

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

APPLICATION:	KAVA RETAIL LICENCE
APPLICANT:	Gapuwiyak Community Incorporated
HEARING:	Section 59 of the <i>Kava Management Act</i>
HEARD BEFORE:	Mr John Flynn (Chairman) Ms Brenda Monaghan Mr Paul Costigan
DATE OF HEARING:	13 July 2006

1. On 14 February 2006 the Commission received an application for a Kava Retail Licence from Gapuwiyak Community Inc (The Applicant). The Applicant's intention is to commence the sale of kava from a kava store to be situated in the Community Council premises.

HISTORY

2. The Council intends to sell kava within the Gapuwiyak Kava Licensed Area which is an area of some 5400 square kilometres. The Gapuwiyak Kava Licensed Area was approved by the Minister and gazetted on 30 November 2005.
3. When considering whether or not to declare the area to be a licensed area, the Minister was required to consider the needs and opinions of the residents and other affected persons. He was also required to consider the views of the Local Government Council regarding the appropriate area to be declared and any other matters relating to possession, supply and consumption of kava.
4. Whilst we were not party to the hearing process, we are confident that when considering whether or not to declare a licensed area, the Minister would have ensured that the community was properly consulted on all relevant issues.
5. At the same time, the Gapuwiyak Community prepared a Kava Management Plan for the Kava Licence Area and had the plan approved by the Commission in accordance with the *Kava Management Act* (the Act). Thus, the groundwork has been done and the principal issue for the Commission at this stage is whether or not there is support for the granting of a kava retail licence to this particular applicant.

THE APPLICATION AND OBJECTIONS

6. Pursuant to Section 59 of the Act, the Commission may issue a Retail Licence to an individual or a body corporate to sell kava within a particular area. There is provision under the *Act* for objections to be lodged with the Director of Licensing regarding the application. In deciding whether or not to grant the Retail Licence, the Commission must be satisfied that the Applicant is a fit and proper person to hold a licence and that the grant of the Retail Licence is in accordance with the needs and opinions of the residents of the licensed area.

7. In the matter before us, the Commission was provided with a detailed brief prepared by the Director of Licensing. It contained all the relevant information including objections lodged against the granting of a Kava Retail Licence. Objections were received from G R and J M Davey of Gapuwiyak, Northern Territory. Mr and Mrs Davey expressed numerous concerns about the impact of kava on the Gapuwiyak Community. Concerns included the following:
 - a) The objectors alleged a current inability of the Gapuwiyak Community Government Council to prevent the flow of illicit kava (and other drugs) into the community.
 - b) A concern that the Council will be unable to ensure that the licence if granted will be sufficiently complied with and breaches enforced;
 - c) The anticipated “conflict avoidance” of the Council and the community which will prevent accurate monitoring and appropriate legal action should breaches occur;
 - d) A concern that persons who may be currently violating Commonwealth and State laws may well be included in decision-making bodies in control of the sale of kava in the gazetted licensed area;
 - e) Concerns about the adequacy of the consultation that took place before the Minister declared the area a Kava Licensed Area.
 - f) The debilitating effects of the consummation of kava on Aboriginal communities.
 - g) A concern about the daily / weekly consumption rate proposed in the Kava Management Plan.
 - h) The amount of money that will be spent on kava rather than on children and other worthwhile community projects.
 - i) The belief that granting a Kava Retail Licence will not decrease the black market trade because of the remoteness of the nearest Police Station and lack of presence of any local law enforcement agency.

8. The second objection came from John H Warwick of Yirrkala. Mr Warwick stated his concerns about kava and alcohol abuse in the Yirrkala Community and noted his concerns about the impact kava plays in indigenous communities

generally. He stated that Yirrkala school attendance is down and those who do come are hungry. He commented on the health concerns affecting the heavy drinkers, the impact of drinking upon the workforce, school attendance, income and the care and support of the children.

9. Both Mr and Mrs Davey and Mr Warwick wrote detailed objections but were unable to attend at the hearing at Gapuwiyak on Thursday 13 July 2006. The Commission has, however taken into account their written objection in deciding whether or not to grant this application.

