

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PROCEEDING:	Application for declaration of a Restricted Area and Permit System
APPLICANT:	Harmony Mäwaya Mala Inc (Harmony)
HEARING:	Nhulunbuy Courthouse – 29 - 31 August 2006
HEARD BEFORE:	Ms Elizabeth Morris (Presiding) Ms Brenda Monaghan Ms Veronica McClintic

BACKGROUND

- 1) On 10 April 2006, Banambi Wunungumurra, Chairperson of East Arnhem Harmony Mayawa Mala Inc (Harmony) made a formal application to the Licensing Commission for the Gove Peninsula to be declared a Restricted Area under Part V111 of the *Liquor Act*. The application was a culmination of many years of discussion and debate about the best ways to deal with the serious and increasing problems related to alcohol abuse in the Gove Peninsula area.
- 2) In February 2006, a detailed report was commissioned by Racing Gaming and Licensing and prepared by Wearne Advisers in conjunction with the School of Australian Indigenous Knowledge Systems, Charles Darwin University (the Wearne Report¹). This report followed a period of considerable consultation with various indigenous and non-indigenous stakeholders. Its contents include a history of alcohol supply in the area, the main indicators of harm resulting from alcohol abuse, licensing reform options favoured by various Yolgnu and non-Yolgnu stakeholders and specific recommendations for reform. It states that “the majority of Yolgnu have

¹ Found at http://www.nt.gov.au/nt/licensing/liquor/Gove_Alcohol_Final_Report.pdf

consistently opposed the imposition of alcohol onto their traditional land for over 30 years and believe these calls have been ignored and overridden.”² The Wearne Report also provided quantitative and qualitative evidence which emphasises the pivotal role alcohol plays in incidents of suicide and attempted suicide, illness and poor health, high police apprehensions, lower educational outcomes, homelessness and disruption to culture. This detailed report formed the basis of the present application by Harmony to the Commission.

- 3) The applicant, Harmony, comprises around 35 indigenous and non-indigenous community stakeholders who joined over 3 years ago to address various community issues including the impact of alcohol abuse in the Gove area. Harmony includes representatives from indigenous councils, Federal and NT government departments, non-government organisations and Alcan, the principal employer in the area.

THE PROPOSAL

- 4) The written proposal and supporting documentation put forward by Harmony is well prepared and well presented and we commend the group on its considerable efforts. The proposal allows residents and visitors to continue to patronise the current licensed premises³ with no further restrictions being imposed on hours of sale or types of liquor sold. There is a clear police presence within the township and it also remains incumbent on each licensee to control patron behaviour on his or her premises in accordance with the *Liquor Act* and licence conditions.
- 5) The applicant’s view is that “more value would be gained from restricting takeaway liquor to those identified *at risk* persons” and the proposal dramatically changes the current process for the supply of takeaway liquor in the designated region⁴. The proposal is for the entire Gove Peninsula (excluding licensed premises and with some limited exceptions) to be declared a restricted area. Under Part V111 of the *Liquor Act*, alcohol can only be possessed or consumed in a restricted area if the person in question (whether a resident or a visitor) has a permit. Harmony proposes a permit system with details of all permits issued to be retained on a networked computer database accessible by all sellers of takeaway liquor in the relevant

² The Wearne Report at page 9

³ Walkabout Lodge and Tavern, Mac’s Liquor (Woolworths), Arnhem Club, Gove Yacht Club*, Gove Surf Club*, Gove Golf Club*, Construction Village Social Facility for G3 staff only. (* Restricted entry and Sale of takeaway liquor to financial members only)

⁴ The area defined is generally described in the application as bordering the existing restricted area boundary of the Galiwinku/Gapuwiyak restricted area and extending south to include all lands from the northern banks of the Walker River north to the bottom apex of the current area and eastwards to include all land including Woodah Island, up to and including the Gove Peninsula, including the township of Nhulunbuy, Ski Beach, Yirrkala and the existing recreational areas managed by Dhimurru. It does not include seas and rivers (refer pages 10 & 11 of application brief)

area. The central computer will be located at the police station. The information will be regularly updated to ensure that each licensee has access to the same information about the restriction of sale of liquor (if any) to any particular customer current as at the time of sale.

