

# Northern Territory

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## LIQUOR COMMISSION

### NOTICE OF VARIATION OF THE CONDITIONS OF LICENCE OF KABE JUNCTION PTY LTD TRADING AS HEARTBREAK HOTEL – LICENCE NUMBER 81201932

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|----------------|-------------------------------------|
| LEGISLATION:   | Section 113, <i>Liquor Act 2019</i> |
| CONSIDERED BY: | Mr Richard Coates (Chairperson)     |
|                | Mr Russell Goldflam (Legal Member)  |
|                | Ms Pauline Reynolds (Health Member) |

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### Decision

1. The Commission determines to vary the conditions of the of the Liquor Licence of Kabe Junction Pty Ltd, trading as Heartbreak Hotel (the Licensee) by including the following condition in relation to CCTV coverage of takeaway liquor transactions namely:

#### Camera Surveillance Condition

The Licensee must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (the Director), including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 28 days.

### Reasons

#### **Background**

2. On 10 September 2020, in accordance with section 113(2) of the *Liquor Act 2019*, the Northern Territory Liquor Commission (the Commission) issued the written notice at Attachment 1 to the Licensee proposing the inclusion of a licence condition requiring CCTV coverage of takeaway sales.
3. On 7 October 2020, the Licensee sought and was granted a 2 week extension within which to respond to that proposal.

4. On 20 October 2020, the Licensee responded as follows:

Kerry Ann King  
Kabe Junction PTY LTD  
Trading as Heartbreak Hotel, Cape Crawford

Response to "NOTICE OF PROPOSED VARIATION OF THE CONDITIONS OF LICENCE OF KABE JUNCTION PTY LTD  
TRADING AS HEARTBREAK HOTEL – LICENCE NUMBER 81201932"

In response to the request from the Northern Territory Liquor Commission to install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing, Kabe Junction (to be referred to as Heartbreak Hotel for the remainder of this letter) is willing to comply and asks for a minimum of 30 days to plan, install, and configure the system required due to the remote location and lack of availability of contractors.

The implementation of CCTV, in addition to BDR and current self-imposed alcohol restrictions should provide Regulators with a high degree of oversight into our operations. Further, it should be given time before the commission considers further restrictions to our liquor licence.

Regarding the request to restrict to sale of takeaway alcohol between 14:30 and 17:30 hours Heartbreak Hotel do not support these measures for the reasons below:

1. Heartbreak Hotel rejects the statement that we are profiting from liquor sales at the expense of the safety and wellbeing of the community as we are proactively self-limiting the sale of liquor in the following ways:
  - a. Heartbreak Hotel is currently employing extraordinary measures to identify the address of those purchasing takeaway alcohol to ensure those that are restricted in the amounts they can purchase are identified.
  - b. At the request of local Borroloola police, Heartbreak Hotel has been limiting residents of Borroloola, Mara Camp, Robinson River and Yanyula Camp to 12 cans of mid strength beer per person per day.
  - c. Individuals who provide ID without proof of address are limited to 12 cans of mid strength beer only per day.
  - d. Individuals who provide ID with an address that is expired are also limited to 12 cans of mid strength beer per day.
  - e. All staff are trained extensively and are provided with a list of restricted locations at the POS to check identification against during each transaction.
2. If the addresses provided on government issued identification and concession cards is indeed falsified as stated by Constable Seumas Christie-Johnston; then this is a matter for local law enforcement and government to police and monitor. Those individuals will continue to travel to Heartbreak Hotel to purchase takeaway alcohol regardless of the hours of sale. Further restricting the hours of takeaway alcohol sales will create congestion on the Carpentaria Highway. With more people travelling to Heartbreak Hotel in a shorter timeframe in the afternoon when visibility on the road deteriorates increasing the risk of road accidents. This measure will not see a reduction in harm, only an increase in risk.  
This would also result in those individuals travelling further to Katherine in unfavourable conditions to purchase larger amounts of alcohol, this is yet another increase in risk of harm to the community because of the proposed measures. If local law enforcement is incapable of policing the roads effectively between Borroloola and Cape Crawford then the problem will simply intensify when the distance these individuals travel increases.
3. The Banned Drinker Register is currently used at Heartbreak Hotel in line with current legislation. Heartbreak Hotel believes that robust and proactive use of the BDR is the way forward to reduce harm in the community. Those that are intercepted by police found to be drunk driving, are involved in alcohol related incidents requiring police intervention, or who pose a risk to their community through their consumption or secondary supply of alcohol should be placed on the BDR by local law enforcement under their powers as an "Authorised Person".

