

NORTHERN TERRITORY LIQUOR COMMISSION

NOTICE OF PROPOSED VARIATION OF LICENCE CONDITIONS

LICENSEES

LICENCE NUMBERS

Top Springs Hotel	81203330/FLL
Timber Creek Hotel	80304074
Victoria River Roadside Inn	81200372

LEGISLATION: Section 113, *Liquor Act 2019 (the Act)*

BACKGROUND

1. The Victoria River locality (**the locality**) is situated in the northwest quadrant of the Northern Territory, and comprises a patchwork of pastoral properties, national parks, Aboriginal land and several residential communities, notably Yarralin (and various small outstations including Lingara, Kulunbulani and Moolooloo), Kalkarindji, Daguragu, Pigeon Hole, Timber Creek and Top Springs. The nearest Northern Territory town is Katherine, about an hour and a half drive from the locality's northeast perimeter. Kununurra, in Western Australia, is about two and a half hours drive from the locality's northwest perimeter.
2. On 10 May 2021, the Chair, Deputy Chair and six Directors of Walangeri Ngumpinku Aboriginal Corporation, which represents "Traditional Owners and Aboriginal peoples residing in the township of Yarralin", wrote to the Northern Territory Minister for Alcohol Policy expressing concern about alcohol-related harm in their community, and requesting the imposition of a restriction on the sale of takeaway liquor in the locality to "six cans per person", improved enforcement of

liquor laws and licence conditions, and assistance with community-based programs. A copy of the letter is annexed to this Notice.

3. The Minister referred the letter to the Chair of the Northern Territory Liquor Commission (**the Commission**), who, on 3 June 2021 informed Walangeri Ngumpinku that the Commission would conduct an inquiry “as to whether the Commission should impose restrictions on the amount of takeaway liquor that can be sold by the licensed outlets that operate in the vicinity of Yarralin”.
4. Three venues within the locality are licensed to sell takeaway liquor: the Victoria River Roadside Inn, the Timber Creek Hotel and the Top Springs Hotel.

The Victoria River Roadside Inn

5. The Victoria River Roadside Inn, located on the bank of the Victoria River, caters mainly for tourists and travellers on the Victoria Highway, the main road between Katherine and Kununurra (and indeed, the only sealed road connecting the Northern Territory and Western Australia). The licence authorises the sale of takeaway liquor every day (except Good Friday and Christmas Day) from 10 am to 10 pm, with an earlier opening time of 9 am on Saturdays and Public Holidays. There are no restrictions on the amount or type of takeaway liquor that may be sold.
6. The Commission has not been provided with information regarding the history of compliance by the licensee with its licence conditions and the Act.

The Timber Creek Hotel

7. The Timber Creek Hotel, an hour's drive further west, lies between the Victoria Highway and the nearby bank of the Victoria River. In addition to being a popular wayside stop, it is a service centre for the Timber Creek community and other local communities, including Yarralin, about an hour and a half drive to the southeast. Takeaway trading hours are every day (except Good Friday and Christmas Day) from midday to 9 pm, with an earlier opening time of 10 am on Saturdays and Public Holidays. The following product restriction applies:

No cask or fortified wine is to be sold in containers larger than two (2) litres. Take away purchases of cask wine and fortified wine (including Stone's Green Ginger Wine) is to be limited to the hours of 14:00 and 18:00 only. Take away purchases of cask wine and fortified wine is to be limited to one (1) two (2) litre cask or one (1) bottle of fortified wine per person per day.

8. The Timber Creek Hotel has previously breached the conditions of its licence. In 2018, the Commission upheld a complaint that in November 2016 the current licensee had sold liquor to a child. The Commission took disciplinary action against the licensee by suspending the licence for two days, but having regard to mitigatory matters including "the responsible and community focussed operation of the licence", the period of suspension was itself suspended for 12 months. The licensee was also issued with an

Infringement Notice in the sum of \$1580 for an associated breach of the *Liquor Act 1978* (NT) arising from the same incident.¹

9. On 9 August 2021, a Delegate of the Director of Liquor Licensing (**the Director**) upheld a complaint that on 8 April 2021 the licensee had breached section 130 of the *Liquor Act 2019* (NT) (**the Act**) by failing to scan the photo identification of a customer who purchased a takeaway bottle of rum. The seriousness of this breach was mitigated by the fact that a few minutes previously the same customer had purchased a takeaway carton of full strength beer, and provided photo identification which had been scanned. In these circumstances the Director's Delegate issued the licensee with a formal warning in relation to the complaint.
10. No major issues of concern were identified by Licensing NT officers who conducted compliance audits of the licensee in December 2018, November 2019, September 2020 and March 2021.

