

Northern Territory Licensing Commission

Application for Declaration of a Restricted Area Decision

Applicant(s): Mr Terry Sams (Traditional Owner) being principal amongst eight other applicants for a restricted area.

Heard Before: Dr Alan Clough

Opinions, Written Submissions and Presentations Received: Senior Sergeant Joe Hart

Hearing Dates: Emu Point (Mulyung): 10th May 2005

Date of Decision: 3rd of June 2005

Summary of Decision

The Licensing Commission was first asked to declare a restricted area within a 20 kilometre radius around Emu Point (Mulyung) outstation so that no liquor of any type could be taken there. The applicants later revised their request for the Commission to declare a restricted area within a radius of approximately four kilometres of the outstation.

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 around Emu Point (Mulyung) outstation, and described in the body of the decision and the Schedule, is declared a restricted area.
2. This declaration will take effect from the 1st 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 1st 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 Emu Point (Mulyung) area.

Recommendations arising as a consequence of this decision

4. It is recommended that applications for liquor permits, which are 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*, unless a consensus is reached at some future time by the residents of Emu Point (Mulyung) outstation that liquor permits should be made available to residents there, and until a formal request to consider any applications for permits is received.

Signed by the Commission member constituting the hearing panel:

Alan Clough
3rd of June 2005

Background: Emu Point (Mulyung) Outstation

Mulyung outstation, whose infrastructure was mostly developed during the 1990s, is located approximately 80 kilometres southwest of Daly River and approximately 30 kilometres east of Peppimenarti in the Daly River/Port Keats region. The western fence line of the Elizabeth Downs Pastoral Lease (NT Portion 2700) is nine kilometres to the east of Mulyung outstation.

The outstation is provided with services and support by the Yantjarrwu Outstation Resource Centre Aboriginal Corporation located at Wudikapildiyerr approximately 50 kilometres to the north. The roads leading to Mulyung, which is located some 11 kilometres southeast from the main Daly River to Port Keats (Wadeye) road, are unformed tracks across low-lying, flood-prone country. The community has an unsealed airstrip for access by light plane. All of the residents of the outstation are Aboriginal people. There are between 70 and 80 residents. Building contractors temporarily reside in the community from time to time for construction projects.

The land on which Mulyung outstation is situated is part of the Daly River/Port Keats Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act* (1976).

Preamble

1. On the 14th of October 2003, a letter (dated the 19th of August 2003) was received by the Director of Licensing (the Director) signed by Mr Terry Sams and eight others regarding an "Application for Community DRY AREA". The stated reason for the application was¹

"...to have an area of 20 klm radius around and in our Community declared legally a Dry Area.

As such we would intend to make it illegal for any person or persons to bring or consume alcohol within that 20 klm area.

We would also wish to impose a severe penalty in the form of a fine and the confiscation of any vehicle bringing alcohol into the area."

2. At its meeting of the 9th/10th of November 2004, the Commission considered a report from the Director which advised that the applicants had more precisely described the relevant area the subject of the application as being one of approximately four kilometres radius around Emu Point (Mulyung) Outstation.² The Commission determined that the material placed before it then constituted an application for a restricted area 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*.
3. On the 12th of November 2004, 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 around Mulyung outstation. Simultaneously, pursuant to s.15(2) of the *Licensing Commission Act* as in force 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.
4. 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.

5. 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

¹ Hearing Brief: Folio 1-2

² Hearing Brief: Folio 12-14

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

6. 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.

7. 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.*

8. 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.*

9. 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:

