

Northern Territory Licensing Commission

Application for Declaration of a Restricted Area Decision with Reasons

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| Applicant(s): | Nyirranggulung Mardrulk Ngadberre Community Government Council |
| Heard Before: | Dr Alan Clough |
| Date of Hearing: | Barugna: 3 rd February 2005 Beswick: 15 th February 2005 |
| Date of Decision: | 5 th of May 2005 |

Summary of Decision

The Licensing Commission was asked to revoke three existing restricted areas in the Maranboy district, namely those which presently surround the communities of Manyallaluk, Barunga and Beswick, and to declare one restricted area to encompass all of the existing ones.

Consistent with the objectives, substance and sentiment of the application, the Commission approached the matter by considering whether to revoke these areas and whether to declare a single encompassing restricted area but considering at the same time appropriate exemptions for liquor licences that would operate within a new restricted area. Consistent with this approach, the Commission also considered whether liquor permits to possess and consume liquor should be available to residents of a new restricted area and the minimum conditions to which a liquor permit should be subject.

The Commission's decision is that:

1. Pursuant to s.74(1), s.81(1)(b) and s.81(2)(b) of Part VIII – Restricted Areas of the *Northern Territory Liquor Act*, in force at the 1st of September 2004, (the *Act*), a parcel of land less than the relevant area the subject of the application but contiguous with and joining the Manyallaluk, Barunga and Beswick restricted areas, and described in the body of the decision and the Schedule, is declared a restricted area.
2. This declaration shall be implemented by causing to be published a notice, pursuant to s.82 of the *Act*, to declare this area a restricted area. This declaration will take effect from the 1st of July 2005.
3. No liquor permits are required for the possession and consumption of liquor in the new restricted area or in the Manyalluk restricted area. The possession and consumption of liquor within the Beswick restricted area and the possession and consumption of liquor other than beer in the Barunga restricted area will continue to be strictly in accordance with the conditions of a permit issued by the Licensing Commission, pursuant to *Division 2 – Permits* Part VIII – Restricted Areas of the *Act*, upon considering the advice of the Chairperson of the relevant Community Management Board and the NT Police which together will continue to provide to all residents of these communities opportunities to apply to the Commission for a liquor permit to possess and consume liquor in the restricted area in which they are resident.

Recommendations arising as a consequence of this decision.

4. It is recommended that the Commission on its own motion, pursuant to s.27 of the *Licensing Commission Act* (2001) review this decision after six months from its date of effect. The Commission was informed that, during these six months, information will be

compiled by the applicant, with assistance from Police and the respective Community Management Boards, to assess whether this determination of their application has achieved their stated objectives.

Alan Clough
5th of May 2005

Nyirranggulung Mardrulk Ngadberre Community Government Council

Nyirranggulung Mardrulk Ngadberre is a Community Government Council incorporated under the *NT Local Government Act 2004* and is comprised of three Community Management Boards for the Manyallaluk, Barunga and Beswick (also known as Wugularr) communities. The constitution of the organisation describes its vision, objectives and structures. Its vision is to maintain observance and respect for traditional values and to join the responsibilities and structures of traditional authority with modern local government to achieve a high quality of life and a range of opportunities and choices for its people.¹

The Nyirranggulung Mardrulk Ngadberre region is located approximately 50 kilometres east of Katherine and Mataranka. It borders on Kakadu National Park to the north, Nitmiluk National Park to the west, the Arnhem Land Aboriginal Land Trust to the north east, pastoral leases to the east, and the Upper Roper National Park to the south. The Stuart Highway skirts the region to the southwest. The Central Arnhem Road passes through Barunga and Beswick leading on to Nhulunbuy in eastern Arnhem Land. The population of the region's communities is highly mobile and has apparently varied considerably over the years. The recorded population of the Barunga community has ranged from 350 to 586 since the 1980s. Manyallaluk ranged from 30 to 120 people and the Beswick community from 160 to 650. The total regional population has apparently fluctuated from just over 500 to around 1300 since the 1980s.² The population's age and sex composition is similar to that of the rest of the Northern Territory. The Community Development Employment Program (CDEP) has been by far the largest employer in the region with around 40% of the 370 people aged ≥15 years. Just 10% of these age groups are employed other than in the CDEP scheme, 17% are unemployed and 33% are not in the labour force.

There are two licensed premises. The Barunga Progress Association Store (Liquor Licence No. 81100776) is licensed to sell beer only for removal and consumption away from the premises six days a week for an hour each day. The other at the Wuduluk Progress Association Store in Beswick (Liquor Licence No. 80900781) is also licensed to sell beer only for removal from the premises but for its consumption in its 'beer garden' only. It is licensed to trade six days a week for 14 hours each week in total. Sales of beer are restricted to a maximum of six cans per male and four cans per female each trading period.

Preamble

1. On the 21st of August 1981, the Chairman of the then Liquor Commission caused to be published a notice in the NT Government Gazette declaring a restricted area around the Aboriginal community centred at Bamyili, now known as Barunga.³ The declaration, effective from the 15th of April, 1981, meant that from this date

"liquor (excluding beer) may not be taken into or consumed within the area described in the Schedule without a permit. In other words, beer may be consumed in the area without restriction, but permits will be required for wines and spirits."

