

Northern Territory Licensing Commission

Decision

Premises:	Old Elsey Roadside Inn Stuart Highway Mataranka
Licensee:	Fynroo Pty Ltd
Licence Number:	81301965
Nominee:	Ms Kelly Bryant
Proceeding:	Section 33 of the <i>Liquor Act 1978</i>
Heard Before:	Mr Peter Allen (Chairman)
Date of Hearing:	27 June & 2 August 2001
Date of Decision:	17 September 2001
Appearances:	Mr Ken Harding for the Licensee assisted by Mr Greg Weller, Executive Director of the Australian Hotels' Association (NT Branch)

The matter before the Commission arose from the evaluation, by the Commission, of the trial of liquor restrictions in Katherine. A series of restrictions on the sale of liquor in Katherine were trialled during 2000 and evaluated during January, February and March 2001.

The Commission was assisted in its evaluation of the trial by the member organisations of the Katherine Liquor Issues Committee; a committee established by the Commission for this purpose and to assist in the first instance, with the establishment and oversight of the trial.

The Commission's Decision arising from its evaluation of the trial restrictions was handed down in Katherine on 30 March 2001.

Within the Decision the Commission stated,

The Commission will review the conditions of all licences in the Katherine region including Pine Creek and Mataranka to ensure that differences between Katherine licences and others in the region are minimised. The review will include all licences; it will include restaurants, stock and station agents and any special purpose or continuing special licences. "Bush orders" will be included in the review.

The guiding principle to be applied by the Commission in its review of licences throughout the Katherine region will be that no "take-away" liquor shall be sold or supplied prior to Midday on any day.

In a document headed, "Implementation of Decision and varying of licence conditions", issued as an attachment to the Decision and signed by the Chairman on 30 March 2001, it was stated that;

The Commission's review of all licences in the broader Katherine region will commence immediately.

As a platform for the review the Commission issued notices pursuant to s.33(1) of the *Liquor Act 1978* to premises in the Katherine region. These notices were consistent with the extracts from the Commission's Decision and implementation statement referred to earlier in this Decision.

The requisite Notices were faxed to the Licensee, Fynroo Pty Ltd, and to the Nominee, Ms Kelly Bryant on 24 April 2001.

The Notices advised the addressees that the Commission “has determined to vary the take-away conditions of your licence”.

The trading hours to be substituted for the Present Trading Hours were detailed in the Notices as follows,

New Takeaway Hours:

Liquor may be sold for consumption away from the premises only during the following hours:

- (i) Seven days per week between the hours of 12:00 and 21:00*
- (ii) Public Holidays between the hours of 12:00 and 21:00*
- (iii) No trading on Good Friday and Christmas Day.*

The Notice concluded with the following paragraphs.

Section 33(2) of the Act provides you with the opportunity to request a hearing in relation to the conditions of your licence within 28 days of your receipt of this notice.

If you do not request such a hearing in writing within that time, then the new conditions of your licence will take legal effect immediately upon the expiration of that period of 28 days.

The Licensee replied by faxed letter, electronically dated 10 May 2001. The letter signed by Mr Ken Harding, a Director of the Licensee, stated as follows,

We seek a hearing regarding the unnecessary proposed licence changes, and additional time for the general travelling public to complete the petitions now circulating.

Notices of Hearing, signed by the Chairman on 29 May 2001 were faxed to the Licensee and Nominee.

It is useful to note that the premises trading as the Mataranka Supermarket was also served with a s33(1) Notice. The Notice was in the same terms as that served on the Old Elsey Roadside Inn.

The licensee of the Supermarket did not respond to the Notice within the prescribed period and was contacted by the Chairman in a letter dated 8 June 2001. In his letter the Chairman noted that the Licensee of the Supermarket had not responded to the opportunity to seek a hearing.

The letter contained other information as follows,

Please be advised that the premises, Old Elsey Wayside Inn, has sought a hearing and that this hearing will be conducted in Mataranka commencing at 10:00 hours on Wednesday 27 June 2001.

In the event that the Commission finds in favour of this Licensee, it is likely that its trading hours will remain the same of those presently in place while your hours will be as per my Notice to of 24 April 2001.

The Chairman’s letter invited the Supermarket to contact the Commission’s Executive Officer with any queries.

Mr Peter John Kutschki, Nominee of the Supermarket, responded in a letter dated 21 June.

Mr Kutschki’s letter stated, in part,

The reason that I have not responded is because I have no objections to the changes that the Commission wants to put in place in our town.

In the event that the Commission finds in favour of Old Elsey Wayside Inn, I would like to request that our liquor licence remains the same, as it would not improve the social wellbeing in our town if we had one takeaway licence different from the other.

Mr Kutschki's letter indicated that he would attend the hearing.

The hearing commenced at 10:00 hours on Wednesday 27 June 2001 at the Territory Manor, Mataranka.

At the commencement of proceedings the Chairman was advised that the Mataranka Community Government Council, at a meeting commencing at 9:00 hours on the hearing date, had passed or might pass a resolution in support of the proposed new trading hours.

The hearing adjourned for some sixty minutes, until a resolution of the Council, signed by its President, was made available to the Commission and the Licensee of the Old Elsey. The Council's resolution forms Exhibit One.

Mr Ken Harding, a Director of the Licensee and representing it at the hearing, sought an adjournment to consider the Council's resolution and any ramifications that might flow from it.

Adjournment granted, the hearing resumed in Katherine on 2 August.

