

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	KATHERINE RIVER LODGE
LICENSEE:	Baklo Pty Ltd
LICENCE NUMBER:	80204523
NOMINEE:	Mr Kurt Scott Rothwell
PROCEEDING:	Application to vary licence conditions
HEARD BEFORE:	Mr Peter Allen
DATE OF HEARING:	6 June 2002
DATE OF DECISION:	20 June 2002
APPEARANCES:	Mr Peter Walker for the Licensee Mr Terry Buss, CEO Katherine Town Council Mr Nigel Hayes, Objector Mr Mark Gage, Objector

The application by Baklo Pty Ltd is to vary the conditions of the licence held in respect of the Katherine River Lodge situated on the Gorge Road at Katherine. The business associated with the licence is described by the applicant licensee as "backpacker and budget accommodation". The licence is categorised as a Private Hotel. The licence conditions permit the sale of liquor to bona-fide lodgers without any necessity to order a meal, and to members of the public strictly ancillary to a meal. The licensed hours are 6:00PM to Midnight, seven days a week.

The applicant seeks to vary the conditions of the licence by an extension of licensed hours to 12 Noon to Midnight, seven days a week and to remove the ancillary meal requirement presently applicable to members of the public.

The application was advertised in the "Katherine Times" on two consecutive Wednesdays, commencing 6 February 2002.

The proposed licence conditions are as follows:

Liquor may be sold between the hours of 12:00PM and Midnight, seven days a week without the necessity for patrons to order a meal.

The premises shall at all times have the appearance of and trade predominantly as a restaurant.

Patrons to be seated at a table.

Consumption of liquor without a meal will not be advertised or promoted.

Premises shall close no later than one and one half-hours after the kitchen closes.

Snack foods will be available at all times.

The word "Bar" shall not be used in any advertising or signage.

Supervisors and Shift Managers shall attend a recognised Responsible Service of Alcohol course.

The conditions sought as above are close to congruent with the conditions normally applied where the Commission permits a restaurant to serve liquor without a meal and are officially referred to as the "Liquor Without A Meal" conditions.

Objections to the application were lodged by Mr Mark Gage, Mr Nigel Hayes and Mr Allan Love. Mr Love, a director of the licensee company for the Crossways Hotel did not appear at the hearing.

The Katherine Town Council lodged a letter of conditional approval over the signature of its CEO, Mr Terry Buss. Given the extensive list of conditions required in order for the applicant to obtain Council support for the application, the parties were advised at the commencement of proceedings that I intended to regard the Council's position as being that of an objector.

Immediately following commencement a view of the premises was conducted. All parties attended. Upon resumption, a sketch plan of the premises was entered as Exhibit One.

The central essence of the application as put in evidence by Mr James Crawford of Baklo Pty Ltd is to open up the licence for longer hours so as to include the lunch period, and subject to the conditions outlined above to sell liquor without a meal to the public at large, particularly tourists travelling past the premises en route to the Katherine Gorge. It is useful to note that the licensee is already able to sell liquor to lodgers without any requirement for those lodgers to order a meal.

Mr Crawford agreed with my proposition that "locals and tourists, particularly backpackers do not readily mix" and that few locals used the facilities of the licensed premises.

Mr Buss, on behalf of the Katherine Town Council outlined the Council's concerns that the premises should not be permitted to become simply another "pub" complete with the attendant problems that such a classification would imply or attract.

Mr Hayes, a resident in close proximity to the premises lodged his objection in response to the statutory notice contained in the "Katherine Times". Mr Hayes concerns include noise emanating from the premises; he stated in evidence that he has called the Police on several occasions. Mr Hayes is concerned regarding the abundance of liquor outlets in Katherine and that in the absence of any requirement to order a meal, itinerants and others would be able to simply walk in and drink, with the effect that the premises would become a public hotel. Mr Hayes is also concerned regarding the appropriateness of students travelling home from the nearby primary school being able to view patrons in the outside area of the premises in event the application for additional trading hours is approved.

