

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: WADEYE COMMUNITY CLUB APPLICATION FOR LIQUOR LICENCE [2024] NTLiqComm 49

REFERENCE: LC2024/032

APPLICANT: Murinbata Tribal Development Corporation Ltd

PREMISES: Wadeye Community Club
Lot 815B, 61 Perdjert Street
Wadeye NT 0800

LEGISLATION: Part 3 Division 4 of the *Liquor Act 2019*.

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

DATE OF HEARING: 3 September 2024

DATE OF DECISION: 3 December 2024

Decision

1. For the reasons set out below and in accordance with s 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a liquor licence to Murinbata Tribal Development Corporation Ltd (**the applicant**) to operate the Wadeye Community Club (**the Club**).
2. The licence will be issued with a community club authority.
3. The licensed premises are situated at Lot 815B, 61 Perdjert St, Wadeye NT 0800 within the area outlined in red on the plan at p 106 of Exhibit 1 tendered at the hearing of the application (**the licensed premises**).
4. The Commission approves the appointment of Mr Andrew Clark as the licence nominee.

5. The conditions of the licence will be those prescribed conditions set out in Part 4 Division 1 and Part 4 Division 7 of the *Liquor Regulations 2019* (**the Regulations**).
6. In addition, the Commission fixes the special conditions set out at Appendix One.
7. The Club must not commence business until the Director of Liquor Licensing (**the Director**) has provided written notice that she is satisfied that:
 - a. a Certificate of Occupancy and all regulatory approvals have been issued;
 - b. each of the licensee's Board members is either a fit and proper person to be on the Board of the licensee, or has entered into an enforceable undertaking that they will not participate in decision-making in relation to the management or operation of the club;
 - c. the club is in compliance with the Code of Practice for CCTV system in licensed premises; and
 - d. the applicant is compliant with the terms of the lease over the premises.
8. The Club must not commence business until the Northern Territory Commissioner of Police and the Chief Executive Officer of the Department of Health (**DOH**) (or, if an Aboriginal Community Controlled Health Organisation (**ACCHO**) has taken over the delivery of health services in Wadeye, the principal executive officer of the ACCHO) have provided written notice to the Commission that they are satisfied that alcohol-related harm in Wadeye has declined to a level that enables police and health services to be delivered consistently and safely to the Wadeye community.
9. The applicant must commence trade within two years of the date of this decision, or at such later date as the Commission allows.
10. To the extent that the licence conditions are inconsistent with terms of the lease of the premises from the Daly River/Port Keats Aboriginal Land Trust (**the Land Trust**) to the licensee, the terms of the lease prevail. The Commission requests the applicant, the Land Trust and the Northern Land Council (**NLC**) to expeditiously work together to amend the lease to remove any such inconsistencies, and to inform the Director when any such amendments are made.
11. The Commission recommends that DOH establish and offer alcohol treatment, rehabilitation and education programs and services to residents of the Wadeye region.

12. The Commission recommends the licensee and the Our Lady of the Sacred Heart Thamarrurr Catholic College work together to develop and implement a procedure to ban persons from the premises because their consumption of alcohol has resulted in non-attendance of a child at school.
13. The Commission will review the operation of the Club and the conditions of the licence twelve months after the commencement of business, and may review the operation of the Club and conditions of the licence six months after commencement of business.
14. The Commission requests the Director to provide it with compliance reports six months and twelve months after the commencement of business.
15. The Commission requests service providers and agencies to provide the Director with information relating to alcohol-related harm for the twelve months immediately preceding the commencement of business and for each three-month period following the commencement of business, to be used as data for the Commission's review of the Club's operations.
16. The Commission requests the Community Led Harm Reduction Unit within DOH and the Menzies School of Health Research to work together to design and undertake the collection and analysis of data for the review of the licence.
17. The licence will be issued immediately following the publication of this decision notice.

Reasons

Introduction

18. Half a century ago, Reverend Patrick Dodson, as he then was, along with three other leaders at Port Keats, a remote coastal settlement near the border of the Northern Territory and Western Australia, submitted a report to the House of Representatives Standing Committee on Aboriginal Affairs. They said this:¹

History has shown that prohibition does not work. Isolation does not safeguard prohibition, it simply puts off the day. We must face reality and human nature and the fact that sooner or later alcohol will come into the lives of these people. Aborigines (and everyone else) if they want to drink and retain their dignity and identity must acquire the ability of being able to control their drinking, otherwise it will be their destruction. To help gain this control there must be:

¹ Leary Rev J, Dodson Rev P, Tipiloura B & Bunduk L, *Alcoholism and Aborigines: a report, Interdepartmental Committee on Alcoholism and Aborigines*, (1975, Canberra), 5

- a. a realistic educational programme on alcohol.
 - b. provision of proper facilities that help towards the formation of good drinking habits.
19. In due course, the Committee published its report, recommending, among other things, that “a licensed club be established on a Mission or Reserve when that community has decided to allow the consumption of alcohol... with special guidelines and conditions”.²

Background

20. Wadeye (also known as Port Keats), a community of some 2,600 residents from 23 clan groups, is one of the largest Indigenous communities in Australia. It is also one of the most remote communities in the nation, being located 420 km south-west of Darwin, near the mouth of the Fitzmaurice River. During the wet season between about October and April, Wadeye is accessible only by water and by air.
21. The Kardu Yek Diminin clan are the traditional owners of the land on which the town centre has been built, and their language Murrinh Patha is the most prominent of several local languages spoken at Wadeye. Wadeye is within the Daly River/Port Keats Aboriginal Land Trust. Wadeye is a General Restricted Area pursuant to Part 8 Division 3 of the Act. About 200 residents of Wadeye, almost all of whom are non-Indigenous workers, hold liquor permits issued by the Director in accordance with Part 8 Division 6 of the Act.
22. There are currently no licensed premises at Wadeye. That was not always the case:³

In the late 1970s, what became known as the Murrinh Patha Social Club was inaugurated. It aimed to provide a safe drinking environment where people could learn to drink responsibly, and to ensure that they spent their money within the community....

In the early years, the club seems to have worked well; there was music and entertainment, and grassy shaded areas and outside tables... Behaviour at the club was governed by a complex series of rules set by the (Aboriginal) management committee, and misbehaviour was promptly dealt with according to the committee’s cultural guidelines. There was a four- or six- can limit on full-strength beers, and drinkers bought the requisite number of tokens to exchange for beer. Women sat on the grass and quietly played cards for beer tokens. The club was a social hub: it was open six days a week, Monday to Friday between 5 and 7

² House of Representatives Standing Committee on Aboriginal Affairs, *Alcohol Problems of Aboriginals* (1976, Canberra), [94]

³ Brady, Maggie, “The wrecking of the Murrinh Patha Social Club: a case study” in *Teaching ‘Proper’ Drinking?* (ANU Press, 2017), pp 109 – 111

pm, and on Saturdays between 4.30 and 7 pm. Takeaways were available to permit holders from 3 – 4 pm...

There were many responsible drinkers at Wadeye; older people arrived dressed in their best and people enjoyed being able to have a few beers without having to leave the community.

23. Over the next decade, the operation of the club was associated with an increase in alcohol consumption at Wadeye and “a build-up of social unrest”. The club’s licence was suspended on 26 occasions. On 3 December 1988, “a group of Aboriginal non-drinkers assembled outside the club, wielding axes and star pickets. They stormed onto the club premises and proceeded to demolish its interior.”⁴
24. Over the next seven years, the club reopened and closed several times, but after repeated episodes of serious alcohol-related disorder and violence, in late 1995 the Liquor Commission suspended the licence indefinitely, and the club has been closed ever since.⁵
25. On 21 November 2023 the Commission conducted a hearing in Wadeye in the course of an own initiative inquiry into the conditions of liquor licences in the Daly River area.⁶ The Commission heard unchallenged evidence from numerous Wadeye residents that the secondary supply of alcohol – or, as it is commonly called, grog-running – from Darwin to Wadeye is prevalent. The Commission also heard evidence that there was support in the community to re-establish a social club.