- a. Individuals who are placed on the BDR will no longer travel to Heartbreak Hotel or anywhere for that matter to purchase takeaway alcohol. This will reduce the risk of road accidents in the area and limit the amount of alcohol bought into vulnerable communities.
- b. Should these individuals be placed on the BDR and subsequently are offered the relevant Therapeutic Support, Heartbreak Hotel believes that this will result in harm reduction in the community.

Heartbreak Hotel operates as a roadhouse to service tourists, local stations, travelling workers and the local community with a range of services. To state that Heartbreak Hotel is operating without its community in mind is a fallacy.

Tourists who pass through and sustain the local tourism industry in the area, are of concern when changes to the sale of takeaway alcohol are suggested. Tourists pass through the area purchasing fuel, food, takeaway alcohol and often stay the night. They arrive and depart at regular intervals throughout the day, to restrict the hours of sale for takeaway alcohol as proposed would harm the business and potentially the local tourism industry.

Heartbreak Hotel also provides essential services to the surrounding stations, providing a central location for deliveries, post, fuel, food and drink and takeaway alcohol. Given the unique nature of the work of local stations, those that travel to Heartbreak Hotel to collect their deliveries and potentially purchase takeaway alcohol do so at different times of the day when they are able to, this is often unable to be planned to an exact timeframe. To restrict the hours of sale would have a negative impact on these members of the community without any benefit to others.

In summary, Heartbreak Hotel believe a restriction in hours of sale will only exacerbate any current issues being experienced in the community of Borroloola. Heartbreak Hotel believe the harm in the community can be reduced by an improvement in policing by local law enforcement and robust use of the BDR.

## Consideration

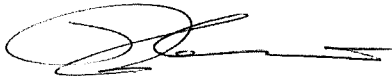
5. The Commission is heartened by the Licensee's acceptance of the proposed condition and agrees that it will provide an opportunity to objectively assess the operation of the takeaway aspect of the licence.
6. The Commission also notes the response of the Licensee to the matters raised by NT Police in support of their suggestion that the trading hours of these premises be reduced. The Commission considers there is merit in the Licensee's request that it be given a reasonable time to demonstrate through the objective CCTV data that it is indeed complying with its responsibilities under the licence, before the Commission conducts any further enquiry as to whether a reduction of trading hours is warranted.
7. The Commission is also prepared to allow the Licensee 30 days from the date of this Decision Notice within which to install the CCTV system.
8. Accordingly, the Commission has determined that it is appropriate to vary the conditions of the licence for Kabe Junction Pty Ltd trading as Heartbreak Hotel on the terms outlined in paragraph 1 of this Decision Notice. That condition is to come into effect 30 days after the date of this Decision Notice.

## Notice of Rights

9. Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by NTCAT and the following persons (relevantly) may apply to NTCAT for a review:

- in all cases – the Director;
- in the case of a decision regarding a licensee or a licensee's licence, authority or licensed premises – the licensee;

10. In accordance with the substance of section 31 of the Act any application for review of this decision must be lodged within 28 days of the date of this decision.



