

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

HEARD BEFORE: Ms Brenda Monaghan (Presiding Member)

DATE OF HEARING: 11 August 2009

APPEARANCES: Acting Superintendent Stephen Heyworth for Northern Territory Police
Mr Des Crowe for Licensee Pine Creek Hotel
Inspector Mark Wood for Director of Licensing
Ms Toni Kutschki, Nominee Mataranka Supermarket
Mr Christopher McManis, Nominee Mataranka Hotel

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; and
 - b) A Liquor Supply Plan for the Katherine Region (including Mataranka, Pine Creek and Victoria River Roadhouse) including the following restrictions on the hours of sale of takeaway liquor:
 - i) 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.
 - ii) Takeaway sales of cask wine and fortified wine (including Stones Green Ginger Wine) is to be limited to the hours of 2:00pm to 6:00pm.
- 2) In making its decision, the Commission stated: *'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.'

- 3) Following receipt of the decision, some Licensees challenged the proposed changes to their licence conditions and a hearing was scheduled for 27 November 2007 (the November 2007 hearing).
- 4) At the November 2007 hearing, the Commission heard submissions that Licensees in the Katherine Regional areas such as Pine Creek and Victoria River wished to maintain their current hours of takeaway trade (ie 10:00am to 10:00pm). It was their view that there was little likelihood of Katherine residents travelling to their premises to enable them to get alcohol before the Katherine takeaway opening hour of 2:00pm. They advised that a two (2) hour window of opportunity had existed for some time (with Katherine takeaway hours commencing at 12:00 noon when regional Licensees opened at 10:00am). Their evidence was that this two (2) hour window had not caused a 'grog running' issue or transference of drinkers from Katherine and that they doubted a four (4) hour window of opportunity would be any different.
- 5) The Commission were also advised of the agreement (the Kybrook Agreement) already in place in Pine Creek to manage the sale of liquor to Indigenous members of the local community and visitors to that community. It was submitted by Licensees that the Commission's intention to impose a severe curtailment of takeaway hour sales from 2:00pm to 8:00pm for all outlets in the Katherine region, was unnecessary and that 10:00am to 10:00pm licensed hours should be maintained in regional areas with a review in due course to confirm the situation.
- 6) At the November 2007 hearing, Police and Licensing expressed some reservations about having different takeaway hours in Katherine as opposed to the regional areas but ultimately were willing to give the outlying communities a trial period to see whether issues of grog running and transference of drinkers did arise.
- 7) Following the November 2007 hearing, the Commission agreed not to vary the takeaway licence hours for Licensees in Mataranka, Pine Creek and Victoria River. Instead 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. The Commission confirmed that 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.

- 8) The new takeaway hours came into force in Katherine in January 2008. Whilst an internal three (3) month review did not immediately show that the difference in takeaway licence hours was causing a problem, this situation changed over time and Police advised in late 2008 that they were intending to seek a standardisation of the takeaway hours in the Katherine Region to bring them in line with Katherine. On 22 May 2009 Commander Kerr, Northern Territory Police, made application for a review of the hours of supply in Mataranka and Pine Creek seeking a change in the hours to align them with Katherine.
- 9) On 11 August 2009 at Katherine, the Commission conducted a Review Hearing with respect to this application. A number of written submissions and other documents were tendered to the Commission including the following:
 - a) Application for review of Commander Kerr dated 22 May 2009 and annexures;
 - b) Reports of the Director of Licensing dated 4 August 2009 and 9 June 2009;
 - c) Correspondence from J Sullivan, Cave Creek Station dated 23 June 2008;
 - d) Correspondence from U Carolyn, Government Business Manager, Jilkminggan Community dated 23 September 2008;
 - e) Correspondence from Nigel Povey, Government Business Manager, Jilkminggan Community dated 27 May 2009;
 - f) Correspondence from A Von Senden, CEO Jilkminggan Community Government Council dated 10 April 2008;
 - g) Correspondence from K Muggeridge, CEO Alawa Aboriginal Corporation dated 14 April 2008;
 - h) Correspondence from Gary Cleary, CEO Yugil Mangi Community Council dated 15 April 2008;
 - i) Correspondence from Des Barritt, Acting Principal, Jilkminggan School dated 16 September 2008;
 - j) Correspondence from M Mizen, Clinic Manager, Mataranka, Sunrise Health Service Aboriginal Corporation dated 15 April 2008;
 - k) Correspondence from D Crowe, Counsel for Pine Creek Hotel dated 29 July 2009;

