

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

Hearing: Section 33(2) Notice – Variation of Licence Conditions – Katherine Liquor Supply Plan; and

Review of Exclusion of Katherine Low Level Reserve to Katherine Municipal Public Restricted Area

Date of Hearing: 27 November 2007

Members: Mr Richard O’Sullivan (Chairman)
Ms Veronica McClintic
Ms Kerri Williams

Date of Decision: 4 December 2007

Appearances: Mr Des Crowe for Pine Creek Hotel
Mr Roy Harding for Victoria River Roadside Inn
Mr Edward Ah Toy for J Ah Toy Pty Ltd
Mr Steven Reed for Crossways Hotel
Commander Greg Dowd for Northern Territory Police
Mr Malcolm Richardson for Director of Licensing

BACKGROUND

- 1) Following a public hearing on 5 September 2007 in Katherine, the Commission on 19 October 2007 handed down decisions on:
 - a) The Katherine Town Council application for a Public Restricted Area;
 - b) A Liquor Supply Plan for Katherine submitted by the Department of Justice
- 2) The decision in relation to the Public Restricted Area application for the entire Katherine Municipal Area was to grant the application with the exclusion of the Katherine Low Level Crossing Reserve, to apply between the hours of 7.00am and 7.00pm.
- 3) In respect of the Liquor Supply Plan proposal the Commission determined the following:
 - The trading hours for on premises sales and the current “light beer” restriction before 12.00 for the Katherine township remain the same.

- Takeaway sales to be permitted between 2:00pm to 8:00pm only. There is no takeaway trading in all licensed premises on Christmas Day and Good Friday and no takeaway trading in stores on Sundays.
 - No cask wine or fortified wine sales in containers larger than two (2) litres.
 - Takeaway sales of cask wine and fortified wine (including Stones Green Ginger Wine) is to be limited to the hours of 2pm to 6pm only.
 - Takeaway purchase of cask wine and fortified wine to be limited to one (1) two (2) litre cask or one (1) bottle fortified wine per person per day.
 - No drive through takeaway sales to taxi drivers on duty.
 - No purchased takeaway products to be kept on premises within an on licence for later collection.
 - All Licensees are required to provide liquor product sales figures as directed by the Commission.
 - Licensees who are licensed to sell liquor for consumption both on and off premises are required to provide liquor figures clearly identifying “on and off premises” sales.
 - Camera surveillance to be installed and operated in the alcohol service areas of all store licences and off-licences.
 - All staff serving alcohol must hold a Responsible Service of Alcohol Certificate within one month of commencing employment or as soon as practicable thereafter. The Commission notes that the unavailability of courses makes it difficult to impose an absolute requirement as a condition and encourages the government to assist in sponsoring relevant courses.
 - Takeaway conditions to apply to all relevant premises in Katherine, Mataranka, Victoria River and Pine Creek. Without the inclusion of these nearby townships in the Katherine Supply Restrictions Decision, problem drinkers could travel to these nearby locations for the purchase of restricted alcohol products or for purchase outside the restricted hours, negating the impact intended with these Supply Restrictions.
- 4) All Licensees were advised of the Commission’s decision of 19 October 2007 under Section 33(1) of the *Liquor Act* to vary conditions of their licence as per paragraph 3 above. Included in that correspondence was that pursuant to Section 33(2) of the *Liquor Act* Licensees had a right to hearing if the conditions proposed for their licence were not agreed to.

- 5) A number of Licensees advised the Commission of their request for hearing, particularly in regard to the advised changes to takeaway hours. These Licensees were:
- a) Victoria River Roadside Inn;
 - b) Australia Hotels Association on behalf of Katherine Country Club, Crossways Hotel, Katherine Hotel, Katherine Sports & Recreation Club and the Katherine Club;
 - c) Mataranka Supermarket;
 - d) Riverview Tourist Village;
 - e) Pine Creek Hotel (represented by Mr Des Crowe).