2. On the 1st of June 1983 by similar notice in the Gazette, the Chairman of the Liquor Commission declared a restricted area at Beswick Station Community being

*"All that parcel of land at Beswick Northern Territory of Australia within a circle of 6.5 kilometres radius from the most northern north western corner of the Beswick Station Progress Association Store (latitude 14 degrees 33 minutes 23 seconds south latitude (sic) 133 degrees 6 minutes 40 seconds east) but excluding therefrom the Beswick Station Progress Association Store."*⁴

¹ <http://notes.nt.gov.au/dcm/legislat/legislat.nsf/0/21a2f65a72f1a7f369256e5b0003b324?OpenDocument>

² Taylor J and Westbury N (2000) Aboriginal nutrition and the Nyirranggulung health strategy in Jaowyn country. Research Monograph No. 19, Centre for Aboriginal Economic Policy Research. Canberra: Australian National University.

³ The Northern Territory Government Gazette No. G33, 21 August 1981, p 1

⁴ The Northern Territory Government Gazette No. G22, 3 June 1983, pp 4-5

The determination, effective from the 1st of June 1983, meant that it became “... *an offence for liquor to be taken into or consumed within the areas described above, without a permit.*”

3. On the 9th of December 1992, again by similar notice in the Gazette, the Chairman of the Liquor Commission declared a restricted area at the Eva Valley pastoral lease in which area is located the Aboriginal community of Manyallaluk.⁵ This determination, effective from the 16th of December 1992 also meant that it became “... *an offence for liquor to be taken into or consumed within the area..., without a permit.*”
4. On the 27th of April 2004, a letter was received by the Director of Licensing (the Director) on the letterhead of the Nyirranggulung Mardrulk Ngadberre Regional Council (NMNRC) signed by Mr Rod Walsh (CEO) advising that the NMNRC had discussed and agreed upon a new proposed liquor restricted area.⁶ The new proposed liquor restricted area was delineated in a proposal submitted with the letter⁷ which was endorsed by Sergeant Angelo De Nale (Officer in Charge, Maranboy Police Station).⁸ This endorsement declared:

“The new proposal was a joint initiative brought about through direct consultation with Beswick, Barunga, Manyallaluk, their Regional Management Council (Nyirranggulung), the Jaowyn Association and the Maranboy Police.”
5. With this diversity of interested parties and given the wide ranging goals of the proposed initiative,⁹ it was not initially clear to the Commission who was to have principal carriage of the application and what were the reasons for desiring the area to be declared a restricted area and for the concomitant revocation of three existing restricted areas. So at its meeting of the 8/9th of June 2004, the Commission determined that the then Chairman, Mr Peter Allen, was delegated to determine whether a hearing would be conducted if further investigations by him clarified the identity of the applicant and clarified the formalities of the application as set out in s.76 of the *Act*.
6. Mr Allen subsequently (26th of June 2004) advised Commission members that, in his view, the applicant was Sgt De Nale of the Maranboy Police Station and that a hearing would be conducted.¹⁰ Processes required by s.77(2) and s.79 of the *Act* were then set in train and the Director advised licensees, relevant council officers and residents of the areas of the time and date of the hearing and that they may express an opinion regarding the application.
7. At its meeting of the 10th/11th of August 2004, in its further consideration of the formalities of the application, the Commission requested a map showing the exact location of the existing restricted areas in relation to the area to be the subject of the new application. At this meeting the Commission also considered a ‘letter of support’ for the application faxed on the 11th of August 2004 from the NMNRC to the Director and signed by the Chairpersons and Community Managers of the Barunga and Wugularr (Beswick) Community Management Boards.¹¹ Then, on the 9th of September 2004, a letter dated the 31st of August 2004, signed by Mr Rod Walsh (CEO NMNRC) and titled: “*Re: Notice of Application for Declaration of a Restricted Area*” was received by the Director.¹² The Commission considered this letter at its meeting of the 14/15th of September 2004 and determined that the Chairman would confirm with both Police and the NMNRC which of them intended to be the formal applicant for the declaration of the restricted area. Mr Walsh attempted to clarify this for the Commission in his e-mail of the 27th of September 2004 which advised that “...*this is a formal application on behalf of the Nyirranggulung Mardrulk Regional Council for*

⁵ The Northern Territory Government Gazette No. G49, 9 December 1992, p 4

⁶ Hearing brief: Folio 2

⁷ Hearing brief: Folios 3-6

⁸ Hearing brief: Folio 2

⁹ Hearing brief: Folios 3-6

¹⁰ Hearing brief: Folio 21

¹¹ Hearing brief: Folio 44

¹² Hearing brief: Folios 47-48

*a restricted liquor license.*¹³ The Commission determined from this that the NMNRC wished to be regarded as the applicant.

8. The applicant's stated aim is to reduce the number of liquor-related incidents and resultant harm to which the residents of the communities of Manyallaluk, Beswick and Barunga are exposed. Its principal focus is on reducing the opportunities for harmful drinking and associated activities to take place at the three informal drinking areas which have grown up at the edge of each existing restricted area, referred to colloquially as the "*signboard*". It is asserted that one of the consequences of uncontrolled drinking in these localities is that persons who become intoxicated whilst drinking there cause disruption and violence when they return to their home communities in the restricted areas. A subsidiary focus is on the challenges of enforcing the provisions of three restricted areas distributed over a large tract of country. There is particular concern about the difficulties of ensuring that liquor does not enter the restricted areas in contravention of these provisions.¹⁴ A central strategy for the proposal is to have just one area that is restricted for liquor rather than the three currently-disjoint restricted areas. It is believed that this will restrict the number of possible entry points for liquor to the area which will facilitate more efficient and effective policing. It is also believed that this will encourage those who currently use the three informal drinking areas to drink in just one locality. It is proposed that such a locality will be provided with suitable services and facilities to minimise the harms and risks to which those who choose to drink there are exposed. The proposal envisages a six-month period during which the performance of the proposals pertaining to a new restricted area could be examined and assessed.¹⁵
9. On the 14th of December 2004, pursuant to s.51(2A) of the *Act*, I was selected by the Chairman (s.51(2A)(b)) to constitute the Commission to hear and determine the application for a new restricted area to be declared. Simultaneously, pursuant to s.15(2) of the *Licensing Commission Act* as in force at the 29th of June 2001, I was selected by the Chairman to constitute the Commission to hear and determine the application for revocation of the currently restricted areas and to hear and determine matters pertaining to liquor permits in the restricted area(s).
10. With respect to revoking a declaration of an area as a restricted area, my statutory power is delineated by s.84 of the *Act* which states:

"A declaration of an area of land to be a restricted area may be revoked by the Commission at its discretion".
11. With respect to declaring an area a restricted area, my 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.
12. In deciding whether to grant an application for an area of land to be declared a restricted area, I am obliged by s.80 of the *Act* to
 - (a) *consider the opinions regarding that application expressed or ascertained pursuant to sections 78, 79(1)(c) and (2); and*
 - (b) *where the relevant area forms the whole or part of a municipality or a community government area – consider any advice regarding the application ascertained pursuant to section 79(1)(d) or (e), as the case may be.*
13. 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

¹³ Hearing brief: Folio 50

¹⁴ Hearing brief: Folio 47-48

¹⁵ Hearing brief: Folios 3-6 and 47-48

- (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.

14. The Commission can determine the minimum conditions to which liquor permits may be subject by way of the following provisions. Pursuant to s.87(1) of the *Act*, the Commission may grant a permit to a person:

- (a) *who resides in; or*
- (b) *who is temporarily living in, or intends to temporarily live in, a restricted area,*

to bring liquor into the restricted area and to possess and consume it there. Moreover, pursuant to s.87(3) of the *Act*,

The Commission may issue a permit subject to such conditions as it thinks fit.

15. The Commission can determine the mechanism(s) it uses to inform itself regarding applications for liquor permits in the restricted area(s) by way of the provisions of the *Act* which, pursuant to s.91(1), in consideration of any application for a liquor permit oblige the Commission to:

- (a) *conduct such investigations and cause to be conducted such investigations of the application as it thinks fit; and*
- (b) *take all such steps as are, in its opinion, necessary to ascertain opinions regarding the application of the people who reside in the restricted area to which the application relates.*

Furthermore, the Commission can revoke a permit “...at its discretion...” pursuant to s.94 or “... if the holder of a permit contravenes or fails to comply with a condition of his permit...” pursuant to s.93 of the *Act*.

16. When exercising these powers or functions the Commission is obliged 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.

Given the mechanisms available to me for considering the application and the standing of the considerations underpinning these reasons for decision, I now turn to consider the substance of the opinions heard regarding the application pursuant to s.80 of the *Act*.

Consideration of opinions heard

Barunga: 3rd of February 2005 (approximately 50 people in attendance)

17. Mr Rod Walsh (CEO of the NMNRC) advised the Commission that his organisation was the applicant. The Executive of the NMNRC unanimously supported the application but are seeking a six months trial of the initiative. His organisation also recognises and acknowledges that resources will need to be provided by NMNRC to assist with services and facilities for a proposed new informal drinking area on the western side of a new restricted area. There are no facilities or services available in the proposed new drinking area at the moment. Funding has not been secured for such services and facilities, but NMNRC is prepared to consider ways of focusing their resources on the initiative and to lobby Government.
18. Sgt Angelo De Nale reminded all those present at the meeting that he had conducted a number of meetings in each of the affected communities where the need to change the restricted areas was discussed. He spoke about the objectives for having a single large restricted area. At the moment, there are three informal drinking areas one located at the edge of each restricted area. Problems with these include the following.
 - a. People are not drinking responsibly in these areas. There are no controls on drinking there. There are no facilities of any kind in these areas.
 - b. Since each drinking area is within walking distance from the Aboriginal communities where drinkers may live, it is easy for intoxicated people to walk into those communities. This leads to disruption and violence, with domestic violence of special concern.
 - c. The three areas are very difficult for Police to patrol since they are located up to 35 kilometres from the Maranboy Police Station. Alcohol-related violence occurs in each of the drinking areas and Police have found it difficult to respond promptly to such disturbances because of the distances they must travel.
 - d. At the moment with three restricted areas and with an informal drinking area where there are no restrictions situated nearby each restricted area, and with beer only unrestricted in the area surrounding Barunga, a claim can be made by those transporting liquor in their vehicles along the roads into the restricted areas without a liquor permit that the liquor is destined for an unrestricted drinking area or, if the liquor is beer, may be taken into Barunga where beer is available without restrictions. This makes enforcement of the provisions of each restricted area particularly difficult. Sgt De Nale described how Police are often obliged to follow people in vehicles carrying liquor whom they suspect of intending to take liquor into a restricted area and who lawfully stop at the informal drinking areas, but who are believed to have later proceeded into the restricted area when the Police were no longer present to observe them unlawfully carrying the liquor with them. Sgt De Nale convincingly emphasised the waste of resources and frustration this caused for Police.
19. Sgt De Nale summarised the outcomes hoped for in the proposed initiative and the objectives it seeks to achieve.
 - a. A single encompassing restricted area will encourage the development and use of just one informal drinking area. It is envisaged that this informal drinking area would be located approximately six kilometres (just a few minutes drive) from the Maranboy

Police Station at a place known as Four Mile Creek. Fresh water is available there and there is adequate space to develop suitable facilities such as shelters and toilets.

