

Northern Territory

LIQUOR COMMISSION

DECISION NOTICE

MATTER: VARIATION OF THE CONDITIONS OF LICENCES

LICENSEES

LICENCE NUMBERS

Aileron Roadhouse	81204578/FLL
Banka Banka Station	80817000
Barkly Homestead	81203263
Bluestone Motor Inn	80201870
Devils Marbles Hotel	81202869
Eldorado Motor Inn	80202797
Elliott Hotel	80104969
Goldfields Hotel	80102583/FLL
Headframe Bottle Shop	81002243
Outback Caravan Park	81117302
Renner Springs Desert Hotel/Motel	81202669
Sporties Club Inc	81402780
Tennant Creek Golf Club	81402752
Tennant Creek Hotel	80102044
Tennant Creek Memorial Club Inc	81402774
Tennant Creek Police Social Club	81403239
The Elliott Store	80902117
Threeways Roadhouse	81202764
United Wycliffe Well	80802878

LEGISLATION: Section 33, *Liquor Act*.

COMMISSION MEMBERS: Goldflam, Douglas, McFarland

INTRODUCTION

1. On 8 May 2018, in accordance with s 33(2) of the *Liquor Act* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) issued written notice comprising proposed variations of licence conditions together with reasons for the proposed variations (“the notice of proposed conditions”), to the above-mentioned licensees (“the licensees”), and invited them to submit a response to the proposed variations within 28 days.

2. Section 33(3) of the Act provides:

The Commission may, having considered any response of the licensee, vary the conditions of the licence as proposed in the notice or in another way the Commission considers appropriate.

3. The Commission received responses from the following licensees:

- Aileron Roadhouse
- Devils Marbles Hotel
- Threeways Roadhouse
- Barkly Homestead
- Goldfields Hotel Motel
- Tennant Creek Hotel
- Tennant Creek Memorial Club Inc

4. The Commission has now considered the responses of the licensees.

5. Since 8 May 2018, the Commission has also received submissions and information from the Northern Territory Director-General of Licensing, Northern Territory Police, the Northern Territory Attorney-General and Minister for Justice, the Barkly Regional Council, the Northern Territory Chief Minister, and several private individuals (“the additional responses”).

6. The Act does not expressly either require or forbid the Commission from considering material from sources other than the licensees at this stage of its

inquiry. In the Commission's view, it is permitted to do so. The Commission has considered whether, if it has regard to the additional responses received, there is a prospect that findings or determinations that adversely affect the licensees would be made. The Commission has concluded that consideration of the additional responses would not give rise to findings or determinations that adversely affect the licensees, and that in the circumstances of this own initiative inquiry, it is appropriate to consider the additional responses. Accordingly, the Commission has considered the additional responses.

7. Having considered the licensees' responses and the additional responses, the Commission has determined to vary the conditions of the licences in the way the Commission considers appropriate, having regard to the applicable statutory provisions as summarised at paragraphs 19 to 23 of the notice of proposed conditions.

SUMMARY OF DECISION

8. For the reasons that follow, the Commission has determined to continue, with minor modifications, the conditions currently in force in accordance with the Determination of the Northern Territory Attorney-General and Minister for Justice made pursuant to s 33AA of the Act on 13 March 2018 ("the current conditions"). In particular, the Commission has determined:
 - 8.1. *not* to impose the conditions set out at paragraphs 53 and 54 of the notice of proposed conditions;
 - 8.2. to impose the conditions set out at paragraphs 50, 51, 52, 55, 57, 58 and 59 of the notice of proposed conditions;
 - 8.3. to vary the Aileron Roadhouse licence so as to permit its licensee to sell takeaway liquor on Sundays;

8.4. to vary the Devils Marbles Hotel licence so as to limit the sale of liquor to local residents, in accordance with existing voluntary arrangements; and

8.5. to further review licence conditions after six months.

REASONS

9. The Commission has determined to retain the current restrictions (with minor modifications) for three reasons. Firstly, having received further information regarding the incidence of alcohol-harm in Tennant Creek since the current conditions were imposed on 28 February 2018, the Commission is now satisfied that the current conditions have been effective in reducing alcohol-related harm. Secondly, the Commission is reassured that the current conditions will continue to be effective, having regard to commitments it has received from the relevant authorities regarding the implementation of complementary alcohol harm-reduction measures in Tennant Creek. Thirdly, it appears that there is widespread (although not unanimous) community and stakeholder acceptance of the current conditions.