The Application

26. The applicant, the Murinbata Tribal Development Corporation Ltd, which was established in 1978, is a registered charity governed by a board (**the Board**) comprising a chairperson, vice chairperson, secretary, treasurer and six community members. The applicant operates the community’s supermarket, a furniture shop and a variety store.
27. On 16 July 2024 the applicant lodged an application with the Director for a liquor licence with a community club authority on a vacant block next door to its supermarket, for premises named by the applicant as the “Wadeye Community Club”.

Consultation

28. As required by s 57 of the Act, notices of the application were published in the NT News on 20 July 2024, on the Director’s website, and by way of a green

⁴ Ibid, p. 118

⁵ Ibid, pp 128 – 129

⁶ Northern Territory Liquor Commission *Review of liquor licences at Peppimenarti and Daly River* (LC:OMV:2023-001, 17 January 2024); *Own initiative variation to conditions of Peppimenarti Club licence* [2024] NTLiqComm 14

sign displayed at the proposed premises. The applicant set up an information table about the Club proposal in front of the supermarket, staffed by members of the Board for 5 hours each Saturday morning from 20 July 2024 for four weeks. Prior to this, the applicant had conducted extensive consultations about the Club proposal with a broad range of agencies and stakeholders over a period of five years.

29. In accordance with s 56 of the Act, notification was given to DOH, NT Police and the West Daly Shire Council.
30. In addition, the application was discussed at a Service Provider meeting held at Wadeye on 19 August 2024.
31. On 20 July 2024 notice of the application was posted on the “Action for Alice” Facebook page, attracting 259 comments, most if not all of which were from Facebook users who, it is apparent, do not live in Wadeye. Although some of the comments were unsupportive of the application, none was eligible to be considered as an objection in accordance with s 60 of the Act.

The responses

32. NT Police provided a detailed response to the application, as will be discussed below. DOH has been working with the community to develop a Community Alcohol Plan, and a Wadeye health clinic staff member participated in the hearing of the application. Daly River Shire declined to comment on the application.
33. A single objection was received, from a resident of Wadeye who declined the Commission’s invitation to attend the hearing, and who the Commission considers does not wish to be identified. The objection, in full, stated:

I would like to object to the club opening in Wadeye, as a resident of Wadeye I feel and have seen that alcohol already causes a huge amount of issues in Wadeye, public drunkenness, domestic violence, anger, broken glass and damage to property, that I am unable to see how introducing more alcohol into the community will help. I don't believe that having a club will stop the illegal alcohol already coming into the community and I feel more information is needed in regards to who will benefit from having a club and how they will benefit.

34. Section 61 of the Act sets out various requirements for objectors and objections to an application for a liquor licence. Although the Commission received only one objection to the application that was compliant with these requirements, as will be seen, during its consideration of the application the Commission became aware that there is some opposition within the community to the application.
35. As will be discussed below, a particularly significant feature of the application is that it is strongly supported by both the Director and NT Police, both of whom the Commission regards as key stakeholders in these proceedings.

The referral

36. On 26 August 2024, pursuant to s 59 of the Act, the Director referred the application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the applicant, the objector and stakeholders that the application would be listed for a public hearing at Wadeye on 3 September 2024.
37. The Director provided the Commission with a bundle of documents (**the brief**), including:
 - a. Application for a new liquor licence
 - b. Affidavit and Declaration of Associates pursuant to s 54 of the Act
 - c. List of members of the Board of the applicant and Board Minutes for 14 December 2023 and 14 June 2024
 - d. Certificate of Title for Lot 00463, 74 Perdjert St, Wadeye⁷
 - e. Lease for proposed site from Daly River/Port Keats Aboriginal Land Trust to the applicant
 - f. Site plan with the proposed licensed area outlined in red
 - g. Site plans for the extension of premises including building stages
 - h. Application to Development Consent Authority
 - i. Costs for building works
 - j. Smoking Management Plan
 - k. Registration of a Food Business – Mobile Food Van
 - l. Menus
 - m. ABN and ACNC registration
 - n. Business Plan
 - o. Probity documents for Andrew Clark
 - p. Confirmation of applicant's financial stability
 - q. Community impact assessment summary and public interest criteria

⁷ The applicant subsequently informed the Director that this Certificate of Title was for a different parcel of land to the land on which the premises will be located, and provided the Director with the correct Certificate.

- r. Evidence of publication of application
- s. Applicant's procedures and policies for the Wadeye Community Club
- t. Correspondence with stakeholders
- u. Objection from Wadeye resident
- v. Submissions by NT Police
- w. Applicant's response to objection and submission

The hearing

- 38. On 3 September 2024, the application proceeded as a public hearing at Wadeye.
- 39. Prior to the hearing Commission members were given a tour by the applicant's officers of the site of the proposed premises, and of the recently fitted-out food truck which will be stationed at the Club.
- 40. At the commencement of the hearing, community members performed a brief ceremony as a mark of respect to a very recently deceased community leader. Commission members Goldflam, Abbott-McCormack and Dwyer felt privileged to be invited to observe this sorry business, and the Commission offers its condolences to the people of Wadeye for this loss, as well as for the loss of other community members who passed away at around this time. The Commission is keenly aware that many Wadeye families are currently experiencing sadness, grief and trauma.
- 41. At the hearing, the applicant was represented and supported by the attendance of the following persons:
 - Mr Andrew Clark
 - Mr Jake Clark
 - Mr James Cartwright
 - Dr Bill Ivory
 - Ms Margaret Perdjert
 - Mr Lionel Dulla
 - Mr Joshua Bunduck
 - Mr Anthony Bunduck
 - Ms Marita Perdjert

- Ms Bridget Perdjert
 - Mr Basil Parmbuk
 - Mr Paschal Kolumboort
42. Ms Ganzer appeared for the Director and A/g Superintendent Erica Gibson appeared for the NT Police. Altogether, 33 persons, including several representatives of government services, registered their attendance. The Commission thanks them all for their attendance and considerable assistance.
 43. The Commission conducted the hearing informally, without administering oaths or affirmations to witnesses. This course facilitated an open and free-flowing exchange of information and views between Commission members and hearing participants.
 44. At various times during the hearing, various other community members and service provider staff members attended and participated. At one point a group of women who identified themselves as being associated with the local school entered the hearing room. The Commission formed the view that this group should be given the opportunity to have their say in a more private and potentially more sympathetic setting than a hearing room dominated by a substantial body of representatives and supporters of the applicant. Accordingly, Member Abbott-McCormack, herself a First Nations member of the Commission, retired with this group to a smaller adjacent room to hear what these women had to say.
 45. The Commission admitted the brief into evidence, as well as the following additional documents, all without objection:
 - a. Incident and Referral Procedures for the Wadeye Community Club
 - b. Healthy Food Policy for the Wadeye Community Club
 - c. Statutory Declaration of Ms Ganzer confirming accurate address of the premises
 - d. Murinbata Tribal Development Corporation Ltd Constitution
 - e. Certificate of Title for Lot 815, 61 Perdjert St, Wadeye
 - f. Application to Development Consent Authority August 2024
 - g. Operational house rules: Wadeye Community Club
 - h. Further probity documents for Andrew Clark
 - i. Probity documents for Margaret Perdjert
 - j. Record of meeting by applicant members and officers with Daly River Inn manager at Daly River Inn, 22 July 2024

k. Correspondence with NT Fire and Rescue Service

l. CCTV system quotation

m. Works Schedule

46. Notably, during the hearing, which was conducted over a period of five hours, including a one hour break, no-one in attendance spoke in opposition to the application. In their oral and detailed written submissions, both Ms Ganzer on behalf of the Director and A/g Superintendent Gibson on behalf of the Commissioner of Police, supported the application.
47. The Commission attaches considerable weight to the submissions of these two key stakeholders, who are both independent of the applicant and have lengthy experience and detailed knowledge of the Wadeye community.