The Top Springs Hotel

11. The current Victoria River Roadside Inn licensee is also currently the licensee of the Top Springs Hotel, which is located at the junction of the Buntine and Buchanan Highways. Top Springs is somewhat closer to Yarralin and its various small outstations than Timber Creek, but, due to the poor condition of the eastern section of the unsealed Buchanan Highway, it takes about the same time to drive there from Yarralin as it does to drive from Yarralin to Timber Creek. Top Springs is the closest liquor outlet to the Indigenous communities of Pigeon Hole, Kalkarindji,

¹ Northern Territory Liquor Commission, *Disciplinary action pursuant to the Liquor Act, Timber Creek Hotel*, 10 May 2018, accessed at https://industry.nt.gov.au/_data/assets/pdf_file/0007/503449/Decision-Notice-Timber-Creek-Hotel.pdf

Daguragu and Lajamanu. It is also patronised by workers from surrounding cattle stations and travellers who venture off the beaten track. The takeaway trading hours are the same as those of the Victoria River Roadside Inn. In addition, the licence contains this condition:

The sales of liquor for consumption away from the premises is restricted in accordance with the decision of the Northern Territory Licensing Commission dated 17 July 2014.²

12. On 17 July 2014, the Northern Territory Licensing Commission imposed the following conditions (**the 2014 Top Springs conditions**) on the Top Springs Hotel licence:³

RESTRICTED SALES Liquor sold for consumption away from the licensed premises is restricted to any 'mid strength' liquor product in an individual container (e.g. can) not exceeding 400ml in capacity and not more than 3.5% alc/vol.

Liquor sold for consumption away from the licensed premises is restricted to a maximum of 24 individual containers per person per day. The maximum number of sales of packaged bulk liquor (e.g. carton) for consumption away from the premises per vehicle is three (3) per day.

² Neither the licensee, the manager of the premises or officers of Licensing NT who attended the Yarralin hearing were able to state with certainty or in detail what these conditions actually were.

³ Northern Territory Licensing Commission, *Reasons for Decision Top Springs Hotel* (17 July 2014) (**Top Springs decision**) accessed at https://industry.nt.gov.au/_data/assets/pdf_file/0011/253649/140717-top-springs-hotel-review-of-decision.pdf

Photographic identification in a form approved by the Commission under Section 314 of the Act must be provided and recorded for each individual purchase of takeaway liquor. Identification approved under the Act for the sale of takeaway liquor includes an NT or other Australian State or Territory Government issued driver licence, evidence of age card, Ochre (Working With Children) Card, and Australian or International Passport. The Director is to provide the licensee with the documents required to be maintained for the purposes of compliance with this condition which requires recording the purchaser's name/ identification number/ date of birth/ alcohol type/ quantity/ vehicle description and registration number. The Director will work with the Licensee to assist in this process and minimise the time required to comply with this condition.

PROHIBITION REGISTER The licensee will work with the Director of Licensing to implement a workable Prohibition Register to prevent those on Alcohol Protection Orders and similar court orders which may include suspended sentences or court imposed bail conditions from purchasing takeaway alcohol from the Hotel. The licensee will be advised in writing of the names and duration of such orders by the Police or the Department. Once advised, the Licensee will not sell any alcohol to those individuals as takeaway liquor or otherwise for the period they are advised that the order is current. The Police or the Director of Licensing will also advise the Licensee when those orders have expired and those persons will then be removed from the Prohibition Register. The Licensee will maintain the Prohibition Register and provide a copy to a Licensing Inspector or to Police upon request.

EXCLUDED PURCHASES Pre-ordered station purchases are not subject to restrictions on quantity or type of alcoholic beverage but the collection of purchased alcohol must occur within licensed hours. Any other requests for temporary or limited variations to the takeaway liquor licence must be made through the normal application processes.

13. It is appropriate to make some observations about the history, context and current applicability of the 2014 Top Springs conditions.

14. The decision to impose the conditions was the culmination of lengthy contentious proceedings following complaints and concerns dating back to at least 1997 regarding alcohol-related harm stemming from takeaway alcohol sold by the Top Springs Hotel.⁴ In 2011, the licence was suspended for 6 days following a serious drunken incident involving Kalkarindji community members. Later that year, in sentencing an offender who, after drinking liquor obtained from the Top Springs Hotel, had driven a vehicle resulting in a fatal car crash, Mildren J said:

This is just appalling, that such an enormous amount of alcohol can be supplied... There should be restrictions placed on them. The number of cartons that people can buy at one time.

15. Consequently, on 8 August 2012 the Licensing Commission imposed restrictions on the sale of takeaway liquor by the Top Springs Hotel. The then licensee sought a review of that decision, and, following a hearing, on 24 May 2013 the Licensing Commission imposed somewhat less onerous restrictions. The licensee

⁴ The following summary history of the proceedings is derived from the Top Springs decision, *ibid*, at [1] – [9]

commenced an appeal to the Supreme Court, but discontinued that appeal and instead sought a further review by the Licensing Commission, which conducted hearings and consultations over 8 days in Yarralin, Kalkarindji, Lajamanu, Katherine and Darwin. The licensee and the Director of Licensing were both represented by counsel, and the Licensing Commission also engaged counsel to assist it. Extensive evidence was taken, including expert evidence from Professor Peter d'Abbs of the Menzies School of Health Research. On 7 July 2014, the Licensing Commission handed down its detailed and comprehensive decision, in which it fixed the conditions that currently apply.

