

Director-General of Licensing

Decision Notice

Matter:	Variation of Conditions of Liquor Licence by the Director-General
Premises:	United Wycliffe Well North Stuart Highway Via Tennant Creek NT 0862
Licensee:	Silvey Pty Ltd
Nominee/Manager:	Karthik Myana
Licence Number:	80802878
AND:	
Premises:	Devils Marbles Hotel Stuart Highway Via Tennant Creek NT 0861
Licensee:	Wauchope (NT) Pty Ltd
Nominee/Manager:	Ann Maree Borton
Licence Number:	81202869
Legislation:	Section 33 of the <i>Liquor Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	9 November 2016

BACKGROUND

- 1) Ali Curung Community was declared a General Restricted Area under the *Liquor Act* ("the Act") in 1979 and was declared a prescribed area under the *Northern Territory Emergency Response Act* in 2007. As a result, it is an offence under section 75 of the Act for a person to bring, possess, consume or supply alcohol in the Ali Curung Community.
- 2) The Ali Curung "Future Lifestyles" Alcohol Management Plan ("AMP") of 2014 identifies United Wycliffe Well (formerly Wycliffe Well Store) and the Devils Marbles Hotel (formerly Wauchope Hotel)¹ as the two closest alcohol outlets to Ali Curung and submits that the sale of take away alcohol from those premises contributes significantly to alcohol related issues and harms experienced by the community.
- 3) In late 2014 the Barkly Regional Council ("the Council") wrote to the Chairman of the former NT Licensing Commission seeking a variation of the conditions attached to the liquor licences for United Wycliffe Well and the Devils Marbles Hotel so as to align the authorised trading hours for the sale of take away alcohol with the then trading hours applicable in Tennant Creek.

¹ For the remainder of this Decision Notice the premises are referred to as United Wycliffe Well and Devils Marbles Hotel except where the context requires otherwise.

- 4) Under the Tennant Creek Supply Plan the trading hours for sale of take away alcohol for licensed premises located in Tennant Creek are:
- Monday to Friday between the hours of 2:00 pm and 8:00 pm;
 - Saturday and Public Holidays between the hours of 12:00 noon and 8:00 pm;
 - Sunday between the hours of 2:00 pm and 8:00 pm; and
 - No trading on Good Friday and Christmas Day.

- 5) The Devils Marbles Hotel currently holds a liquor licence authorising it to trade as a Roadside Inn (Unserviced). The current trading hours authorised by the licence conditions for the sale of take away alcohol are:

- Sunday to Friday inclusive between the hours of 10:00 am and 10:00 pm; and
- Saturday and Public Holidays between the hours of 9:00 am and 10:00 pm.

The licence does not contain a condition prohibiting the sale of take away alcohol on Christmas Day or Good Friday.

- 6) United Wycliffe Well currently holds a liquor licence authorising it to trade as an On-Licence premise. The current trading hours authorised by the licence conditions for the sale of take away alcohol are:

- Sunday to Friday inclusive between the hours of 10:00 am and 10:00 pm; and
- Saturday and Public Holidays between the hours of 9:00 am and 10:00 pm.

The licence does not contain a condition prohibiting the sale of take away alcohol on Christmas day or Good Friday.

- 7) Following a meeting on 5 March 2015 the Ali Curung Local Authority, in consultation with Licensing NT, approached both licensees asking that they consider implementing voluntary restrictions on take away alcohol trading hours to match those applicable to licensed premises in Tennant Creek. At the same time, Licensing NT contacted the licensees to ascertain whether they would be agreeable to joining the Tennant Creek Liquor Accord under which all members of the Accord agree to restrict liquor sales to enhance the well-being and public safety of the Township.
- 8) Both licensees responded that they were not prepared to voluntarily vary the existing take away alcohol trading hours. It should be noted that the Wycliffe Well premises was sold and the liquor licence was transferred to Silvey Pty Ltd from Arcvan Pty Ltd on 28 January 2016. At the time of the transfer the trading name of the business was changed from Wycliffe Well Store to United Wycliffe Well. The premises are also colloquially known as the Wycliffe Well Roadhouse. The request for the voluntary restrictions was made to the former nominee/manager of the premises, Mr Anthony Vanderzalm.
- 9) Also, the Devils Marbles Hotel was previously known as the Wauchope Hotel. The change of name of the premises was effective from 18 September 2015. The ownership and management of the premises did not change at the time the business name was changed. Local residents still refer to the premises as the Wauchope Hotel or the Wauchope Roadhouse, despite the formal change of name.
- 10) On 9 June 2015 the Council, on behalf of the Ali Curung Local Authority, lodged a submission requesting that the Director-General of Licensing ("the Director-General") exercise the powers available under section 33 of the Act and vary the take away alcohol trading hours conditions of both premises to align with the trading hours applicable in Tennant Creek.

SUBMISSIONS IN SUPPORT OF VARIATION OF LICENCE CONDITIONS

Barkly Regional Council

- 11) On 1 May 2015 Ms Barb Shaw, President of the Barkly Region Council, wrote to Licensing NT regarding meetings held with the Ali Curung Local Authority and concerns expressed regarding evidence of harm caused by alcohol sales from nearby roadhouses, United Wycliffe Well and Devils Marbles Hotel.
- 12) Ms Shaw submitted that drinkers from nearby communities travel to the roadhouses to purchase alcohol from 10:00 am, four hours before take away alcohol can be purchased in Tennant Creek. She states that this situation supports people drinking all day and greatly increases the risks of accidents due to drink driving.
- 13) Ms Shaw submits that the current situation demonstrates the impracticability of having different liquor licence conditions in different parts of the Barkly region. She stated that Barkly Regional Council offers its support to the Local Authority and the wider Ali Curung community in its aims of identifying and implementing ways to minimise harm caused by alcohol and drunken behaviour in this community.
- 14) By letter dated 9 June 2015 Ms Edwina Marks, Chief Executive Officer of the Barkly Regional Council, forwarded the submission on behalf of the Ali Curing Local Authority urging the variation of liquor licence conditions applicable to the United Wycliffe Well and Devils Marbles Hotel. Ms Marks submitted that alcohol misuse is a serious issue in Ali Curung which impacts on social, economic and human advancement. The community hopes that by tackling alcohol supply it will reduce alcohol related harm as a step in the right direction. She stated that the community is also addressing harm and demand reduction strategies through their AMP and notes that the request is community driven and has resulted in recent momentum to make change. Ms Marks also stated that the section 33 submission had received overwhelming support by both local community members and stakeholders.

