

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

**Application by the East Arnhem Harmony Mayawa Mala Inc
("The Harmony Group") Seeking A Declaration that an Area of
East Arnhem Land be Declared a General Restricted Area
Pursuant To Part VIII Of The *Liquor Act***

and

**Application by Assistant Commissioner Graham Kelly for the
Declaration of Certain Areas in the East Arnhem Region to be
Declared Public Restricted Areas**

Applicants: Assistant Commissioner Graham Kelly
East Arnhem Harmony Mayawa Mala Inc ("The
Harmony Group")

Date of Hearing: 8 and 9 August 2007

Legislation: Part V111 Divisions 1B, and 2 of the *Liquor Act*

Members: Mr Richard O'Sullivan (Chairman)
Ms Helen Kilgariff
Mr John Brears

Appearances: Mr Craig Smyth, Counsel Assisting the Commission
Mr Greg Lye for the Director of Licensing
Ms Jodi Mather for Department of Justice

COMMISSION'S NOTE

There were two hearings into separate but related applications, one a General Restricted Area application, the other, a Public Restricted Area application, both for the sake of expediency heard before the Commission on 8 and 9 August 2007. The proper operation of the general restricted area relies in part on the implementation of the public restricted areas. The two applications strike a balance between the controlling alcohol abuse whilst allowing responsible consumption of alcohol for social or community events. The effect of the two applications is akin to a swiss-cheese type arrangement - the general restricted area is a large area in which alcohol is prohibited, the public restricted areas are a group of smaller areas over which alcohol is allowed pursuant to a special permit.

APPLICATION FOR GENERAL RESTRICTED AREA

BACKGROUND

- 1) This is an application by the East Arnhem Harmony Mayawa Mala Inc (“the Harmony Group”) seeking a declaration that an area of East Arnhem Land be declared a General Restricted Area pursuant to Part VIII of the *Liquor Act*. As is required by Section 77 of the *Liquor Act* a Northern Territory Licensing Commission (“the Commission”) hearing was held in Nhulunbuy on 8 – 9 August 2007. The purpose of that hearing was to allow the applicant the chance to respond to a number of issues raised by an earlier, but differently constituted, Commission hearing on 29-31 August 2006. In conducting the hearing it was necessary to re-hear much of the evidence presented at the first hearing.
- 2) On 10 April 2006, Mr Banambi Wunungmurra, Chairperson of the Harmony Group made a formal application to the Commission for part of East Arnhem Land to be declared a restricted area pursuant to Part VIII of the *Liquor Act*. The Commission was informed that the application was a combination of many years of discussion and debate about the implementation of strategies aimed at minimising harm associated with alcohol misuse in the region. On consideration of the application the Commission held a hearing on 29 August 2006 in Nhulunbuy. At that hearing a number of submissions were made by various stakeholders including the Harmony Group, Licensees and Yolgnu community members. On 31 August 2006, the Commission gave its “in principle support” for the proposal. In doing so, the Commission did not ignore the concerns raised by the Licensees and provided a further opportunity to the Harmony Group to clarify a number of issues. On 6 October 2006 the Commission published its In Principle decision. The Commission identified the following issues which required clarification;
 - a. Confirmation of the boundaries - the Commission required better definitions of the boundaries that would be included or excluded from any restricted area.
 - b. Use of the Public Restricted Area amendments pursuant to Part VIII of the *Liquor Act* - the Commission recommended that the Harmony Group consider whether recent amendments to the *Liquor Act*, namely Public Restricted Area amendments, could be utilised in their proposal.
 - c. Consultation with clubs and community organisations - the Commission recommended that consideration be given to wide consultation with clubs and community organisations, particularly those who have special licenses for members or events.
 - d. Details of the final model of permit system - the Commission required clear details of the final model of the permit system to satisfy itself that the system was reasonable, functional and sustainable.
 - e. Homelands community consultation about the permit system - the Commission required sufficient information to enable it to be satisfied that the out-lying communities had been adequately consulted about the permit system and that they had been provided details of any proposed permit conditions for their own communities to consider.

- f. Funding issues - the Commission required information as to funding issues of the permit system.
 - g. Community strategy - the Commission required confirmation with the assistance Racing, Gaming and Licensing and the Office of Alcohol Policy that appropriate community education and community strategy would be in place prior to the commencement of the scheme.
 - h. Legal impediments - the Commission required information to satisfy itself that potential privacy discrimination and competition issues had been considered and dealt with in conjunction with other stakeholders to address any concerns.
- 3) In response to the issues raised above, the Harmony Group submitted a final submission, which was presented to the Commission at the hearing.

