

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR GENERAL RESTRICTED AREA
OVER DELYE OUTSTATION [2025] NTLiqComm 6

FILE NO.: LC2024/050

APPLICANT: David Hewitt, Kathleen Bobongie, Kenneth Hewitt,
Margaret Hewitt, Russell Hewitt

AREA: Delye Outstation
Delye Road
NEMARLUK NT 0822

LEGISLATION: Part 8 Division 3 of the *Liquor Act 2019* (NT)

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Ms Ebony Abbott-McCormack (Health Member)
Ms Rachael Shanahan (Community Member)

DATE OF HEARING: 11 December 2024

DATE OF DECISION: 3 February 2025

Decision

1. For the reasons set out below and in accordance with s 177 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to declare a general restricted area (**the GRA**) over the Delye Outstation situated on land owned by the Daly River/Port Keats Aboriginal Land Trust.
2. In accordance with s 172 of the Act, the Commission will declare the GRA by *Gazette* notice specifying that:
 - a. The boundaries of the GRA are as depicted in Annexure One to this decision notice.
 - b. Other than in accordance with a permit issued under s 201 of the Act (**a liquor permit**) that has not been revoked or suspended, the following are prohibited in the GRA:
 - i. The bringing of liquor into the area;

- ii. The possession of liquor in the area;
 - iii. The consumption of liquor in the area; and
 - iv. The sale, supply and service of liquor in the area.
 - c. The Director of Liquor Licensing (**the Director**) may on their own initiative suspend a liquor permit of a resident of the GRA for a period of up to six months with immediate effect.
 - d. The Director must consult with the residents of the GRA and have regard to the Delye Outstation Community Alcohol Plan¹ when considering:
 - i. an application for a liquor permit;
 - ii. the conditions of a liquor permit, including the quantity and type of liquor to be permitted, and the places at which liquor may be possessed and consumed by the permit holder;
 - iii. suspension of a permit; or
 - iv. revocation of a permit.
 - e. The declaration of the GRA expires in 99 years.
3. By way of compliance with s 178 of the Act, the Commission has determined to publish information about the GRA by posting this decision notice on the Commission's website, and by sending a copy of this decision notice to:
- a. Daly River/Port Keats Aboriginal Land Trust
 - b. Northern Land Council
 - c. NT Police
 - d. Attorney-General and Minister for Tourism and Hospitality
 - e. Minister for Alcohol Policy
 - f. Alcohol Policy, Northern Territory Department of Health
 - g. Office of Aboriginal Affairs, Department of the Chief Minister and Cabinet
 - h. Harm Minimisation Unit, Northern Territory Department of Health
 - i. National Indigenous Australians Agency

¹ Exhibit One, pp 47 to 53

4. The declaration of the GRA will take effect on the date of publication of the *Gazette* notice referred to above.
5. The Commission requests the Director, the Director of the Harm Minimisation Unit and the residents of the GRA together take reasonable steps to erect a sign at the turn-off to Delye warning the public of the GRA in accordance with s 181(2)(a) and (b) of the Act.

Reasons

Introduction

6. Delye Outstation, also recorded as Deleye, is a family outstation of about four square km within the Daly River/Port Keats Aboriginal Land Trust (NT Portion 1637), located some 40 km north of Peppimenarti and 80 km west of Daly River/Naiyu. Delye, which is on a dirt road, is about a six and a half hour drive from Darwin.
7. The Traditional Owners and Elders live in Darwin and visit the outstation for holidays: David Hewitt (**Mr D Hewitt**), Kathleen Bobongie (**Ms Bobongie**), Kenneth Hewitt (**Mr K Hewitt**), Russell Hewitt (**Mr R Hewitt**), Warren Hewitt (**Mr W Hewitt**), Margaret Hewitt (**Ms M Hewitt**) and Dianne Hewitt (**Ms D Hewitt**).
8. The relevant history, circumstances and legal issues pertaining to this matter are similar to those set out in the decision of the Commission dated 19 June 2024 to declare a General Restricted Area for Itchy Koo Park.² It is unnecessary to now repeat the detailed consideration of those matters set out in that decision.

The Application

9. On 12 August 2024, Ms Sofia McPherson (**Ms McPherson**) submitted an application on behalf of Mr D Hewitt to apply for a declaration that Delye Outstation be declared a General Restricted Area. The application was accompanied by a letter (**the letter of support**) signed by five of the seven Traditional Owners and Elders of Delye Outstation: Mr D Hewitt, Ms Bobongie, Mr K Hewitt, Ms M Hewitt and Mr R Hewitt.