10. Mr Terry Sams informed the Commission that the 32 men and 37 women and children who gathered for the hearing at the bough shelter in the centre of the community included the majority of the residents of Mulyung outstation. The family of just one household was not present.
11. Mr Sams advised the Commission that his community had discussed and considered their application for a restricted area over quite a long period of time and that they were keen to have a decision on their application following this hearing. He advised those present that the Commission had come to hear their views and that this was their opportunity to have their say about a restricted area.
12. One young man who identified himself as a drinker said that he agrees with the application and that there should be no alcohol brought into the community. He recognised there were many problems due to alcohol being brought here.
13. Two ladies who were school teachers said they agreed with the application because they are concerned that children are being exposed to the behaviour of drunken people. They are especially concerned that children are witnessing the violence that occurs due to the alcohol brought into and consumed in the community. They assert that a minority of people don't listen to the concerns they raise for the safety and wellbeing of the children in the community and so, there needs to be a strong law that assists the community council to deal with alcohol coming to Mulyung.
14. Several other ladies also advised the hearing that, at present, the community council has a policy to ensure that those who wish to drink do so at a place situated approximately three kilometres from the community and bring their liquor no further than this point. They also advised that two members of the council are usually delegated to sit with those drinking at this place in order to intervene in any violence which may erupt and to ensure that liquor is not brought beyond this point into the community and so that the drinkers' level of intoxication is scrutinised.
15. Mr Sams expressed the view that if there was a restricted area then the Council was prepared to continue to enforce this policy to ensure that the wellbeing of the drinkers is monitored and to ensure that his council's strict controls on liquor being brought into Mulyung outstation are upheld. He is strongly in favour of a restricted area with no liquor permits for any person at any time and with no exceptions. In the future the community may consider liquor permits. But for the moment the community's wish is for a 'dry' area.
16. A lady who declared that she had been a problem drinker in the past advised the Commission that she opposed the application. Her reasoning was that she had a son who is also a drinker and she does not wish for him to be compelled to drink at one of the licensed premises in the district or at an informal drinking area where trouble may occur. She fears that this will lead to him also becoming a problem drinker.
17. At this point, there was considerable discussion about the need for an informal drinking area at the edge of a proposed restricted area especially amongst the men as a group. Then one man, who declared that he was a drinker, stated that he thought it best that drinkers should go to the licensed premises in the surrounding district and that they should not drink at an informal drinking area near the community because intoxicated people could still cause trouble in the community. He informed the Commission that, although he was a drinker, he too was in favour of a restricted area where no liquor of any type can be possessed or consumed.
18. Mr Terry Sams confirmed that he and his community council, having considered what the people had discussed, now agreed with the drinkers that there should be no informal drinking area near the community and added that this would relieve the council of the onerous and time-consuming task of monitoring the drinkers. He too thought that they

should be encouraged to drink at one of the licensed premises in the district rather than in an uncontrolled setting where the community must be always on its guard.

19. In his written submission,³ Senior Sergeant Joe Hart advised that he had consulted with the community and believed that it was clearly understood that vehicles or aircraft bringing liquor into a restricted area illegally could be seized and the liquor confiscated. He also advised that Mr Sams had demonstrated to him that he had the capability to control the trouble caused by intoxicated people at Mulyung with minimal Police assistance and furthermore that Mr Sams undertook to report any liquor related incidents to Police during Police working hours. By way of evidence in support of this the Sergeant advised that in the 12 weeks he had been the Officer in Charge at Daly River he had no cause to attend liquor-related matters at the outstation. Finally Sergeant Hart believes that if the application is granted, then the following measures should be put in place
- a. No liquor permits; no exceptions for special events such as Christmas or birthdays.
 - b. The outstation must be signposted at all access points.
 - c. There must be a working phone in the community at all times.
 - d. Police and Licensing Inspectors should have a meeting with outstation community members to discuss all the laws and requirements of a restricted area.
20. In a report presented to the November 2004 Commission meeting the Director indicated that an area of 20 kilometres radius around Emu Point outstation encroached several kilometres onto the Elizabeth Downs pastoral lease.⁴ The Director indicated in his report his office had been advised by the Northern Land Council that the applicants wished to modify their initial request so that an area of approximately four kilometres radius around Mulyung outstation would be declared a restricted area. Mr Sams and other community residents indicated to the Commission the preferred locations of the boundaries and warning signs during the course of the hearing (Schedule).

Consideration of the issues and determination

21. It was clear from the evidence provided and from the manner of its presentation that Mr Terry Sams is a man having pivotal authority at Emu Point (Mulyung) outstation who is determined, along with his community council, to minimise the negative effects of alcohol in their community. Mr Sams and his council clearly wield the authority of traditional family structures to do this. It therefore seems likely, so long as Mr Sams is there and so long as he and his council remain resolute in their determination to control liquor in their community, their authority will prevail.
22. It was not possible pursuant to s.80(a) and s.79(1)(c) of the *Act* to fully ascertain and determine the opinions of all residents in this matter since a small minority were absent from the community at the time of the hearing. Despite a degree of reticence about this, most of those present expressed support for the application with one person opposing it. While it seems likely that opinion would have been more divided were it possible for all individuals to have expressed their views independently of the imperatives of the authority of their council and elders, those present were clearly ready to acquiesce in their leaders' views. I am prepared to make a determination on the *face* of the opinions ascertained which were uttered generally in favour of both the application for a restricted area and the request that no permits for liquor are issued. Despite the mildly equivocal opinions of the residents, and given the convincing authority and resoluteness of Mr Sams and his community council, such a determination seems realistic. The application for a restricted area is clearly not intended as a means whereby Mr Sams would abrogate the responsibilities he and his council have shouldered in order to manage alcohol issues at

³ Hearing Brief: Folio 9.

⁴ Hearing Brief: Folios 12-14.