THE APPLICATION

- 4) The Harmony Group's application is one of a number of initiatives proposed to address the serious alcohol related issues within the East Arnhem Land Region. The Harmony Group has acknowledged that their proposal is not the panacea to alcohol related crime and anti-social behaviour in the area, but if implemented will play a significant part in the alcohol management plan. The Harmony Group has recognised that supply reduction, early intervention and rehabilitation are fundamental to addressing alcohol problems in the community.
- 5) **(a) The proposal for a General Restricted Area**

The Harmony Group's application requests that the Commission declare a General Restricted Area for the area of the land to the south and south east of the current boundaries of the Galliwinku/Gapuwiyak restricted areas, including all land from the northern banks of the Walker River, north to the bottom apex of the current restricted area and eastwards to include all land, including Woodah Island, up to and including the Gove Peninsula, including the township of Nhulunbuy and all of Wigram Island. The proposed area does not include the sea, however does include all land within the boundaries of the General Restricted Area. The proposed area also encompasses the existing recreational areas managed by the Dhimurru Land Management Corporation. Detailed maps were provided to the Commission as well as relevant geographic co-ordinates.

The proposed General Restricted Area encompasses the following communities and their areas of land;

- The Laynhapuy Homelands and its outstations;
- The Gumatj Homelands and its outstations;
- The Yirrkala Dhanbul Community;
- All that area of land occupied by the ALCAN Mining Corporations, including the township of Nhulunbuy to Wallaby Beach;
- Galaru (an existing Restricted Area);

- The Marngarr Community Government Council Communities of Gunyangara (Ski Beach) and Galupa; and
- All of Wigram Island (an existing tourist/fishing/safari camp, which belongs to the Galiwinku Community).

The implementation of the Harmony Group's application will also require modification of existing General Restricted Areas. The current application includes the present General Restricted Areas of Yirrkala and Galarru (East Woody), which will need to be revoked. Further, the application proposes that Wigram Island be included in the East Arnhem area. Thus, the restricted area of Elcho Island will need to be revoked and re-declared, so that Wigram Island can be included within the East Arnhem General Restricted Area.

The Harmony Group's application also contemplates the declaration of a number of Public Restricted Areas under Part VIII of the *Liquor Act*. That application is the subject of a separate application, made by the Northern Territory Police, which was heard on the same dates as this application.

The Harmony Group's application also requires the excision of licensed premises from the General Restricted Area. Licensed premises cannot exist in a General Restricted Area and therefore are required to be excised. The licensed premises sought to be excluded from the General Restricted Area are as follows;

- Walkabout Tavern (on the takeaway licence);
- Walkabout Lodge (on licence only);
- Arnhem Club (on and takeaway licence);
- Woolworths Nhulunbuy (takeaway only);
- Nhulunbuy Surf Life Saving Club (on licence only);
- Gove Country Golf Club (on and takeaway licence);
- Gove Yacht Club (on and takeaway licence);
- Police Club (Continuing Special - on licence);
- Norforce (an area exempted under section 5(1)(b) of the *Liquor Act*).

6) (b) The Permit System

The Harmony Group's application contemplates the introduction of a liquor permit system to regulate consumption within the General Restricted Area. In its broadest sense it is proposed that persons who wish to purchase takeaway alcohol in the General Restricted Area will require a permit issued by the Licensing Commission pursuant to Section 87 of the *Liquor Act*. Permits will allow residents to purchase take-away liquor and transport it back to their residence for consumption.

The Harmony Group's application proposes that the issuing of permits, and the control of the sale of take away alcohol, will be facilitated through an "Alcohol Management System" designed and supplied by ID Tect Pty Ltd. ID Tect is a software development company specialising in the use of

identification technology for the purposes of behavioural management. Further, as a result of extensive consultations with each of the East Arnhem Communities it is also proposed that a permit application process will be unique to each area and facilitated through a permit committee.

The Harmony Group's application evidences extensive consultations with various communities. The Commission was presented with evidence of the various views of those Communities in relation to the issuing of liquor permits to their respective community members. The outcomes of those consultations and the wishes of those communities are expressed in summary form as follows:

- i)** Laynhapuy Homelands - no permits are to be issued.
 - ii)** Gumatj Homelands and outstations - no permits are to be issued.
 - iii)** Yirrkala – is presently a General Restricted Areas with permits available to its members. The community wishes to retain the option of allowing permits for its community members. However, the community has suggested a six (6) month beer only restriction on any new permits. The issue of permits will be facilitated by the Yirrkala liquor permit committee.
 - iv)** Galaru - no permits to be issued.
 - v)** Marngarr Community Government Council Communities, Gunyangara (Ski Beach) and Galupa - the community has expressed a wish to allow the opportunity for their members to apply for permits which will be facilitated via the Marngarr-Gumatj alcohol permit committee.
 - vi)** Wigram Island – no permits are to be generally issued. However it is proposed that guests to the existing tourist fishing safari camp on Wigram Island will be able to obtain liquor permits to allow them to purchase takeaway liquor to be transported to the camp site where it can be consumed.
 - vii)** Nhulunbuy and Wallaby Beach – permits will be allowed, with applications to be made directly to the Commission or its delegated representative. A permit committee will be established to deal with variation or revocation of permits only.
- 6) The Harmony Group's application proposes that the liquor permits should be issued on a three (3) year basis to permanent residents, and on a six (6) monthly basis to temporary residents. Applications will be able to be filed at one of the two available locations, either at the Nhulunbuy Court House in Endeavour Square, Nhulunbuy or at the Licensing Commission in Knuckey Street, Darwin. Applicants will be required to produce proof of local residence which they must nominate as their principal address for the possession and consumption of liquor. Such proof of residence would include items such as a driver's licence, rental agreement or power bill, letter from the employer, declaration from the Manager of accommodation facility or a statutory declaration from a family member or friend that lives in the region. It will also be a requirement that applicants from communities outside Nhulunbuy will also need to produce a letter from their Local Community Council or homelands providing details as to residency.