Ali Curung Local Authority ("the Authority")

- 15) The Authority provided a detailed submission requesting that the Director-General exercise the powers available under section 33 of the Act and reduce the trading hours for take away alcohol at United Wycliffe Well and the Devils Marbles Hotel to align with the hours applicable for licensed premises in Tennant Creek.
- 16) The submission referred to the decision of the former Licensing Commission in 2008² when the take away alcohol hours for licensed premises in Tennant Creek were reduced to authorise trading hours for Tennant Creek and Threeways to 2:00 pm to 8:00 pm Monday to Friday, 12:00 noon to 8:00 pm Saturdays and Public Holidays, 2:00 pm to 8:00 pm on Sundays (for clubs and hotels only) with no trading on Good Friday or Christmas Day. In that decision the Commission noted the submission by the Northern Territory Police to extend the alcohol supply restrictions to the wider Tennant Creek area to include Wauchope, Wycliffe Wells, Barkly Homestead, Renner Springs etc. The Commission determined not to extend the measures that far, however it was noted that if advised that problem drinkers are travelling to these locations to obtain alcohol when not available in Tennant Creek, the Commission would reconsider the geographic coverage of the measures.
- 17) The Authority refers to a significant increase in alcohol related harm being experienced in the community in the 12 months prior to lodging its submission and seeks to have the trading

² Reasons for Decision on Application by Tennant Creek Council for a Public Restricted Area and Review of the Tennant Creek Liquor Supply Plan – NT Licensing Commission – 15 May 2008 at paragraph 68

hours aligned to prevent further harm. The Authority notes that the former Licensing Commission adopted a similar approach in 2012 when it reduced the trading hours for licensed premises in Larrimah and Mataranka to align with the hours applicable under the Katherine Supply Plan.

- 18) Ali Curung has been “a dry community” since its declaration as a General Restricted Area in 1979, at the request of the community. The submission states that Ali Curung Police report that 90% of their workload involves alcohol related domestic violence. The majority of the drinking takes place away from the community, primarily adjacent to the Stuart Highway close to the alcohol outlets in ad-hoc, unmonitored and uncontrolled drinking camps.
- 19) The Authority notes that school attendance in the community is at an unacceptable level of just 50% and that the high rate of alcohol consumption contributes to the problem. The submission also refers to positive results achieved in Tennant Creek where the combination of the Supply Plan, voluntary restrictions enforced by licensees and the Temporary Beat Location initiatives have resulted in a reduction of greater than 50% in alcohol-related assaults. The submission also raises concerns regarding the impact of excessive alcohol consumption on children through Foetal Alcohol Spectrum Disorders and the normalisation of excessive and dangerous drinking behaviours.
- 20) United Wycliffe Well is a stopover point on the Stuart Highway 127 kilometres south of Tennant Creek and 380 kilometres north of Alice Springs and approximately 40 kilometres from Ali Curung via sealed road. Conditions attached to the liquor licence restrict the volume of alcohol that may be sold to patrons to 12 x 375 ml bottles or cans of light beer, 8 x mid strength beer, 6 x full strength beer or 6 x ready to drink spirit mixers per person per day. The restrictions apply to all patrons of the premises who purchase take away alcohol and not just the residents of Ali Curung.
- 21) The Devils Marbles Hotel is also a stopover point on the Stuart Highway located 113 kilometres south of Tennant Creek and 395 kilometres north of Alice Springs and approximately 57 kilometres from Ali Curung. The Hotel has an informal agreement with the community of Ali Curung with residents of the community restricted to six cans of beer per person per day. The Authority queries whether the voluntary restriction is actually enforced and refers to wholesale liquor data for the premises indicating a steady increase in the sale of pre-mixed spirits, standard spirits and bottled wine from 2011 to 2014. The Authority notes that between 2013 and 2014 pre-mixed spirit sales increased by 106%, standard spirit sales increased by 152% and bottled wine sales increased by 29%. The Authority submits that this level of increase is alarming and requires proactive involvement to address the resultant increase in harm.
- 22) By comparison, for all Tennant Creek licensed premises combined between 2013 and 2014 pre-mixed spirits sales decreased by 25%, standard spirit sales decreased by 14% with sales of bottled wine increasing by 41%.
- 23) The Authority submits that Ali Curung has been developing its AMP since August 2010 with a significant effort by community members and stakeholders. The AMP includes a number of harm and demand reduction measures with the greater control over the supply of alcohol being a key strategy along with the strategy of keeping Ali Curung as a dry community.
- 24) The Authority states that several attempts have been made to have United Wycliffe Well and the Devils Marbles Hotel join the Tennant Creek Liquor Accord, without success, in an attempt to restrict the number of community members travelling significant distances to obtain alcohol. The Authority suggests those premises have not joined the Liquor Accord to avoid implementing the voluntary restrictions.
- 25) The Authority states that Ali Curung Police have expressed concerns that problem drinkers are travelling to both Devils Marbles Hotel and United Wycliffe Well to access take away alcohol. Community members have also expressed concerns that people from Tennant Creek

and other places also travel to both premises to take advantage of the earlier opening hours for take away alcohol.

