

Northern Territory Licensing Commission

Application for Declaration of a Restricted Area Decision

Applicant(s): Mr Robert Lee Executive Director
Jawoyn Association Katherine

Heard Before: Dr Alan Clough

Hearing Dates: Katherine and Banatjarl: 9th of May 2005

Date of Decision: 27th of June 2005

Summary of Decision:

The Licensing Commission was asked to declare a restricted area at Banatjarl (formerly known as King Valley Station) so that no liquor of any type could be taken there.

The Commission's decision is that:

1. Pursuant to s.74(1) and s.81(1)(b) of Part VIII – Restricted Areas of the *Northern Territory Liquor Act*, in force at the 1st of September 2004, (the *Act*), the Commission has determined that a parcel of land at Banatjarl, and described in the body of the decision and the Schedule, is declared a restricted area.
2. This declaration will take effect from the 15th of July 2005 and shall be implemented by causing to be published a notice, pursuant to s.82 of the *Act*, to declare the area restricted.
3. The effect of this decision is that, from the 15th of July 2005, in accordance with s.75(1) of the *Act*, a person shall not bring liquor into, have liquor in his possession or under his control, or consume sell or otherwise dispose of liquor within the Banatjarl area.

Recommendations arising as a consequence of this decision

4. It is recommended that, consistent with the applicant's request, applications by residents of Banatjarl restricted area for liquor permits, allowed by s.90 of the *Act* and which must be considered by the Commission pursuant to s.91, are refused by the Commission, pursuant to s.92(b) of the *Act*.
5. It is also recommended that the Commission consider possible adverse impacts on the operations of the Banatjarl restricted area during the course of any future review of the nearby Nyirrangulung Mardrulk Ngadberre restricted area.

Signed by the Commission member constituting the hearing panel:

Alan Clough
27th of June 2005

Background: Banatjarl

Banatjarl, whose infrastructure is based on the station buildings and facilities of the former cattle property known as King Valley Station, is located approximately 40 kilometres due east of Katherine. Access is by road from Katherine for a distance of approximately 42 kilometres southeast along the Stuart Highway and then northeast on a gravel road for approximately 18 kilometres. A gravel track continues on for another 25 kilometres leading to the Manyallaluk community. The country to the north is rugged with no access to Banatjarl from this direction.

Banatjarl is owned by the Jawoyn Association.¹ There are three houses and associated sheds, water tanks and disused yards on the property. The community has no airstrip and access is by road only. All of the residents of the outstation are Aboriginal people. In December 2004 there were seven residents.²

Banatjarl is freehold land³ bordered in the north by the Nitmiluk (Katherine Gorge) National Park which is also part of the Jawoyn Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act (1976)*. The land bordering Banatjarl to the east is also part of the Jawoyn Aboriginal Land Trust. Freehold land borders Banatjarl to the west and the south.

Preamble

1. On the 25th of June 2004, a letter (dated the 24th of June 2004) was received by the Director of Licensing (the Director) signed by Mr Robert Lee, Executive Director of the Jawoyn Association requesting that, with respect of NT Portion 1729 Banatjarl, “.. the Dry Area legislation be gazetted over this portion”. The stated reason for the application was

“The Banatjarl Women’s Resource Centre will soon commence programs involving Nutrition, Drug and Alcohol, respite from domestic violence etc for women and families.

The Sara Flora centre is being established and as such we require the portion to be alcohol free”⁴
2. Subsequently, on the 13th of August 2004, a further letter dated the 11th of August 2004 was received by the Director seeking to expand the area the subject of the application generally to the southwest towards the Stuart Highway and to the north and east, with the general intent of making Banatjarl contiguous with the Nyirranggulung Mardrulk Ngadberre restricted area, but without precise delineation of an expanded area.⁵
3. At its meeting of the 8th/9th of March 2005, the Commission considered a report from the Director which advised that the applicants were seeking a restricted area at NT Portion 1729, Banatjarl,⁶ as described in their letter of the 24th of June.⁷ The Commission determined that the material placed before it constituted an application for a restricted area, the relevant area being Banatjarl (King Valley Station), and determined to set a date for a hearing to be conducted into the application. The Commission also determined that the Chairman would request the Director to conduct such appropriate investigations as will assist the Chairman in relation to the requirements of s.79 of the *Act*.
4. On the 11th of March 2005, pursuant to s.51(2A)(b) of the *Act*, the Chairman selected me to constitute the Commission to hear and determine the application for a restricted area at Banatjarl. Simultaneously, pursuant to s.15(2) of the *Licensing Commission Act* as in force

¹ Hearing Brief: Folio 1

² Hearing Brief: Folio 7

³ Hearing Brief: Folio 5

⁴ Hearing Brief: Folio 1

⁵ Hearing Brief: Folio 5

⁶ Hearing Brief: Folio 12-14

⁷ Hearing Brief: Folio 1

at the 29th of June 2001, the Chairman selected me to constitute the Commission to hear and determine those aspects of the application pertaining to liquor permits.