HEARING ON PROPOSED LIQUOR SUPPLY CONDITIONS

- 6) At hearing on 27 November 2007 Mr Des Crowe outlined his client's arrangements for selling liquor to indigenous members of the community and indigenous travellers. Under agreement negotiated through the Pine Creek Aboriginal Advancement Association alcohol restrictions have been imposed on local community members under what has been termed the "Kybrook" Agreement – a reference to the local Kybrook community.
- 7) Mr Crowe convincingly submitted that his client had a series of arrangements in place that limited the potential for excessive alcohol consumption and resultant anti social behaviour from indigenous community members.
- 8) He submitted that the Commission's decision in relation to alcohol supply matters handed down on 19 October 2007 were largely agreed to. The exception to this was the restricted hours on takeaway sales proposed. The Commission decision proposed a severe curtailment of takeaway hour sales from the current 10.00am to 10.00pm for Roadside Inns to 2.00pm to 8.00pm for all outlets in the Katherine region, including Roadside Inns.
- 9) Mr Crowe and his client submitted that at present there is a two (2) hour window for problem and habitual drinkers in Katherine to travel to Pine Creek for the purchase of alcohol at 10.00am (versus the 12.00midday currently applying in Katherine). Given that there is currently no abuse of the variance in licence hours between Pine Creek and Katherine Township, Mr Crowe and his client contended that if the current 10.00am commencement continued it was unlikely to create a pattern of travel for problem drinkers to Pine Creek to purchase their alcohol earlier.
- 10) Mr Crowe sought that the Pine Creek Hotel be excluded from the Commission's decision of 19 October 2007 and for a trial period of three (3) months to operate to evaluate whether abuse of this four (4) hour window of

opportunity to substitute purchasing from Katherine to Pine Creek would be taken up.

- 11) The Commission commended the Pine Creek Licensee for the current voluntary restrictions and the responsible attitude towards service of alcohol.
- 12) Mr Harding, Nominee of Victoria River Roadside Inn, made submission and agreed with all of the conditions of the Commission's decision with the exception of the restriction of takeaway hours. He advised he did not sell cask wine nor did his hotel sell Stones Green Ginger or fortified wines.
- 13) He advised that people do not come from Katherine Township to purchase alcohol from Victoria River at the moment and doubted whether they would do so if Katherine takeaway purchases were not available until 2.00pm (assuming Victoria River Roadside Inn retained its current 10.00am to 10.00pm takeaway).
- 14) He stated that the Victoria River situation was different to Katherine, Pine Creek and Mataranka in that they had a resident community to support their operations whereas Victoria River heavily relied on tourism and outlying pastoral properties.
- 15) Mr Harding sought no change to his current takeaway hours and for a three (3) month review of hours to be conducted following takeaway restrictions in Katherine.
- 16) Mr Ah Toy the Nominee of J Ah Toy Pty Ltd store submitted (no prior notice of his objection to proposed trading hour variations had been advised) that Licensees at Pine Creek had self imposed liquor restrictions which were working and petitioned the Commissioners to allow the existing 10.00am to 10.00pm takeaway hours to continue, noting that currently his store only traded between the hours of 9.00am to 5.00pm.
- 17) He sought that Pine Creek and his licence be excluded from the restricted takeaway hours that applied to Katherine for a three (3) month trial period following which the issue could be reviewed.
- 18) Commander Dowd advised the Commission that he held reservations if the Pine Creek, Mataranka and Victoria River were to hold their current takeaway trading hours, while Katherine premises was subject to further restrictions. Restricting Katherine outlets to 2.00pm commencement of takeaway trading, while allowing the outlying premises to open at 10.00am would provide a four (4) hour window for problem drinkers to travel to and purchase alcohol. While this has not proved a significant problem with the current two (2) hour differential between the outlying area and Katherine for takeaway, he considered there was a risk for the further widening of this differential.
- 19) He however did agree that a three (3) month trial period was a measured and considered step to take, noting that if problems did eventuate the Commission could expeditiously take remedial action.

- 20) Mr Richardson, on behalf of the Director of Licensing advised that a trial period for the outlying Licensees appeared sensible, and that he considered the submissions put on behalf of Pine Creek and Victoria River were well presented.
- 21) The Australian Hotels Association (AHA) had submitted on behalf of five (5) licensed outlets in Katherine that there was agreement with all conditions advised by the Commission (originating from the decision of 19 October 2007) apart from the takeaway opening hours.
- 22) The AHA made submission that to minimise community and tourist disruption that takeaway hours on Friday, Saturdays and Public Holidays should commence at 12.00midday through to 8.00pm, with all other days remaining as per the Commission's decision, ie 2.00pm to 8.00pm.