THE HEARING and subsequent discussions

10. At the hearing on 13 July 2006, approximately one hundred (100) indigenous and non-indigenous residents attended. While it appeared to the Commission that the majority of residents supported the granting of a Kava Retail Licence, they were concerned about the harmful affects of kava abuse on a community. In an informal survey conducted by the Clinic Sister, it appeared that the majority of adults surveyed by her consumed kava with three fifths of those users consuming kava daily.
11. The concern was also expressed at the meeting that the Community would be unable to stop the sale of illegal kava. At the end of the meeting, the Commission suggested that the Community needed to have further time to consider the implications both good and bad of a Kava Retail Licence being granted. The Commission also spoke of changes it considered should be made to the Alcohol Management Plan. It later advised Gapuwiyak Community Inc by letter that any licence, if granted, would be subject to certain changes to the Kava Management Plan as follows:
 - a) That the amount of kava to be sold per day would be limited to two hundred (200) gram bags and that the maximum amount of kava to be sold per person per week would be four hundred (400) grams;
 - b) That the hours of sale of kava from the store would be limited to approximately three (3) days per week with the shop being closed on days when Government benefits and wages were paid; and
 - c) That the Kava Management Plan would be varied to include meaningful penalties for people caught bringing illegal kava into the Community or for the on-sale of legal kava outside of the licensed area or the sale to non-permit holders.
12. The Commission encouraged the Gapuwiyak Community Inc to speak widely within the Community to ensure that if the licence is granted, it will have Community support.
13. On 9 August 2006, the Commission received a letter from Gapuwiyak Community Inc dated 28 July 2006. It advised that Gapuwiyak held a Council Meeting on 25 July 2006 at which the kava issue was discussed and a Resolution was made as to whether or not the Kava Retail Licence would be pursued. The Commission was advised that prior to this meeting a Notice was

displayed at prominent locations, both inside the Council Office and on the external wall of the Council building advising Community members that the meeting was being held. A copy of the Notice was provided to the Commission for information.

14. At the meeting, a motion was before the Council as follows: *“That Council vote to say yes for the application of a Kava Retail Licence and agree to the following amendments in the Kava Management Plan:*

- i) Days of sale for kava will be Monday, Tuesday, Friday and Saturday;*
- ii) Hours of sale are amended to read Monday, Tuesday and Friday 4.30pm to 6.30pm, Saturday 1.00pm to 4.00pm;*
- iii) The limits of kava are altered to 200 grams per person per day and maximum weekly purchase per person be reduced to 400 grams.*

iv) Penalties for illegal on-selling of kava are noted as follows:

First offence: immediate one (1) month ban from purchase.

Second offence: Three (3) months ban.

Any further offences, the person must attend a Full Council meeting to discuss why a permanent ban should not be imposed.

v) In recognition of a new position created at the Council since the development of the Kava Management Plan, the Council Health Coordinator is now included as a representative on the Kava Sub Committee.

vi) All reasonable steps will be taken by Council to inform Police of blackmarket activities in the area.”

The above motion was passed by the Council.

THE DECISION

15. Following receipt of this further correspondence, the Commission has considered whether or not a Kava Retail Licence should be granted to the applicant. The Commission is impressed with the responsible manner in which the application has been made and progressed. It is also impressed by the willingness of the Community Council to work with the Commission and Licensing Inspectors on issues of concern.

16. The Commission is satisfied that the Applicant is a fit and proper person to hold a Kava Retail Licence within the licensed area.

17. The Commission is satisfied that there has been sufficient community consultation regarding the granting of the Kava Retail Licence. It is not dismissing, however, the concerns expressed by objectors and some other

- community members regarding the impact of the improper use of kava on individuals, families and communities. The Commission is aware, however from discussions with Licensing Inspectors and others that the flow of illegal kava into the Gapuwiyak Licensed Area is likely to significantly decrease if a Kava Retail Licence is granted.
18. The Commission sees the sale of legal kava as being the lesser of two evils in that the quality of legal kava is regulated to prevent contamination and the price is controlled to ensure that the family budget is not misused. Further, there are careful limits placed on the amount of kava that can be sold to ensure that the harmful affects are minimised and the hours of sale are strictly controlled to hopefully ensure that money is first spent on food and household necessities other than kava.
 19. Finally, there are limits placed on the amount of kava that can be sold daily and weekly per person to ensure that the drinking of legal kava is at safe limits.
 20. In the circumstances, the Commission approves the application for a Kava Retail Licence. The Kava Retail Licence will allow the Applicant to sell kava to all residents of the Kava Licensed Area declared by the Minister
 21. The licence will remain in force for twelve (12) months after the date it is issued. Prior to its renewal, the Commission intends to obtain a full report from Racing, Gaming and Licensing so that it can consider whether or not it is appropriate for the licence to be renewed.
 22. As regards changes to the Kava Management Plan, the Commission looks to the *Kava Management Act*, which states:

58D. Amendment or replacement of kava management plan

(1) At least 10 residents of a licence area, or a community government council for a council area of which part is a licence area, may –

(a) prepare an amendment to the kava management plan applying in the licence area; or

(b) prepare a kava management plan to replace the kava management plan applying in the licence area.

(2) A person who prepares or the persons who prepare an amendment to a kava management plan or a replacement kava management plan must do so in consultation with the Commission, the Commissioner of Police and the Chief Health Officer and must, on completing it, give the amendment or replacement kava management plan to the Commission for approval.

(3) The Commission must not approve an amendment to a kava management plan or a replacement kava management plan unless satisfied that –

(a) the amended plan or the replacement plan appropriately provides for the matters specified in section 58B(1)(a) and (b);

(b) the amended plan or the replacement plan complies with this Division and the Regulations;

(c) in the case of an amended plan or a replacement plan that will be applying in a licence area that is or part of is within a council area or an area controlled or managed by an incorporated association – the amended plan or the replacement plan is supported by the local government council for the council area or the incorporated association; and

(d) the amendment to the plan or the replacement plan was developed to the reasonable satisfaction of the Commission, the Commissioner of Police and the Chief Health Officer.

(4) In addition, the Commission must not approve an amendment to a kava management plan or a replacement kava management plan unless the Commission has consulted the residents of the licence area in which the amendment or replacement plan will apply about that amendment or replacement plan.

(4A) For subsection (4), consultations with residents must be conducted in the same manner in which consultations were conducted with them under section 55 about the application to declare the licence area and section 55 applies (with the necessary changes) accordingly.

(4B) However, the Commission may approve an amendment to a kava management plan without consulting the residents of the licence area as required by subsection (4) if the Commission, the Commissioner of Police and the Chief Health Officer agree the amendment is minor in nature.

An amendment to a kava management plan or a replacement kava management plan has no effect unless it is approved by the Commission.

(5) An amendment to a kava management plan or a replacement kava management plan has no effect unless it is approved by the Commission.

23. The Commission supports all of the changes approved by the Council in its meeting on 25 July 2006 (see paragraph 14 above) with one further addition to the current plan. That amendment is to paragraph 7 titled “*Community Expectation or Rules*”. It is suggested that the fourth sub paragraph under that heading be amended to read:

“Council will delegate to its committee the power to alter times and frequency of sales (subject to the approval of the changes by the Northern Territory Licensing Commission) and establish a strategy to restrict sales to individuals where misuse has been identified”.

24. Finally, the Commission is satisfied that the provisions of the *Act* have been complied with as follows:

- a) that the proposed changes have been sufficiently discussed with the community both at the public hearing on 13 July 2006 and the later Council Meeting on 25 July 2006.
- b) that the changes have the general support of the Council and the community and go some way to ensuring that the supply and consumption of legal kava is handled responsibly.
- c) that the amended plan complies with Part VIII Division 1 of the *Act* and the Regulations.
- d) that the Amended Plan has the approval of the Chief Health Officer and the Commissioner of Police. Police have put forward some comments on further changes that could be considered. These matters will be raised and discussed at the Kava Conference being organised for later this year when a review of all Kava Management Plans is one of the principal items on the Agenda.
- e) that the proposed changes ensure that the Plan sufficiently addresses the following:

(a) the practices and procedures for or in relation to the possession, supply and consumption of kava in the licence area where it applies; and

(b) measures relating to the minimisation of harm to residents and the amenity of the community that results from the possession, supply and consumption of kava in the licence area

John Flynn
PRESIDING MEMBER

17 October 2006