Consultation

10. Section 175 of the Act requires the Director to give notice of a proposed GRA to:
 - a. Any licensee whose licensed premises are in the area – there are no such licensees.

² *Application for General Restricted Area over Itchy Koo Park [2024] NTLiqComm 25*

- b. Any applicant for a licence whose proposed licensed premises are in the area – there are no such applicants.
 - c. Any licensee whom the Director considers may be affected adversely by the proposed restriction – the Director did not consider that there was any such licensee.
 - d. Any local council in the proposed area – the Director notified both the West Daly Regional Council and the Northern Land Council. Neither of these councils responded.
11. Although not required to do so, Licensing NT notified the NT Police and the Woodycupaldiya Health Clinic. Neither raised concerns about the application.
12. Section 175 also requires the Director to take reasonable steps to consult with the people who reside in the area. Ms McPherson, who is engaged by the NT Department of Health to assist communities to prepare community alcohol plans, visited the community and consulted with Delye Outstation members. The Commission is satisfied that the community members are well aware of the circumstances of the application, and support it.
13. In addition, the Director consulted with NT Police, who support the application.

Director's Report

14. In accordance with s 176 of the Act, on 7 November 2024 the Director provided the Commission with a report (**the report**) including:
- a. Application for general restricted area dated 9 August 2024
 - b. Letter of support for application signed by five traditional owners/elders
 - c. Record of Administrative Interests and Information for Daly River/Port Keats Aboriginal Land Trust
 - d. Draft map of proposed GRA
 - e. Community Alcohol Plan for Delye Outstation
 - f. Notices of application sent to Northern Land Council, NT Police, West Daly Regional Council and Woodycupaldiya Health Clinic
 - g. "BUSHTEL" community profile for Delye Outstation

The hearing

15. On 11 December 2024, the application proceeded as a public hearing. Ms Bobongie appeared for the Applicant. Ms Holly Sowerby (**Ms Sowerby**) appeared for the Director. Ms McPherson and Ms Ameina Bruncker, employed by the Department of Health to prepare community alcohol plans, also attended

to observe. The Commission thanks them all for their attendance and assistance.

16. Pursuant to s 23 of the Act the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. The Commission conducted the hearing with a minimum of formality.
17. The Commission admitted the report into evidence, as well as an email from NT Police supporting the application, all without objection.
18. On behalf of the Applicant, Ms Bobongie provided the following information to the hearing:
 - a. Elders and their families visit the outstation for one to two weeks at a time.
 - b. Each Elder has their own house on the outstation where they stay with their families and guests.
 - c. There are no shops or services in the vicinity of the outstation.
 - d. Some family members had permits prior to the commencement of the *Stronger Futures* legislation. Their permits were revoked as a result of this legislation, not due to irresponsible behaviour.
 - e. She supports the conditions set out at paragraph 2 above.
19. On behalf of the Director, Ms Sowerby supported the application, together with the conditions set out at paragraph 2 above.

ASSESSMENT OF THE APPLICATION

20. Section 177 of the Act requires the Commission to consider:
 - a. the application;
 - b. the Director's report;
 - c. the public interest and community impact requirements.

The application

21. The Commission finds that the application complies with the requirements for applicants set out at s 174 of the Act. Section 3 of the application ("Consent of the registered owner of the area") is signed by five people who describe themselves as "Traditional Owners / Elders of Delye Outstation". As the registered owner of the area is the Daly River/Port Keats Aboriginal Land Trust, the application is in this respect irregular. The same issue arose in similar circumstances when the Commission considered an application for a GRA over Itchy Koo Park. For the reasons given at [2024] NTLiqComm 25 [41] to [54] in that matter, the Commission now finds that despite the irregularity, the

application now under consideration is valid.