Further consultations

48. Nevertheless, having familiarised itself with the contentious and turbulent history of the first social club in Wadeye, as briefly described above, out of an abundance of caution the Commission considered that it should take further steps to ascertain the level of community support for the application. In particular, the Commission was concerned that some community members might be reticent to express a dissenting view in a hearing attended predominantly by authoritative and articulate supporters of the Club. In accordance with s 21(2) of the Act, the Commission formed the opinion that it would not be appropriate in the circumstances to require such witnesses to give evidence in a public hearing because it would be likely to cause them undue hardship. The Commission notes that s 23(3) provides that the Commission “may inform itself in any manner it considers appropriate”.
49. Accordingly, following the hearing, the Commission conducted further private consultations with about a dozen non-Aboriginal officers of the following service providers in Wadeye (**the service provider group**):
- Our Lady of the Sacred Heart Thamarrurr Catholic College
 - One Tree Community Services (the operator of the Kardu Darrikardu Numida Hostel, the Wadeye Safe House and the Wadeye Children and Family Centre)
 - Da Ngilmalmin Family Centre
50. At the conclusion of both the hearing and the private consultations, the Commission indicated to all participants that it was tentatively inclined to approve the application. The Commission then wrote to the following stakeholders asking them to comment on a draft list of licence conditions the Commission prepared:
- The applicant

- The Director
- Thamarrurr Development Corporation
- Kardu Diminin Corporation
- NT Police, Wadeye
- Territory Families, Wadeye
- Health Clinic, Wadeye
- OLSH Thamarrurr Catholic College
- Department of the Chief Minister and Cabinet, Wadeye
- One Tree, Wadeye
- Children and Family Centre, Wadeye
- West Daly Council
- Northern Land Council
- Daly River/Port Keats Aboriginal Land Trust
- The objector

51. The Commission thanks those stakeholders who replied for their thoughtful and detailed responses, all of which the Commission has had regard to in making its decision.

52. One of the responding stakeholders was the Kardu Diminin Corporation Ltd, a registered charity owned by the traditional owners of Wadeye which “was formed to carry on the ideas of spiritual and community development and, in particular, to develop enterprise and employment opportunities for Indigenous Australians in Wadeye”.⁸ Under the signatures of twenty of its members, Kardu Diminin stated that it had conducted consultations with “all 23 clans as well as all business and service providers within the town of Wadeye”. Kardu Diminin went on to say:

It was clear most people are supportive of the social club concept. There were major concerns expressed about the current form of alcohol consumption. We are tired of losing our people through violence, accidents, and damage to their health. The majority of

⁸ Australian Charities and not-for-profits Commission website, accessed at <https://www.acnc.gov.au/charity/charities/c6bfa650-3aaf-e811-a961-000d3ad24182/profile>

people consulted want change in our community, and they see the social club as a key step in the right direction.

Support for the social club concept is clear. It's seen by people in this community as a right, but also as a right to drink responsibly. It's about the right to drink in a safe place, with clear enforceable rules, in a club that is well managed and accountable to everyone, especially women and children.

During the [consultations], we also heard about how prohibition has not worked. We know our land, our people, and our community best and we are in the best position to make decisions to best support our community... We fully support the social club initiative going forward.

53. Several of the signatories to the Kardu Diminin letter had attended the hearing in their capacity as members of the applicant's Board. It is apparent to the Commission that the applicant and the Kardu Diminin Corporation Ltd are owned, directed and managed by substantially the same people. This reduces the weight the Commission gives to the Kardu Diminin Corporation submission.
54. Nevertheless, the Commission readily accepts that there is strong support for the establishment of the Club amongst leading members of the traditional owners of Wadeye, the Kardu Diminin clan.
55. Amongst opponents to the application, the following written submission by One Tree Community Services was typical of the views expressed in the Commission's private consultations:

One Tree respects the right of the community for self-determination and recognise there is a diversity of opinions on this issue, however, we have been advised directly by numerous women in community who are stakeholders of our services that they do not support [the application for the Club]. Many of these women have fought over a long period of time to try to keep alcohol out of their community. We would not support such a club unless the vast majority of women and service providers in community were in support of it.

56. The service provider group submitted that the women in the community who had advised them felt too unsafe to attend the public hearing of the application, or even to meet the Commission in private. They submitted that the Club would exacerbate the existing high levels of alcohol-related harm in Wadeye.
57. A notable aspect of the service provider group was their reluctance to come forward. The service providers did not lodge any objections in accordance with the procedure provided by the Act. They did not attend the hearing. They told the Commission that the women of the community wanted to present a petition opposing the Club, but did not produce such a document. They did not provide the Commission with the names of any community members who opposed the

application. They did not request to meet the Commission, but agreed to do so only at the invitation of the Commission. The Commission accepts that this reluctance was largely, if not entirely, due to their apprehension that publicly voicing concerns about the Club might trigger retaliatory action by supporters of the Club against the service providers, and more importantly, against their female clients.

58. The members of the service provider group all submitted that the principle of Aboriginal self-determination is to be respected. The Commission agrees. However, not having heard from any Aboriginal residents of Wadeye that they oppose the establishment of the Club, the Commission is left with a lingering doubt as to the authority of the service provider group members to speak on behalf of a substantial segment of the Wadeye community.
59. For example, although the impression given to the Commission by the delegation from the school was that Aboriginal staff and parents are opposed to the Club, the applicant presented a different picture:⁹

Parents of school children consulted have not raised negative comments regarding the notion of a Club. Some Indigenous people have suggested that there might be a policy of "no school, no club for the parents". However, these were also others who thought there should not be such a policy. Some of the Indigenous teachers openly support the Club. They say that they worry about their partners travelling into Darwin to drink...and "ending up in the long grass." They say they would much rather having them drinking mid strength beer in Wadeye.

60. As stated above, One Tree is committed to opposing the Club unless "the vast majority of women and service providers in the community were in support of it". As One Tree is itself one of the key service providers in Wadeye, this assertion appears to leave no real room for One Tree to modify its position in the foreseeable future.
61. One Tree indicated that if the Club were established it would decline to serve on the advisory committee, to apply for persons to be banned from the Club, or to supply data to assist in the proposed 12 month review of the Club's operations. At first blush, this might be seen as uncooperative, but One Tree provided the Commission with clear and cogent reasons for taking this position, which the Commission accepts.
62. Furthermore, the Commission makes no criticism of the service provider group for adopting their rather uncompromising position. Having formed the strong view that the re-establishment of a social club at Wadeye is not in the best interest of the community, it is readily understandable that they elect not to contribute to or participate in the operation of the Club.

⁹ Exhibit One, 170

63. On the other hand, the Commission was impressed that the applicant, both during the hearing and in its response to the draft licence conditions circulated by the Commission to stakeholders, demonstrated both a willingness to compromise, and the capacity to methodically, sensitively and sensibly work through the numerous issues of concern regarding the operation of the licence that were raised by the Commission.
64. The Commission acknowledges that in the course of its two very brief visits to Wadeye, it has only been able to obtain a superficial understanding of the concerns and wishes of community members, and is heavily reliant on the information it has received from groups based in the community who have strongly held views and well-established interests. Some of the Club's supporters can be expected to personally benefit from its establishment. It does not necessarily follow however, and the Commission does not find, that these people are motivated primarily by self-interest.
65. It is commonly asserted that in Northern Territory Aboriginal communities there is a divide between the drinkers, who are men, and the non-drinkers, who are women. The Commission accepts that there is some truth to this assertion, and that women have been particularly prominent in the "Beat the grog" campaigns that have been a feature of Northern Territory alcohol policy debates since at least the 1980s. However, some prominent supporters of the Wadeye Social Club are women, and not all of these women are drinkers. For example, Ms Margaret Perdjert, the chairperson of the Board, is a woman, a non-drinker, and a powerful and articulate advocate for the establishment of the Club.