- b. It will not be so easy for intoxicated persons to walk to the communities from the one proposed informal drinking area because of the longer distances involved. A bus is proposed to service the proposed informal drinking area to provide transport for people who are not intoxicated to their home communities each morning. The bus would be equipped with a radio to enable contact with Police.
 - c. With a single informal drinking area, it will be possible to encourage more responsible drinking and to reduce the risks to which drinkers are exposed.
 - d. Police will be able to patrol an informal drinking area on a routine basis, each time they leave the station and possibly up to four or five times each shift. Police responses to episodes of fighting and disruption in a proposed new drinking area can be more immediate. If there are injuries, as occurs now, Police could take people to the clinic and be closer to respond to these needs. While it seems likely that there will continue to be fighting in a new informal drinking area, the violence would be located well away from the communities where women and children would not see it or become victims of it.
 - e. Since there would be just one major entry point to a new restricted area from the west near the Police Station, enforcing the provision that liquor is not to be brought into the restricted area unless in accordance with a permit would be more efficient and effective and less demanding of Police resources.
20. With regard to liquor permits Sgt De Nale advised that there were 11 liquor permit holders at Barunga. If people can be responsible with their drinking there is no reason why he should not recommend that the Licensing Commission issue a liquor permit. "If you want to drink responsibly then get a permit. Responsible drinking is sitting down and having a few beers. If you want something different you can go to Katherine where it is unrestricted."
 21. At this stage I asked the people present whether the Sergeant's statements were generally consistent with their own ideas and whether the Sergeant was making made good sense. There was general agreement that the Sergeant's points were valid and did make good sense.
 22. Mr Silas Jensen advised the Commission that he is the Vice Chairman of Barunga Community Management Board. Mr Jensen praised the ideas put forward by Sgt De Nale, but insisted that the new drinking area has to be "... one hundred percent safe." Mr Jensen said that it would be useful to have liquor meetings in the communities to talk about how the proposal works and to think about fixing it if it doesn't work.
 23. Mr Captain Andrew advised the Commission that he is the second eldest traditional owner for the area surrounding Barunga. He agrees with the "signboard" being moved back to Four Mile Creek. In the meantime, he would like to work with Sgt De Nale to ensure that beer only is brought to the "signboard." Sgt De Nale agreed to do so.
 24. Mr Eddy Oenpelli expressed concerns that in a single drinking area there would be fighting between different groups over the alcohol brought there. "There's no telephone up there. Will you be down there? How long? What if someone gets hurt? How long from Four Mile to Barunga Clinic?"
 25. Ms Helen Lee, a Barunga Resident, was concerned about the possibility of inconvenience to permit holders during a transition period. She suggests it is time for Barunga to consider a social club so that people can drink in a place where they have to be more responsible.
 26. Mr Freddie [name not clear in recording] advised that he was the President of the Barunga Progress Association Store Committee. He expressed his concern that moving the "signboard" might affect the operations of the Barunga Progress Association liquor licence, but did not provide reasons for his concern. He expressed some satisfaction that if the

“signboard” was moved, and if there was appropriate and regular transport, then it could be a positive thing. He expressed concerns, however, that the different groups in the area all drinking in one place could mean a lot of fighting. And if someone is alone then they are exposed to additional risk. “From my point of view, when you put them three together, you have more problem.” He stressed: “... and remember, if this new area doesn’t work, we can have another meeting and go back to the old way.” Freddie tried to explain the unusual types of consequences from fighting among Aboriginal people.

“That’s the only thing that I’m trying to get through is that we just don’t communicate. It’s done by Aboriginal culture in paying back people because you’re alone. They can still get you. It doesn’t matter where you are. They can come in and do that. It’s more closer here where family can look after us. If it’s over there then you’re on your own.”

27. Anne Marie Lee (Chairman Barunga Community Management Board) and member of NMNRC. She believes that a new drinking area at Four Mile Creek would reduce the incidence of antisocial behaviour, domestic violence and other violence in the community. The Barunga Community Management Board has discussed the proposal and gives its full support.
28. Mr Brett [name not clear in recording] is a Barunga resident. He suggests that facilities and services need to be in place or ready before the proposed changes are made. How much will the bus cost and how will it run? He is concerned the proposed new drinking area is too far away.
29. Mr Jim Stefan is an employee of Woolworths and Manager of the Barunga Progress Association Store. He claims that the Store Committee is confused about what the proposed revocation of the restricted area around Barunga means and whether their store, which is licensed to sell liquor from their premises currently exempted from the restricted area, would be able to continue to operate in a similar manner.
30. Ms Rachel Wilika advised that she is a member of the Barunga community. She supports the new restricted area proposal.

“I want to support the restricted area because of problems down in the camps. It all comes down to discipline. We need to be hard on our countrymen. We have to support our children. I see things are changing because of what’s happened during the last couple of years... just across the bridge and then the sign board went to the jump-up and now it should go to Four Mile. We gotta be heard towards our countrymen, we gotta teach them and show them, it’s time to be hard on our family because we have problems too down in the camp. Me and my family we lock ourselves every night because of the drunks. We should put money towards a social club where people can drink in moderation, not the money to the drinking area. That’s what I’d like to see in Barunga, you know.

31. Mr Paul Amray (Sport and Recreation Officer for the Barunga Community) advised he was speaking in strong support of Ms Wilika.

“We can’t keep on treating drinkers like little kids ... we’ve gotta come down hard on them and stop them from doing this instead of catering for the problem drinkers. The proposal is a good idea because police can’t control it properly at the moment. People from each community should look after themselves. Having a social club in Barunga would be great where people can learn to drink responsibly. And if people can’t drink properly then they can be controlled. There might be a few problems with different people drinking in the same place. Need to start teaching problem drinkers to drink properly. You can talk until you’re blue in the face. The majority of people are responsible drinkers. In my time here in Barunga, I’ve come to know people who can drink responsibly. I support Rachel and the other women who cop it all, it all falls back on them, especially when hot stuff is brought into the community, it falls back onto women.”

