

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Jungle Drum Bungalows Batchelor
<b>Date of Hearing:</b>	02 July 2002
<b>Date of Decision:</b>	02 July 2002
<b>Date of these Reasons:</b>	07 August 2002
<b>Proceeding:</b>	Application for new on-premises licence
<b>Applicant:</b>	Mr Ronald Stuart Lake
<b>Heard Before:</b>	Ms Shirley McKerrow (Presiding) Mr John Withnall Mrs Barbara Vos
<b>Appearances:</b>	Mr R Lake, the Applicant Mr C Horne, for Batchelor Butterfly Farm and Bird Sanctuary Mr R Davis, for Batchelor Resort (Batchelor Caravillage)

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Mr Ronald Lake is the proprietor of the registered business "Jungle Drum Bungalows", a small motel complex at Batchelor. Six (6) small bungalow units, each accommodating four (4) persons, occupy only part of one side of an allotment landscaped in a tropical style somewhat reminiscent of Balinese. A separate restaurant building adjoins a pool in the middle of the complex. The office and reception area is at the front of the allotment, and Mr and Mrs Lake reside on the premises.

Mr Lake seeks to sell liquor to bona fide lodgers for consumption on the premises between 11:30 hours and 12:00 midnight, and to the general public only in conjunction with a meal in the restaurant between 11:30 hours and 14:00 hours and again between 18:00 hours and 12:00 midnight.

Police have no objection to the application. The only objections are on behalf of two immediately adjoining businesses: the Batchelor Butterfly Farm and Bird Sanctuary, and the Batchelor Caravillage.

Neither objection related to that part of the proposal as would allow service to in-house guests. Both objectors were concerned with that element of the proposed liquor licence which would allow service to the public, albeit only in conjunction with a meal, and with noise issues.

In pursuing their respective objections, both objectors presented submissions as to the concentration of liquor licences in Batchelor.

Given that the Butterfly Farm and Bird Sanctuary itself includes a licensed restaurant, and that the Batchelor Caravillage although not itself licensed has the same management as the nearby Rum Jungle Motor Inn, issues of the possible application of Section 48(1A) of the *Liquor Act* (which prohibits so-called "commercial objections") need to be considered by the Commission.

The most recent guideline to the Commission's approach to this issue is to be found in the decision on an application for a liquor licence by Delissaville Social Club Inc., currently accessible on the Commission's website. In the present case both Mr Horne on behalf of the Butterfly Farm and Bird Sanctuary and Mr Davis on behalf of the Batchelor Caravillage conducted themselves in such manner as satisfied us that they had genuine community and tourism-related concerns that were broader than a mere reaction to perceived competition.

On the aspect of undue proliferation of liquor licences, it was also pointed out in the Delissaville decision that this aspect of liquor licensing is normally considered by the Commission to be far more critical in relation to takeaway licences rather than to controlled on-premises consumption. In the case before us the on-premises proposal is especially modest.

Mr Horne pointed us to Item 6 of the relevant Development Permit for the applicant's premises, restricting "the use of the eatery and bar ..... to house guests and limited visitors", but in the Commission's view the limited nature of the proposal in relation to visitors cannot be seen to contradict such a requirement. Visitors are to be restricted in their liquor consumption to use of the restaurant, the modest capacity of which can seat no more than thirty (30) people at best.

At the conclusion of the hearing the parties were advised of the Commission's decision that a licence would be granted with conditions appropriate to the limited nature of the operation. It was the Commission's view that the modest scale of this particular operation did not give rise to any real issue of undue licence proliferation within the Batchelor community.

Parties were also advised that inasmuch as the objectors' apprehension of noise disturbance was not unreasonable, there would be conditions addressing this issue. The Commission surmised that in all probability these would restrict the areas in which liquor may be consumed to the bungalows and their verandahs or "patio" areas and to the restaurant structure, and in all likelihood there would be a curfew on the service of liquor somewhat earlier than midnight, with the need for any special events or gatherings to be the subject of applications for temporary variation.

Such will be the case. The licence will issue with the following Special Conditions:

**Trading Hours:** Trading hours for the premises shall be 11:30 hours to 22:00 hours seven (7) days per week.

**Service and Consumption:**

- (a) Liquor may be served only to bona fide in-house lodgers, and to persons other than lodgers seated at a table in the restaurant in conjunction with a meal ordered from the main menu. All liquor supplied to persons other than lodgers shall be in and by way of open containers only.
- (b) Although the licensed area for the purposes of administration of the *Liquor Act* shall be the entirety of Lot 334 Town of Batchelor, nevertheless the Licensee shall not permit liquor to be consumed by patrons in any part of the licensed premises other than within the restaurant or within the bungalows and their individual verandah or "patio" areas. For the purposes of this condition "restaurant" shall mean the enclosed restaurant structure only, not inclusive of the pool or its surrounds, and "patrons" shall include the family and guests of lodgers, and any person attending any organised function or special event at the premises.
- (c) Pursuant to Section 104(g) of the *Liquor Act*, restaurant patrons are authorised to remain in the restaurant until 23:59 hours, provided always that no liquor is to be served or in any way supplied or provided to any person after 22:00 hours.

**Entertainment:** No electronically amplified entertainment shall be permitted other than background music, whether live or recorded, subject at all times to the next succeeding condition directed against noise disturbance.

**Noise disturbance:** The licensee shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause disturbance to the ordinary comfort of lawful occupiers of any adjoining premises. Without in any way limiting the generality of such requirement, the sound of music or liquor-related exuberance shall not be able to be clearly audible to or easily perceived by any such occupiers after 2200 hours on any night.

It will be noted that we have not seen fit to incorporate an afternoon break in the approved trading hours. This is not so much a trade-off against the imposition of the earlier cessation of liquor

service than was applied for but an acceptance of Mr Lake's assurances as to the manner in which the premises are to be conducted in relation to the availability of liquor. There is an element of faith involved on the Commission's part in this respect, and it remains only to note that if we should ever feel that such faith has been misplaced or disappointed then the licensee could expect an appropriate variation of trading hours by way of section 33 of the Act.

S M McKerrow  
Presiding Member