16. In its decision, the Licensing Commission accepted the then licensee's evidence that 95% to 98% of the takeaway liquor sold at the Top Springs Hotel was to residents of local Indigenous communities such as Kalkarindji, Daguragu, Yarralin and Lajamanu. No evidence or submissions have been received to date in the course of the current inquiry that this has changed since 2014.⁵

17. When handing down its 2014 decision, the Licensing Commission determined to review its decision within twelve months from the commencement of operation of the varied conditions. The Licensing Commission's decision was made in the exercise of its powers under the *Northern Territory Licensing Commission Act 2009* (NT). However, before the twelve month review period had elapsed, that Act was repealed by the *Licensing (Director-General) Act 2014* (NT), resulting in the abolition of the Licensing Commission, the powers and functions of which were conferred on the Director-General of Licensing. So far as the Commission is

⁵ Top Springs decision, above, fn 3, at [17]

aware, the Director-General took no steps to undertake the review of the 2014 Top Springs conditions.

18. Although the conditions have not been reviewed, they have in part been effectively supplanted by subsequent legislation. The conditions regarding photographic identification and the maintenance of a Prohibition Register have in practice been superseded by Part 6 Division 1 (“Patron identification system”) of the Act, which requires all Northern Territory liquor licensees to use photographic identification of persons who wish to purchase takeaway liquor to determine whether they have been placed on the Banned Drinkers Register.

19. The first two paragraphs of the conditions set out at paragraph 12 above remain in force, as does the exemption from those conditions for pre-ordered station purchases.

20. The Commission has not been provided with information regarding the history of compliance by the current licensee with its licence conditions and the Act.

Closed Circuit Television Condition

21. On 20 December 2021, the Commission (constituted by a panel comprising Commissioners Coates, Truman, Dwyer and Corcoran) inserted the following condition into 139 liquor licences, including the Victoria River Roadside Inn licence, the Timber Creek Hotel licence and the Top Springs Hotel licence:

The Licensee must install, maintain and operate a camera surveillance system in compliance with any requirements and guidelines prescribed by the Director or any Code of Practice issued by the Commission, 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.⁶

The inquiry

22. This inquiry is being conducted under section 113 of the Act, which confers power on the Commission to vary the conditions of a liquor licence on its own initiative. Before doing so, the Commission must give the licensee written notice of the proposed variation and state the reasons for the proposed variation. The Commission must invite the licensee to submit a response within 28 days.
23. The Commission is empowered but not required to conduct a public hearing in the course of its inquiry. In this instance, the Commission determined to conduct a public hearing at Yarralin. Section 113(3)(c) requires the Commission to consider “the public interest and community impact requirements” before varying the licence conditions. Those requirements are set out at section 49 of the Act, which lists ten public interest objectives and a further ten community impact factors.
24. On 12 July 2021, the Commission notified the affected licensees and the following stakeholders of the hearing at Yarralin, and invited each of them to make a

⁶ The Commission ordered that the condition commence 60 days after 20 December 2021, or within such longer period as may be permitted by the Director. Decision accessed at https://industry.nt.gov.au/data/assets/pdf_file/0003/1078752/decision-notice-variation-licence-conditions-include-cctv.pdf

submission addressing the public interest objectives and community impact factors:

Department of the Chief Minister

Director of Liquor Licensing

Kalkarindji/Daguragu Council Services Manager

Kalkarindji Health Centre

Minister for Alcohol Policy

Northern Land Council

NT Police

Timber Creek Council Services Manager

Timber Creek Health Centre

Victoria Daly Regional Council

Walangeri Ngumpinku Aboriginal Corporation

Yarralin Aged Care Centre

Yarralin Day Care Centre

Yarralin Medical Centre

Yarralin Store

25. The hearing proceeded at Yarralin on 6 August 2021. The Commission acknowledges Walangeri Ngumpinku for allowing the hearing to take place on their land and making those who attended from outside the community welcome. The Commission also acknowledges the considerable assistance of Remote Sergeant Rinaldo Coulson, Officer in Charge of the Yarralin Police Station, who provided the Commission with a suitable venue for the hearing, a meeting room attached to the police station.

26. A broad range of community members and staff from various service agencies in Yarralin attended the hearing, as did Callum and Fiona McDonald, the nominees of the Timber Creek licence, and (by telephone) Cristina Jones, on behalf of the licensee of the Victoria River Roadhouse Inn and Top Springs Hotel. Officers of Licensing NT, Hospitality NT and the Northern Land Council were also in attendance.

27. The hearing demonstrated that the supply and consumption of liquor is a highly contentious issue within the Yarralin community.

28. In summary, on the one hand there was a strong and indeed passionately expressed view by several community leaders and elders that grog is the source of a great deal of harm in the community, and that supply restrictions should be imposed to reduce that harm. On the other hand, other articulate and assertive community members argued that restricting supply would not fix the problem, but would aggravate it, as committed drinkers would travel greater distances and go to greater expense to keep drinking, if necessary by resorting to sly grogging.

29. At the hearing, the Commission renewed its invitation for submissions. On 14 August 2021, Remote Sergeant Coulson provided the Commission with a brief written report of “excessive alcohol fuelled violence” amongst Yarralin residents over the previous week. He stated:

“Jobs linked to Timber Creek Hotel selling excessive alcohol

1 x threaten suicide

1 x breach domestic violence order

2 x criminal damage

5 x domestic disturbances

1 x disorderly in public place

Informants and offenders arrested by Police are saying that Timber Creek Hotel are selling as much alcohol as people want. 1 person is buying 2 cartons of alcohol [sic: ?beer], 2 bottles of spirits. The car is full of people and everyone is buying alcohol. Then they come back to the community to on-sell the alcohol. Yarralin police are dealing with serious assaults resulting in woman sustaining serious injuries. Timber Creek police are physically sitting outside the hotel due to their ongoing issues in their community. Timber Creek Police are seeing Yarralin residents walking in and purchasing alcohol and waiting for Police to leave to return”.