32. Mr Grant Steel (Community Manager Manyallaluk Community) advised that he was a retired police officer and had only been in his current role for a month. He was asked by

the people who came along with him from Manyallaluk to speak to the hearing on their behalf. The Manyallaluk Community Management Board supports the proposal but believes that as little money as possible should be invested in the facilities at the proposed new drinking area.

Barunga: 15th of February 2005 (approximately 100 people in attendance)

33. Mr Mick Jessop (Acting CEO NMNRC) tendered a letter from his Council advising that although Mr Rod Walsh had left the role of CEO, it was the Council's wish to proceed with the application. Mr Jessop advised on behalf of NMNRC that it would support a new drinking area at Four Mile Creek with a bus for transport, toilets, a water supply and shelters as long as the drinkers looked after the area.
34. Sgt De Nale spoke again to reinforce the information he provided at Barunga. His Police District of Maranboy is 23,500 square kilometres and the station is staffed by just himself and one other officer. He reminded those present of the consultations he had conducted throughout the three communities during the preceding eighteen months or so. He spoke with drinkers, non-drinkers, elders, councils, clinic staff, education staff, aged care staff and shopkeepers. The problems that people raised to him in these talks were all alcohol related. Much of his day to day work is dealing with people who are intoxicated or who are trying to bring liquor into the restricted areas. He explained once more the main points of the proposal. In doing so he praised the operations and the management of their licensed premises, also known as the 'social club', by the Beswick Progress Association Store Committee. The social club is run in a very responsible manner. The Committee closes the social club when people become intoxicated or if there are concerns about community tensions. He suggested that working with the Beswick Community Management Board Chairman (Mr Richard Kennedy), he would consider issuing permits to those people who are responsible drinkers since, in his view, the social club is sufficiently well-managed that it would provide liquor for takeaway from the premises only to those who hold a valid liquor permit.
35. Mr Big Dod [name not clear on recording], a community elder, wanted to know who the people were who signed the letter making the application. I read out the signatories' names and Mr Big Dod then expressed his concerns in Kriol about the proposed new drinking area.

"If sambadi garra dai at deya Fo-Mile Krik, dem da pipul dat garra git trabul bikos nat onli Rembarrnga, Ngalkbon, Mayali, if enibodi garra dai, dei garra get bleim: Barunga and Beswick. Maitbi dei dai fo daga. Wat, dei garra ebum kitchen daun deya? Det tu far fo daga. Wen dis garra hepin langa Fo-Mile Krik? Loda med pipul iya wen drangkin. Wi garra get trabul. En ai laigim det shop menija; wi abum iya. Nomo go langa 'sain board'. Wi kan ledim yang pipul brom iya go langa 'sain board'. Pipul shud bi stei iya wan ples wen wi abum diswan miding. Telim alabat pipul iya, nomo go langa det Fo-Mile Krik. Det tu far det Fo-Mile."

36. Next to speak was Sam [name not clear on recording] who is the Vice Chairman of the Community Management Board and also the Community Advisor. He told the Commission he had discussed this at length with the rest of the community and that he had thought a lot about it. He acknowledged it was dangerous but the 'signboard' must be moved back to Four Mile Creek. There are a lot of problems he sees in his community from alcohol, especially with people off in the bush drinking, and kids and families being disturbed every night from drunken people. If the 'signboard' moves it will be important that the Police are there regularly because it will be dangerous. It will not be good to construct three different compounds at the new drinking area. He also suggests that the social club needs to make some changes that would encourage people to stay in Beswick rather than be tempted to drink elsewhere in such dangerous places. He suggests a takeaway for the weekend of perhaps a dozen beer "... six and four and maybe take away a dozen from here." He was describing the current social club limits of six beers for men and four beers for women each trading session and is suggesting a dozen beers for takeaway on the weekend for those

who would hold a valid permit. Any new arrangements should be put in place on a trial basis.

37. Mr Richard Kennedy is the Chairman of Wugularr (Beswick) Community Management Board. He declared that he signed the letter but disregards the suggestion that he would be blamed for serious incidents in a proposed new drinking area. The problems he sees in his community are associated with alcohol, damage to houses and their fittings, and alcohol related violence. He has observed children as young as 14 or 15 drinking. Attendance at school goes up and down influenced by the presence of drunken people in the community. They disturb kids. Kids must have their rest so they can go to school. Mr Kennedy knows there will be problems in a single drinking area. But he is confident that the Police will be able to keep control and order there because the drinking area is closer to their station.
38. Mr Phil Harness represented the health centre staff. After hours, one out of two people come to the clinic for problems that are directly attributable to alcohol. There is a lot of violence in this community and the violence is always connected to the same thing, alcohol.
39. Mr Mike Puccetti Principal of the Wugularr School asked Sgt De Nale to make a statement on his behalf to remind the community that when attendance goes down the school can lose a staff member. At the moment numbers at school are down. If the school loses a teacher then it makes it harder for children to get education.
40. Ms Pamela Weston has lived all her life in Beswick. She works in the area of drugs and alcohol, domestic violence, mental health and child abuse. She does not agree with having a 'taxi-rank' at Four Mile Creek. There could be other health issues for the people using the area, especially if they should be taking medication. We know that all three communities don't get along very well and this will be a big problem. I'm sticking up for drunken people here, but I think we need to have some kind of 'limit' at the social club to encourage them to stay in the community rather than drink at Four Mile. "There'll be a lot of violence and rape there." If there is no telephone in the new drinking area it will be dangerous because the Police are still too far away.