In the intervening period Summons to Witness and to Subpoena Documents, dated 25 July 2001, were served on Mr Mark Joroslafsky, President of the Mataranka Community Government Council. The Summons directed Mr Joroslafsky to attend, to give evidence and produce documents, specifically, the complete minutes of the Council's meeting held 27 June 2001.

At the commencement of proceedings Mr Mark Joroslafsky indicated his attendance and produced the Council Minutes of Meeting sought by the Subpoena. The minutes form Exhibit Two; the resolution regarding liquor trading hours is at 7.12. Mr Joroslafsky confirmed the documents provided represented the complete minutes. Aside from the information contained at 7.12, the minutes contained no other reference to liquor or liquor related matters.

The Council minutes show that five members including the President were present, there were two apologies.

At item 7.12 the minutes clearly state,

Mataranka Community Government Council is in support of the proposed trading hours.

The minutes show the resolution as "Carried".

In verbal submissions, Mr Harding and Mr Weller representing the Licensee spoke regarding the needs of tourists and the travelling public and emphasised the importance of the town as a bus stop for the local attractions. The importance of the self-drive market was emphasised. Also emphasised was the importance of providing services to the permanent residents of Mataranka. It was submitted that the sale of liquor to tourists and locals was but one element of the range of services provided in the town. It was submitted therefore that restrictions on the sale of liquor would eat into all aspects of commercial life in the town.

It was recognised that Katherine had liquor-related problems and that the restrictions in Katherine had been directed at assisting that town to deal with its problems. It was submitted as unlikely that residents of Katherine would drive to Mataranka to purchase liquor two hours earlier than the opening time in Katherine and further submitted that there was no evidence of this occurring.

In closing, Mr Weller submitted that the 10:00AM opening in Mataranka had not corrupted or short-circuited the intent of the restrictions in Katherine.

Mr Harding tendered a petition on behalf of the Licensee. The wording of the petition is as follows,

I object to the proposed change of takeaway hours at Mataranka. I believe this will be damaging to the townspeople and tourists alike. Mataranka is not a part of Katherine or its problems and should not be treated as such by a vocal minority.

The petition was signed by 138 persons, 27 of whom gave addressees outside the Territory. The petition forms Exhibit Three.

Mr Joraslafsky, President of the Mataranka Council gave evidence of the Council's intentions in relation to the resolution contained in its minutes at Exhibit Two. Mr Joraslafsky is a long-term resident of Mataranka and an experienced member of its Community Government Council. Mr Joraslafsky proved to be a valuable witness. He clearly articulated the challenges faced by the local community as it strives to cater for residents and tourists while simultaneously coping with residents of those communities outside Mataranka who come to the town, predominantly for the purchase of liquor.

Sergeant Christopher Wilson provided evidence on behalf of the Northern Territory Police. He proved to be a valuable witness with extensive knowledge of the issues facing the town and the nearby Aboriginal communities. Sergeant Wilson's grasp of the substance and detail of the challenges facing his region is worthy of note and a comment that Mataranka is fortunate to have his services. Sergeant Wilson gave evidence regarding the part played by taxis and other vehicles travelling from Katherine, not in great numbers, but nevertheless I am satisfied, on the evidence that it occurs. Also provided was an in-depth verbal analysis, on a community by community basis, of the liquor-related problems of surrounding Aboriginal communities and the means and frequency of visits to Mataranka for liquor purchases. While members of these communities are likely to visit also Katherine on a regular basis, for most, Mataranka is and has always been their first stop. Other communities, although not required to travel via Mataranka en route to Katherine, nevertheless visit from time to time and purchase liquor.

It was clear from Sergeant Wilson's evidence that he would prefer liquor trading hours to be shortened and that his concerns, as do those of the Council, go beyond the workload arising from liquor issues to the amenity and the quality of life in the town. Given the substantial commitment over recent years to improve the physical appearance of the town, it is not difficult to be disposed to their concerns.

To formulate a decision it is necessary to return to the starting point of the matter. That is, the restrictions on the sale of liquor in Katherine, the evaluation of those restrictions and the review of liquor licence conditions in the surrounding region. The Commission's decision arising from its evaluation of the restrictions does not plainly state its reasons for conducting a review of licences in the surrounding region. Nevertheless I see it as reasonable to assume that the Commission's intention was to ensure that the potential effectiveness of those restrictions was not diminished by a flow of problem or heavy drinkers to other towns in the region. Although evidence has been submitted of taxis and other vehicles travelling to Mataranka, apparently for the purchase of liquor, no evidence was tendered to suggest that the actual numbers represented a threat to the restrictions in Katherine.

Accordingly, I accept the submissions of Mr Weller that the current trading hours have not "corrupted or short-circuited" the Katherine restrictions. Also accepted is the submission made in Mr Kutschki's letter of 21 June, referred to earlier in this decision.

The s 33(1) Notices issued 24 April 2001 are withdrawn. The Old Elsey Roadside Inn and the Mataranka Supermarket may continue to trade in accordance with the conditions of the licences presently in effect, specifically the conditions that permit "take-away" sales to commence at 10:00AM and at 9:00AM on Saturdays and Public Holidays.

The core issue in this matter was the restrictions on the sale of liquor in Katherine and the need to ensure the potential effectiveness of these restrictions is not diminished. Although it is clear that "take-away" trading hours in Mataranka do not impact on Katherine in any meaningful way, nothing arises from this decision that is in anyway helpful to the community of Mataranka as it seeks to deal with its own issues. Mataranka's liquor related issues must remain for another time, to be determined at that time, in accordance with the needs and wishes of the Mataranka community.

Peter R Allen
Chairman