30. On 16 August 2021, Warren Grant-Vest, the manager of the One Tree Yarralin Children’s Service, made a written submission to the Commission in a personal capacity, opposing the imposition of further restrictions on the sale and purchase of liquor in the community. He expressed the view that to impose such restrictions would create a black market and exacerbate community problems.

31. The Commission was provided with a petition dated 1 September 2021, bearing 24 signatures on behalf of “the Traditional Owners and Elders of Timber Creek and surrounding Communities” addressed to “the Timber Creek Hotel and the Victoria River Roadhouse”. The petition stated:

“We are requesting that sales of alcohol to those of our people that reside in our Communities be reduced to the following:

- 1) 1 (One) Carton of Mid Strength Beer per person per day.
- 2) Nil spirits or UDL cans or Bottles of Wine to be sold to those same people.

Our people are hurting their health and hurting each other, due to the amount of alcohol and what they can purchase every day”.

32. On 16 September 2021, the Commission wrote to the Commissioner of Police, the NT Department of Health and the Director, requesting further information in relation to various matters the subject of its inquiry.

33. Responses were promptly received from NT Police and Health, but to date the Director has not provided the information sought by the Commission.

34. NT Police informed the Commission that over half of the offences of violence recorded by police in the locality over the last two years were alcohol-related. Well over 80% of reported domestic violence incidents in the locality over this period were alcohol-related, and the number of reported alcohol-related domestic violence incidents in the locality almost doubled in the twelve months to July 2021 over the previous 12 months.

35. While in the locality, Commissioner Goldflam took the opportunity to visit the Victoria River Wayside Inn, the Timber Creek Hotel and the Top Springs Hotel, staying overnight as a paying guest at the two latter establishments.

36. Commissioner Goldflam made the following contemporaneous notes of his attendance at the Victoria River Roadside Inn and his conversation with the licensee's nominee, Mr Lyle Wright, on 2 August 2021:

There were about 50 caravans on site. Mr Wright said he usually works at Top Springs (which is owned by the same licensee) and has come down to Victoria River Roadside Inn temporarily. He said there are no takeaway sales being conducted from Victoria River Roadside Inn at the moment because the BDR scanner stopped working a few days ago and he doesn't know when it will be fixed. He said that caravaners can still purchase liquor from Victoria River Roadside Inn, and drink it in the bar or the camping area, which is part of the licensed premises. He said that some Indigenous customers from Kalkarindji, Yarralin and Timber Creek purchase bulk quantities of takeaway he considers to be problematic. He said that at Top Springs he had on occasion refused to serve some such customers, and suggested that product limits of a carton of beer or equivalent may be a good idea.

From my cursory casual observations, Victoria River Roadside Inn is a pleasant, picturesque, orderly, family-friendly establishment that is thriving with the current influx of tourists. The only people I noticed were apparently either staff or caravanning tourists.

37. Commissioner Goldflam made the following contemporaneous notes of his attendance at the Timber Creek Hotel on 2 August 2021:

At the bar there were half a dozen or so local residents, a mix of non-Indigenous and Indigenous patrons. Adjoining the bar was the

restaurant. It was well-patronised, by caravanning tourists. There were a lot of vehicles in the hotel's camping area. At about 8 pm a hotel staff member approached a group of Indigenous people out the front of the hotel and told them they weren't allowed to drink there, and that if they didn't leave she'd call the police.

38. Commissioner Goldflam made the following contemporaneous notes of his attendance at Top Springs on 6 August 2021:

On arrival (unannounced) from the Buchanan road, we entered the front bar. The barmaid said we were not allowed there, as it was for the blacks, and asked us to re-enter the premises through the adjoining shop, opened a bolted partition barrier, and ushered us through a staff area, past the BDR scanner and tills, to the back bar, which she told us was for whites, and which the blacks were not permitted to enter. She also said that the blacks have their own toilet, and their own beer garden, and that we need not be scared of them as they would stay in their own area. There were two or three Aboriginal people in the front bar at the time. The only access between the front and back bar through public areas was a door marked EXIT at the end of the bar, locked by a snib on the back bar side of the door. The only access to the unshaded front bar beer garden was from the front bar. The garden (a sparse open area with seating and some vegetation) was completely fenced.

Access to the rear of the premises, which comprised the back bar (with a pool table), a room designated as "Restaurant" with tables and chairs, a

large covered garden patio area with motel rooms, car parking and plant, storage and staff quarters, was via a driveway from the Buntine Highway.

While we were at the premises, all Aboriginal patrons were in the front bar and beer garden, and all non-Aboriginal patrons were in the rear bar and garden, as more or less dictated by the layout described above.

When I identified myself to the resident manager, he assertively and unequivocally denied that Top Springs operates in a racially discriminatory manner. He said that Indigenous patrons are welcome in the back bar and play pool there. He explained that the two Italian backpackers had only been very recently engaged as bar staff, and were still being shown the ropes. He had taken over as manager a few weeks previously, after a serious break-in at the premises and the theft of a pallet load of beer. Since then, security had been upgraded. Police had not positively identified the perpetrators. The previous manager had been intimidated by this incident, which precipitated his departure.