Mr Gage, an elected alderman of the Katherine Town Council, lodged his objection in his private capacity. The thrust of his objection was that there was insufficient consultation with nearby residents. He also submitted that the applicants had been poorly advised and that the conditions sought, if granted, would render the licence unworkable. Further, Mr Gage was concerned that the Commission should not issue or create hybrid licences and thus the licence should be either a restaurant or a tavern complete with the appropriate infrastructure and licence conditions.

Mr Love, a local resident and licensee, lodged an objection but did not appear. I am satisfied that reasonable effort was made by the Racing, Gaming and Licensing Division to effect Mr Love's appearance. As no reason has been provided by Mr Love for his non-attendance, I do not propose to consider his objection in any detail.

In my consideration of the application and the concerns of the objectors I am mindful of the applicant's desire to expand its business with an emphasis on tourist visitors to Katherine and of the objectors' concerns that the premises does not become another "pub". I am also mindful that the amenity of the immediate neighbourhood should not be diminished, in particular by additional noise.

My approval of the application is subject to a series of licence conditions tailored to limit the licensee to little more than the tourist market it seeks to access and to satisfy the concerns of the objectors as to noise, amenity, and the mode and manner of trade at the premises.

Firstly as to amenity and noise, the applicant licensee and Mr Hayes are agreed on the following "noise condition" to be inserted into the licence.

The licensee shall not suffer or permit the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of the lawful occupiers of any other premises.

As the premises abuts a residential area the following condition will be inserted into the licence:

Any future application to vary the conditions of the licence so as to extend licensed hours, alter the mode or manner of trade at the premises or which the Commission considers may be likely to affect the amenity of the neighbourhood shall be advertised to the public-at-large and made known to the residents of the neighbourhood.

To acknowledge Mr Hayes' concerns regarding school children travelling past the premises at the end of the school day, and also as a further condition designed to limit noise emanating from the premises, the conditions below will be inserted in the licence.

The patron capacity of the "outside area" abutting the Gorge Road shall be subject to the approval of the Director of Licensing, such approval to be expressed as a maximum number of tables and chairs.

All patrons of the "outside area" shall be seated at a table.

The licensee shall provide "screening" to the outside area by way of trees and pot-plants. The density of the "screening" shall be subject to the approval of the Director.

Upon the insertion of the above conditions into the licence, the application to extend the licence to 12 Noon to Midnight, seven days a week is approved.

For the application that "liquor without a meal" style conditions form part of the licence I share Mr Gage's view that the applicant appears to have been poorly advised in its choice of proposed conditions as such conditions were developed by the Commission for application at standard restaurant settings. The applicant's premises is not a standard restaurant; a significant majority of its current patron base is already able to obtain liquor without any requirement to order a meal.

I also share the concern of the objectors that the premises should not become "just another pub". Cognisant that the focus of the application as detailed in Mr Crawford's evidence is to draw the passing tourist traffic into the premises and to permit tourists and travellers to consume liquor with or without a meal and his clear understanding that "tourists and locals do not readily mix", the licence will be varied by the insertion of the following conditions.

The premises shall at all times operate primarily and predominantly as a facility for tourists and travellers to the Katherine Region and all advertising and promotional material shall be directed to this effect.

Liquor may be sold or supplied to bona-fide tourists and travellers to the Katherine region provided that at all times the onus of proof as to the bona fides of such travellers and tourists shall lie with the licensee.

The condition that requires non-residents of the lodge to purchase a meal with their liquor shall remain in the licence as a "core condition" so as to ensure the premises retains its specialised nature and does not become a watering-hole for all and sundry, in effect a "pub". The above conditions shall be "special conditions" that provide an exemption to the core condition, for service to tourists and travellers who are not registered lodgers at the premises.

Peter R. Allen
CHAIRMAN