"A drunken person will be a dead person at the taxi rank. We kill 'em in the long run. We still got our law yet. This is gonna be because of the taxi rank now. Woman might get bashed up by a sober husband. Why shift the taxi rank way up there? I'm asking this liquor commissioner if we can have maybe a limit for Friday and Saturday instead of having them out there getting drunk. Keep them here instead of over there."

41. Mr Sammy Bush Blanas is the CDEP Coordinator. He advised that he spoke for a group of drinkers sitting with him who asked him to do so.

"Most drinkers over here agree that the signboard could go back but they want to put a proposal up to you for a limit Monday to Saturday. We're trying to keep people here not going back to the signboard. I hope the liquor commission will hear a proposal about keeping everybody here. I agree with the signboard goes back to Four Mile, but these drinkers want a limit here. The store is strict with rules. Old man Freddy is very strict on the counter. Some care, some don't. But I do care. I want to see people staying here instead of going to the signboard. Grog is a big problem here. We are slaves to all you drunken mob. I got family, they all drink, and they're all 'piss heads'. I can't deny that. There's a lot of domestic violence and underage drinking. But, we can't deny the drinkers' rights too. We gotta give them something too. Otherwise we should tell them to go to Katherine. We gotta balance their rights. Give them their rights too, all you sober people. So the community's gotta support the drinking men. It's gotta come from every one of us. I'm starting to live with this grog problem. Balance it out sober and drunken man. All these grog men say they agree as long as we give them something here so they stay and work. We can't frighten them by making them go to Four Mile. If we frighten them they'll go to Katherine."

Mr Blanas continued on to say that he agreed with the 'signboard' going back to Four Mile. He emphasised that the drinkers here want access to liquor permits and takeaway. He

believes that the store committee is sufficiently strict with the rules and that the social club could successfully manage liquor permits. He hopes the Commission would listen to this proposal. Mr Blanas acknowledges that there are some drinkers in Beswick with alcohol problems. However, he argues that those drinkers who do not have such problems should not be denied their rights. He argued that an effort to encourage drinkers to stay at Beswick might also assist to keep people away from Katherine where liquor is available without restrictions. He referred to the high incarceration rates for the area with many people from the communities in the region imprisoned for offenses that are alcohol-related. He suggested that encouraging people to drink in their community would reduce the risk of their becoming involved in episodes which could lead to imprisonment.

42. Mr Robert E Lee (Chairman of the Katherine Region Harmony Group) advised people that he did not have a view about their community and that it was for them to decide what they wanted to do. He urged them to consider developing their social club into a larger business to address the kinds of problems and proposed solutions Mr Bush had outlined and for the development of their own enterprises. He urged the people present to "... think positive and don't keep putting yourselves down."
43. Nancy [name not clear on recording] advised the Commission that she was a health worker who had lived and worked for much of her life in Beswick. With emphasis to the wider group, "Dijan na ai bin wonda tok!" Nancy informed the Commission that many of the drinkers who might use a new drinking area should be taking medications regularly. Many drinkers are not compliant with their medication regimes whether they are drinking in the community or elsewhere. This may be an extra risk for those who would use a proposed new drinking area further away from the local health centre. While she has sympathy for these people, her view is that the domestic violence and disruption caused by intoxicated people in the community is a much greater problem. Takeaway liquor during the week from the social club is not going to work because there will be drunks every night. Nancy agrees with the applicant's proposal.
44. Ronald [name not clear on recording] advised the Commission that he is a community member. He suggests that if there is a new drinking area at Four Mile Creek, there should be a telephone service there because he is concerned about the extra prospect of violence. He supports also the idea of a dozen beers takeaway for permit holders on Saturdays after the "... six and four."
45. Another local gentleman whose name was not clearly heard on the recording advised the Commission that he is the store and social club manager. He advised the Commission of the abuse that his staff endure from drinkers. He also reported the social club's strategy to manage behaviour on the premises, including limiting some individuals to buying light cans only. He does not agree with a takeaway dozen every night because when the liquor is removed from the premises then he cannot control or be responsible for it and then blame is likely to come to the club management. He advised the rest of the meeting as follows.

"If you want this limit, you gotta convince us that you can drink sensible and that goes for the ladies too. You gotta remember too: when this mob be finished drinking here and you've got your dozen takeaway there'll be people running to your place. This club is the only area you mob can drink. But if you mob got a good idea, just come and let us know and we will listen. It's alright for you to have six and four Monday to Thursday because of work. Come Friday and Saturday we don't care how much you drink. But until you mob get up and say something we won't change that policy."
46. Dwayne [name not clear on recording] advised that he and Freddie [name not mentioned] are Beswick residents who work on night patrol. Dwayne suggested that it would not be safe at Four Mile with people from the different communities all drinking in one place. He feels that if there was a vehicle to support night patrol, then he could assist Police to patrol a proposed new drinking area. Some people from the group commented along the lines that the night patrol has had vehicles in the past that were not used appropriately and that

to be effective there needs to be a more disciplined and responsible approach to implementing a night patrol.