The research literature

66. In addition to receiving and considering a substantial body of evidence and listening to the views and submissions of a range of community members, service providers and stakeholders, the Commission has been assisted by reference to published reports of experts who have previously undertaken research into social clubs in remote communities, including Wadeye.
67. In her 2017 book *Teaching 'Proper' Drinking*, social anthropologist Dr Maggie Brady outlined the challenge now faced by the Commission, and, more importantly, by the Wadeye community:¹⁰

The business of establishing community-owned licensed premises is fraught with contradictions, hazards (moral and otherwise) and challenges. There is an inescapable tension within the definition of 'community benefit' that exists between the goal of moderating alcohol consumption and generating a surplus (which might be used to fund community projects) by selling it. This tension is particularly severe in an Indigenous context, as Indigenous people experience a disproportionate physical and social cost from alcohol abuse. An Indigenous hotel

¹⁰ Brady, supra n. 3, 263

or club that ‘poisons its own people’ is clearly an undesirable form of enterprise. The tension increases when an articulate temperance lobby (often led by women) draws attention to the inherent moral hazard of a social enterprise (often run by men) that sells alcohol.

68. Brady also made the following salient observation, specifically in relation to Wadeye:¹¹

The history of the club demonstrates that good intentions and agreed upon rules of behaviour are not enough to influence what happens outside club hours and beyond club boundaries, especially in a fractious community in which interpersonal violence has become normalised, and community members have limited powers of persuasion over the behaviour of fellow residents.

69. In a similar vein, in the concluding chapter of their book *Learning from 50 years of Aboriginal alcohol programs: Beating the grog in Australia* (Menzies School of Health Research, 2023), Peter d’Abbs and Nicole Hewlett plainly state the risks and pitfalls of social clubs on remote communities (at 277, citations omitted):

Licensed clubs in Aboriginal communities... have generally—although not universally—failed to achieve the three primary objectives for which they are usually intended: to foster a culture of moderate drinking in communities, to reduce the unregulated importation of liquor into communities (‘sly grogging’) and to reduce the exodus of would-be drinkers from communities to towns. Some have had almost the opposite outcomes, becoming sites for heavy, chronic drinking and all the harmful consequences that flow from it, while having little impact on either illicit grog-running or periodical movement of drinkers away from the community.

Why is this so? In each community, drinking patterns and their consequences are shaped by distinctive combinations of causal factors, but four factors appear to be especially salient. The first is a naïve belief held by some, particularly non-Aboriginal promoters of licensed outlets in communities, that by creating the right setting you can bring about a cultural shift from binge drinking to moderation.... [T]he reality is usually the other way around: drinkers adapt the setting to their preferred drinking culture. The second factor consists of unrealistic expectations placed on the capacity—and often, willingness—of Aboriginal authority figures—whether councillors or

¹¹ Ibid, 136

traditional Elders—to control the behaviour of drinkers. This does not mean that respected Aboriginal leaders cannot prevent and resolve conflicts arising from excessive drinking; ... they can and do. But at a community level, and in a context where licensed clubs generate their own economic interests, the exercise of effective social controls on harmful drinking is often compromised. Thirdly, governance of licensed outlets in Aboriginal communities presents formidable challenges, and those who undertake it require both external administrative support and monitoring to assist them in meeting these challenges. To date, this support has been conspicuously absent. Finally, the goals of pursuing economic viability while avoiding social, health-related and other harms from alcohol misuse are often inherently contradictory.

70. D'Abbs and Hewlett continue on a more optimistic note:

[L]icensed outlets in communities need not fail or have harmful outcomes. In recent years in both Queensland and the NT, the imposition of restrictions on trading conditions by governments, combined with the presence in communities of people and organisations willing and able to operate within those restrictions, have led to instances of community-owned outlets operating venues for sociable drinking without exacting unacceptable harms and costs.

71. Considerable evidentiary support for this more positive view can be found in the research report *Managing Alcohol Consumption: A review on licensed clubs in remote Indigenous communities in the NT* (Report to the NT Department of Business, 2015), authored by Brady and D'Abbs together with Gillian Shaw (**the Bowchung Report**). The Bowchung Report found, at 5, that:

the rates of alcohol-related recorded assaults in communities *with* clubs have exhibited a downward trend, in contrast to trends in the NT as a whole, and in[the remainder of remote communities in the NT] in both of which rates have continued to increase... Hospital admission rates for alcohol related causes for localities with and without licensed clubs were compared. Communities with clubs have slightly lower rates of alcohol-related separations (28.8 per 1,000 population) than those without clubs (32.1 per 1,000 population)... In summary this analysis suggests that communities with clubs do not experience markedly higher alcohol related harms than those without clubs.

...

Many survey respondents reported being proud of their clubs. It gives them somewhere to go and enjoy themselves, and

another element to life in their community. Many non-drinkers also supported the existence of the club and felt that it should be available to people who want to use it. Clearly, for some people they are a valuable community resource.

72. The Bowchung Report attributed this success to four measures introduced by the Commonwealth government's 2007 "Intervention", namely:

- The reduction of operating hours to four days a week, three hours per day
- The shift from full-strength to mid-strength beer
- The abolition of takeaway sales
- Income management

73. The conditions the Commission has determined to impose incorporate the first three of these measures. The fourth measure is beyond the power of the Commission to regulate.

74. The Bowchung Report went on to state, at 6:

Service providers, particularly police, report that clubs are a powerful tool in controlling people's behaviour. Community residents value access to the club highly, and some aspects of their behaviour can therefore be controlled by threats of banning from the club. Communities use this control for a variety of purposes – getting people to go to work, punishment for perpetrators of domestic violence, punishment for people who neglect their children, making people pay for things that they have broken and so on. A less positive impact is the financial stress that having a club brings to individuals and their families. A considerable proportion of the disposable income in a community with a club is spent at the club.

75. If Wadeye were a place where the harmful consumption of alcohol was not already prevalent, then it is most unlikely that the Commission would be satisfied that the establishment of a licensed club on the community would be in the public interest. However, as the authors of the Bowchung Report point out, at 8, things are not so simple:

[T]he dilemma facing policy makers is not a dichotomy between a dry community where residents don't drink alcohol, and a community with a club where people do drink alcohol. Residents of remote communities access alcohol from a number of outlets – whether they have a club or not. The dilemma is therefore creating policy and regulatory settings that maximise drinkers'

access to environments in which their alcohol consumption is managed and harms are minimised.

76. The Bowchung Report made the following recommendations, at 7 – 8:

If a decision to establish a club is made the following checklist should be followed in creating standards for the design, construction and management of it:

- a. Plans for such a licensed facility should include a range of hot meals as well as entertainment and activity – not just the consumption of alcohol.
- b. The design of such a facility should demonstrate it will have a kitchen and dining area, as well as a bar area, and should be spacious and able to accommodate small groups of people who may wish to drink separately.
- c. The design also needs to demonstrate that alcohol will be stored in a highly secure manner that mitigates the risk of being stolen.
- d. The club should be incorporated through a legal vehicle which sets a high standard of governance.
- e. The club committee has access to professional advice over the recruitment and supervision of a manager, and is fully aware of its responsibilities.
- f. That governance training is provided to club committee members and regularly updated. Training on committee requirements under the *NT Liquor Act* needs to be included in this training.
- g. That as part of the capacity building of the club committee, members learn more about alcohol related matters affecting their community. This could include arranging for the local health service to provide quarterly reports on the level of alcohol related presentations in their community.
- h. The club management should commit to a transparent process for the return and use of profit to their community, and that procedures be established for the fair and equitable distribution of benefits to appropriate groups in the community.
- i. The club committee should agree that the club venture be evaluated after the first two years, and commit funds to undertake the evaluation.