PUBLIC RESTRICTED AREA

- 23) Subsequent to the Commission determining the Katherine Municipal Boundary a Public Restricted Area, with the Low Level Crossing Reserve exempted from the hours of 7.00am to 7.00pm, there has been further discussion of its impact. The decision of the Federal Minister to declare all Town Camps in Katherine restricted has apparently added pressures on any excluded area in terms of likelihood of anti social drinking and behaviour. Advice had been provided to the effect that some Town Camp residents including from Kalano, had commenced drinking at the Low Level Crossing.
- 24) Based on Police information and lack of support by Katherine Town Council for the exclusion of the area, the Commission has conducted a review of the exclusion. A smaller defined area of around two (2) hectares has been deemed more suitable than the declaration of the entire Reserve.
- 25) It is a containable area with considerable recreation values provided by barbecues, public toilets and maintained lawns. The area in recent times has transferred to the Northern Territory Government, under the care and maintenance of the Department of Planning & Infrastructure (DPI). The Commission was advised that DPI supported the area being excluded from the "Dry" Town.
- 26) A complicating issue would be the need to bring the Public Restricted Exclusion Area into line with the two (2) kilometre law. It would therefore be necessary, if this exclusion is to be granted, to similarly exempt the area from applying under the 2km area.

LIQUOR SUPPLY PLAN DECISION

27)The Commission agreed:

- a) Not to vary the takeaway licence hours for Licensees in Mataranka, Pine Creek and Victoria River. It would allow existing hours to continue while imposing amended restricted hours in Katherine, but with the situation to be monitored to ensure there was no transference of alcohol purchased by problem drinkers from Katherine to these outlying regions. A review would be conducted within three (3) months of the new takeaway hours being applied to the Katherine Township, to determine if transference of alcohol purchases to the outlying regions was occurring.
- b) The Commission determined to allow takeaway sales in Katherine Township to commence from 12.00midday on Saturdays and Public Holidays to enable the community to purchase alcohol for recreation and social purposes associated with community activities commonly occurring at these times. The Commission was not minded to vary the takeaway hours proposed for Friday and therefore takeaway hours will commence at 2.00pm from Monday to Friday for stores and supermarkets and Sunday to Friday for all hotels and clubs. Sales at all outlets for all opening days will cease at 8.00pm.

28)To allow adequate time for Katherine Licensees to make any operational changes and adjust to the new licence conditions, particularly applying to takeaway hours and products, the Commission is mindful that a lead time before formal introduction of the new conditions is required. The Commission has therefore determined that the new licence conditions will come into effect on the same date as the “Dry” Town, that is 21 January 2008.

PUBLIC RESTRICTED AREA DECISION

29)The Commission determined to reduce the excluded area for the Katherine Low Level Reserve to a small portion defined as the barbecue area immediately above the Katherine River. This area is open to use by the public from 07:30am to 07:30pm and the Commission grants exclusion of this recreation area from the “Dry” Town and for consistency this is to apply from 07:30am to 07:30pm. The area has been identified as being around two (2) hectares of NT Portion 1302 and part of Lot 502 Town of Katherine. For gazettal purposes the area is defined as:

All that area within the Town of Katherine containing an area of approximately 2 ha being NT Portion 1302 and part of Lot 502 Town of Katherine and bounded by lines commencing at the northern most corner of NT Portion 1302 thence southerly by the eastern boundaries of the said portion to a northern corner of Lot 502 thence southwesterly by a southeastern boundary of Lot 502 to the high bank of the Katherine River thence generally southwesterly by the high bank of the Katherine River to its intersection with the westernmost boundary of Lot 502 thence northerly

by the westernmost boundary of Lot 502 to the most southern corner of NT Portion 1302 thence northerly and northeasterly by the western and northwestern boundaries of NT Portion 1302 to the point of commencement.

- 30) Noting that this area is likely within the two (2) kilometre radius of a takeaway outlet the Chairman of the Commission has advised he is minded to determine its exclusion from the two (2) kilometre law and action to enact this exclusion will separately be undertaken.
- 31) The changes applying to the excluded area will come into effect concurrently with the "Dry" Town on 21 January 2008.

Richard O'Sullivan
CHAIRMAN

4 December 2007