- 6) For those who reside in Nhulunbuy, it is proposed that the initial permits will be issued by the Officer In Charge of Nhulunbuy Police Station whose powers to approve permits will be delegated powers from the Commission. The Commission who will of course retain its review power over such decisions. A Permit Officer/s will be employed to process the applications. All Nhulunbuy residents (including fly-in fly-out contractors) or bona fide visitor will be issued with a permit with no initial restrictions on it in relation to the quantity or type of liquor able to be purchased. For those who reside outside Nhulunbuy in outlying communities such as Yirrkala and Ski Beach, then the granting of permits is a decision to be made by the Gove Peninsula Liquor Committee (the Liquor Committee) after receiving advice from the community or homeland in question.
- 7) Should a permit holder commit some act that brings into question his or her right to hold a permit, then this decision will also be referred to the Liquor Committee to be dealt with. The Liquor Committee will be comprised of local community members representing various formal interests such as Police, Family and Children's Services, Alcohol and Other Drugs, nominated members from each of the following communities: Marngarr, Yirrkala Dhanbul, Nhulunbuy, Laynhapuy Homelands and Gumatj Homelands and other interested groups as is appropriate. This group (or a quorum of the group) will meet regularly in order to consider permit applications from outlying areas and all recommendations for permit restrictions in cases where a permit holder's alleged behaviour warrants such measures being taken or where an community ceremony requires permit restrictions to be imposed. If the terms of a permit are breached, the liquor Committee will be able to require the permit holder to undertake certain steps such as completions of an alcohol awareness programme or rehabilitation. The composition of the group hearing any particular matter will depend on the circumstances and members will be required to abstain from involvement in cases of perceived conflict. Finally, the proposal requires all complaints to be subject to a report to police or another agency such as FACS or Health. The Liquor Committee's powers to grant and revoke permits or place conditions on a permit will be delegated to it by the Commission who will of course retain its review power over such decisions. Where an urgent decision is required regarding revocation of a permit, the matter will be referred to the Licensing Commission.
- 8) Each outlying community will need to decide whether it wants its residents (indigenous and non indigenous) and visitors to the community to have

access to takeaway liquor. As takeaway liquor can only be consumed in a permit holder's home or other designated area, it is vital for each individual community to decide whether or not it wants to allow any alcohol to be consumed on its land. Alternatively, a community might want restrictions placed on the amount of alcohol residents could bring back to their homes. If a particular homeland community says it wants no liquor on its land, then none of its residents will get a permit and signs will be erected to make it clear to visitors that no liquor is allowed. If it wants only limited amounts of alcohol to be brought into the community, then the permits issued will reflect that limitation. Further, an individual is able to ask for conditions to be placed on their own permit if they themselves have an alcohol problem or if they have in the past been subjected to "humbug" and wish to avoid it.

- 9) The proposal before the Commission will allow permit holders who reside in Nhulunbuy in purpose built residential accommodation to access purchase and consume liquor in accordance with their permits at:
 - a) Their residence and the residence of friends (upon invitation)
 - b) Recreation areas designated suitable for drinking by Dhimurru (with Dhimurru Recreation permits) or the NLC including areas such as Cape Wirrawuy.
 - c) Sporting and social functions such as approved sporting events on Hindle Oval or Rotary Beach Volleyball.
 - d) Other unspecified recreation areas.
- 10) Once a permit has been issued (which includes the scanning onto the centralised computer database one (1) or several forms of personal ID), the permit holder will need to produce the same photo identification (eg a drivers licence, 18+ drinker's card or passport) as was scanned to obtain takeaway liquor. The staff serving the customer will be required to ensure that the photo matches the physical characteristics of the customer before them. If so, then the staff member will check the customer's name against the permit database to ensure that there are no prohibitions or restrictions on the sale of alcohol to that person. It is anticipated that all suppliers of takeaway will have access to a networked database containing details of all permits issued. It will be important to ensure that the privacy of individuals whose information is on the database is respected and protected from misuse. If the network is "down" then it is proposed that permitholders will need to produce their written permit to obtain alcohol.