77. The Commission commends the applicant for having had careful regard to these recommendations in preparing and presenting its application to the Commission. In fixing the conditions of the licence, the Commission has endeavoured to implement all of the Bowchung Report recommendations.

ASSESSMENT OF THE APPLICATION

78. In accordance with s 59 of the Act, the Commission has considered:
- a. the applicant's affidavit required by s 54;
 - b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
 - c. the financial stability and business reputation of the body corporate;
 - d. the general reputation and character of the secretary and executive officers of the body corporate;
 - e. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;
 - f. any objection to the application made under s 61; and
 - g. any response provided by the applicant under s 62.
79. In accordance with s 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

The applicant

80. The Commission finds that the applicant complies with s 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
81. The applicant is a company limited by guarantee and a registered charity. Clause 3 of its Constitution provides:

The Company is formed to carry on the ideals of spiritual and community development existing since the establishment of Wadeye and, in particular, the establishment and preservation of stability, health and employment, and the spiritual development of members of the Community whilst giving paramount consideration to the retention of Aboriginal culture and the improvement of the quality of life of the members of the Community.

82. Clause 10.1 provides:

All Aboriginal persons who reside in the area of Wadeye, Port Keats, and immediate surrounding areas situated on the Traditional lands of the Murinbata Tribe shall be eligible for membership.

83. The applicant has provided extensive documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

84. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of s 54.

85. The Commission considers that as the registered proprietor of the land on which the Club will operate, the Land Trust, is a person who may be able to influence the applicant or expect a benefit from the applicant. The applicant provided the Commission with a copy of its lease with the Land Trust over an area that includes the proposed premises. In some minor respects, the terms of that lease are more restrictive than the licence conditions the Commission has decided to impose. The Commission has no power to exempt the applicant from full compliance with the lease terms, and does not purport to do so. The Commission does however encourage the applicant to work with the Land Trust and the Northern Land Council to amend the lease to harmonise its terms with the licence conditions the Commission has imposed.

86. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the applicant, other than members of the Board. As set out at paragraph 7(b) above, the Commission has determined that the applicant must not commence to trade until it has satisfied the Director that each of the licensee's Board members is either a fit and proper person to be on the Board, or has entered into an enforceable undertaking that they will not participate in decision-making in relation to the management or operation of the club

87. The Commission notes that pursuant to s 106(1)(a) of the Act, the applicant must give the Director written notice of any change to Board membership.

The suitability of the applicant's premises

88. The applicant has provided detailed architectural drawings of the proposed premises. Patrons will be accommodated in an outside roofed 20m x 12m area equipped with ceiling fans, fixed seats, benches and tables for about 100 persons, a counter/bar and counter area, a large flatscreen television and a CCTV surveillance system, with access to enclosed male and female toilet blocks. Adjacent to the public area of the premises a secure concrete block building will accommodate a coolroom, a secure storage area, offices, a board

room and staff facilities. The counter/bar will include limited food preparation facilities. The principal source of cooked food at the premises will be from a purpose-built food truck to be stationed at the rear of the premises.

89. The Commission finds that the plans to ensure that alcohol be securely stored on the premises are satisfactory.
90. Section 91 of the Act requires licensees to comply with prescribed fire safety standards. Typically, licensees are required to display a notice stating how many patrons are permitted on the premises. In this case, however, having examined the building plans, the Northern Territory Fire & Rescue Service came to the view that as the public area of the premises is not an enclosed building, there was no requirement to fix a limit on the number of patrons. Nevertheless, after consultation with the applicant (and other stakeholders), the Commission has determined to impose a condition limiting the number of patrons on the premises at any one time to 200.
91. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

The financial stability, general reputation and character of the body corporate

92. Having been provided with the applicant's audited financial statements, the Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.
93. The Commission finds that the applicant has accumulated sufficient financial resources to build the premises, establish the Club and commence to trade.

The general reputation and character of the applicant's secretary and executive officers

94. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officers to be satisfactory.

Whether the applicant is a fit and proper person to hold a licence

95. The Commission assesses the applicant to be a fit and proper person to hold a licence.

Whether the licensee's nominee is a fit and proper person to hold a licence

96. The applicant has nominated Mr Andrew Clark as the licence nominee. The Commission assesses Mr Clark, who holds current RSA certification and has provided appropriate documentation of his reputation, character and work history, to be a fit and proper person to hold the licence.

Public notice and consultation

97. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with s 57 of the Act. The

Commission commends the applicant for having undertaken considerably more consultation than was required by the Director, both within Wadeye and by visiting and inspecting social clubs in other remote communities.

The objection and the response to the objector

98. As discussed above, the Commission has not only had regard to the single objection to the application, and the applicant's response to it, but also the matters raised by opponents to the application who did not make a formal objection. It is the applicant who bears the onus of satisfying the Commission of the relevant matters. Section 50(3) of the Act states that the "mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community". Even if there are no objections, the applicant must still satisfy the Commission of those matters, and it is the Commission's responsibility to consider all of the information it has received.

Whether issuing the licence is in the public interest

99. To determine whether the issue of the licence 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 s 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.

100. In the view of the Commission, the most significant of the public interest objectives in relation to this application are objectives (a), (b), (c), (d), (e), (i) and (j).
101. Objective (a) is of particular importance. Wadeye is already a community which experiences alcohol-related harm, including, in recent years, riots, the trashing of houses, the burning of vehicles, serious assaults and even fatalities. Alcohol has frequently been implicated in these very harmful incidents. Members of the Wadeye community are already at high risk of suffering alcohol-related harm or ill-health. The Commission is satisfied that the objective of minimising that risk is more likely to be advanced by establishing a social club, managed by representatives of the community, offering supervised, safe, regulated, lawful and affordable consumption of liquor instead of standing by while the currently prevalent practice of unsupervised, unsafe, unregulated, unlawful and ruinously expensive¹² consumption of liquor continues uninterrupted. The Commission considers that there is a reasonable prospect that the establishment of the Club will disrupt the business model of grog-runners, and attract members who elect to spend \$50 on six mid-strength beers or UDLs at the Club instead of \$500 on a bottle of rum in the bush.
102. That said, the Commission does not disregard the real possibility that the Club will fail to reduce alcohol-related harm. It is for this reason that the Commission has, firstly, imposed a broad range of strict conditions on the licence, and secondly, determined to conduct a review of the licence after a relatively short period of operation.
103. The Commission considers that the remaining objectives it has identified as being of particular significance in this case can be advanced by compliance with the conditions the Commission has determined to impose. For example, the safeguarding of public order and safety will be promoted by the screening of patrons to prevent weapons from being brought onto the premises.
104. Objective (e) merits specific mention. The Kardu Diminin clan, as the traditional owners of the town centre, have particular authority and particular responsibilities. The clan leaders are strong supporters of the Club. Moreover, through the applicant corporation which they own and direct, they will control the Club. The Commission is satisfied that placing the Club in the hands of the traditional owners is apt to promote the objective of increasing cultural benefits for the local community area. The establishment of the Club has the potential to be a powerful illustration of successful self-determination and local decision-making in action, which in turn would be in the public interest both for the Wadeye community and further afield.
105. Having considered each of the s49(2) public interest objectives, the Commission is satisfied that it is in the public interest to issue the licence.