- 26) The submission from the Authority also refers to the decision of the former Licensing Commission in 2012³ to restrict take away alcohol trading hours for licensed premises in Larrimah and Mataranka where a similar situation was occurring with people travelling significant distances to purchase alcohol due to the take away alcohol restrictions in place in Katherine. The Authority notes that a major consideration in that decision was the impact on the wider community and tourists in terms of the risks posed to general road users by intoxicated drivers and grog runners.
- 27) The Authority states that the Licensing Commission had no difficulty in finding that drinkers were travelling from Katherine and surrounds to Larrimah and Mataranka to purchase alcohol in order to circumvent the supply measures in place in Katherine and Mataranka. The Authority submits that the same situation is occurring in the Barkly region.
- 28) The Authority states that the informal drinking camps set up near the licensed premises are unmonitored and uncontrolled bringing a high risk of alcohol related violence and anti-social behaviour. People at the drinking camps hide in the bush close to the Stuart Highway and consume alcohol in a binge drinking pattern before returning to Ali Curung by car with drivers over the legal blood alcohol level. The Authority submits that alcohol related harm occurs in Ali Curung when intoxicated drinkers return to the Community after a day of drinking.
- 29) The Authority states that often drinkers will be accompanied to and from the drinking camps by family members, including young children. If the young children do not accompany the adult drinkers they are left at Ali Curung without a carer or responsible adult to look after them. The Authority also recounts instances of drinkers taking children to the drinking camps so they can be "Sober Bob" and drive the adults back to Ali Curung after a drinking session.

NT Police

- 30) Senior Constable Declan Douglas, an officer attached at the time to the Ali Curung Police Station, submitted a statutory declaration dated 20 May 2015. He had served at Ali Curung from June to December 2012 and again from December 2013 until his transfer to Alice Springs in August 2016. He states that in his time in the community he has observed many occasions where community residents travel to United Wycliffe Well and Devils Marbles Hotel to take advantage of the extended take away alcohol trading hours.
- 31) Senior Constable Douglas states that people have told him that they travel to the roadhouses with friends and family as the take away alcohol hours allow them to purchase alcohol near the community while still giving them additional time to visit and purchase additional alcohol at both roadhouses.
- 32) In his statement Senior Constable Douglas recounts examples of alcohol related anti-social behaviour at both locations⁴ where Police intervention has been required, including:
 - A highly intoxicated female who had been drinking near the Wycliffe Well Roadhouse being detained by staff after standing in the middle of the Stuart Highway after an argument with a family member. The female was placed in protective custody;
 - 30 to 40 people at various states of intoxication in the vicinity of the Wycliffe Well Roadhouse shouting for Police to permit them to purchase "Just one more six pack".

³ Reasons for Decision: NT Licensing Commission - Mataranka Hotel, Mataranka Homestead Tourist Resort and Larrimah Wayside Inn - 5 July 2012

⁴ It should be noted that the incidents referred to occurred prior to the recent transfer of the liquor licence to Silvey Pty Ltd and prior to the change of name from Wycliffe Well Roadhouse to United Wycliffe Well.

When that did not occur they threw rocks over the Stuart Highway towards Senior Constable Douglas and other Police officers. The officers were forced to take shelter in a toilet block while rocks continued to be thrown. Immediately prior to this a child of one of the roadhouse staff had been playing in the area where the rocks were thrown. As a consequence of this incident the premises were closed early;

- Domestic violence incidents where the parties had spent the day drinking at the roadhouses;
- Fist fights amongst people congregating at the drinking camps, both in the camps and on the Stuart Highway;
- A domestic violence instance involving serious head injuries to the female where the couple were heavily intoxicated having been drinking all day in Tennant Creek. The couple had purposely stopped at the Wauchope Hotel to get more alcohol on their way home to Ti Tree;
- The arrest of drunk drivers who had purchased a six pack allocation of beer from both premises prior to their arrest; and
- Intoxicated mothers drinking at the roadhouses in company with their young children.

- 33) Senior Constable Douglas notes that since the introduction of temporary beat locations in Tennant Creek numerous drinkers have taken advantage of the earlier trading hours at the roadhouses and travelled to either location to purchase alcohol while still be able to return to Tennant Creek by 2:00 pm when they can purchase more take away alcohol. He states that the application to bring the trading hours for the roadhouses in line with those in force in Tennant Creek is supported by the Ali Curung Local Authority, community elders and the Ali Curung Police.
- 34) On 29 May 2015 Mr Daniel Bacon, Acting Commander Southern Command, lodged a submission in support of the proposal to restrict the trading hours for both premises. He noted that Tennant Creek has adopted strong supply reduction strategies through voluntary restrictions and a range of measures that have seen a significant reduction in alcohol fuelled violence in the Township. He notes that the development of the Tennant Creek Alcohol Management Plan is a further positive step in looking at a range of supply, demand and harm reduction strategies.
- 35) A/Commander Bacon states that members of the Authority have seen the positive changes that have occurred in Tennant Creek and are concerned about the current hours of trade at United Wycliffe Well and Devils Marbles Hotel contributing to increased social harm in their community, a concern that he shares. He submits that it is evident that the hours of trade at both premises, in conjunction with the more stringent supply restrictions in Tennant Creek, has led to an increased use of both premises by Ali Curung and Tennant Creek residents.
- 36) A/Commander Bacon states that he fully supports the Authority's recommendation to the Director-General to vary the licence conditions of both premises to bring authorised hours for the sale of take away alcohol in line with those applicable to licensed premises in Tennant Creek.