The Hearing.

- 11) The application made by Harmony was the subject of a public hearing at Nhulunbuy on 29 and 30 August 2006. It was well attended by various stakeholders including the affected licensees and both Woolworths (Mac's Liquor) and the Walkabout Tavern provided written and oral submission at the hearing. Evidence was presented to the Commission by representatives for the applicant, by Sgt Tony Fuller and several other Yolgnu and non-Yolgnu residents. The quality of the application and presentation was commendable. The evidence of several Yolgnu women was particularly important. They emphasised that alcohol is a major contributor to endemic social and health problems that exist in East Arnhemland-particularly impacting upon the indigenous population. Yolgnu women spoke of the pain of losing family members to alcohol and their feelings of desperation and powerlessness to protect their communities and particularly their youth. The evidence presented was compelling.
- 12) Also at the hearing, Mr Roger Steele as a representative for Woolworths Limited addressed the Commission on the Licensee's general support for Harmony's efforts to address a serious problem but expressing their concerns regarding the complexities of the permit proposal being put forward. Mr Steele outlined several simpler permit proposals as Woolworth's preferred option. In written submissions, Woolworths raised many issues of concern including the difficulties of developing and implementing a complex technological solution in a remote and often challenging environment, concerns about the cost of the proposal including ongoing expenses, privacy issues and the added burden on staff members that the proposal entails.
- 13) Mr Tourish from the Walkabout Tavern supported "*in principle a proposal that will place restraints or permits on persons who abuse the takeaway access of alcohol*" but submitted that there were a number of shortcomings in this current proposal. These concerns included the difficulties in obtaining permits for those only visiting (such as tourists), the likely impact on applicants if the permit office is only open office hours, concerns about the reliability of a central data system including the likely expense of introducing and maintaining the same, reliability of the computer network data system in an area with a poor record of telecommunications stability and concerns about competition, privacy and discrimination issues generally.
- 14) After hearing the full proposal from the applicant Harmony and also the concerns of major licensees, the Commission considered it would be of assistance for them to publicly state the Commission's position. To this end, the Commission indicated publicly its "in principle " support for Harmony's proposal as outlined above. In doing so, it did not ignore the very valid concerns of licensees but was willing to give the applicant the opportunity to work through those concerns and hopefully find solutions. If successful, this

proposal will allow only responsible drinkers to continue to purchase takeaway alcohol and will undoubtedly impact positively on the level of violence, antisocial behaviour and alcohol related health and social issues within the area. Our “in principle” decision allows Harmony, homeland communities and other stakeholders to now consider the detail of the proposal and provide the Commission with sufficient information for it to be satisfied that the final scheme is appropriate for the area and is workable.

15) Whilst a considerable amount of detail has been provided to the Commission and other stakeholders by the applicant, some further clarification is required in various areas. Further, other details already provided may change once decisions are made on the final form of the permit system that is proposed. Before giving a final approval, the Commission will need to be fully informed about all relevant details of the final proposal and will be particularly interested in the following information:

- a) Confirmation of the boundaries of the proposed restricted area. As a general rule, licences cannot be granted under Part V111 of the *Liquor Act* in a restricted Area⁵ and all licensed premises as defined by their boundaries will need to be clearly excluded from the restricted area.
- b) The proposal suggests that permit holders will be permitted to consume liquor in specified public places (such as Cape Wirrawuy) and at specified public events (such as Rotary Beach Volleyball or sporting events on Hindle Oval.) The Commission will have to consider carefully each individual proposal allowing permit holders to drink in public places or recreation areas. It may be that the applicant should consider closely the new Public Restricted Area amendments under Part V111 of the *Liquor Act* –which allow for special licences to be granted for special events within a restricted area and further details will need to be provided to the Commission about this issue.
- c) Consideration will need to be given to Clubs and community organisations who currently have special licences for members or events to decide whether any of these private premises will be exempt from the Dry area to allow the licences to continue. The Commission will need to be satisfied that adequate consultation has taken place with those affected clubs and that the final proposal with respect to any or all of these licences is sensible and workable.