¹² Several persons made unverified claims to the Commission that a 750 ml bottles spirits can sell on the Wadeye black market for \$500.

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

106. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must consider the matters set out at s 49(3) of the Act:
- (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 s 50;¹³
 - (j) any other matter prescribed by regulation.¹⁴
107. Several of the community matters are similar in substance to the public interest objectives, and similar considerations apply. Section 49(4) of the Act provides that the Commission may mitigate a possible adverse impact on the community by imposing certain licence conditions. As will be discussed below, that is what the Commission has decided to do.
108. Having considered each of the s49(3) matters, and having imposed licence conditions intended to mitigate any possible adverse impact caused by the operation of the Club, the Commission is satisfied that issuing the licence will not have a significant adverse impact on the community of Wadeye. If, after reviewing the Club (as the Commission has determined it will do), the Commission is no longer satisfied that the Club has not had a significant adverse impact on the community, the Commission will not permit the Club to continue to operate with the same licence conditions.

¹³ In the view of the Commission, no such guidelines are currently in force.

¹⁴ No such matters have been prescribed by regulation.

The licence conditions

109. The Commission has determined to fix the conditions set out at paragraphs 5 to 9 above. The Commission has decided to impose a large number of conditions in order to mitigate the significant risks it has identified in its consideration of the application. The Commission considers that if all of the conditions are adhered to, there is a reasonable prospect that the Club will operate effectively, and that the community will benefit. The Commission has designed the conditions to be implemented together, as a whole. Importantly, the Commission consulted with the applicant and other stakeholders about the conditions, and the applicant supports them.

Hours of operation

110. The Commission has fixed operating hours and days with the agreement of the applicant, and in accordance with the Bowchung Report findings. In addition the Commission has decided that last drinks must be called half an hour before closing, giving patrons 30 minutes to finish their drink, but minimising the risk that patrons will stockpile their drinks and consume them rapidly just before closing time. The Commission has deliberately set the opening hours so that they do not overlap with the opening hours of the Wadeye supermarket next door to the premises.
111. The Club will only be licensed to operate for 13 hours a week. The premises can of course open at any other times, providing no liquor is supplied or consumed during those periods. The Commission expects and encourages the applicant to regularly and frequently open the premises for alcohol-free events.
112. In its thoughtful submission, the Thamarrurr Development Corporation stated:
- We propose that the club be available to be booked for special events and private functions through an approved process. This would enable local organisations to host events such as Christmas parties, employee awards ceremonies, and birthday celebrations, fostering an inclusive environment that promotes responsible drinking and allows for the enjoyment of alcohol in a recreational and social context.
113. The Commission accepts this submission, and has decided that the “approved process” should be for an application to be made to Licensing NT for the issue of a special event authority licence at the Club. The Commission has delegated to the Director the power to determine such applications, and the Director routinely uses that delegated power.
114. The Commission commends the applicant for committing to provide a bus service to take members home when the Club closes.¹⁵ The Commission does not consider that a licence condition is needed to consolidate this commitment.

¹⁵ Exhibit One, 181

Members only

115. Following considerable discussion at the hearing, and with the agreement of the applicant, the Commission has determined to restrict the supply and consumption of liquor at the Club to members. Guests and visitors will not be permitted to obtain or consume liquor at the Club. The Commission considers that this will both encourage Wadeye residents to apply for and maintain their membership of the Club, and minimise the risk that persons unwelcome at the Club will obtain access under the cloak of being a guest or visitor.

Membership

116. The Commission has fashioned the membership rules of the Club to give effect to the following objectives:
- a. The application process should be simple and efficient.
 - b. Membership should be limited to persons with a recognised connection to Wadeye.
 - c. Membership applicants should be screened for eligibility.
 - d. Membership applications should be determined by the Club committee, but the committee should not be permitted to arbitrarily refuse to allow eligible applicants to become members.

Children

117. The Commission gave careful consideration to whether or not children should be allowed on the premises when liquor is being supplied and consumed. Ultimately, in accordance with detailed submissions from both the applicant and the Thamarrurr Development Corporation, the Commission determined to fix conditions that allow children to be on the premises if accompanied by a supervising family member. The conditions also require the Club to provide a designated children's play area. The Commission accepts that these conditions will promote the operation of the Club as an inclusive family-friendly facility, and mitigate the risk that it will degenerate into a "drinking hole".

Entry requirements

118. At the request of the applicant, the conditions include measures to prevent persons who are intoxicated or carrying weapons from entering the premises.

Service of alcohol

119. In accordance with the findings of the Bowchung Report, the Commission has imposed conditions restricting supply to six mid-strength serves of alcohol per person per day. The Commission considered various methods of implementing these restrictions. Any such method risks being undermined by members who "trade" their six-beer ration with others. The Commission understands that many years ago this problem afflicted the original Murrinh Patha Social Club.

Ultimately, in consultation with the applicant, the Commission decided on a pre-purchase hole-punched card system. The non-transferable cards will expire on the day they are issued, and will display the name of the member, which limits the opportunity for abuse.

Crowd controllers and CCTV surveillance

120. Although Schedule 2 of the Regulations classifies a community club authority as “very low risk”, having regard to the history and circumstances of the Wadeye community, the Commission assesses the Club to be a very high risk venue. NT Police support the application, but have raised their concern that the operation of the Club may place additional strain on police resources. Accordingly, the Commission has determined to impose conditions the same as those safety conditions prescribed by the Regulations for another class of very high risk licences, namely licences with a late night authority. The Commission has fixed licence conditions equivalent to those set out at reg 59, regulating the use of crowd controllers and a video surveillance system. The applicant supports the inclusion of these conditions in the licence, and has made arrangements for the hiring of security staff and the installation of a CCTV surveillance system.
121. In the undesirable but foreseeable event that there is an incident of serious disorder or violence in the community, the Commission, with the agreement of the applicant, has fixed a condition requiring the Club to close at the request of police.

Food

122. In accordance with the Bowchung recommendations, the Commission has imposed a condition requiring a full meal to be available for purchase during the hours of operation. The Commission is satisfied that the food truck the applicant has acquired and fitted out will enable the applicant to comply with this condition.

Governance

123. The applicant proposes to establish a committee to manage the Club, supported by an advisory committee drawn from a broad range of clan groups and service providers. Clause 38.3 of the Land Trust lease provides that “There must be equal representation of men and women on the Club Committee”. In order to comply with this clause, the committee will presumably need to have an even number of members, which may not be possible. The Commission suggests that consideration be given by the parties to the lease to amending this clause. The Commission has fixed conditions reflective of the governance arrangements proposed by the applicant, which the Commission considers are sensible, practical and responsible.
124. The Commission has also imposed conditions relating to the management of the Club adapted from and substantially similar to the conditions prescribed by reg 40 for licences with a club authority.

Intoxicated members

125. Section 141(1) of the Act imposes on all liquor licensees a general duty to exclude and remove any person who is violent, quarrelsome, disorderly or incapable of controlling their behaviour. Section 141(2) confers on licensees the power to exclude and remove any person who is intoxicated. The Commission has decided to impose a condition of the licence that goes somewhat further than the duties on licensees imposed by the Act. The licensee of the Wadeye Social Club will be required to exclude and remove persons who are intoxicated.