Department of Health

- 37) Ms Colleen Keen, Manager of the Ali Curung Primary Health Centre for the past five years, lodged a submission in support of the proposed restrictions. Ms Keen states that the community at Ali Curung is continuing to experience an increase in drinking and family violence. Health staff have experienced a significant issue with nurses not wishing to work at Ali Curung due to after-hours call outs to attend to the results of alcohol fuelled assaults and neglected children whose parents are out on the Stuart Highway drinking.
- 38) Ms Keen describes the past 12 months at Ali Curung as the worst year of her tenure due to increased violence, assaults and child neglect attributed to the increased consumption of alcohol in the community with alcohol abuse, petrol sniffing and family violence escalating.
- 39) Ms Keen notes that there are many underage drinkers and petrol sniffers in the community and that senior members are purchasing high powered cars for the youth to drive to the Wycliffe Well and Wauchope to purchase alcohol and petrol for family members. Staff report that on most nights loud music and raised voices are keeping the rest of the community awake and that intoxicated people are still staggering around in the mornings when the clinic staff are heading to work.
- 40) Ms Keen states that many senior elders who do not drink are also voicing their concerns. She has observed community members cramming into vehicles at 7:30 am and heading out to the Stuart Highway so as to arrive at the roadhouses for the 10:00 am opening of the take away outlets. She also notes that some cars are used as de facto taxis and make the trip to the roadhouses several times per day.
- 41) In her submission Ms Keen states that many children are not properly fed and do not attend school as their carers are too busy planning their next drive to buy alcohol. She states that numerous drinkers stay at the roadhouses until they run out of money. She also submits that people are now drink-driving from other communities such as Ti Tree, Tara, Wilora and Willowra to the roadhouses to avoid the restrictions in place in Tennant Creek. She adds that clinic staff have been required to attend to injuries suffered by people from those communities.
- 42) Ms Keen also submits that a large number of young adults and children in the community indicate signs of Foetal Alcohol Spectrum Disorder which is very frightening given the children are the future of the Ali Curung community. She also states that many children upwards of 14 years of age are drinking on a regular basis.

Alekarenge School

- 43) Ms Shontell Dougherty is the Principal of the Alekarenge School located at Ali Curung. Ms Dougherty states that one of the prominent issues in the community is alcohol misuse which is evident from her contact with students and their families and from her engagement with other stakeholders in the community. She states that current school attendance is around 50% and that alcohol misuse impacts on this disappointing outcome. Ms Dougherty submits that she would support any measure aimed at improving school attendance.
- 44) Ms Dougherty states that the local community has expressed concerns to her about the level of drinking in Ali Curung with a great number of residents purchasing alcohol from the Devils Marbles Hotel or United Wycliffe Well. She states that she has witnessed parents travelling to either roadhouse prior to 10:00 am to purchase alcohol and states that if the parents did not have the option of early purchases of alcohol they would be able to place a greater effort in getting their children to school.
- 45) Ms Dougherty concludes by stating that she fully supports the submission to restrict the trading hours for take away alcohol at both premises and hopes that as a result parents will focus on improving their childrens' education.

NOTICES PURSUANT TO SECTION 33 OF THE LIQUOR ACT

46) Section 33 of the Act provides:

33 Variation of conditions by Director-General

- (1) *The Director-General may vary the conditions of a licence (other than a condition determined under section 33AA) on the Director-General's own initiative.*
- (2) *Before varying the conditions, the Director-General must give the licensee written notice:*
 - (a) *stating the proposed variation; and*
 - (b) *stating the reasons for the proposed variation; and*
 - (c) *inviting the licensee to submit a response to the proposed variation within 28 days after the date of the notice.*

47) On 12 August 2015 the Director-General wrote to the nominee and licensee of both premises notifying them of the proposal to vary the liquor licence conditions to restrict the authorised trading hours for the sale of take away alcohol. Specifically, the licensees were advised that the Director-General was considering a variation of conditions reducing the trading hours for the provision of take away alcohol to align with conditions applicable to take away alcohol outlets in Tennant Creek, namely:

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

- (i) Sunday to Friday inclusive between the hours of 2:00 pm and 8:00 pm; and
- (ii) Saturday and Public Holidays between the hours of 12:00 noon and 8:00 pm.

48) The letter in respect of the Wycliffe Well Store was addressed to then nominee/manager under the liquor licence, Mr Arc Vanderzalm. As noted above, the liquor licence for the Wycliffe Well Store was transferred to Silvey Pty Ltd on 28 January 2016 with the business name for the premises being changed to United Wycliffe Well at the same time. Prior to the transfer of the liquor licence Mr Vanderzalm provided a response to the section 33 Notice. Whilst Mr Vanderzalm is no longer the licensee it is appropriate that his submission be considered given the long period during which he managed the business conducted under the liquor licence.

49) On 24 August 2016 the Director-General sent a notice pursuant to section 33 of the Act to the current nominee/manager and licensee of United Wycliffe Well to afford them the opportunity to make submissions in respect of the proposed variation to licence conditions.

Response to section 33 Notice - Wycliffe Well Store

50) By statutory declaration sworn 11 September 2015 Mr Vanderzalm responded to the section 33 Notice on behalf of the former Wycliffe Well Store. He noted the submission of Senior Constable Douglas regarding incidents in the vicinity of the Wycliffe Well premises involving groups of intoxicated indigenous persons. Mr Vanderzalm submits that the evidence implies that the people referred to became intoxicated by drinking alcohol purchased from his premises.

