

NORTHERN TERRITORY LICENSING COMMISSION

**REASONS FOR DECISION
ON APPLICATION FOR ADJOURNMENT OF HEARING**

PREMISES: KEEP RIVER ROADHOUSE

DATE OF DECISION: 31 July 2000

DATE OF HEARING: 31 July 2000

Complaint: APPLICATION FOR GRANT OF LIQUOR LICENCE

Licensee: NA

Nominee: NA

**Heard Before: Mr John Withnall (Presiding)
Mrs Annette Milikins (Member)
Mrs Shirley McKerrow (Member)**

**Appearances: Ms Susan Gilmour for Northern Land Council
Mr Greg Macdonald for NT Police**

Reasons for decision on application for adjournment of hearing

The following is a decision delivered ex tempore on 31 July 2000. Some non-substantive editing has taken place, and certain background material added.

In this matter Ms Pauline Bailey is applying for a new liquor licence for a roadhouse to be established at the gateway to the Keep River National Park, just on the Territory side of the border with Western Australia. The intention is for the applicant to take a lease from the developer, who will take title by way of approved excision from NT Portion 1033 currently in the name of the Conservation Land Corporation.

Ms Susan Gilmour represents the interests of the Northern Land Council, and appears also for nine individual Aboriginal persons from communities close to the proposed licensed premises. She submits that it is these local communities in the area, on both sides of the border, that is the "community" for the purposes of section 32(1)(d) of the Liquor Act, and on information and instructions from her clients applies for an adjournment on the grounds that many other members of those communities are known locally to wish to object to the application but had not known of the application having been lodged. The advertising of the application had appeared only in the "Katherine Times", and Ms Gilmour pointed out that although the relevant communities are only some forty kilometres from Kununurra, the area is of course over four hundred kilometres from Katherine. She argued in effect that the relevant communities are Kununurra-centric, including those on the Territory side of the border, and that because the advertising of the application was restricted to Katherine there had been a significant lack of publicising of the application within the relevant community, and only now was it obvious that there was building up a groundswell of community opposition to the licence, on both sides of the border.

In this context Mr Greg Macdonald, appearing on behalf of the NT Police, sought to tender late objections from two local Territory station owners, which had been submitted to and passed on by the Western Australian police, and the Ngaliwurru-Wuli Association sought to lodge a late objection on behalf of communities at Binjen, Doojum, Police Hole, Bubble Bubble, Mialuni (Amanbidgee) and Bulla.

Ms Gilmour sought the adjournment so that the application might be more effectively publicised within the relevant local communities.

In response Mr Ray Brown, appearing in support of Ms Bailey, consistently emphasised the liaison that had taken place between himself and a group of traditional owners over some time leading up to the application, but he conceded that apart from the advertisements in the "Katherine Times" there had been no other notification by him to local communities in the Keep River area that the application had actually been lodged with the office of the Director of Licensing such that the time limited for lodging objections had commenced to run.

We must agree with Ms Gilmour as to what is the relevant community in relation to this application. The law in the Territory on this issue remains that stemming from the decision of Muirhead J in *R v Liquor Commission; ex parte Pitjantjatjara Council Inc. (1984) 31 NTR 13*. This related to the Yulara Resort, and the Court held that the Liquor Commission in order to comply with section 32(1)(d) in that particular application had to consider and balance the views of “all groups” in the “surrounding area”, as a consideration separate from the requirements of the travelling public.

We also accept with the benefit if not of hindsight then certainly of the additional information now before us, that the advertising of the application only in Katherine can now be seen to have been less than effective notice to that community that the clock was ticking for objections. This is absolutely no criticism of the applicant; she was after all following a direction of an officer in the office of the Director of Licensing in the normal course of checklisting her application. Nor do we criticise that officer either; it is easy to see why the choice of the Katherine newspaper seemed logical at the time. Certainly the Commission can have no jurisdiction beyond the Territory border, but once an application is within the jurisdiction a consideration of relevant community is unaffected by political boundaries, and in any event the selection of the appropriate town centre for advertising an application in relation to those elements of the relevant community that do live on the Territory side of the border needs to look to the actuality of communication patterns in the area, which are notoriously unsusceptible to notions of state boundaries.

We accept that the local communities in the area on *both* sides of the border look to Kununurra as their town centre.

We therefore adjourn the hearing with the direction that the application be prominently advertised in the “Kimberley Echo” in Kununurra on two different occasions. The advertising will be paid for by the Commission.

The application need not be re-advertised in Katherine. The advertisement in the “Kimberley Echo” is to include a notification that those who have already filed objections will not need to renew those objections; all existing objections are to stand.

We are not insensitive to the applicant’s unhappiness with the adjournment. However, given the number of witnesses Ms Gilmour has with her at the present time, even if we commenced to hear the matter now it is obvious it could not finish within the time which has been made available for it, and would be adjourned part heard. Ms Bailey and Mr Brown were going to have to return to Darwin for a continuation of the hearing in any event, so it makes more sense in terms of a fair go for all if in the unavoidable interim the application is more effectively advertised. There can be no further criticism of the process if all who want to have their say can be seen to have been notified of that opportunity.

It is recommended that the applicant and the office of the Director arrange such advertising forthwith. As soon as the new objection period expires, and it can then be seen what length of time ought to be allocated to the hearing, the Commission will then *immediately* set the earliest possible new hearing date. The matter will receive all possible priority.

The applicant no doubt realises that she has entered into an obviously sensitive process, and in order that her case be presented in the best possible light we strongly suggest that she consider retaining legal counsel for the hearing. It is not essential for success, of course, and an unrepresented applicant receives as of right every proper consideration and courtesy. Lawyers routinely play no part in the simpler and less sensitive applications. We cannot *advise* the retention of a lawyer, but strongly commend such course of action to the applicant in the light of what would appear to be a gathering climate of local disapproval. We are told that even some of those traditional owners who appear to have signed a written consent to the process will now be contesting the validity of their approval. Given a recent decision of the full Federal Court, albeit now under appeal, which delineated native title rights in the area, the matter promises to be more complex than perhaps the applicant may have expected.

John Withnall
(Presiding member)
31 July 2000