Consideration of the issues and determination

47. In summary, my response to the application was to refuse to revoke the existing restricted areas and to refuse to declare a single encompassing restricted area. Instead I determined to declare restricted an area which joined together the three existing restricted areas. It was thought that this was the safest and most appropriate way to accommodate the applicant's request, which was firmly supported by residents' views, to trial their initiative for a period of six months. With this approach it was therefore not necessary for me to consider exemptions for licensed premises to operate within a new restricted area. In addition, since discussions appeared to be at an early and constructive stage regarding the grant of liquor permits to suitable applicants for takeaway in the restricted areas, as a strategy to encourage responsible drinking away from informal drinking areas, it was thought that a review of this decision after a period of six months would allow a period of time for such discussions to be progressed. Consequently I did not consider in detail the minimum conditions to which a liquor permit should be subject, since such information may be forthcoming as substance for the recommended review.
48. The central issue addressed by those providing opinions at the hearing was the issue of whether a single informal drinking area should be created. In accordance with the proposal, a majority agreed that the three current informal drinking areas should be eliminated by moving the "signboard" to the suggested area at Four Mile Creek¹⁶ with just a few expressing their opposition.¹⁷ Community residents, it is noted, despite generally supporting the application also acknowledged there would be special dangers in doing so and that people who would use such an area should be encouraged to drink responsibly in their home communities.¹⁸ The Commission has no power to determine that such an informal drinking area is established or not. In exercising its power to make a determination regarding this restricted area application, however, 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 the creation of a single drinking area in a situation where there are no constraints on the possession and consumption of liquor and that this should be strongly discouraged. It is also my view that there would be no benefit to be gained for either drinkers or for their respective home communities by encouraging a new informal drinking area that would run the unacceptable risk of eventually taking on the form and substance of the current informal drinking areas with their attendant problems. Moreover, the investment of any substantial resources into the development of a new informal drinking area should be discouraged consistent with the views expressed by the Manyallaluk people.¹⁹ Some residents of Barunga, quite sensibly, were also of the view that such funds would be better spent on developing the amenity and services of the current licensed premises so that more responsible drinking can be encouraged.²⁰ Investment in the local licensed premises was also urged at Beswick in order to encourage drinkers to stay in their home community.²¹ Finally, although the Commission has no power in this matter to prevent an informal drinking area developing, it is the Commission's expectation that if a new informal drinking area emerges as a consequence of this decision, then appropriate measures offered by the

¹⁶ Points 17-19, 22-23, 26-28, 30-33, 36-39, 41 and 43.

¹⁷ Points 24, 35, 40.

¹⁸ Points 18-20, 31, 35-37, 40-41, 43-45.

¹⁹ Point 32.

²⁰ Points 25, 30-31.

²¹ Points 41 and 42.

applicant²² and the Police²³ should be implemented as quickly as possible to ensure that the risks to those who persist in using such an area are minimised.

49. Pursuant to s.81(1)(b) of the *Act*, it is determined that a restricted area is declared but which is less than the relevant area the subject of the application, as permitted by s.81(2)(b), and which is specified in the Schedule. Sufficient evidence was provided to support the need to eliminate the informal drinking areas near the restricted areas and to ensure that Policing of the restricted areas' provisions would potentially be more efficient and effective. The applicant sought a trial of the initiative²⁴ and several of those who expressed opinions felt this was necessary in view of the potential dangers involved in a single informal drinking area.²⁵ In making the determination to declare restricted an area of land less than the relevant area, it was at the forefront of my thinking that should there be serious consequences from the changes of the type apprehended by many of those who provided opinions,²⁶ the Commission may exercise its discretion to revoke this declaration pursuant to s.84 of the *Act*, which would have the effect of reinstating the original, albeit problematic, arrangements. The date of effect of this determination shall be the 1st of July 2005. The effect of this determination is that, notwithstanding s.86 of the *Act*, which permits the transport of liquor through and beyond the restricted area so declared, it shall be an offence to bring liquor into, &c, this area (s.75) from the 1st of July 2005.
50. It was determined that there were no sufficient or convincing reasons provided at the hearing for the Commission to exercise the discretion it has under s.84 of the *Act* to revoke any or all of the existing restricted areas. In the case of Barunga, the Progress Association Store expressed some confusion about what the proceedings would mean for their operations.²⁷ I saw no need to risk disrupting or confusing the existing operations of the licensed premises at either Barunga or Beswick. The licensed premises appear to be managed well and strictly in accordance with their licence conditions.²⁸ Since the determination at point 49 above effectively provides for moving the "signboard", a principal focus of the application, and since neither support nor opposition for revoking the current restricted areas was expressed by residents of Manyallaluk, Barunga or Beswick, I decided that it was not necessary to exercise the Commission's discretion as requested in the application. In doing so, however, I recognise that one of the difficulties for enforcing the provisions of the restricted areas is not entirely eliminated. With beer only unrestricted in the restricted area surrounding Barunga, a claim could still be made by those intending to illegally transport beer in their vehicles along the roads into the restricted areas, that the beer is destined for Barunga and is therefore not in their possession illegally.

Recommendations arising as a consequence of this decision.

51. It is recommended that the Commission on its own motion, pursuant to s.27 of the *Licensing Commission Act (2001)* review this decision after six months from its date of effect. The grounds for such review would include but not be limited to the residents' and others' opinions expressed at the hearing regarding the need to trial the applicant's initiative together with the specific request by the applicant to implement the initiative for an initial period of six months. The Commission could reasonably expect the applicant to compile information relevant to the substance of such a review using the following sources and methods.
- a. Evidence of regular discussions of liquor management issues by the NMNRC and the respective Community Management Boards,

²² Points 17, 27 and 33 and Folios 47-48 of the hearing brief.

²³ Points 19 a-d and Folios 3-6 of the hearing brief.

²⁴ Point 17 and Folio 48 of the hearing brief.

²⁵ Points 26, 36, 43.

²⁶ Points 19, 22, 24, 26, 35-37, 40, 41-42.

²⁷ Points 26 and 29.

²⁸ Points 29, 34, 41 and 45.