51) Mr Vanderzalm refuted that implication and made the following observations:

- The restrictions on the range and quantities of alcohol able to be purchased from Wycliffe Well make it unlikely that people would become intoxicated by drinking only what they could purchase from the premises;

- The troublemakers referred to by Senior Constable Douglas are typically members of the Ali Curung community returning from an all-day shopping trip to Tennant Creek;
- Ali Curung is a dry community with no alcoholic products available for purchase within the community, nor can alcohol be taken into or consumed within the community;
- A far greater range of alcohol is available for purchase in Tennant Creek than at Wycliffe Well and Ali Curung residents frequently chose to travel to Tennant Creek to purchase supplies, bypassing Wycliffe Well on the way. As a result, these people have an opportunity to drink in Tennant Creek for several hours before the return journey to the community;
- When the returning travellers reach Wycliffe Well many are already seriously intoxicated and still have significant supplies of alcohol with them. They use Wycliffe Well as the last stopping point to access the facilities and make last-minute purchases. Requests for further alcohol supplies are refused.
- Before continuing on the last leg of the homeward journey the drinkers consume the remainder of their alcohol supplies as they are prohibited from taking alcohol into the community. Inevitably the behaviour referred to by Senior Constable Douglas occurs on these occasions;
- Wycliffe Well does not cause or contribute to the alcohol related problems in the community and is powerless to prevent it;
- Wycliffe Well staff clean up rubbish from the premises and nearby areas, including empty spirit and wine bottles and beer cartons. None of those products are available for take away purchase from Wycliffe Well;
- The average weekly order for alcohol for Wycliffe Well includes 35 cartons of full strength beer and provides for the average sale of five cartons per day, sold only in six pack lots per person. It only takes 20 six pack sales to account for the daily stock and, contrary to assertions and assumptions, that quantity of alcohol can only have minimal effect and contribution to indigenous intoxication.

52) Mr Vanderzalm also states that during the period 2 to 5 September 2015 he conducted a survey of customer attitudes towards the proposed reduction in take away alcohol trading hours and that the results showed that 99% of customers are opposed to the proposed reduction.

Response to section 33 Notice – United Wycliffe Well

53) By letter dated 21 September 2016 Ms Fiona Garvey, National Property Manager for United, responded to the section 33 Notice on behalf of the management of United Wycliffe Well. Ms Garvey submitted that a reduction in the trading hours for the premises would not have a material effect on the level of alcohol consumption in the Ali Curung Community and would not be an effective measure to address or reduce the issue of alcohol related harm within the community. She also states that a reduction in the alcohol trading hours would negatively and unfairly impact on the business conducted by United Wycliffe Well.

54) Ms Garvey states that a variation to the trading hours for take away alcohol will impact on sales and the flow of trade through the business and will result in tourists stopping elsewhere for fuel and not using the accommodation facilities. She notes that patrons of the motel and caravan park commence checking in around 1:00 pm and that the current liquor trading hours cater for local and tourist customers. Ms Garvey also submits that tourists reasonably expect to be able to purchase alcohol at lunch time.

- 55) Ms Garvey also submits that a reduction in the trading hours will not result in a significant change in the consumption behaviours of the Ali Curung Community residents as there are days when less than three community members visit the premises. She states that the sale of alcohol between 10:00 am and 2:00 pm on average accounts for 33% of the total take away alcohol sales for the past three months and that a reduction in the trading hours will have a serious and detrimental financial impact on the business.
- 56) Ms Garvey also submits that alcohol related harm in the Ali Curung Community is a result of individuals consuming more than one six pack of beer per day and not due to the trading hours at United Wycliffe Well. She also notes that the venue is subject to existing restrictions on the range and quantity of alcohol that may be purchased. Ms Garvey submits that there have been no major alcohol related incidents around the premises since the transfer of the licence to United and that the licensee complies with the terms and conditions of the liquor licence.
- 57) Ms Garvey states that the six pack limit on the sale of beer is enforced and only individuals with identification are served. Individuals who cause trouble are refused service on subsequent days and this policy is known within the community. Ms Garvey also states that persons who are refused service at United Wycliffe Well often travel to Tennant Creek or the Devils Marbles Hotel for their alcohol. She states that the management at United Wycliffe Well has not observed any individuals making the 260 km round trip from Tennant Creek to United Wycliffe Well to purchase alcohol.
- 58) In conclusion Ms Garvey notes that the incidents of anti-social behaviour described in the statement of Senior Constable Douglas occurred prior to United taking over the premises and the liquor licence and, in any event, those incidents were denied by the former licensee.

Response to section 33 Notice - Devils Marbles Hotel

- 59) On 7 September 2015 Mr Greg Targett, Nominee/Manager of the Devils Marble Hotel provided a detailed response to the section 33 Notice. Mr Targett submits that the strategy is fundamentally flawed if implemented in its entirety. However, he does believe that in part the reduction (presumably in the supply of alcohol to Ali Curung residents) is absolutely necessary.
- 60) Mr Targett states that he and his partners purchased the hotel a little over two years ago and have combined business experience in the Barkly Region spanning over 70 years. Since acquiring the business they have invested over \$600,000 on new facilities and maintenance. The premises subsequently received recognition from the Australian Hotels Association with the award for Best Redeveloped Licensed Premises in 2015. Mr Targett is a member of the board of the AHA, representing Wayside Inns in the southern region.
- 61) Mr Targett states that since taking over the business management he has installed strict operating procedures to ensure compliance with the Act as well as compliance with the agreement with Ali Curung Elders to sell only one six pack of beer per person per day. They also require the production of photo identification for alcohol purchases and check that patrons have a vehicle to ensure there is no compromise of the two kilometre non-alcohol zone. Patrons are not permitted to loiter in the area after purchasing alcohol, evidence that the voluntary restrictions is in fact enforced.
- 62) Mr Targett submits that the efforts of management are designed to configure the hotel business such that they are not reliant on the sale of take away alcohol and that they are achieving the aim of a 34% reduction in the sale of take away alcohol year on year. He states that the premises keeps strict records of take away alcohol sales and that this is known to the Ali Curung Police.
- 63) Mr Targett acknowledges that there were difficulties with previous employees who managed the premises and were responsible for a breach of licence conditions. However their

employment was terminated and the business has now engaged competent managers who have committed themselves to the hotel for at least two years.