THE CONDITIONS HAVE BEEN EFFECTIVE

10. At paragraph 30 of the notice of proposed conditions, the Commission referred to data from NT Police recording that following the imposition of the current conditions, there was an immediate and substantial decrease in “assault offences”, “alcohol related assault offences” and “domestic violence and alcohol related assault offences”. However, in the absence of substantial baseline or comparative data, the Commission concluded that it was “unable to find that [the NT Police] data clearly or reliably establishes that harm has decreased in association with the trial of restricted conditions”.

11. Since then, NT Police have provided the Commission with further data that now satisfy the Commission that harm has indeed decreased in association with the current conditions. The further data strongly indicates that the observed decrease referred to above is not attributable to seasonal variations: in the month of March for each of the previous three years, offending in each of these categories increased in Tennant Creek. Furthermore, the observed decrease is in contrast to Alice Springs and the Northern Territory as a whole, where offending in each of these categories also increased in March 2018.
12. NT Police have informed the Commission that the increase in “active policing” offences (ie public order offences) in Tennant Creek in March 2018 noted by the Commission at paragraph 30 of the notice of proposed conditions is likely a result of increased proactive police presence in the area, and not indicative of an increase in anti-social behaviour. The Commission accepts this explanation.
13. At paragraph 29 of the notice of proposed conditions, the Commission referred to a range of matters reported to it indicative of a decrease in alcohol-related harm associated with the current conditions. The Commission has not received any further information to the contrary.

THE CONDITIONS WILL CONTINUE TO BE EFFECTIVE

14. At paragraphs 30 and 31 of the notice of proposed conditions, the Commission expressed concern that although NT Police data strongly indicated that regular Point of Sale Interventions (POSIs) at Tennant Creek takeaway liquor outlets had been highly effective in reducing alcohol-related harm in the past, POSIs had been discontinued when the current restrictions commenced. The Commission has now been informed that “full lock-down” POSIs were reinstated in April 2018, and

will be maintained until they are replaced by the NT Police Auxiliary Liquor Inspector program (PALI), which will commence in August 2018:

Tennant Creek Police will continue to maintain their presence at takeaway outlets as part of the POSI transition plan. It is intended that the adopted approach will maximise the benefits of the current and proposed restrictions, support the POSI strategy as a whole and reassure the Liquor Commission of the ongoing police commitment.¹

15. The Commission considers that the commitment to maintain full lock-down POSIs/PALIs is a substantial measure which in itself obviates the need to implement the proposed conditions.

16. In addition, the Commission notes advice from the Attorney-General and Minister for Justice regarding a number of ancillary measures which it is anticipated will directly or indirectly reduce alcohol-related harm in Tennant Creek, namely:

- Eleven additional police to the area, including Substance Abuse Intelligence
- The re-establishment of Mobile CCTV cameras in the area;
- The extension of Operation Haven to Tennant Creek
- The establishment of five new positions within the Territory Families Tennant Creek Office
- The provision of two Senior Compliance Officers from Licensing NT to service Tennant Creek, with one permanently based in Tennant Creek
- Two additional Maternal and Child Health Nurses
- One additional Child and Youth Mental Health Worker

¹ Letter from Deputy Commissioner Operations Kate Vanderlaan APM (NT Police), 16 May 2018

- Two additional Alcohol and Other Drugs Nurses
- Three new Public Housing Safety Officers

17. The Commission considers that these measures (assuming they are all implemented) further reduce the need to implement the proposed conditions.

THE CURRENT CONDITIONS ENJOY COMMUNITY SUPPORT

18. The Commission has previously found that there is no consensus in Tennant Creek regarding alcohol restrictions.²

19. The Barkly Regional Council has recommended that the current restrictions be maintained “with some minor changes”, and makes the following submission:

Overall, there are many people in Tennant Creek who are of the view, similar to what is stated in your Reasons that the current restrictions are working, government has now injected significant additional resources into our town, reinvigorated the Alcohol Management Plan, outlined a plan to have licensing inspectors outside bottle shops and will shortly have public housing safety officers in place to help reduce alcohol related harm to the community.³

20. Similarly, in its submission dated 2 June 2018, the Tennant Creek Memorial Club states:

After seeking responses from our members (which are attached), the general consensus has been that the community is happy with the current restrictions in place.