5. With respect to declaring an area a restricted area, my statutory power is delineated by s.74(1) of the *Act* which reads as follows:

Subject to this Act, the Commission may declare that a specified area of land shall be a restricted area.

6. In deciding whether to grant an application for an area of land to be declared a restricted area, the Commission is obliged by s.80 of the *Act* to

consider the opinions regarding that application expressed or ascertained pursuant to sections 78, 79(1)(c) and (2);

7. My options for a decision after hearing are set out in s.81(1) and s.81(2) of the *Act*. Under s.81(1), and subject to the objects of the *Act*, the Commission must either

(a) refuse to declare the relevant area to be a restricted area and direct the Director to forward notice of the refusal together with a statement of the reasons for refusal to the applicant;

(b) declare an area of land to be a restricted area; or

(c) declare an area of land to be a restricted area in respect of liquor other than a type of liquor.

Under s.81(2)(a) and (b) the declaration may be in relation to a relevant area which is the relevant area, or land that in area is equal to, greater than or less than the relevant area but pursuant to s.81(3) shall include a part of the relevant area.

8. The Commission is obliged by s.91 of the *Act* to consider an application for a liquor permit, as allowed by s.90, to bring liquor into the restricted area and to possess and consume it there. Upon consideration of such an application the Commission is obliged by s.92 of the *Act* to either

(a) issue a permit in a form approved by the Commission, subject to such conditions as are determined by the Commission under section 87(3); or

(b) refuse the application and direct the Director to forward notice of the refusal together with a statement of the reasons for refusal to the applicant.

9. When exercising these powers or functions the Commission is obliged, from the 1st of September 2004, by s.3(3) of the *Act* to have regard to the objects of the *Act* and to exercise the power or perform the function in a way that is consistent with these objects delineated in s.3(1) and s.3(2).

(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor –

(a) so as to minimise the harm associated with the consumption of liquor; and

(b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

(2) The further objects of this Act are –

(a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;

(b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and

(c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.

10. Given the available mechanisms for considering the application and the standing of the considerations underpinning these reasons for decision, the substance of the opinions heard and submitted in writing regarding the application are now considered pursuant to s.80 of the Act.

Summary of the substance of opinions heard and submitted in writing:

11. The Commission notes the written submission from the Barunga Community Management Board advising that the Board has endorsed the application for a restricted area lodged by Mr Robert Lee for the area known as Banatjarl.
12. At the hearing in Katherine, Mr Robert Lee was the only person present. He advised that the relevant area is the Banatjarl area, formerly known as the King Valley Station, and that he made the application in order to ensure that the area is secure from liquor so that a range of women's programs that are proposed can be run there. Mr Lee advised that Banatjarl is an area of 'woman's dreaming' and that the Jawoyn Association owns the property. It is envisaged that the proposed programs will permit people from Beswick, Barunga, Binjarri, Gorge Camp and Rock Hole to have an area where they can find some respite from drinking problems and engage peacefully in cultural activities. The focus of the programs will be on welfare for families, negotiation with parents for a safer environment for children, aged care and as a respite place from domestic violence. Mr Lee tabled a document entitled 'Banatjarl Family Resource Centre Strategic Plan 2005-2008: Women's Dreaming Place'⁸ which outlines in considerable detail, consistent with Mr Lee's evidence, the vision for Banatjarl and the programs that would be delivered.
13. As far as possible to discourage the development of informal drinking areas near Banatjarl, he is particularly concerned that the Banatjarl area should be 'joined up' in a suitable way with the new Nyirranggulung Mardrulk Ngadberre restricted area which will come into force on the 1st of July 2005.⁹ He is very much concerned that with such a new restricted area surrounding the Barunga, Beswick and Manyallaluk communities, it is possible that drinkers would seek to come to Banatjarl where, at present, no restrictions on the possession and consumption of alcohol, pursuant to the *Liquor Act*, apply.
14. When asked about the current arrangements for controlling liquor at Banatjarl, Mr Lee advised that he was the senior person for that place and that he had made a ruling some years ago that the area would be a 'dry' area. He advised that there were four employees resident there at the moment and that they were all employed on the basis that the area would be one where his ruling as the owner was respected and that no liquor would be taken there and no intoxicated people would be allowed to enter there. In his words "We've been running it dry as it is."
15. The hearing was adjourned and reconvened at Banatjarl where Mr Stephen Woods, who is employed as a mechanic, confirmed for the Commission the existing arrangements for liquor and furthermore that persons recruited to work there are employed on the basis that they would not bring liquor into the area or enter the area intoxicated. He assured us that all his fellow workers and residents knew these arrangements and abided by them, although some visitors from elsewhere occasionally ignored them. Mr Woods indicated that he clearly understood the application before the Commission and strongly supported it.
16. The NT Police had nothing to add for the Commission's deliberations in the matter.¹⁰