Banned members scheme

126. The licence conditions establish a banned members scheme. Settling the details of this scheme has been one of the more challenging aspects of the Commission's task in these proceedings.
127. The Commission has designed the banned members scheme to give effect to the following objectives:
- a. All banning applications should be based on a ground that identifies harm directly or indirectly arising from or associated with the member's use of alcohol.
 - b. To protect the privacy of community members, and to minimise the risk of vexatious or frivolous banning applications, the range of persons who may make a banning application should be limited.
 - c. Banning applications should be dealt with quickly and fairly.
 - d. Banning applications should be dealt with by the Club committee, but the committee should not be permitted to arbitrarily refuse a banning application.
 - e. To promote consistency and certainty, a minimum banning period of one month should apply.
128. Several stakeholders raised a concern that service providers might be deterred or even precluded from making a banning application by statutory and professional restrictions on sharing information. This is a legitimate concern, but is not one that the Commission considers need or indeed can be addressed by way of a licence condition.
129. Importantly, the banned members scheme does not require individuals or agencies to breach client confidentiality. For example, the scheme permits NT Health to make a banning application because of a member's health condition, including pregnancy. As is well known, drinking alcohol during pregnancy is hazardous to the well-being of the unborn child. As is also well-known, health professionals must not disclose information about a patient's medical condition

without their patient's permission. The banned members scheme does not *require* the Wadeye clinic to apply to have a pregnant Club member banned. Such an application may well be in the interest of the member's unborn child, but it could only be made with the consent of the member.

130. Similarly, NT Police submitted that unless police enter into an information-sharing agreement with the Club committee, police will be restricted in providing sensitive personal information to the committee. Accepting that this is correct, the Commission nevertheless expects that in many instances information about a matter that could give rise to a banning application will either be public (for example, because it has been the subject of legal proceedings in open court, such as the making of a Domestic Violence Order) or shared with consent (for example, a member who consents to a Domestic Violence Order, a condition of which is that they not consume alcohol and be banned from the Club). It is up to the Club committee and NT Police whether or not to enter into an information-sharing agreement.
131. The Commission notes that a permissible ground for a banning application is that the member has taken retaliatory action as a result of being subject to a banning application or a ban.
132. A group of women associated with the Wadeye school attended the hearing and told the Commission that they were strongly in favour of a rule that people be banned from the Club if their consumption of alcohol results in non-attendance of a child at school. The Commission accepts this submission, and has included this as a permissible ground for a banning application.
133. In order to strengthen the effectiveness of the banned members scheme, the Commission has made provision for the Club manager to make a banning application on any of the permissible grounds.

Records maintenance

134. The Commission has fixed several conditions requiring the licensee to make and maintain records of membership, attendance, staff training, Club committee meetings, crowd controllers, the banned persons list, alcohol-free events, incidents and liquor sales. The Commission acknowledges that these requirements will place a significant administrative burden on the licensee. However, the Commission considers that much if not all of this information should in any event be recorded by the licensee in the ordinary course of business. Moreover, the Commission anticipates that this information will be critical to the conduct of the review of the licence.

Alcohol treatment, rehabilitation and education

135. The Commission was informed that that there are currently no alcohol treatment, rehabilitation or education programs and services to residents of the Wadeye region. Given the apparent prevalence of alcohol-related harm in Wadeye, this is of concern to the Commission, which recommends that DOH establish and offer such programs and services.

Commencement of trade

136. As the Commission usually does when issuing a liquor licence for premises that have not yet been constructed, the Commission has directed that business not commence until the Club has provided material that satisfies the Director that the licensee has complied with various regulatory requirements.
137. Similarly, as is the Commission's usual practice, it has imposed a condition that trade commence within a specified period after the issue of the licence.
138. On 21 November 2024, as this decision notice was being finalised, the Commission was informed by senior officials from the Department of Chief Minister and Cabinet, the office of the Director and NT Police, that following a recent spate of grog-running there had been a marked increase in alcohol-related harm in Wadeye. Of particular concern, following threats by intoxicated persons to nurses, DOH had directed clinic staff to only attend call-outs under police escort.
139. In response to this information, the Commission determined to fix the further pre-condition to the commencement of trade set out at paragraph 8 above. In addition, on 3 December 2024, the Chairperson of the Commission returned to Wadeye and met with the community in order to inform the community of this and the other conditions of the licence, and to request community leaders to use their authority to take all available steps to reduce alcohol-related harm, disorder and violence.

The objects of the Act

140. 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.
141. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
142. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

Extension of time

143. Section 60(2)(b) of the Act provides that the Commission must make a decision whether to issue the licence and authority within 28 days of the expiry of the 14 day period allowed for the applicant to respond to an objection to the application. In this case, that period expired on 19 August 2024. However, although the Commission conducted its hearing soon after that date, on 3 September 2024, the complexity of this matter delayed the issuing of this decision notice. The Commission scheduled the application for hearing at the first reasonably available opportunity.

144. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision until the date of this decision notice.

NOTICE OF RIGHTS

145. Section 31(1) read with s 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* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

146. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director, the licensee and the objector.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
3 December 2024

On behalf of Commissioners Goldflam, Abbott-McCormack, R Shanahan and Dwyer¹⁶

¹⁶ The term of appointment of Commissioner Dwyer expired on 5 November 2024. Before this date, Mr Dwyer attended the hearing of the application and endorsed the decision in the terms set out at the commencement of this notice.

APPENDIX ONE

SPECIAL CONDITIONS OF LICENCE

Hours of operation

1. The operating hours of the Club shall be:

Tuesday: 17:00 to 20:00
Wednesday: 17:00 to 20:00
Friday: 17:00 to 20:00
Saturday: 16:00 to 20:00

2. The licensee must not supply, sell or serve alcohol after 19:30.
3. No club functions or events at which liquor is supplied at the club outside its regular operating hours are permitted, other than in accordance with a liquor licence with a special event authority that may be issued by the Director or the Commission.

Members only

4. The licensee must not sell, supply or serve alcohol to any person who is not a member of the Club. Visitors and members' guests must not be sold, supplied or served with liquor.
5. The licensee must not permit any person is not a member of the Club to consume alcohol on the premises. Visitors and members' guests must not consume liquor on the premises.
6. The licensee must ensure that all its advertising and marketing material make it clear that liquor is only available on the premises to members of the Club.

Membership

7. A person is eligible to be a member of the Club if they:
 - a. are over 18 years of age; and
 - b. have signed an application form that includes an undertaking to comply with the conditions of the licence and the rules of the Club; and
 - c. have provided photographic identification; and
 - d. have authorised inquiries to be made by or on behalf of the Club committee as to whether the person is on the Banned Drinkers Register or is otherwise banned from the Club; and

- e. are either:
 - i. a resident of the Wadeye area depicted on the map at page 38 of Exhibit 5 tendered at the hearing of the application; or
 - ii. the holder of a liquor permit for Wadeye; or
 - iii. the holder of a permit issued by the Northern Land Council to enter, visit or remain at Wadeye.
- 8. The licensee must:
 - a. make application forms for membership of the Club available to all persons eligible to be members of the Club; and
 - b. ensure that applications for membership of the Club are considered at the first available meeting of the Club committee; and
 - c. approve a membership application if the Club committee is satisfied that the applicant is eligible for membership.

Children

- 9. The licensee must establish, maintain and provide an alcohol-free child-safe area within the premises equipped with appropriate play equipment and facilities.
- 10. Entry to the club during operating hours is prohibited to any child not accompanied by an adult who is the child's parent, step-parent, uncle, aunt, grandparent, spouse or guardian.

Entry requirements

- 11. The licensee must ensure that on entry to the premises all patrons pass through a walk-through scanner to screen for weapons. The licensee must exclude or remove from the premises any person who is carrying a weapon.
- 12. The licensee must breath test any person who tries to enter the Club who staff reasonable suspect may be affected by liquor. The licensee must refuse entry to the Club by any person who tests at >0.05% BAC.
- 13. The licensee must not permit more than 200 patrons to be on the premises.

Service of alcohol

- 14. The sale, supply, service and consumption of liquor on the premises is limited to products with an alcohol/volume percentage not greater than 3.5%, being mid-strength beer, cider and pre-mixed spirits.