21. The Northern Territory Chief Minister wrote to the Commission on 7 June 2018, stating:

² Notice of proposed conditions, paragraph 38

³ Letter from Steve Moore, Chief Executive Officer, Barkly Regional Council, 5 June 2018

I am advised that [the current conditions] have general community support. Community support is crucial to liquor restrictions working.

22. The Commission accepts that the views of the community are of relevance,⁴ and is, on the basis of the responses referred to above, satisfied that there is now significant community support to continue the current conditions.

23. Notwithstanding the significant level of community support for maintaining the current conditions, the Commission has also considered whether they are required at all. Having regard to the offence data supplied by NT Police, and the detailed history provided by the Barkly Regional Council of events in Tennant Creek in the months leading up to the imposition of the current conditions, the Commission respectfully considers that the Director-General's exercise of her emergency powers under s 48A of the Act on 27 February 2018 and 6 March 2018 was proper and appropriate, as was the Attorney-General and Minister for Justice's exercise of her powers under s33A of the Act on 13 March 2018 to determine licence conditions on the basis that they were urgently needed for the wellbeing of the affected communities. The Commission has previously noted with concern the dangerously harmful levels of alcohol consumption in Tennant Creek.⁵

24. Having regard to these matters, as well as the objects of the Act and the application of the public interest and community impact test, the Commission is comfortably satisfied that conditions as restrictive as those currently in force should continue to apply in Tennant Creek for the time being.

⁴ See Notice of proposed conditions, paragraph 37

⁵ Notice of proposed conditions, paragraphs 1 to 3

A SIX MONTH REVIEW

25. In its notice of proposed conditions, the Commission foreshadowed a further s 33 inquiry into takeaway trading in Tennant Creek and the Barkly in 12 months.⁶ Having now decided not to impose the more restrictive conditions then proposed, in large part in reliance on the commitments made by NT Police and the NT Government to implement the complementary measures outlined at paragraphs 14 and 16 above, the Commission considers that it should review the licence conditions again in 6 months. The Commission looks forward at that time to confirmation by the relevant agencies that the complementary measures have been implemented in accordance with the commitments that have been made.
26. The Commission also looks forward at that time to receiving evidence that the improvements observed since 28 February 2018 in relation to alcohol-related harm in Tennant Creek have been consolidated and sustained. If on the other hand the evidence indicates that alcohol-related harm has again increased, the Commission will give consideration to imposing further restrictions on the supply of alcohol in the Barkly.

WHY SINGLE OUT THE BARKLY?

27. A common theme of both the licensees' responses and the additional responses received by the Commission to the notice of proposed conditions is that people in the Barkly have been unfairly singled out for "punishment" by the Commission. An associated concern expressed is that imposing restrictions on the Barkly will merely shift harmful drinkers to other localities.

⁶ Notice of proposed conditions, paragraph 47

28. The Commission rejects the assertion that it is singling out the Barkly. This s 33 inquiry is a response to calls for action that originated in the Tennant Creek community. The Barkly Regional Council wrote in urgent terms to the Chief Minister alerting him to increasing rates of crime on 29 November 2017.⁷ In February 2018, following a series of disturbing incidents in Tennant Creek, there were several widely reported town meetings at which residents called for action to be taken to address alcohol-related harm. At that time, the Mayor of Tennant Creek issued this compelling plea:

These crimes combined with escalating property related crime, increased alcohol related assaults and high rates of domestic violence related assault require a whole of government response, community participation and families accepting some of the responsibility for where we are at. Alcohol is clearly one of the major causal factors contributing to crime. Our Council is extremely concerned and is seeking any ideas to change and help towards finding a solution to the current situation... Tennant Creek seems to be the forgotten town at the moment, I call upon the Government to start allocating some resources to Tennant Creek to start working with the community.⁸

29. The Commission also rejects the assertion that it is punishing people in the Barkly. The Commission acknowledges that the current conditions have caused

