

# Northern Territory Licensing Commission

## Decision on whether Objections will proceed to Hearing

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| <b>Premises:</b>         | RJ'S Bar and Bistro, Katherine Motel   |
| <b>Applicant:</b>        | Kelbak Pty Ltd   |
| <b>Licence Number:</b>   | 80217364   |
| <b>Objectors:</b>        | Mr A P (Tony) Adams<br>Brevet Sergeant E S (Scotty) Mitchell                                   |
| <b>Legislation:</b>      | Sections 4F to 47I of the <i>Liquor Act</i> and<br>Section 28 of the <i>Interpretation Act</i> |
| <b>Decision of:</b>      | Ms Merran Short  |
| <b>Date of Decision:</b> | 18 June 2008   |

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### Summary of Decision

Hold a Hearing in respect of the objections received from:

1. Mr Tony Adams ("Mr Adams")
2. Brevet Sergeant Scotty Mitchell ("Sergeant Mitchell")

### Background

- 1) Mr Mark Baker and Ms Fiona Kelly the Licensees ("the Licensees") of RJ'S Bar and Bistro ("RJ'S") have made an application for a Variation to Conditions of their Licence "to open this venue on a Friday and Saturday night after 9.00pm when the restaurant closes and continue on to the current close time of 2.00am. Although the Licensees state in their application that they do not wish to call the venue a night club but rather prefer the "wording to be RJ'S Lounge Bar, ("the Application").
- 2) The Application was advertised in the Katherine Times on 19 and 26 March 2008 pursuant to Section 32A of the *Liquor Act* ("the Act"). The advertisements gave notice that Kelpak Pty Ltd had applied to vary the licence conditions of the Katherine Motel ("the Licence") to convert RJ'S to a Lounge Bar from 21.00 to 02.00 on Friday and Saturday nights.
- 3) The advertisement was as follows:

*I, Mark Baker On Behalf Of Kelbak Pty Ltd, Hereby Give Notice that I have applied to the Northern Territory Licensing Commission for a Variation Of Trading Conditions for Liquor Licence 80217364 for the premises located at Giles Street Katherine, NT.*

*Current Trading Conditions for RJ'S Bar And Bistro are as follows:*

*Sunday to Saturday between 11:00 hours and 02:00 hours the following day.*

*Proposed Trading Conditions are as follows:*

*RJ's Bar and Bistro will remain a restaurant from Sunday to Saturday with no variation of trading hours.*

*Between 21:00 hours and 02:00 hours on Friday and Saturday the restaurant will be varied to a Lounge Bar.*

*Entertainment will consist of amplified music and solo artist only.*

*This is the first notice of the application and a second notice will appear in the Katherine Times on 2 April 2008.*

*The objection period is deemed to commence from Wednesday, 2 April 2008.*

*Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of conditions of the licence may or will adversely affect:*

*(a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*

*(b) health, education, public safety or social conditions in the community.*

*Only those persons, organisations or groups described in Section 47F(3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.*

*For further information regarding this application contact Licensing and Regulation on telephone 8972 8906. Objections to this application should be lodged in writing with the Director of Licensing, Licensing and regulation, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.*

*Dated this 26<sup>th</sup> Day of March 2008*

- 4) Pursuant to Section 47F(4)(d) of the Act an objection must be lodged within thirty (30) days after the publication of the last notice – namely 25 April 2008. The objections the subjects of this decision are dated 29 and 26 April respectively and are therefore (allowing for the weekend) just outside the time allowed by the Act.
- 5) The Commission has the power to abridge time pursuant to Section 127 of the Act:
 

*“127 Commission may extend or abridge time*

  - (1) Where this Act provides that an act or thing may or is required to be done –*
    - (a) within a specified time; or*
    - (b) not before the expiration of a specified time,*

*the Commission may, in its discretion, extend or abridge that time.*
  - (2) The Commission may extend time under subsection (1) notwithstanding that the time prescribed by this Act for the doing of an act or thing has expired.”*
- 6) I am informed that Mr Adams was initially given incorrect information by Licensing and Regulation as to whether he was entitled to object to the Application. In those circumstances and in circumstances where the objections are only just out of time and no issue is taken, correctly in my view, by the Applicant, and there is no apparent prejudice to the Applicant, I exercise the discretion given to the Commission under Section 127 of the Act and extend time for objections to 30 April 2008.