- l) Correspondence from T Kutschki, Director Mataranka Supermarket Pty Ltd dated 26 July 2009;
 - m) Correspondence from C McManis, Nominee, Mataranka Hotel dated 24 July 2009.
- 10) The Commission also received oral submissions from the following persons at the hearing on 11 August 2009.
- a) Ms Toni Kutschki, Mataranka Supermarket;
 - b) Mr Christopher McManis, Mataranka Hotel;
 - c) Acting Superintendent Stephen Heyworth;
 - d) Inspector Mark Wood;
 - e) Mr Des Crowe for Pine Creek Hotel.
- 11) In support of the application for review, the Northern Territory Police made the following submissions:
- a) Mataranka has in recent years experienced a significant increase in alcohol related issues which impact the two (2) town camps (Mulgan Camp and Transient Camp) and also on the wider community of around four hundred (400) people.
 - b) Mataranka is the local hub for a number of outlying Aboriginal communities including Jilkminngen, Minyerri and Hodgson Downs. It is also the closest liquor outlet for the communities of Numbulwar, Bulman, Beswick and Barunga.
 - c) A number of factors and in particular the restriction on takeaway hours in Katherine before 2:00pm has resulted in an increase in the number of people from outlying communities travelling to Mataranka to purchase takeaway alcohol from 10:00am onwards.
 - d) Many of these people then remain within the town area, either drinking in public or staying at the town camps. This factor, combined with the reality that many of their communities are now within "Dry" areas, has meant that alcohol related issues have increased significantly in the Mataranka region.

- e) The local Police have also noted that the more indulgent hours in Mataranka have led to an increase in the number of people from communities as far away as Lajamanu, electing to remain in Mataranka for extended periods.
 - f) The majority of the workload for Police in this district is alcohol related and includes anti social behaviour, traffic offences, motor vehicle accidents, assaults and liquor offences.
 - g) Statistics provided by Police for the hearing confirm a dramatic increase over the past year in the amount of liquor seized and tipped out and in Protective Custody and alcohol related arrests.
 - h) Local Police have also noted direct evidence of taxis from Katherine being hired to allow passengers to purchase large quantities of alcohol from Mataranka in the mornings and returning to Katherine.
 - i) The increase in alcohol purchase and consumption in Mataranka has had a direct impact on Policing requirements in the area and has placed a strain on Katherine Region's Policing resources.
 - j) One particular example given is that during the period 1 January 2009 through to 17 March 2009 Mataranka Police took into custody and placed in the Police cells 285 individuals. This number exceeded the combined total for the two (2) previous years for the same period.
 - k) A comparison between the alcohol related incidents occurring in Pine Creek to those in Mataranka supports a conclusion that the supply restrictions currently imposed on Mataranka are not sufficient to ensure that harm is minimised.
 - l) Pine Creek Community does not have the same problems. One of the major differences between Pine Creek and Mataranka is the Kybrook Agreement which in Pine Creek only allows for a six (6) pack of light beer to each person from the Kybrook Community per outlet per day.
- 12) The written and oral submissions made on behalf of the Director of Licensing are in line with and supportive of the submissions made by Northern Territory Police. In essence, it is the view of the Director that Mataranka Licensees should no longer be able to sell takeaway alcohol from 10:00am but should be restricted to the same hours as Katherine Licensees.
- 13) The Licensing Inspectors from the Katherine region have spent some time in and around Mataranka over the past year observing the purchasing patterns of customers. Their observations fully support a finding that a large number

of residents from Mataranka and surrounding communities are accessing large amounts of VB beer and pre mix spirits between 10.00am and 2.00pm.

