHCSIA lodged an objection submission on 5 November 2012 on behalf of the Commonwealth and was therefore within time as required by Section 47F(4)(d) of the Act.
- 12) The submission states that harm reduction should be the principal matter taken into consideration with Licence applications. In this instance the submission states the granting of a Liquor Licence involves potential harm to vulnerable people. It contains the Commonwealth view and concerns over alcohol abuse, high levels of harm, suicide, child neglect and violence at communities on Bathurst Island. It maintains that an additional Liquor Licence will increase the risk of alcohol related harm.

Applicant’s Response to Objections:

- 13) The applicant submits that the lodge is being developed in a remote area of Bathurst Island which is only accessible by boat or airplane, i.e. there are no direct road links. The application submits that the Barra Base operated for many years at this location without issue.
- 14) In relation to risk the applicant advises that there will be no takeaway alcohol sold and that sales will only be made to bona fide guests and staff employed by and working at the lodge.
- 15) The applicant submits that in regard to the fishing lodge it operates on Melville Island, no one from the nearest community (Milikapiti) has ever purchased or consumed alcohol at the Melville Island Lodge, other than fishing clients and lodge staff.
- 16) The Commission is advised that the applicant intends to operate the Lodge on Bathurst Island in the same manner they operate an evidently successful fishing lodge on Melville Island.

Consideration of the Issues

- 17) While not commenting on the merit of the FaHCSIA objection submission it does fall within the requirements of the Act. FaHCSIA is a body able to make objection under Section

47F(3)(e) as outlined in paragraph 9) above. Furthermore, the content of the objection also conforms to the requirements under Section 47F(2):

- (a) the amenity of the neighbourhood where the premises the subject of the application are of will be located; or
- (b) health, education, public safety or social conditions in the community

18) The objection makes reference to potential harm and increased risk of alcohol related harm which could occur if the application was to be granted. It therefore conforms with the requirements stipulated in the Act.

Decision

19) The Commission has determined that the objection lodged by Mr Mark Coffey, State Manager, Department of Families, Housing, Community Services and Indigenous Affairs is valid and requires a Hearing pursuant to Section 47I(7) of the Act.

20) Section 51(1) and (2) provide that where a Hearing is to be conducted the Chairperson shall fix a time and location and provide relevant documentation no less than seven days before the Hearing date.

21) However, if FaHCSIA indicates that it does not wish to appear at Hearing to make submissions in support of its objection, the Commission has the ability to rely on the written submission and under this circumstance it could determine whether a public Hearing is required or whether the Hearing can take the form of consideration of the matter on the papers provided.

22) The latter would be a more expeditious process should FaHCSIA not wish to appear before the Commission.

Richard O'Sullivan
Chairman

18 December 2012