## Objections

### Mr Adams:

- 7) The basis of Mr Adams objections is that –
- The variation to the licence conditions will mean an increase in the number of persons in the neighbourhood which could lead to increased anti-social behaviour in the neighbourhood; and
  - The business is primarily a Motel and its licence should reflect that.

### Sergeant Mitchell on behalf of the Northern Territory Police (“the Police”):

- 8) The substance of the Police objections are:
- That approving this Application would create resourcing problems for the Police and that the anti-social behaviour which could erupt will increase the workload of the Police and Police in Katherine “are already working at capacity”.
  - The increase in venues available for Katherine residents is likely to result in increased anti-social behaviour including fighting and offensive behaviour which the Police may be unable to attend to due to existing commitments and this in turn could lead to danger within the neighbourhood surrounding RJ’S.
  - There are already two other late night venues in Katherine and the Police question whether there is really a need for a further late night venue. Police provided data outlining offences in the Katherine region in support of their objections.
- 9) The question then is whether the objections are valid objection pursuant to Section 47 F of the Act?

Section 47F of the Act provides -

#### **47F. Person may object to certain applications**

- (1) *Subject to this section, a person, organisation or group may make an objection to the following applications:*
- (a) *an application for the grant of a licence, as notified under section 27;*
  - (b) *an application for a variation of the conditions of a licence, as notified under section 32A;*
  - (c) *an application for the substitution of other premises for the premises specified in a licence, as notified under section 46A;*
  - (d) *an application for approval to make a material alteration to licensed premises, as notified under section 119.*
- (2) *The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –*
- (a) *the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
  - (b) *health, education, public safety or social conditions in the community.*
- (3) *Only the following persons, organisations or groups may make an objection under subsection (1):*

- (a) *a person residing or working in the neighbourhood where the premises the subject of the application are or will be located;*
- (b) *a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located;*
- (c) *a member or employee of the Police Force acting in that capacity;*
- (d) *a member or employee of the Fire and Rescue Service within the meaning of the Fire and Emergency Act acting in that capacity;*
- (e) *an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;*
- (f) *a community-based organisation or group (for example, a local action group or a charity).*

10) In the case of Mr Adams, he is the Licensee of the Katherine Hotel, which is located next door to RJ'S and therefore pursuant to Section 47F (3) (a) is a "person residing or working within the neighbourhood..." where RJ'S is located. As for Sergeant Mitchell he is a "member or employee of the Police Force..." and as such is eligible to object pursuant to Section 47F (3) (c) of the Act.

## **Applicant's Response to Objections**

11) The Applicant has had an opportunity to respond to the objections and emphasised the fact that their intention is that the Application is to introduce a Lounge Bar not a night club. As for the Police objections, the Applicant points out that very few of the Police call outs are related to RJ'S and that they are aiming to attract an older clientele and they do not anticipate the anti-social behaviour that is associated with the other night clubs in Katherine.

## **Determination**

12) The general themes of the objections are similar in nature in that both objectors submit that the variation will have a negative impact upon the neighbourhood by potentially increasing dangerous anti-social behaviour and in the case of the Police, workload, and on that basis I am satisfied that when considered as a whole, the objections could impact upon the amenity, health, public safety or the social conditions of the neighbourhood and in those circumstances the grounds of objections are within those permitted under the Act.

13) I find that the objections are valid and require a hearing.

Merran Short  
Legal Member

18 June 2008