- 14) Inspector Wood has observed that a considerable number of these customers are consuming their alcohol, either in the main public park in Mataranka or in nearby bushland.
- 15) Correspondence from Government Business Managers, School Principals and Town Council personnel all support the Police's request for a change in the hours of trade of Mataranka Licensees to align them with Katherine.
- 16) There are four (4) licensed premises in Mataranka, with the Mataranka Hotel, Mataranka Supermarket and Mataranka Homestead able to sell takeaway. The fourth premises, the Territory Manor does not sell takeaway alcohol.
- 17) Both Ms Toni Kutschki and Mr Chris McManis attended the hearing and addressed the Commission. They also provided written submissions. Ms Kutschki, Nominee of the Mataranka Supermarket advised that a change to takeaway hours would seriously impact on her business sales. She advised that her principal concern is for tourists whose purchases of alcohol are up to fifty percent (50%) of her total alcohol sales for six (6) months of the year.
- 18) Ms Kutschki advised that travellers often attend at her supermarket to make purchases of both food and alcohol before leaving for their next destination. Inspector Wood advised that from his observations, although her supermarket sells alcohol to local residents and travellers from outlining communities, she normally only sells a carton of beer per person and does not sell to intoxicated persons. Inspector Wood did query, however, Ms Kutschki's comment about the number of tourist purchases as compared with locals.
- 19) Ms Kutschki asked the Commission to consider options other than simply imposing the Katherine takeaway hours on Mataranka Licensees. She expressed a willingness and interest to see an agreement similar to the Kybrook Agreement introduced into the Mataranka region. She also supported options such as a light beer only restriction being imposed or a condition that the Licensees sell only to bona fide tourists.
- 20) Mr McManis from Mataranka Hotel also provided detailed written submissions and appeared in person at the hearing. Mr McManis advised the Commission of a number of initiatives he has implemented at the hotel recently to assist in managing alcohol related behaviour on premises. He also asked the Commission to consider options other than the Katherine licence hours such as a 'bona fide tourist' exemption or restrictions on product type and quantity prior to 2:00pm.

- 21) Mr McManis fully acknowledged that there were alcohol related issues that were having a detrimental impact in the Mataranka region but he encouraged the Commission to consider options other than supply restrictions favoured by Police so as to allow the Licensees and others more time to find their own solutions to these problems.
- 22) Mr Crowe sought clarification from the Commission as regards their intentions with respect to Pine Creek Licensees. The Commission, after hearing submissions from the Police and the Director of Licensing, intimated the intention to allow Pine Creek licence conditions to remain the same at this stage because there appears to be no increased alcohol related issues in Pine Creek that necessitate a change being made.
- 23) The Commission noted that there is likely to be an extra pressure placed on Pine Creek Licensees if changes are made to the takeaway licence conditions of Mataranka Licensees. For this reason the licensed premises in both areas will be carefully monitored in the foreseeable future in the hope that both communities are not impacted upon by alcohol related harm.

DECISION

- 24) In making this decision the Commission has had the benefit of well prepared submissions from the Director of Licensing, Northern Territory Police, the Licensees and several other stakeholders. The Commission is appreciative of the time and effort that has gone into making these submissions and thanks those involved.
- 25) The Commission fully understands the commercial concerns of the Mataranka Licensees who play a valuable role within the community and who simply want to ensure that their businesses remain sustainable and profitable.
- 26) The Commission's role, however must take into account the wider impact of alcohol upon the community. In the wider Mataranka region, there is clear evidence that Mataranka has become the place to go for liquor supplies between 10:00am and 2:00pm.
- 27) Allowing outlying regions to maintain longer takeaway hours than Katherine was always potentially problematic and subject to review. The evidence before the Commission supports a finding that the liquor purchased by customers from Mataranka before 2:00pm is contributing measurably to alcohol related harm, both within that community and in surrounding communities. For this reason, the Commission intends to accept the submission of Northern Territory Police that the licensed hours for Mataranka Licensees should be brought into line with those in Katherine. It does not intend to make any change to Pine Creek or the Victoria River Roadhouse

because there is no evidence before it at present to support a need for change. Those communities will be monitored from time to time to ensure that the situation has not changed.

- 28) The Commission has also considered whether some special exemption should be provided to Mataranka Licensees to enable them to continue selling alcohol outside of the tighter takeaway hours to bona fide tourists and pastoral stations.
- 29) The Commission intends to change the licence conditions of these premises to allow them to accept bush orders from pastoral stations but it does not intend to allow them any special consideration with respect to tourists. It is noted that Mataranka is situated only one hundred kilometres (100 km) from Katherine. Licensees in Katherine are restricted to the takeaway hours of 2:00pm to 8:00pm for all customers and there is no good reason why the Commission should allow Mataranka Licensees to be treated differently.
- 30) Section 33 letters will now be prepared for affected Licensees in Mataranka advising them of the proposed change to licence conditions. The Licensees have the opportunity of a twenty-eight (28) day period to seek a hearing if they wish to do so, If no hearing is sought, then the new conditions become licence conditions after twenty-eight (28) days from receipt of the Section 33 letter.

Brenda Monaghan
PRESIDING MEMBER

1 September 2009