39. On 22 December 2021, Remote Sergeant Coulson submitted a report to the Commission of a further break-in and theft of “a substantial quantity” of liquor on 19 December 2021 from the Top Springs Hotel liquor storage shed, a “flimsy corrugated iron” shed located outside the boundary of the licensed premises.

40. Although the Top Springs Hotel has installed a well-equipped CCTV surveillance system with 14 cameras, that system does not include any surveillance of the liquor storage shed.⁷

41. The Commission notes that by operation of section 83 of the Act and Regulation 19 of the *Liquor Regulations* 2019, it is a condition of every Northern Territory liquor licence that “when the premises are closed, all liquor must be stored securely to prevent access by the public”. The Commission is concerned that the Top Springs Hotel licence may not be currently operating in compliance with this condition.

42. On 14 January 2022, Remote Sergeant Coulson submitted the following further report to the Commission:

31/12/2021

- Alcohol purchased at Timber Creek
- Yarralin resident drinking whilst driving.
- Police seized 10 litres of alcohol (3 bottles of spirits, 2 – 3 x cartons of beers and sprits)
- 2 x cartons of VB cans already consumed
- Travelling to Yarralin
- 5 people in car. Inferred the alcohol was for other people waiting in community

⁷ The Director provided the Commission with a 50 page document titled “Camera Surveillance Plan for Top Springs Hotel” prepared by Benash Maintenance Services, Katherine, dated October 2021.

07/01/22

- 5 x Yarralin residents attended Timber Creek and purchased 5 cartons of beers/ mixed drinks
- After purchasing, drove to Victoria Road House to purchase more cartons of alcohol
- Plan was to return to Yarralin after getting more alcohol
- Car broke down on side of road
- Residents commenced drinking on side of road
- Yarralin female killed when hit by a truck
- Witness statements obtained who outlined their intention to buy alcohol from another premises even after buying alcohol already
- Inferred supply into Yarralin community

In my mind, this is excess when over 10 litres of alcohol is being sold to one car load every sale; I do not believe this to [be] responsible sales of alcohol.

The licence premises managers in Timber Creek know the locals in Timber Creek and still sell excessive amounts of alcohol to vulnerable people living in Alcohol Protected Areas. All three licenced premises are surrounded by Aboriginal communities who are all designated Alcohol Protected Areas.

Discussion

43. The Commission has carefully considered the 2014 decision of the Licensing Commission in relation to the Top Springs Hotel conditions. The Commission

respectfully adopts, to the extent that they remain relevant and applicable, the findings, analysis and observations contained in that decision.

44. Having received the unchallenged accounts by both Yarralin and Timber Creek community members and by police of continuing alcohol-related harm in the locality, the Commission is satisfied that levels of alcohol-related harm in the locality are unacceptably high.

45. The Commission is of the view that reducing the supply of takeaway alcohol in the locality is likely to reduce the unacceptable level of alcohol-related harm.

46. The Commission considers that community wishes are relevant to the application of the public interest and community impact requirements.⁸ In the view of the Commission, however, it does not follow that community wishes can only be taken into account if there is consensus within the relevant community as to what those views are.

47. As stated at paragraph 28 above, at the Yarralin hearing it became apparent to the Commission that there is no community consensus regarding what to do about alcohol-related harm in the locality. This lack of consensus is unsurprising. The Licensing Commission noted a similar lack of consensus in the hearings it conducted at Yarralin, Kalkarindji/Daguragu and Lajamanu in 2014.⁹ Similarly, in 2018, the Commission conducted an inquiry in the Barkly, in the course of which it

⁸ See Northern Territory Liquor Commission, *Application for Variation of conditions of liquor licence, Glen Helen Outback Resort Lodge* (22 June 2020) at [57] – [58] (the **Glen Helen decision**) accessed at https://industry.nt.gov.au/_data/assets/pdf_file/0006/897756/Decision-Notice-Glen-Helen-Lodge-Nominees-Pty-Ltd.pdf. That matter concerned the construction of the *Liquor Act 1978* (NT), but the relevant provisions are similar to their counterparts in the Act.

⁹ See Top Springs decision, above fn 3, at [20] – [26], [90]

found that there was no consensus in the Tennant Creek community on the same issue.¹⁰ In short, the regulation of the supply and consumption of liquor has long been contentious throughout the Northern Territory. The Commission agrees with the approach taken by the Licensing Commission in the 2014 Top Springs decision: “the [Licensing] Commission should not be guided by consensus but by the legitimacy of its decision... in accordance with the objects of the *Liquor Act*.”¹¹ Were the Commission only permitted to take action where there was community consensus, the Commission’s hands would in many cases – including this one – be tied, and it would be prevented from discharging its functions under the Act.

48. In this inquiry, the most cogent reason advanced to the Commission not to impose restrictions on the sale of takeaway liquor in the locality is that this would simply aggravate existing problems by pushing drinkers to obtain liquor from further afield, and in particular, from Katherine. The same objection was raised, considered and ultimately rejected at the 2014 Top Springs hearing. Regrettably, the planned 12 month review of the 2014 Top Springs conditions was never undertaken, as discussed above. Accordingly, the Commission has not been assisted by data showing the effect of the imposition of the 2014 Top Springs conditions on levels of consumption and associated harm in the first year following their introduction.