- b. Permit applications submitted to the Commission for consideration to be approved and evidence that the Police and Chairpersons of the Community Management Boards have met regularly to consider liquor permit matters,
 - c. Relevant extracts from police diaries and/or incident reports,
 - d. Registers of community incidents furnished by Community Management Boards,
 - e. Evidence of discussions at meetings of health clinic staff regarding their impressions of general trends in alcohol-related presentations to health centres
 - f. Evidence of discussions at meetings of school staff regarding their impressions of general trends in alcohol-related concerns for students in the communities' schools.
52. Regarding liquor permits, it is the Commission's expectation that reasonable opportunities to apply for a liquor permit, as allowed for in the *Act* by s.87 and s.90, will continue to be made available by the Police and the respective Community Management Boards to all those residents of the Barunga and Beswick restricted areas who seek to apply for one.²⁹ It is recommended that the Commission inform itself, pursuant to s.91(1)(b) of the *Act*, when considering each and every application for a liquor permit by first seeking the formal advice of the Police and the Chairperson of the relevant Community Management Board. It is further recommended that the Commission seeks at least the following information.
- a. On the permit application form verification of identity, age and community of residence,
 - b. An indication of whether the application is supported or not supported. At this stage it may be necessary for the Police and/or the Community Chairman to consult with relevant health workers, education workers and other key community representatives on whether they support or do not support the application. Reasons for not supporting the application for a permit shall be clearly specified in fairness to a person whose application may not be recommended or approved. Any special requirements for those whose permits are approved must also be specified including any limits on liquor types, quantities or container types.
 - c. Whether supported or not, the permit application should be signed by the designated member of the NT Police and the Chairman of the relevant Community Management Board.

In furnishing this information the Commission expects that the following procedures would be followed.

- d. All permit applications, including those which have not been supported, should be sent to the Director of Licensing for the NT Licensing Commission's consideration to be approved.
- e. The applications would then all be returned to the relevant community so that
 - i. In the case of permit applications not approved, the applicants can be so advised and the reasons for their non-approval provided.
 - ii. In the case of permit applications approved, a copy of the approved application, any special requirements and the permit can be made available to them.
 - iii. Permit applicants can be formally advised of their right to seek a review of any aspect of the Commission's decision regarding their application.
- f. The Police and the Chairpersons of the Community Management Boards should meet regularly to consider new applications or to consider revocation and suspension of liquor permits and related administrative matters.

²⁹ Points 20, 25, 31, 34, 36, 40-41, 44-45

Advice to the Commission

53. The Commission is advised that it is possible that either or both the licensed premises may apply at some time in the near future to vary their licence conditions to sell takeaway liquor to permit holders resident in their respective restricted areas. In particular, the Commission is advised that a request to vary its licence conditions to enable the Beswick Progress Association Store to sell a maximum of one dozen cans of beer for takeaway to holders of valid liquor permits in the Beswick restricted area on Saturdays is generally consistent with the opinions expressed by the residents of Beswick and also by the Licensee who together are seeking to encourage responsible drinking in their community and to minimise the risks drinkers may face if they persist in using informal drinking areas.³⁰
54. Finally, the Commission is advised that it is likely that the Barunga Community could, at some time in the near future, seek to revise the current provisions of its restricted area where, at present, beer is available without restriction.

End of decision.

³⁰ Point 45.

Schedule

DIPE (Survey) Ref LI 2005/05

Proposed Liquor Restricted Area for Nyirranggulong Mardrulk Ngadberre Region

Commencing at the northeastern corner of Northern Territory Portion 4342 (Manyallaluk Aboriginal Land Trust); thence southerly by the eastern boundary of the said Portion to its most eastern southeastern corner; thence easterly by part of the northern boundary of the NT Por 1636 (Beswick Aboriginal Land Trust) to its northeastern corner; thence southerly, westerly, again southerly, again westerly, again southerly and again westerly by an eastern, a southern, an eastern, a southern, an eastern and a southern boundary of the said Portion to its most southern southwestern corner; thence generally northwesterly by southwestern boundaries of Northern Territory Portion 1636 to a point due south of the intersection of the centrelines of Central Arnhem Road and Four Mile Creek; thence due north to intersect the easterly prolongation of the southern boundary of Northern Territory Portion 1729; thence westerly by the said prolongation to the southeastern corner of the said Portion; thence northerly by part of an eastern boundary of Northern Territory Portion 1729 to the left bank of King River; thence generally northeasterly by the said bank to a point due north of the intersection of the centrelines of Central Arnhem Highway and Four Mile Creek; thence due north to the southern boundary of Northern Territory Portion 4424 (Manyallaluk Aboriginal Land Trust); thence westerly, northerly, easterly and again northerly by part of a southern, a western, a northern and a western boundary of the said Portion to the northeastern corner of Northern Territory Portion 4377 (Bambalmok Aboriginal Corporation); thence easterly to the most southern southwestern corner of Northern Territory Portion 4774; thence easterly by the northern boundaries of Northern Territory Portions 4424 and 4342 to the point of commencement, but excluding there-from the restricted areas for Barunga, Beswick and Manyallaluk as proclaimed in Northern Territory Government Gazettes G33 of 21/8/1981, G22 of 3/6/1983 and G49 of 9/12/1992 respectively.

Description certified correct:

Signed:

Date:

Certifying Officer: Peter Moy
Land Records Unit, Survey Branch
Ph 8999 7947

Locations of signs advising of the restricted area

Signs are to be of a size no less than 1m², and installed at locations delineated in consultation with NMNRC, the relevant Community Management Boards, Maranboy Police and the Director of Licensing. Signs are to be of two types:

1. 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

†The possession or consumption of LIQUOR beyond this point 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†

2. 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 (5km)

†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†