⁸ Exhibit 1

⁹ http://www.nt.gov.au/ntt/commission/decisions/050505_Nyirranggulung_Mardrulk_Ngadberre_Restricted_Area.pdf

¹⁰ Hearing Brief: Folio 25

Consideration of the issues and determination

17. It was clear from the evidence provided and from the manner of its presentation that Mr Robert Lee is a man having pivotal authority at Banatjarl who is determined to ensure that the proposed women's, aged care and respite programs would not be disrupted by intoxicated people or by the consequences of liquor being brought into the area. Mr Lee wields the authority of traditional family structures to do this. It therefore seems likely, so long as Mr Lee remains resolute in his determination to control liquor in the Banatjarl area, his authority will prevail. The application for a restricted area is clearly not intended as a means whereby Mr Lee would abrogate the responsibilities he has shouldered in order to prevent alcohol entering Banatjarl. On the contrary, Mr Lee seeks to reinforce his efforts with the assistance of NT law.
18. An important reason for Mr Lee in making the application is to ensure that Banatjarl is not adversely affected by the declaration of the neighbouring Nyirranggulung Mardrulk Ngadberre restricted area which will come into effect on the 1st of July 2005. Mr Lee thereby demonstrated a realistic consideration of the possible flow-on effects of such a declaration. At the same time Mr Lee clearly holds no expectations for additional policing efforts in excess of their current needs if a restricted area was declared. In any event, over and above the prospects for apprehension by Police, it is possible that the residents of Banatjarl could benefit from time to time by the surveillance carried out by Licensing Inspectors of Racing, Gaming and Licensing who would apprehend those who would seek to bring alcohol into a restricted area at any available opportunity.
19. Mr Lee also stated, with some emphasis, that he wished to ensure that a restricted area at Banatjarl should be contiguous with the Nyirranggulung Mardrulk Ngadberre restricted area. No further information was provided to describe how the two restricted areas should be made contiguous. This issue may be addressed by the Commission in any future review of the Nyirranggulung Mardrulk Ngadberre restricted area.
20. For these reasons the Commission, pursuant to s.81(1)(b) of the *Act*, declares a restricted area at Banatjarl, formerly King Valley station (NT Portion 1729) as specified in the Schedule. Signs are to be erected in consultation with Mr Lee and as specified in the Schedule. The declaration is to be effective from the 15th of July 2005.

Recommendations arising as a consequence of this decision

21. It is recommended, consistent with the applicant's request, that applications for liquor permits, allowed by s.90 of the *Act* and which must be considered by the Commission pursuant to s.91, are refused by the Commission, pursuant to s.92(b) of the *Act*.
22. The Commission notes that it was recommended that the adjoining Nyirranggulung Mardrulk Ngadberre restricted area should be reviewed after a period of six months from the 1st of July 2005.¹¹ S.3(3) of the *Act* obliges the Commission to have regard to the objects of the *Act*, with an object being to protect and enhance community amenity, social harmony and wellbeing through, amongst other mechanisms, the responsible consumption of liquor (s.3(2)(a)). It is therefore recommended that the Commission consider possible adverse impacts on the operations of the Banatjarl restricted area as a consequence of the outcomes of such a review, especially the prospect that informal drinking areas may emerge near Banatjarl, or that there occurs an increased likelihood that liquor is taken there in defiance of restrictions, or that the boundaries of the Banatjarl restricted area would require modification to ensure that the two restricted areas are contiguous and that those who would consume liquor in the vicinity of the Banatjarl restricted area do not disrupt its residents.

End of decision.

¹¹ http://www.nt.gov.au/ntt/commission/decisions/050505_Nyirranggulung_Mardrulk_Ngadberre_Restricted_Area.pdf

Schedule

Banatjarl Restricted Area

DIPE (Survey) ref LI 2004/08/85

All that parcel of land in the Northern Territory of Australia containing an area of 121 square kilometers more or less being Northern Territory Portion 1729 and more particularly delineated on survey plan S79/045 lodged with the Surveyor General, Darwin.

Locations of signs advising of the restricted area

Signs of a size no less than 1m² are to be installed at the entrance gate(s) to Banatjarl, in consultation with the applicants, and at any points where roads enter the restricted area so that all inbound passengers and vehicle drivers may be made aware that they have entered a restricted area.

These signs are to state the following

(with words between these symbols: *...* in lettering no less than 50mm tall and between these symbols: †...† in lettering no less than 13mm tall)

Liquor Act Warning Restricted Area

†The possession or consumption of LIQUOR in this area is a serious offence. Any vehicle carrying liquor may be seized and forfeited and the following penalties may also apply.

First offence - up to \$1000 fine or 6 months imprisonment

Second or subsequent offence - up to \$2000 fine or 12 months imprisonment†