RICHARD COATES  
PRESIDING MEMBER  
CHAIRPERSON  
22 October 2020

On behalf of Commissioners Coates, Goldflam and Reynolds

# Northern Territory

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## LIQUOR COMMISSION

ATTACHMENT 1

### NOTICE OF PROPOSED VARIATION OF THE CONDITIONS OF LICENCE OF KABE JUNCTION PTY LTD TRADING AS HEARTBREAK HOTEL – LICENCE NUMBER 81201932

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|                       |                                       |
|-----------------------|---------------------------------------|
| <b>LEGISLATION:</b>   | Section 113, <i>Liquor Act 2019</i>   |
| <b>CONSIDERED BY:</b> | Mr Richard Coates (Chairperson)       |
|                       | Mr Russell Goldflam (Legal Member)    |
|                       | Ms Pauline Reynolds (Health Member)   |
|                       | Mr Blair McFarland (Community Member) |

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1. On 22 January 2020, Superintendent Kylie Anderson of NT Police, Tennant Creek and Barkly Division wrote to the Commission with a request that the Commission vary the licence conditions of the Liquor Licence of Kabe Junction Pty Ltd, trading as Heartbreak Hotel (the Licensee).
2. The variations sought were to remove the licence condition allowing the premises to remain open for the sale of liquor in certain circumstances after 23:00 hours, to reduce takeaway hours to between 14:30 and 17:30 hours and to introduce a requirement in the licence that the Licensee install CCTV cameras to cover the point of sale of takeaway liquor.
3. In support of the requested variations, Superintendent Anderson submitted a statement from Senior Sergeant Tanya Mace in which she stated that residents of Borroloola were travelling to Heartbreak Hotel to obtain liquor in circumvention of restrictions which had been imposed in respect of takeaway sales in that township.
4. A Statutory Declaration from Constable Seumas Christie-Johnston of 5 January 2020 was also submitted. In that declaration he deposed:

*"During rural patrols and Point of Sale Inspections at Heart Break Hotel, I have conducted traffic apprehensions on numerous vehicles. As outlined above, I have detected drunk drivers travelling to and from Heart Break Hotel to purchase liquor. Many of the vehicles travelling to and from Heart Break Hotel to purchase liquor are not roadworthy, unregistered and uninsured, with unrestrained adult and child passengers on board.*

*Information I have received from community members is that people living in these camps and outstations are purchasing large quantities of liquor from*

*Heart Break Hotel and then bringing it into Borroloola Community. Further information I have received indicates that some community members are changing their driver's licence addresses to addresses outside of Borroloola Community, or providing 18+ cards and lying about where they live so they can purchase larger quantities of liquor from Heart Break Hotel.*

*I firmly believe that in order to see a reduction in alcohol abuse, alcohol related incidents and alcohol fuelled violence in Borroloola, strong action must be taken. Heart Break Hotel is profiting from liquor sales at the expense of the safety and wellbeing of Borroloola community members and surrounding communities.*

*The trading hours for the sale of take-away liquor at Malandari Store and Heart Break Hotel should be identical and reduced (example: Monday to Friday 10am to 2pm only). This will prevent Borroloola community members from travelling to Heart Break Hotel in unsafe vehicles in an intoxicated state, with unrestrained children on board due to Malandari Store being closed.*

*In summary, in the time I have been deployed to Borroloola there has been one clear overwhelming factor affecting the community; alcohol. The devastating effects of alcohol on the community are undeniable. The flow on effect of liquor sales from Malandari Store and Heart Break Hotel are placing enormous demands on emergency service workers in the community, resulting in high attrition rates and resources being stretched to breaking point. I firmly believe that alcohol abuse is affecting every member of the Borroloola community, either directly or indirectly. Without action, this community is almost certainly going to deteriorate and leave its people with a bleak future”.*

5. In a Statutory Declaration dated 14 January 2020, Aboriginal Police Officer Shannon Richards also deposed inter alia:

*“My time in Borroloola has opened my eyes in regards to alcohol consumption in the community and the devastating effect it is having. Since deploying to Borroloola I have attended 71 Alcohol related incidents requiring police intervention. These incident range from aggravated Assault, assault, domestic violence and stealing, all of which stem from the consumption or the need to consume alcohol.*