Mulyung. On the contrary, Mr Sams seeks to reinforce his community's responsibilities with the assistance of NT law. Mr Sams also demonstrated a realistic consideration of the difficulties facing the NT Police in enforcing the provisions of the restricted area from their Daly River station, a distance of more than 80 kilometres, and from which Mulyung is isolated during the wet season. The community appears to hold 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 Emu Point could benefit from 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 around their community at any available opportunity. If I determined to refuse the application on the grounds of any division of opinion among the residents, Mr Sams and his council would be left to continue to try to prevent people bringing alcohol into Emu Point, along with managing those residents and visitors who may be intoxicated when they arrive there, without the moral or real authority of NT Law.

23. For these reasons the Commission declares a restricted area at Emu Point (Mulyung) outstation pursuant to s.81(1)(b) of the *Act* and as specified in the attached Schedule. Signs are to be erected in consultation with Mr Sams and as specified in the Schedule. The declaration is to be effective from the 1st of July 2005.
24. An important issue addressed by those providing opinions at the hearing was the issue of whether an informal drinking area situated near Mulyung outstation should be maintained and supported. Mr Sams, his community council and the drinkers, after considering the issue decided that an informal drinking area situated near the community should no longer be supported and that those who wished to drink should do so at licensed premises in the surrounding district. The Commission has no power to determine that such an informal drinking area is supported or not. However, in exercising its power to make a determination regarding this restricted area application, s.3(3) of the *Act* obliges the Commission to have regard to the objects of the *Act*, with a primary object being the minimisation of the harm associated with the consumption of liquor (s.3(1)(a)) and a further 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 my view that social harmony and the wellbeing of drinkers would not be enhanced by an informal drinking area situated near the Mulyung outstation where there are no constraints on the possession and consumption of liquor and that such an area should be strongly discouraged. Finally, although the Commission has no power in this matter to prevent an already-established informal drinking area continuing, it is the Commission's expectation that if this happens as a consequence of this decision, then the measures currently being used by the applicant, with the support of Police, should be maintained to ensure that the risks to those who would persist in using such an area are minimised.

Recommendations arising as a consequence of this decision

25. Given that no opinions were expressed in favour of liquor permits for residents of a restricted area at Mulyung, it is recommended that applications for liquor permits, which are 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*, consistent with the applicants' request.
26. Mr Sams, however, suggested that in the future the community may seek to make a submission asking the Commission to consider applications for liquor permits. I observed several adolescents in the group at the hearing, who seemed to me very likely one day to seek to apply for a permit, as will be their right, when they become eligible to hold one. I believe that Mr Sams was indicating this future prospect to me by his suggestion. Therefore, it is recommended that the Commission, in the future, reconsiders the opinions expressed regarding liquor permits but only on the basis that a consensus is reached by the residents of Emu Point (Mulyung) outstation that liquor permits should be made available to residents there, and only when a formal request to consider any applications for permits is received.

End of decision.

Schedule

Mulyung (Emu Point) Restricted Area

All that parcel of land near Mulyung (Emu Point) outstation bounded by lines between the points described as follows:

Map datum AGD66 zone 52, Series R722 Sheet 4969 1 Hermit Creek

Commencing at the point with easting 641000 and northing 8437000; thence easterly to a point with easting 646000 and northing 8437000; thence southerly to a point with easting 646000 and northing 8431000; thence generally west southwesterly along the cliffs or breakaway to a point with easting 641000 and northing 8429400; thence northerly to the starting point with easting 641000 and northing 8437000.

Locations of signs advising of the restricted area

1. Signs of a size no less than 1m² are to be installed at the exit gate(s) from the Emu Point (Mulyung) airstrip and, in consultation with the applicants, at 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.

Map datum AGD66 zone 52, Series R722 Sheet 4969 1 Hermit Creek

- i. Approximately 3km northwest of Emu Point at a point with easting 641000 and northing 8435000
- ii. Approximately 3km northeast of Emu Point at a point with easting 646000 and northing 8434800

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†

2. Located on the access roads to Mulyung (Emu Point) outstation, in consultation with the applicants, at a convenient position near these locations

Map datum AGD66 zone 52, Series R722 Sheet 4969 1 Hermit Creek

- i. Approximately 8km northwest of Emu Point near a point with easting 638000 and northing 8439000 at the junction of the old road with the new road
- ii. Approximately 11km northwest of Emu Point near a point with easting 638000 and northing 8441400 at the intersection with the Port Keats-Daly River road
- iii. Approximately 6km northeast of Emu Point near a point with easting 649000 and northing 8435500

and stating 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 Ahead (... Km)

†The possession or consumption of LIQUOR in a restricted area is a serious offence. Vehicles 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†