49. The Commission accepts that when supply restrictions are imposed on one venue, some drinkers will get around this by purchasing takeaway liquor at another venue. To drive to Katherine from a community in the locality requires at least an hour and

¹⁰ Northern Territory Liquor Commission, *Proposed Variation of conditions of licence – Barkly region* (8 May 2018) at [38], accessed at https://industry.nt.gov.au/data/assets/pdf_file/0008/545408/proposed-variation-conditions-licence-barkly-region.pdf

¹¹ Above, fn 3, at [91]

a half additional time than to drive to a liquor outlet located within the locality, and a further additional hour and a half to return. That in itself is a significant disincentive. A further disincentive is that in Katherine, all takeaway liquor outlets are patrolled by POSIs – police officers or police auxiliaries who use their powers under Part 11 Division 1 of the Act (“Point of sale intervention”) to block the purchase of takeaway liquor by residents of general restricted areas¹² or alcohol protected areas,¹³ where the consumption and possession of liquor are not permitted. As a consequence, residents of, for example, Yarralin, would face very significant obstacles in purchasing takeaway liquor in Katherine, as indeed Yarralin residents who identified themselves as drinkers informed the Commission at the hearing.

50. Accordingly, the Commission is not persuaded that imposing supply restrictions within the locality would merely result in drinkers sourcing their takeaway liquor from Katherine.

51. However, the Commission does consider that there is good reason to fix the same conditions for the sale of takeaway liquor for all venues *within* the locality. As noted above, it takes about the same time to drive from Yarralin to Timber Creek as it does to drive from Yarralin to Top Springs. Currently, the conditions at the Top Springs Hotel are more restrictive than those at the Timber Creek Hotel. Accordingly, Yarralin residents who wish to purchase a significant quantity of takeaway liquor have a strong incentive to travel to Timber Creek rather than Top

¹² See Part 8 Division 3 of the Act

¹³ See Part 2, Division 2 and Division 7, *Stronger Futures in the Northern Territory Act 2012* (Cth)

Springs. The evidence received by the Commission strongly supports a finding that Yarralin drinkers generally obtain their liquor from the Timber Creek Hotel.

52. The Commission also considers that the fixing of uniform trading conditions on all three outlets in the locality mitigates the risk that one outlet trades with an unfair business advantage over its competitors.¹⁴

53. For these reasons, the Commission proposes to impose the same conditions for the sale of takeaway liquor on each of the three outlets in the locality.

54. The Commission has not received evidence of the proportion of takeaway liquor sold by the Timber Creek Hotel or Victoria River Roadside Inn to travellers, as distinct from locals. However, at the Yarralin hearing, Mr McDonald, the Timber Creek licensee, informed the Commission that his establishment charges \$102 for a carton of Victoria Bitter beer and \$133 for a carton of Jack Daniels pre-mixed bourbon and cola. These prices are considerably higher than those in larger population centres. As the Licensing Commission found in relation to the Top Springs Hotel, the Commission is inclined to find that few travellers who stop at the Timber Creek Hotel or Victoria River Roadside Inn purchase their takeaway liquor there, because they can and do stock up much more economically elsewhere. It follows that limited inconvenience to travellers would be occasioned by the restrictions on takeaway liquor that the Commission proposes to impose.

55. In its letter to the Minister for Alcohol Policy dated 10 May 2021, Walangeri Ngumpinku proposed that a “six can per person” limit be placed on takeaway liquor

¹⁴ Currently, two of the outlets, the Victoria River Roadside Inn and the Top Springs Hotel, have the same owner, but in 2020 the Top Springs Hotel was offered for sale with an asking price of \$3,000,000. The Commission has not been informed whether it remains on the market.

purchases in the locality. Although this letter was signed by the Chairperson, Deputy Chairperson and six Directors of the corporation, at the hearing in Yarralin some of the signatories appeared to be ambivalent in expressing their continued support for this proposal. On the other hand, the petition from Timber Creek residents dated 1 September 2021 proposed a limit of one carton of mid strength beer per person per day. That proposal corresponds closely to the existing Top Springs conditions, which, as far as the Commission is aware, have operated satisfactorily for the last seven years.

56. Although none of the evidence or submissions received by the Commission expressly contend that the imposition of restrictions on the supply of takeaway liquor in the locality would offend either the *Racial Discrimination Act 1975* (Cth) or the *Anti-Discrimination Act 1992* (NT), the Commission has considered this issue. In the view of the Commission, the variations it proposes to make to conditions would not be unlawfully racially discriminatory, because they would be a “special measure”. The Licensing Commission reached a similar view in the Top Springs decision.¹⁵ The Liquor Commission has itself previously considered legal aspects of this issue in some detail.¹⁶

Proposed variation of conditions

57. The Commission proposes variations to conditions based on the 2014 Top Springs Hotel conditions, with adaptations taking into account the subsequent

¹⁵ Top Springs decision, above, fn 3, at [89]

¹⁶ See Glen Helen decision, above, fn 8

implementation of the patron identification and Banned Drinkers Register schemes.