⁷ Letter from Steve Moore, Chief Executive Officer, Barkly Regional Council, 5 June 2018

⁸ Megan Palin, Crime in the Outback: 'This town has a problem with sexual assault on children', news.com.au, 23 February 2018, accessed at <https://www.news.com.au/national/crime-in-the-outback-this-town-has-a-problem-with-sexual-assault-on-children/news-story/434c70e5263ae2c0c9df5f289162d4f2>

inconvenience and irritation to some drinkers, and a loss of profits to licensees. Those costs must, however, be weighed against the substantial benefits that have been observed. On the information provided to the Commission, it is satisfied that the benefits to the community of the current conditions outweigh the costs.

30. There is however force in the submissions that the Northern Territory's alcohol problems are not confined to the Barkly, that imposing restrictions in the Barkly may move the problem rather than solve it, and that the Commission should not confine its attention to the Barkly. This s 33 inquiry is the first such matter undertaken by the Commission since its establishment on 28 February 2018, when the *Liquor Commission Act* (NT) came into force. The Commission anticipates that it will not be the last such matter. The Commission has received representations from the Alice Springs community that restricted conditions similar to those now in force in Tennant Creek should also be imposed in Alice Springs. The Commission will in due course give serious consideration to those representations.

PROCEDURAL ISSUES

31. Another common theme of the responses received was concern that the Commission has not conducted a public hearing, and that submissions received by the Commission have not been made available for scrutiny by other stakeholders and the community.

32. The Commission acknowledges these concerns, which it considers are well-founded. The Commission recommends that the Department of the Attorney-General and Justice consider amending the Act to give the Commission discretion to proceed by way of a public hearing when conducting a s 33 inquiry.

BARKLY LICENSEES OUTSIDE TENNANT CREEK

33. As stated in the notice of proposed conditions, the Commission considers that conditions should be calibrated to “remove any incentive to drinkers to drive to another location in the Barkly region where the conditions are less restrictive”.⁹

34. In its response to the Commission’s notice of proposed conditions, the Aileron Roadhouse licensee submits that “the removal of Sunday takeaway trade is more harmful for the community as the trial has shown that this variation to my licence has caused many of the Aileron customers to go to Alice Springs.”

35. The Commission accepts this submission, and has determined to permit this licensee to trade on Sundays. In reaching this decision, the Commission has had regard to these facts and circumstances:

- The Aileron Roadhouse licence restricts the sale of takeaway liquor to six cans of beer per person per day;
- since the commencement of the current restrictions there has been a lot more movement of persons seeking alcohol driving to Alice Springs;¹⁰
- Aileron is approximately 135 km north of Alice Springs and 370 km south of Tennant Creek;
- licensees at Ti Tree (200 km north of Alice Springs) and Barrow Creek (300 km north of Alice Springs) are not permitted to sell takeaway liquor;
- the next licensed takeaway outlet “up the track” is United Wycliffe Well (375 km north of Alice Springs, 130 km south of Tennant Creek); and
- takeaway liquor can currently be purchased on Sundays in Alice Springs.

⁹ Notice of proposed conditions, paragraph 56

¹⁰ Greg Dick (Nominee, Aileron Roadhouse), Submission, 4 June 2018

36. In the notice of proposed conditions, the Commission stated:

the proposed limits will align the daily amount of takeaway liquor that can be purchased at roadhouses with the daily amount that can be purchased from licensed premises in Tennant Creek... the proposed restrictions substantially replicate, complement and support local limits on the supply of takeaway liquor to residents of remote communities, such as the long-standing agreement between the Devils Marbles Hotel not to sell more than six cans of full-strength beer to members of the Alekerenge community.¹¹

37. Although it has now decided for the reasons set out above not to implement a “six-can” takeaway limit in Tennant Creek, the Commission remains concerned not to undermine existing arrangements and conditions regulating the supply of takeaway liquor by Barkly licensees outside Tennant Creek. Existing licence conditions to that effect will be maintained.¹² In relation to the Devils Marbles Hotel, the existing informal arrangement referred to above will be incorporated into the licence conditions, in terms similar to those that currently apply to the nearby licensed premises at Wycliffe Well.