- 64) Mr Targett takes issue with a number of claims made in submissions supporting the reduction of trading hours for the sale of take away alcohol. Despite the assertion that Devils Marbles Hotel is not interested in participating in the Tennant Creek Liquor Accord, Mr Targett says that he did attend two Liquor Accord meetings however he was “absolutely discouraged” to continue attending by a senior member of the Tennant Creek Police. Mr Targett states that he would be only too happy to attend future meetings.
- 65) Mr Targett also objects to the assertion by Ali Curung service providers that the premises is not complying with the voluntary agreement restricting take away alcohol sales to one six pack per person per day and relies on the records kept of all take away sales.
- 66) Mr Targett refers to the submission from Senior Constable Douglas and notes that 72% of the incidents highlighted occurred at Wycliffe Well. He notes that of the two incidents attributed to the Devils Marbles Hotel one incident referred to intoxicated people who had travelled from Tennant Creek. Mr Targett submits that management are always proactive in surveying the front of the premises and if people do not move on straight away then his staff moves them on.
- 67) Mr Targett states that it is simply not true that Tennant Creek residents travel to the Devils Marbles Hotel and United Wycliffe Well before 2:00 pm. He states that Tennant Creek residents patronise the Goldfields Hotel and Tennant Creek Hotel prior to 2:00 pm and drink on premise until such time as take away alcohol is available. He concedes there is no doubt that people will travel from Tennant Creek after 8:00 pm to the Devils Marbles Hotel in the hope of accessing more alcohol. Mr Targett submits that those attempts are fruitless as the Hotel voluntarily ceases take away alcohol sales at 8:00 pm.
- 68) Mr Targett submits that a better disincentive for reducing traffic between Tennant Creek and Ali Curung would be to introduce the same alcohol volume restrictions applicable to the Devils Marbles Hotel to licensed premises in Tennant Creek. He states there is no doubt Ali Curung residents travel to Tennant Creek to access larger volumes of heavy beer in 30 packs as well as bottles of spirits and wine. He noted that he has scores of photos taken over the last two years of empty cartons, spirit bottles and wine bottles scattered around his premises.
- 69) Mr Targett acknowledges the submission from the Authority that Ali Curung residents travel down the highway from Tennant Creek prior to 8:00 pm to access more alcohol and stresses the point that they would not go to Tennant Creek in the first place if only six packs were available.
- 70) Mr Targett states that the directors of Devils Marbles Hotel have always been wary of being “painted with the same brush as Wycliffe Well”. He submits that he cannot emphasise enough the chasm that exists between his operation and the (former) management of the Wycliffe Well premises. Mr Targett states that the management of the Wycliffe Well premises do not understand how to manage the indigenous population as evidenced by the number of people loitering around the front of the premises. (It should be noted that Mr Targett can only be referring to the former licensee of the Wycliffe Well Store as the liquor licence was transferred to the current licensee, Silvey Pty Ltd, after Mr Targett’s submission was lodged with the Director-General).
- 71) Mr Targett submits it appears that for some people his premises comes under the same umbrella as the Wycliffe Well premises which is humiliating as the business at Devils Marbles Hotel business is operated professionally and supports the local community as much as it can by behaving as good corporate citizens. As evidence of the positive relationship with the local community Mr Targett notes that the Devils Marbles Hotel sponsors a number of community events including Desert Harmony, Tennant Creek Cup, the Corporate Golf Day, local footballers and the Indigenous Marathon project, amongst others.

- 72) In summary Mr Targett states that he is not opposed to closing take away alcohol sales at 8:00 pm each night as he is not interested in providing an incentive for residents of Tennant Creek to travel down to the Devils Marbles Hotel, noting that they are currently closing at 8:00 pm voluntarily. Mr Targett submits that further reducing trading hours by four hours daily between 10:00 am and 2:00 pm is excessive and would have a significant material financial effect on the business. He states that current strategies have already yielded a significant reduction in take away alcohol sales and, taking account of the efforts of management of the premises, a 50% reduction of take away alcohol trading hours seems unfair.

CONSIDERATION OF THE ISSUES

- 73) Ali Curung is an Aboriginal community located approximately 150 kilometres south of Tennant Creek and 350 kilometres north of Alice Springs. The population fluctuates significantly with figures maintained by the community clinic suggesting a population of approximately 1,100 people. The 2011 census recorded 535 people residing in Ali Curung.
- 74) The Ali Curung community has been developing its Alcohol Management Plan ("AMP") since August 2010. The AMP includes a large number of harm and demand reduction measures with many of those measures either underway or being negotiated with service providers. The AMP identifies greater control over the supply of alcohol as key to the overall AMP having any real chance of success in reducing alcohol related harm.
- 75) Development of the Ali Curung AMP commenced in October 2010 and to date has received community agreement on three separate occasions in 2011, 2013 and 2014. Since mid-2011 the Ali Curung AMP has identified sale, pricing and amount of alcohol sold at roadhouses located at Wauchope and Wycliffe Well as contributing to alcohol related harms experienced by the community.
- 76) One of the aims of the AMP in terms of alcohol supply reduction is to bring the licence conditions for the sale of take away alcohol at the local roadhouses into line with the restricted take away alcohol trading hours currently in place for licensed premises in Tennant Creek where take away alcohol sales are not permitted before 2:00 pm.
- 77) As set out in the background above, the current authorised trading hours for United Wycliffe Well and Devils Marbles Hotel are from 10:00 am to 10:00 pm Sunday to Friday and from 9:00 am to 10:00 pm on Saturdays and Public Holidays. The Authority has requested that the Commission takes steps to remove the anomalies.
- 78) Examination of the earlier decision of the former Licensing Commission (the Commission) to amend the take away liquor conditions for licensed premises in Katherine is useful in placing the Ali Curung matter currently before the Director-General into context. In 2007 the Commission determined to restrict take away sales of alcohol for licensed premises in Katherine to the hours of 2:00 pm to 8:00 pm only, with additional restrictions placed on the sale of cask and fortified wine.
- 79) Stakeholders in support of that application sought to have the restricted take away conditions applied to all relevant premises in Katherine, Mataranka, Victoria River and Pine Creek. It was argued that without the inclusion of these nearby townships in the restricted hours problem drinkers in Katherine could travel to these nearby locations for the purchase of alcohol outside the restricted trading hours, negating the impact of the harm reduction intended with the supply restrictions for Katherine premises. The Commission ultimately determined not to vary the take away licence hours for premises outside the Katherine Township.
- 80) By 2009 Mataranka had experienced a significant increase in alcohol related issues which impacted negatively on the two town camps and the wider community. It was evident at the time that the restriction on take away alcohol sales in Katherine before 2:00 pm had resulted in an increase in the number of people from outlying communities travelling to Mataranka to