15. A Club member must not purchase and consume more than six alcoholic drinks at the Club on one day. Members can only be sold liquor by presenting a card they have purchased that day at the Club that states the member's name, the date, and the number of drinks (no more than six) that they have pre-purchased. At the time of supply, a hole must be punched on the card for each drink that is supplied. A member is entitled to a cash refund of any unused drinks on their card when they leave the Club.
16. The licensee must not serve a member more than three alcoholic drinks in a single transaction.
17. Liquor must only be sold, served or consumed in open metal or plastic containers.
18. The licensee must prominently display the National Health and Medical Research Council Australian guidelines to reduce health risks from drinking alcohol at the premises in appropriate language.
19. A reasonable range of low-alcohol and non-alcoholic beverages must be available for purchase by patrons during the hours of operation.
20. During the hours of operation, a full meal must be available for purchase by patrons.
21. The licensee must not provide persons with credit by lending them money.

Crowd controllers

22. The licensee must employ or hire at least:
 - a. two licensed crowd controllers for the first 100 patrons on the premises; and
 - b. one additional licensed crowd controller for each additional 100 patrons on the premises.

Example: If 150 patrons are at the premises, the licensee must employ at least 3 licensed crowd controllers.

23. The licensee must ensure that:
 - a. The licensed crowd controllers on the licensed premises must wear clothing that identifies their function; and
 - b. The licensed crowd controllers on the licensed premises enforce licence conditions, the provisions of the Act and the Regulations that apply to the licensed premises.

CCTV surveillance system

24. The licensee must, in accordance with a code of practice established by the Commission under section 20 of the Act:
- a. install and maintain video surveillance equipment for the licensed premises; and
 - b. keep the licensed premises under video surveillance during the hours of operation; and
 - c. keep a record of that surveillance for at least 14 days; and
 - d. make that record available to inspectors and police officers on request.

Attendance register

25. The licensee must require all persons entering the premises to register their entry in either an electronic register or manual attendance book that records the following details:
- a. Name
 - b. Residential address
 - c. Date and time of entry to the premises

Governance

26. The management of the licence must be governed by a Club committee consisting of at least two men and at least two women, with representatives from the licensee, Thamarrurr Development Corporation, Kardu Diminin Corporation and two appointed skill-based positions. The Club committee must include at least one non-drinker.
27. The licensee must establish an advisory committee of at least 12 persons and invite representation from clan groups, service providers and stakeholders. The advisory committee must include at least three non-drinkers. The advisory committee must meet at least once every three months, and provide reports of its advice about the operation and membership of the Club to the Club committee.
28. The constitution, objects, purposes, membership provisions and rules of the Club must not be altered without the written approval of the Director.
29. The Club committee must:
- a. ensure that the club complies with the licence, the Act and the Regulations when operating the licensed premises; and

- b. meet at least once a month, unless otherwise approved, in writing, by the Director; and
 - c. keep a record of its proceedings.
30. The licensee must keep a record of the Club's members that includes the following information:
- a. the member's name and contact information;
 - b. the member's membership number.
31. The licensee must keep a record of the licensed crowd controllers employed at the Club that includes the following information:
- a. the person's name and contact information;
 - b. the person's licence number.
32. The licensee must provide the records under this condition immediately to the following on request:
- a. an inspector;
 - b. a person appointed as an inspector under the *Private Security Act 1995*.
33. The licensee must establish and maintain a register of ongoing training undertaken by Club staff, the Club committee and the advisory committee, including:
- a. Responsible service of alcohol;
 - b. Licensee's requirements under the *Liquor Act 2019*;
 - c. Governance of an incorporated association, including management of conflicts of interest;
 - d. Supervision of manager and staff; and
 - e. Prevalence and nature of alcohol related harm in the community.

Exclusion, removal and banning of members

34. The licensee must exclude and remove from the premises any person whose speech, balance, coordination or behaviour appears to be substantially impaired by the consumption of liquor.

35. The licensee must establish and maintain a list of persons prohibited from entry to the licensed premises (**the banned list**), including the following details for each person on the banned list:
- a. Name
 - b. Residential address
 - c. Period of prohibition
 - d. Reason for prohibition
36. The licensee must record on the banned list all persons who the licensee has banned from entering the premises.
37. The licensee must make the banned list available upon demand for inspection by a police officer or licensing inspector.
38. The licensee must not sell, supply or serve liquor to any person who is on the banned list, and must exclude or remove from the premises any person who is on the banned list, unless the club committee decides that the person is permitted to enter and remain on the premises.
39. The Club manager must immediately ban and record on the banned list:
- a. for one month, a member who is violent, quarrelsome, disorderly or incapable of controlling their behaviour at the club;
 - b. for three months, a member who purchases liquor at the club which they then supply or attempt to supply to persons who are not on the premises;
 - c. until the next Club committee meeting, a member who has received notice that they are the subject of a banning application.
40. The club committee must consider, as soon as practicable, an application to ban a member (**a banning application**) received from any of the following:
- a. NT police, because the member:
 - i. has been placed on the Banned Drinkers Register;
 - ii. has been prohibited from entry to the Peppimenarti Club or the Daly River Inn;
 - iii. has engaged in alcohol-related domestic or family violence;
 - iv. has been placed on a Domestic Violence Order or Personal Violence Restraining Order with a condition restraining the member from being intoxicated or drinking liquor;

- v. is subject to a bail, good behaviour, suspended sentence or parole order condition restraining them from being intoxicated or drinking liquor;
 - vi. has been charged with or found guilty of alcohol-related offending; or
 - vii. has taken retaliatory action as a result of being subject to a banning application or a ban.
- b. Department of Children and Families, because the member's consumption of alcohol has resulted in:
- i. non-attendance of a child at school; or
 - ii. it is assessed appropriate in the family's circumstances because of:
 - I. physical harm to a child, or
 - II. emotional harm to a child, or
 - III. sexual exploitation of a child, or
 - IV. neglect of a child basic care needs.
- c. NT Health, because of the member's health condition, including pregnancy.
- d. The advisory committee, because the member's consumption of alcohol has caused harm to themselves or to another person.
- e. The member, because the member wishes to be excluded from the club.
- f. The Club manager, for any of the reasons set out above in this condition.
41. The club committee must give reasonable notice to a member that they are subject to a banning application and give them a reasonable opportunity to respond to the application in writing or by attending the Club committee meeting at which the application will be considered.
42. The club committee must grant a banning application if it is satisfied that the grounds for the application are made out. The Club committee must fix a period during which the member is banned (**the banning period**) of not less than one month, which the committee may at its discretion backdate to commence on the day the member received notification of the banning application and was banned pursuant to condition 39(c).
43. A banned member can apply to the Club committee to reduce their banning period on the ground that since being banned they have successfully completed

a course or program of alcohol treatment or rehabilitation, or have been removed from the Banned Drinker Register, if applicable.

44. The club manager must establish and maintain an incident register in which records are kept of all incidents involving:
- a. the exclusion, removal or attempted exclusion or removal of a person from the club;
 - b. the attendance of police at the club;
 - c. the attendance of medical staff at the club to assist a person who has suffered injury or a medical episode;
 - d. injury to a person;
 - e. damage to the club;
 - f. theft of property from the premises;
 - g. offending at the premises;
 - h. a disturbance at the club; or
 - i. the unscheduled closure of the club
45. At the request of police following, where practicable, consultation with senior members of the community, the licensee must cease the sale of liquor and close the bar during any period of violent, quarrelsome or riotous conduct within the community.

Records maintenance

46. The licensee must keep records and provide to the Director each three months:
- a. The attendance register or book
 - b. The incident register
 - c. The training register
 - d. List of banning applications received
 - e. The banned list
 - f. Minutes of Club committee meetings
 - g. Sales of liquor
 - h. Details of alcohol-free events held at the club