TAKEAWAY CONDITIONS

38. From 13 June 2018, the following conditions will apply to the licences operated by the licensees:

- A. takeaway liquor will only be available for sale Monday through to Saturday between 4 pm and 7 pm (subject to the exception in paragraph 39 below);

¹¹ Notice of proposed conditions, paragraph 56

¹² This applies to the following licences: Aileron Roadhouse, Bootu Creek Wet Mess Canteen, Banka Banka Station, Barkly Homestead, Elliott Hotel, Elliott Store and United Wycliffe Well

- B. takeaway sales on Sunday is prohibited (subject to the exception in paragraph 40 below); and
- C. sale of the following products will be limited to no more than one of the following per person per day:
- i. 30 cans or stubbies of mid-strength or light beer; or
 - ii. 24 cans or stubbies of full strength beer; or
 - iii. 12 cans or bottles of Ready to Drink mixes; or
 - iv. One two litre cask of wine; or
 - v. One bottle of fortified wine; or
 - vi. One bottle of green ginger wine; or
 - vii. Two x 750 ml bottles of wine; or
 - viii. One 750 ml bottle of spirits.

The sale of port, wine in a glass container larger than 1 litre and beer in bottles of 750ml (subject to the special condition at paragraph 43B below) or more remains prohibited.

39. The sale of takeaway liquor will be permitted by licensees operating premises outside Tennant Creek from Monday through to Saturday between the hours of 12 noon and 7 pm.

40. The sale of takeaway liquor will be permitted by the Aileron Roadhouse on Sundays for the same hours as the sale of takeaway liquor is permitted in Alice Springs on Sundays.

41. The Devils Marbles Hotel licence will include the following additional condition:

TAKEAWAY RESTRICTION

Liquor sold for consumption away from the premises to purchasers who produce identification indicating that they are residents of Alekerenge/Ali Curung or a "Community" is restricted to:

Twelve (12) 375ml bottles or cans of light beer per person per day; or

Eight (8) 375 ml bottles or cans of mid strength beer per person per day; or

Six (6) 375 ml bottles or cans of full strength beer per person per day; or

Six (6) 375 ml bottles or cans of RTDs (with alcohol content not greater than 5%) per person per day

42. Notwithstanding anything contained in the conditions set out at paragraph 38 above, where a licence contains an existing condition which is more restrictive than the conditions set out therein, the existing condition prevails.

43. The Commission determines that bona fide lodgers of licenced premises be permitted to purchase between noon and 11 pm:

A. Liquor not subject to the restrictions referred to at paragraph 38 above, for consumption by the lodger or invited guests of the lodger during the lodging period in the room, caravan site or camping site occupied by the lodger.

B. Darwin Stubby Souvenir packs, provided they are sold at room temperature and in the presentation box provided, for consumption away from the premises.

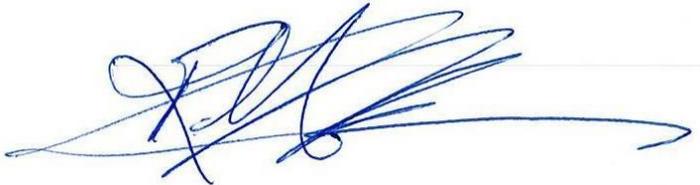
44. "Lodger" means a person staying in accommodation provided by the licensee and includes a properly established caravan park or camping area maintained by the licensee at or near his premises. To establish their bona fides for the purpose of purchasing liquor pursuant to these special conditions, lodgers must produce personal identification plus proof that they have paid for their accommodation.

45. The Commission determines that people placing bush orders, being bona fide orders from bush communities, cattle stations or work camps remote from Tennant Creek, be permitted to purchase up to seven "days worth" of liquor as set out in paragraph 38 above. To establish their bona fides for the purpose of purchasing liquor pursuant to this special condition, orders must be placed on accounts and received by telephone or email at least one day in advance. All documentation must be retained for each order and made available to an Inspector of Licensed Premises on request.

NOTICE OF RIGHTS

46. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to vary licence conditions pursuant to section 33 of the Act is specified in the Schedule and is a reviewable decision.

47. 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. Any application for review of this decision must be lodged within 28 days of the date of this decision.



Russell Goldflam

Acting Deputy Chairperson

Northern Territory Liquor Commission

12 June 2018