purchase take away alcohol from 10:00 am onwards. Many of these people then remained within the Mataranka town area, either drinking in public or staying at the town camps. Police also observed that the more indulgent hours in Mataranka had led to an increase in the number of people from communities as far away as Lajamanu, electing to remain in Mataranka for extended periods.

- 81) The Commission subsequently imposed the same take away liquor restrictions in Larrimah following cogent evidence indicating that residents of Katherine and Mataranka were travelling to Larrimah to purchase alcohol during the less restricted take away liquor trading hours that applied to the Larrimah Hotel.
- 82) Whilst there are differing views in respect of the number of Ali Curung community residents who frequent the Devils Marbles Hotel and United Wycliffe Well to purchase alcohol, and the volumes of alcohol actually purchased by those residents, it is acknowledged that this actually occurs on a regular basis. The evidence before the Director-General seeking a reduction in take away liquor trading hours supports a finding that the liquor purchased by customers from Ali Curung before 2:00 pm is contributing measurably to alcohol related harm.
- 83) The submission presented on behalf of the Ali Curung community states that residents of Ali Curung are regularly travelling to both premises to purchase take away alcohol in order to circumvent the supply measures currently in place in Tennant Creek. Ali Curung Police report that 90% of their workload is alcohol related family and domestic violence incidents with the majority of the drinking occurring away from the dry community. In addition, staff of the Ali Curung Clinic estimate that 80% of all presentations at the clinic are alcohol related.
- 84) It is acknowledged that not all alcohol obtained by Ali Curung residents is purchased from the Devils Marbles Hotel or United Wycliffe Well with many travelling further on to Tennant Creek to access greater quantities and a wider range of alcohol products. However it is also acknowledged that Ali Curung residents do purchase alcohol from those premises prior to 2:00 pm and that this in turn contributes to the alcohol related harm and anti-social behaviour prevalent in the community.
- 85) Both licensees have submitted that a restriction of the trading hours for take away alcohol for their premises would have limited positive effect as Ali Curung residents would simply travel the further distance to Tennant Creek for their alcohol supplies. Previous history with roadhouses along the Stuart Highway indicates that is likely to be the case for at least the hard core drinkers of the community. The outcome for general community is not so clear cut and it would appear that similar restrictions in other locations, for example Mataranka and Larrimah, have resulted in positive outcomes with community members commencing their drinking at 2:00 pm in the afternoon rather than at 10:00 am in the morning.
- 86) One of the key initiatives of the Ali Curung AMP is the reduction of the supply of alcohol to community members by managing the availability, accessibility and convenience of alcohol supply. A specific measure identified to achieve that aim is the alignment of the take away alcohol trading hours for the Devils Marbles Hotel and United Wycliffe Well with those applicable in Tennant Creek.
- 87) The Ali Curing AMP, as for all AMPs developed for Aboriginal communities, is driven by members of the community who have first-hand knowledge of the impacts of alcohol on their respective communities. The AMP states clearly that the majority of Ali Curung residents support the maintenance of a dry community. The residents, through the AMP, have also indicated that they view the reduction of trading hours for the nearby roadhouses as an appropriate measure to achieve a reduction in alcohol supply and use with a resultant reduction of alcohol related harms in the community.
- 88) Of significance is the relatively short distances, by Northern Territory standards, from the subject premises to Tennant Creek. Devils Marbles Hotel is situated 113 kilometres south of Tennant Creek, approximately 1.25 hours driving time, with United Wycliffe Well located

127 kilometres south of Tennant Creek equating to approximately 1.5 hours driving time. The evidence presented in the submissions in support of restricted take away liquor trading hours indicates clearly that residents of Ali Curung are travelling to the Devils Marbles Hotel and United Wycliffe Well to purchase take away alcohol prior to the 2:00 pm opening that applies in Tennant Creek. Many then undertake the trip to Tennant Creek to take advantage of the greater range of alcohol products available and the less restrictive alcohol volume limits imposed at Devils Marbles Hotel and United Wycliffe Well. The intoxication of some drivers apprehended by Police on their return to the community, and the volume of alcohol purchased, is alarming not only to community members but also to the wider community and tourists in terms of the safety of road users being put at risk by intoxicated drivers and grog runners.