*There has been a large majority of people with photo I.D's that depict the owner living in a remote outstation, when in fact they reside in Borroloola. I believe that the reason for people having this type of I.D is to get more alcohol. In Borroloola if you are a resident in the town, you are only allowed to purchase 18 cans of mid strength beer either Malandari Store or the Heart Break Hotel, an hour's drive away. At Heart Break Hotel, if you have a license that details your residential address as being somewhere other than Borroloola town, you are not restricted with how much alcohol you can buy. The effects of this became evident when I conducted mobile RBT's between Heart Break Hotel and Borroloola. Promis job 9115258 was listed as a traffic campaign. My partner and I intercepted two vehicles. 1 vehicle had 5 occupants and the other vehicle had 3 occupants. Between the two vehicles there were 9 cartons of beer on board destined for Borroloola. All occupants had I.D's that detailed*

*they lived at various outstations when police knew the occupants resided at Borroloola”.*

6. On 23 January 2020, the Commission wrote to Ms Kerry Ann Ralph, the nominee of the Licensee, enclosing copies of all documentation that had been submitted by Police and sought her preliminary view on whether the Commission should conduct an inquiry into the terms and conditions of the licence.
7. No response was received from the Licensee.
8. After conducting a review of previous licensing decisions in relation to liquor issues in the Borroloola area, the Commission resolved to travel to Borroloola and Heartbreak Hotel to ascertain whether it was appropriate to amend the hotel's licence conditions in the manner that had been sought by Police and also to ascertain whether variations should also be considered in respect of other licences in the region.
9. Unfortunately, because of the COVID-19 pandemic it became impossible for the Commission to travel to Borroloola. Even now, with relaxation of travel restrictions there are logistical difficulties in the Commission being able to travel to this region and hold a realistic level of consultation with relevant stakeholders.
10. The Commission has therefore decided to deal with this matter in stages and deal with what we consider should be a relatively non-contentious matter first.

#### **THE REQUIREMENT TO INSTALL CCTV**

11. Most liquor takeaway outlets in Darwin and Alice Springs have security cameras installed to cover the point of sale for takeaway liquor. Although it is not currently a specific condition of most licences, licensees have at their own instigation installed CCTV systems to monitor the point of takeaway liquor sales for both security and staff safety reasons.
12. On 13 January 2020, the Commission in its decision to vary the conditions of takeaway licences in Alice Springs imposed a camera surveillance condition<sup>1</sup> on all licensees as follows:

##### ***CAMERA SURVEILLANCE CONDITION***

*All affected licensees must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (“the Director”), including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 14 days.*

13. It is the Commission's present view that there would be benefit in having all takeaway outlets install CCTV surveillance at the point of sale to ensure

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<sup>1</sup> Commission Decision – Second Variation of the conditions of licences -13 January 2020

compliance with BDR requirements and to reduce the incidence of sales to intoxicated persons. The Commission is currently considering whether this might be most efficiently achieved through an amendment to the relevant authority conditions within the Liquor Regulations 2019 or as a broad ranging own initiative variation pursuant to section 113 of the *Liquor Act 2019* (the Act).

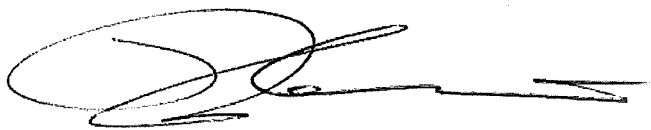
14. Having regard to the isolated location of these licensed premises and the concerns that have been raised as to the Licensee's compliance with the conditions of its takeaway licence, the Commission considers that it would be in everyone's interest that the Licensee be required to install CCTV to monitor takeaway sales and retain the data captured by that system for not less than 28 days.
15. Accordingly, the Commission proposes to insert the following condition in this Licence within 30 days of it being confirmed within the subsequent decision notice, unless the Licensee satisfies the Director of Liquor licensing that a longer period is necessary to install the required surveillance system:

Camera Surveillance Condition

The Licensees must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (the Director), including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 28 days.

**INVITATION TO LICENSEE TO RESPOND**

16. Pursuant to section 113(2) of the Act, the Commission invites the Licensee to respond to the proposed variation within 28 days of this notice.



CHAIRPERSON

NORTHERN TERRITORY LIQUOR COMMISSION

10 September 2020

On behalf of Commissioners Coates, Goldflam, Reynolds and McFarland