58. Victoria River Roadside Inn

Vary the Special Condition headed Takeaway Hours by omitting the current condition and substituting the following, under the heading "Takeaway Conditions":

- a. Liquor shall be sold only for consumption away from the premises during the following hours:
 - (i) Sunday to Friday inclusive between the hours 12:00 and 21:00
 - (ii) Saturday and Public Holidays between the hours of 10:00 and 21:00;
and
 - (iii) No trading on Good Friday or Christmas Day
- b. Liquor sold for consumption away from the licensed premises is restricted to any 'mid strength' liquor product in an individual container (e.g. can) not exceeding 400ml in capacity and not more than 3.5% alc/vol.
- c. Liquor sold for consumption away from the licensed premises is restricted to a maximum of 24 individual containers per person per day. The maximum number of sales of packaged bulk liquor (e.g. carton) for consumption away from the premises per vehicle is three (3) per day.
- d. The Director of Liquor Licensing is to provide the licensee with the documents required to be maintained for the purposes of compliance with this condition which requires recording the purchaser's name/ identification number/ date of birth/ alcohol type/ quantity/ vehicle description and registration number. The Director of Liquor Licensing will work with the

Licensee to assist in this process and minimise the time required to comply with this condition.

- e. Bona fide orders from cattle stations or work camps are not subject to restrictions on quantity or type of alcoholic beverage but the collection of purchased alcohol must occur within licensed hours. Orders must be placed on accounts and received at least one day in advance by telephone, by an order placed on the licensee's website, by a written order sent by electronic means to the licensee or by a postal order sent to the licensee. All documentation must be retained for each order and made available to an inspector on request.

59. Timber Creek Hotel

Vary the Special Conditions by omitting the condition under the heading "Sale of Cask and Fortified Wines" and inserting the following, under the heading "Takeaway Conditions":

- a. Liquor sold for consumption away from the licensed premises is restricted to any 'mid strength' liquor product in an individual container (e.g. can) not exceeding 400ml in capacity and not more than 3.5% alc/vol.
- b. Liquor sold for consumption away from the licensed premises is restricted to a maximum of 24 individual containers per person per day. The maximum number of sales of packaged bulk liquor (e.g. carton) for consumption away from the premises per vehicle is three (3) per day.
- c. The Director of Liquor Licensing is to provide the licensee with the documents required to be maintained for the purposes of compliance with

this condition which requires recording the purchaser's name/ identification number/ date of birth/ alcohol type/ quantity/ vehicle description and registration number. The Director of Liquor Licensing will work with the Licensee to assist in this process and minimise the time required to comply with this condition.

- d. Bona fide orders from cattle stations or work camps are not subject to restrictions on quantity or type of alcoholic beverage but the collection of purchased alcohol must occur within licensed hours. Orders must be placed on accounts and received at least one day in advance by telephone, by an order placed on the licensee's website, by a written order sent by electronic means to the licensee or by a postal order sent to the licensee. All documentation must be retained for each order and made available to an inspector on request.

60. Top Springs Hotel

Vary the Special Conditions headed "Takeaway Hours and Restrictions on the Sale of Takeaway Liquor" by omitting the current conditions and substituting the following, under the heading "Takeaway Conditions":

- a. Liquor shall be sold only for consumption away from the premises during the following hours:
 - (i) Sunday to Friday inclusive between the hours 12:00 and 21:00
 - (ii) Saturday and Public Holidays between the hours of 10:00 and 21:00;and
 - (iii) No trading on Good Friday or Christmas Day

- b. Liquor sold for consumption away from the licensed premises is restricted to any 'mid strength' liquor product in an individual container (e.g. can) not exceeding 400ml in capacity and not more than 3.5% alc/vol.
- c. Liquor sold for consumption away from the licensed premises is restricted to a maximum of 24 individual containers per person per day. The maximum number of sales of packaged bulk liquor (e.g. carton) for consumption away from the premises per vehicle is three (3) per day.
- d. The Director of Liquor Licensing is to provide the licensee with the documents required to be maintained for the purposes of compliance with this condition which requires recording the purchaser's name/ identification number/ date of birth/ alcohol type/ quantity/ vehicle description and registration number. The Director of Liquor Licensing will work with the Licensee to assist in this process and minimise the time required to comply with this condition.
- e. Bona fide orders from cattle stations or work camps are not subject to restrictions on quantity or type of alcoholic beverage but the collection of purchased alcohol must occur within licensed hours. Orders must be placed on accounts and received at least one day in advance by telephone, by an order placed on the licensee's website, by a written order sent by electronic means to the licensee or by a postal order sent to the licensee. All documentation must be retained for each order and made available to an inspector on request.

61. Vary the Special Condition headed "Camera Surveillance Requirements" by omitting "and the appearance of the salesperson." and substituting:

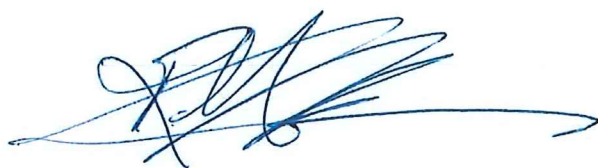
and the appearance of the salesperson; and of the liquor storage area designed and operated so as to record the entry and exit of all persons into and out of the area, and the appearance of those persons.