22. The Commission now turns to consider the substance of the application.
23. In addition to requiring that an application be in the approved form, s 174 provides that it must include:
 - a. a detailed explanation of the restriction being proposed;
 - b. a detailed description of the proposed general restricted area;
 - c. the reasons for the proposed restriction; and
 - d. a copy of a community alcohol plan, if any.
24. The Commission is satisfied that the Applicant has provided sufficient detail of the restrictions it proposes, and, noting that they are supported by the Director, the Commission considers that those restrictions are appropriate, as reflected in this decision.
25. The Commission notes that its determination of the boundary it has specified is solely for the limited purpose of declaring the GRA. The Commission does not intend or purport to determine, declare or affect the property rights of Delye Outstation traditional owners vis a vis the property rights of traditional owners of any neighbouring community areas.
26. The Commission is satisfied with the Applicant's reasons for imposing the restrictions he has proposed.
27. The Applicant has prepared and provided a community alcohol plan. GRA applicants are not required to develop a community alcohol plan, but the Commission commends the Applicant for having done so, and strongly encourages any future applicants to do so. The Commission accepts the submissions of the Applicant, the Director and the Harm Minimisation Unit that the Delye Outstation community alcohol plan has been developed by the community, has the support of the community, and is strong. The Commission notes that the plan is compliant with regulation 111B(2) of the *Liquor Regulations*, which prescribes that a community alcohol plan must include measures aimed at:
 - a. managing the supply of alcohol in the community;
 - b. reducing demand for alcohol in the community; and
 - c. reducing harm or risks of harm that may be caused the consumption of alcohol in the community.
28. The Commission finds that the Delye Outstation community alcohol plan is fit for purpose and thoughtfully formulated.

Whether issuing the licence is in the public interest

29. To determine whether the declaration of the GRA is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:

- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) preventing the giving of credit in sales of liquor to people;
- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

30. Having considered each of these objectives, and having particular regard to the contents of the Delye Outstation community alcohol plan, the Commission is comfortably satisfied that it is in the public interest to declare the GRA.

Whether the issue of the licence will have a significant adverse impact on the community

31. To determine whether it is satisfied that the declaration of the GRA will not have a significant adverse impact on the community, the Commission must consider the matters set out at section 49(3) of the Act, which are:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;

- (c) the risk of harm from the excessive or inappropriate consumption of liquor;
- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50;³
- (j) any other matter prescribed by regulation.⁴

32. The Commission is satisfied that the declaration of the GRA will have a modestly beneficial impact on the community, having particular regard to the s 49(3)(d) and (e) matters. If the declaration were not made, the interim alcohol protected area would continue, and the Delye Outstation traditional owners and other residents would justifiably feel frustrated and disempowered. Conversely, issuing the GRA is a gesture of respect and acknowledgement to the Delye Outstation community. Noting that the regulation of liquor on Aboriginal land in the Northern Territory has in recent years been subject to various statutory changes, the Commission considers that the declaration of the GRA will provide a measure of certainty to the community regarding the management of alcohol into the future.

The liquor permit scheme

33. Part 8 Division 6 of the Act establishes a permit scheme administered by the Director, who determines applications by persons to bring liquor into a GRA, possess or control liquor in a GRA, and consume liquor in a GRA. The Director also has the power to revoke a liquor permit, and pursuant to this decision, will also have the power to suspend a liquor permit for up to six months.

34. This decision requires the Director to administer the permit scheme for the GRA in consultation with the community and in accordance with the community alcohol plan.

Expiry

35. Section 172(3)(c) of the Act provides that the declaration of a general restricted area must specify when the declaration expires. If the law clearly authorised the Commission to decline to fix an expiry date for a general restricted area

³ In the view of the Commission, no such guidelines are currently in force.

⁴ There are no such "other" matters prescribed by regulation.

declaration, the Commission would not have fixed an expiry date in this matter. However, out of an abundance of caution, in order to ensure that the declaration is compliant with this provision, the Commission has specified an expiry date in the distant future.

Warning of general restricted area

36. Section 181 of the Act provides:

- (1) The Commission must take all steps it considers necessary to warn the public of a general restricted area at:
 - (a) The places where a road or other customary route enters the general restricted area; and
 - (b) The customary departure locations for any vessels or aircraft travelling into the general restricted area.
- (2) The warning must state the following:
 - (a) the details of the declaration;
 - (b) a summary of the offence against section 173;
 - (c) any other matters the Commission considers appropriate.

37. As requested by Ms Bobongie, the Commission has determined that a warning sign should be erected. The residents of Delye outstation have the option to provide input into the design of the sign, provided that the details specified at s 181(2) of the Act is included.

The objects of the Act

38. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.

39. The Commission considers that making the GRA declaration together with the conditions it has determined to impose, is consistent with the purposes of the Act.

NOTICE OF RIGHTS

40. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

41. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Applicant, the Director and the Chief Executive Officer of the Department of Health.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
13 February 2025

On behalf of Commissioners Goldflam, Abbott-McCormack and R. Shanahan

Annexure One