⁵ There is one exception being the recently enacted amendments to Part V111 that allow “public restricted areas” to be declared Dry but with the ability for special licences to be granted for functions such as weddings or festivals (see Part V111, Division 1B of the *Liquor Act*.) These amendments commenced on 19 September 2006 and may be of assistance in areas such as Hindle Oval allowing it to be declared Dry but retaining the ability for the Commission to grant a special licence for a community event from time to time. This will depend on whether the Oval can be defined as a “public place” for the purposes of this section (see s74 (1A) of the *Liquor Act*).

- d) Clear details of the final model of permit system to satisfy the Commission that the system is reasonable, functional and sustainable for this particular area including details of proposed permit rules, the Liquor Committee's final composition, constitution and procedures and rules to protect the privacy of personal information and details of the guideline they intend to follow when imposing restrictions for permit breaches.
 - e) Sufficient information to enable the Commission to be satisfied that the outlying communities have been adequately consulted about the permit system and that they have provided details of any proposed permit conditions for their own communities to the applicant. They need to be aware that these general conditions will apply to all residents on their communities both indigenous and non-indigenous (ie conditions limited to a clan group for example would be considered discriminatory). There also needs to be clarification as to whether it is proposed that all permit holders from the township and outlying communities can buy takeaway to drink in the designated public areas or whether the applicant was considering one rule for town residents and one for others.
 - f) Whether there are any funding issues that the Commission should be aware of that might impact on the time frame for implementation (1 March 2007) or the adequacy or sustainability of the proposed system.
 - g) Confirmation that, with the assistance of Racing Gaming and Licensing and the Office of Alcohol Policy, appropriate community education and communication strategies will be in place prior to the commencement of the scheme.
- 16) The Commission will also need to be satisfied that there are no legal impediments to the introduction of the permit system that might concern the Commission or any stake holders (and in particular licensees who in practical terms must be intrinsically involved in the supply proposal). To this end, the Commission will need to be satisfied that potential privacy, discrimination and competition issues have been considered and dealt with and will work with the applicant and other stakeholders to address any concerns once the details of the final scheme are known. It is difficult for us at this stage to clearly identify issues of concern. We are aware that once the applicant has clarified what specific personal information regarding permit holders will be accessible by licensees/the Officer in Charge of Nhulunbuy Police Station/the Liquor Committee and how that information will be stored, the NT Information Commissioner will be able to give guidance on any outstanding privacy issues or any necessary measures such as the need for guidelines governing the use and storage of information. Further the Antidiscrimination Commissioner has expressed a willingness to play a similar role. Finally, once the Commission has the detailed final proposal, we can take steps to satisfy

ourselves that the scheme does not offend any other legislation.

- 17) Once in force, this liquor supply plan will hopefully be an effective tool to assist in controlling many alcohol related problems that currently plague the Gove Peninsula. A supply plan cannot work in isolation however and its overall success will depend on other community strategies aimed at reducing demand and minimising harm. We note that the wider Gove community has already instigated many meaningful initiatives such as community based patrols and a special care centre and we are confident that the community will work with the Office of Alcohol Policy to introduce an Alcohol Management Plan.
- 18) The Commission is interested in working with the applicant, licensees and other stakeholders on this liquor supply proposal as we accept that the most important right is “the right of community members particularly women and children to lead peaceful and productive lives free from violence, suicide and other trauma⁶”.
- 19) The Commission now awaits with interest the final proposal following discussions between stakeholders and addressing the issues outlined above.

Elizabeth Morris
Presiding Member
6 October 2006

⁶ Wearne Report