- 89) In addition, the submission lodged on behalf of the Ali Curung community highlights that the early departure of residents to secure alcohol supplies from 10:00 am impacts detrimentally on school attendance and the welfare of the children of the community generally. It is submitted that if the take away alcohol hours were aligned with those in Tennant Creek residents would leave the community for their alcohol supplies later in the day with the prospect of children actually attending school rather than being taken on the early morning alcohol purchase run. There is little doubt that Ali Curung residents would not travel to Devils Marbles Hotel or United Wycliffe Well to purchase alcohol were it not for the fact take away alcohol is available at those premises four hours earlier than in Tennant Creek.
- 90) It is acknowledged that restricting the hours of take away alcohol sales for the premises under consideration may very well have the effect of inducing determined drinkers to travel even further to Tennant Creek for their supply of alcohol. That may well be the case; however there would be little purpose in Ali Curung residents travelling to Tennant Creek early in the morning due to the 2:00 pm opening hours for take away alcohol in the Township.
- 91) The submissions of both licensees in respect of the potential for the proposed restrictions to impact negatively on tourists and bona fide travellers is noted and accepted. There can be little doubt that a proportion of tourists are inconvenienced and frustrated by the various alcohol restrictions in place in Territory licensed premises. However, that inconvenience to tourists needs to be assessed against the situation in the Territory and the concerted efforts at all levels of Government and the general community to reduce the serious and on-going alcohol related harm afflicting many Aboriginal communities.
- 92) Not surprisingly, both licensees have submitted that the sale of take away alcohol to Ali Curung residents does not constitute a significant proportion of the overall income of the businesses. The premises under consideration operate primarily as Stuart Highway roadhouses, providing a wide variety of services to tourists, travellers and those who reside and work in the general area. It would be a matter of serious concern if businesses of this nature were reliant on the sale of large amounts of alcohol to residents of local Aboriginal communities to ensure their financial viability. That does not appear to be the case for either Devils Marbles Hotel or United Wycliffe Well.
- 93) The major concerns expressed by the licensees of the premises under consideration is the impact that restricted take away alcohol hours will have on tourists and travellers using the roadhouses, both in terms of inconvenience to patrons and the financial impact due to an inevitable reduction in alcohol sales.
- 94) It is accepted that licence conditions for the various hotels and roadhouses along the Stuart Highway have been developed and modified on a case by case basis taking account of local conditions, including the proximity of Aboriginal communities and associated levels of harm experienced on those communities. The result has been varied licence conditions at different roadhouses creating frustration, primarily for tourists who reasonably expect standard conditions to apply to alcohol sales across the Territory.

- 95) The general authority for licensees to be able to manage their premises within the confines of licence conditions as they see fit needs to be balanced against the interests of the wider Territory community and the concerted efforts on many fronts to curb irresponsible drinking, particularly where that involves residents of Aboriginal communities. In all the circumstances I am persuaded that the trading hours for the sale of take away alcohol for the Devils Marbles Hotel and United Wycliffe Well should be brought into line with those in place for licensed premises in Tennant Creek.
- 96) Acknowledging the submissions of the licensees in respect of potential inconvenience to tourists and travellers utilising the subject premises, I am of the view that the restrictions should not be applicable to bona fide lodgers of the premises. I intend to impose licence conditions for both premises that will authorise the sale of take away alcohol to bona fide lodgers for longer hours than those authorised for sales to the general public.
- 97) I also propose to review this Decision after twelve months to consider whether the restrictions have resulted in any quantifiable impact on the well-being of the Ali Curung community and, equally as importantly, to ensure that the measures do not result in determined drinkers travelling further distances to another venue or another place along the Stuart Highway to purchase take away alcohol.

DECISION

- 98) Pursuant to Section 33(4)(a) of the Act, the licence conditions for the Devils Marbles Hotel and United Wycliffe Well are amended by the removal of the current conditions relating to the trading hours for the sale of take away alcohol and replacement with the following condition:

Take away Hours

Liquor may be sold to the general public for consumption away from the premises during the following hours:

- (i) Monday to Friday between the hours of 2:00 pm and 8:00 pm;
- (ii) Saturday and Public Holidays between the hours of 12:00 noon and 8:00 pm;
- (iii) Sunday between the hours of 2:00 pm and 8:00 pm; and
- (iv) No trading on Good Friday and Christmas Day.

Bona Fide Lodgers

Liquor may be sold to the bona fide lodgers of the premises for consumption away from the premises during the following hours:

- (i) Monday to Friday between the hours of 10:00 am and 10:00 pm;
- (ii) Saturday and Public Holidays between the hours of 9:00 am and 10:00 pm;
- (iii) Sunday between the hours of 10:00 am and 10:00 pm; and
- (iv) No trading on Good Friday and Christmas Day.

(v) For the purpose of this condition, a bona fide lodger means a person staying in hotel or motel style accommodation provided by the Licensee and also includes a properly established caravan park or camping area maintained by the Licensee at or near his premises.

- 99) The above variations to licence conditions shall come into effect 28 days from the date of publication of this decision so as to allow Licensees time to make the necessary arrangements to implement the changes. The Director-General will review the above decision after the new conditions have been in place for a period of twelve months.
- 100) The current licence condition, "Take away Restriction", attached to the liquor licence for United Wycliffe Well which restricts the volume of take away alcohol able to be sold to individual patrons of the premises will remain in force. It is expected that the Licensee for the Devils Marbles Hotel will continue to enforce the voluntary restriction of one six pack of take away beer per person per day to be sold to individual patrons.
- 101) A close examination of the licence issued for United Wycliffe Well disclosed a number of anomalies between the licence conditions and the nature of the business actually conducted at the premises. The authority for the United Wycliffe Well is currently an on-licence for consumption on or at the premises only. That authority is contradicted by the inclusion of take away alcohol conditions within the licence. An on-licence is not the appropriate liquor licence for United Wycliffe Well which actually conducts a roadhouse business with the sale of fuel and the offering of tourist accommodation and facilities being key components of the business.
- 102) The anomalies identified need to be addressed and I intend to instigate further amendments to the licence authority and conditions for United Wycliffe Well, pursuant to section 33 of the Act, so as to properly reflect the nature of the business being conducted, namely a roadhouse authorised to sell alcohol for consumption on premises and as take away. As required by the Act, the Licensee will be afforded an opportunity to comment on the further proposed amendments.

REVIEW OF DECISION

- 103) Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision by the Director-General to vary licence conditions in accordance with section 33 of the Act is included in the Schedule to the Act and is therefore a reviewable decision.
- 104) Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal ("NTCAT"). Any application for review of this decision must be lodged with NTCAT within 28 days of the date of this decision. For the purpose of this decision, and in accordance with section 120ZB(1)(c) of the Act, the affected persons are those who made a submission during the section 33 process that resulted in the within decision being made.



Cindy Bravos
Director-General of Licensing

9 November 2016