62. The Commission invites the licensee of the Top Springs Hotel to consider installing an alarm system to protect the liquor storage area, a step that may assist the licensee to satisfy the Commission that it is operating in compliance with Regulation 19 of the *Liquor Regulations 2019*.

Invitation to respond

63. Pursuant to section 113(2)(c) of the Act, the Commission invites affected licensees to submit a response to the proposed variations within 28 days after the date of this notice.

64. The Commission also invites other interested parties to submit a response to the proposed variations within 28 days after the date of this notice.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

17 January 2022

On behalf of Members Goldflam, Carson and Hart



WALANGERI NGUMPINKU ABORIGINAL CORPORATION

Hon Natasha Fyles
Minister for Alcohol Policy
GPO Box 3146
Darwin, NT 0801
C/- minister.fyles@nt.gov.au

10 May 2021

Re: Alcohol in Yarralin Community and Surrounds

Dear Hon Natasha Fyles,

We are writing to you as community leaders of Yarralin. Over the past several months there has been an increase in alcohol related incidents in our community. This includes drunk drivers causing accidents, disturbances late into the night, and arguments between family members. These incidents have already resulted in injuries and deaths in our community. It is also affecting those in community who hold jobs, being kept up all night due to noise, drunken fighting, and arguments.

There have already been two fatal road accidents involving alcohol in the last 6 months, where community members have died and been injured.

Of great concern, is that these behaviours are now being picked up by our children. Both One Tree Community Services who run our creche, and our School Principal, have noted an increase in aggressive behaviours in children at child-care and school. With a marked increase in aggressive play-fighting, including an incident where a child had to be sent to the clinic. Children are learning these behaviours in community and taking them to school.

We are a dry community but some members of our community are bringing alcohol in. Our new Police Sergeant is doing his best but those in community who are taking part in the drinking know when the Police are asleep. Community know when Police are patrolling our roads, and they wait until the Police have gone home before they do a grog run.

This is also compounded by the roadhouses and motels in our region who we believe are not doing the right thing. We know our community members have been able to buy more alcohol than they should be. Possibly driven by a reduction in revenue as a result of COVID, resulting in the motels seeking other avenues to obtain revenue by taking advantage of community members and selling them more alcohol than allowed under their license.

We also believe some members of community are bringing in drugs and alcohol on the plane, when they return from travel to Darwin for medical and other reasons.

That is why we are writing to you. We are requesting:

- Restriction of take-away alcohol to six cans per person at Timber Creek, Victoria River Roadhouse, and Top Springs.

- Enforcement of the Liquor License restrictions in our area, including support for our local Police Sergeant to enforce alcohol restrictions and related laws as required.

However, we also know that this will not be enough. Those community members seeking alcohol already spend hours on the road travelling. In one incident, a vehicle got a flat tire doing a suspected grog run, and was left in the middle of the road with two occupants while a second vehicle continued. Returning for the first vehicle's occupants 12 hours later. Having to drive further to Kununurra or Katherine is not enough of a deterrent.

We know we need to engage parents with their children. We also need activities for community to keep them healthy and provide them with other alternatives to drinking.

There are a number of programs which we believe may help. That is why we are also asking for assistance with them:

- Victoria Daly Regional Council receives funding for a Sport & Rec position, however they have had difficulty seeking appropriately qualified candidates from within local community. An increase in funding to allow the hiring (and accommodation) of an external candidate may be required. Someone who can then take on a local assistant or two that they can train.
- The local Police Sergeant is running programs once a fortnight in the Police Station's Conference Room, with table tennis and other activities. This is getting good feedback and engagement with our children, and we want to see support for it to be expanded to more nights every week at an appropriate venue, with a Sport & Rec Officer.
- There are no School Holiday programs run in Yarralin. We would like to see programs like Child Safe for Kids, Positive Parenting Programs, and other programs that can assist us in addressing the family violence and parenting issues in community.
- We have limited sports and recreational facilities in community. We are currently exploring the development of a new store, so that we can turn our existing store into a community centre with computers for internet banking, TVs and game consoles, and other activities such as art, or cooking programs that can all keep people engaged and away from drink. We will be seeking Federal Funding but support for this project would be appreciated.
- We are also exploring the construction of a Multi-functional Sports, Entertainment & Cultural Centre. Consisting of a multi-purpose sports court, library, and changing rooms. We are currently working with Victoria Daly Regional Council and Engineers Without Borders on design and costings.

We understand these programs will cost money, however we believe the savings from reduced health-care issues, Police involvement, along with less accidents and deaths on the road, will more than off-set these over the long-term future of our community. According to "The cost of road crashes in Australia 2016: An overview of safety strategies", Frederick Litchfield, 2017, Australian National University, the average cost per road fatality in Australia is \$7.8 million, with a cost per serious injury of \$310,094.

We request your support in seeking further development of programs appropriate for our community.

Yours sincerely,

Samantha Campbell
Chair



Selina Campbell
Deputy Chair



Brian Darby
Director

BRIAN DARBY

Wesley Campbell
Director

W. Campbell

Johnny Dan
Director

J. Dan

Coin Campbell

Coin Campbell
Director

Sharatine Campbell
Director

Sharatine Campbell

Brian Pedwell

Brian Pedwell
Director