- 7) In order to apply for a liquor permit all applicants will be required to produce up to three forms of identification which may include a driver's licence, passport, proof of age card, Medicare card or health card and/or Arnhem Club membership card. Photographic identification will be preferred, however, if applicants can not produce photographic identification a form of identification with a letter from the applicant's local community council providing proof of residence will often be sufficient. Once the identification is presented it will be scanned into the Alcohol Management System at the Court house or the Licensing Commission and stored for future recognition at the point of sale.
- 8) As discussed above, the Harmony Group's application proposes the establishment of liquor permit committees to provide recommendations to the Licensing Commission in support, or otherwise, of a permit application. The proposed work flow process for the liquor permit committees is as follows:
- The applicant will lodge their application with their respective community government council.
 - The application will be assessed by the relevant liquor permit committee.
 - Application forms must be either endorsed as being supported, or not, together with a description of any restriction applied by the liquor permit committee.
 - The application form will then be forwarded to the OIC Nhulunbuy Police Station who will then conduct a similar process, that is, sign and endorse the application and support, or not, the application.
 - The application form will then be returned to the applicant.
 - The applicant will then lodge their application form (generally by attending the Nhulunbuy Court House).
 - The applicant will then be required to produce sufficient identification providing proof of age and residential address.
 - Once satisfied as to the applicant's identity the official will then process the application which involves the capture of the digital photograph of the applicant to be stored on the Alcohol Management System.
 - The applicant will be provided with an A4 size liquor permit specifying the terms and conditions.
- 9) The membership of permit committees will comprise members of the local community, the Harmony Group, Northern Territory Police and Department of Health and Community Services. Terms of reference for each permit committee were provided to the Commission.
- 10) In addition to the issue of a permit allowing the purchase of take away alcohol the Harmony application also proposes a system of potential restrictions which can be placed on the permits. Restrictions could be imposed for a number of reasons including as recommended by the liquor permit committee, if the person had a health problem, if they had breached a permit condition, had committed an alcohol related offence or had voluntarily requested the restriction. The restriction may be in terms of type of alcohol and/or volume of alcohol able to be purchased by that permit holder.

- 11) In response to a number of concerns raised by Licensees an interim permit system was also proposed to allow very short term visitors to Nhulunbuy to attain a liquor permits without the need to attend the Nhulunbuy Court House. It is proposed that short term visitors, such as tourists or business people, will be able to pre-apply for a permit prior to arriving in Nhulunbuy. Interim permit applications will be available from the internet, and possibly other locations such as police stations, government offices or by mail. Applicants will be required to provide details (such as drivers licence or passport number) from one form of specific photographic identification. If approved, the applicant will be required to present that piece of photographic identification at the point of sale in order to purchase take away alcohol. It is envisaged that the interim permit would be applicable for 28 days.
- 12) At the heart of the implementation of the permit system, as proposed by the Harmony group, is the Alcohol Management System. In summary, the Alcohol Management System enables verification of a permit holder prior to purchase of take away alcohol. It is proposed that each takeaway liquor licensee will be issued with a computer node linked via wireless telephone internet connection to a central server in Darwin. The central server will store all permit information, including digital photographs and other relevant details of the permit holders. The store located nodes will also store encrypted information relating to permit holders including an encrypted photograph, unique identification number and any imposed restrictions applicable to the permit holder. The purpose of the server will be to centrally store information and to update store nodes, for new permits or restrictions, on a regular basis.
- 13) On purchasing alcohol a customer will be required to provide a form of specific identification to the teller, the teller would then scan the identification in the Alcohol Management System, the system would then check the identification against the permit database. If a permit had been issued for that form of identification the scanned photographic image of the permit holder and any restrictions would appear on the computer screen for the teller to view. The permit holder would then be entitled to purchase the liquor subject to any restrictions imposed on the permit. Where a person under permit was subject to restricted volume purchases, the teller would be required to enter the volume of the particular alcohol purchased for that particular person for that transaction. If a customer purchases more than their restricted amount, email notifications are generated automatically by the system and sent to Commission staff indicating a possible breach of permit restrictions.
- 14) At the hearing a number of issues were raised in relation to the Licensees' obligations where a technological problem caused a failure of the Alcohol Management System either at the point of sale computer or the central server. The Harmony Group suggested that in such circumstances the licensee's teller could record the names and details of customers who purchased alcohol for later data entry. However, that raised a number of privacy issues including the handling of private information by Licensees. In response to such concerns the Commission proposes to make compliance with the permit system a condition of each licensee's liquor license. A failure to abide with the requirements of the permit system will constitute a breach of a licence. However, the Commission recognises the remote possibility that the Alcohol Management System may have failure or interruption. In such circumstances, a licensee, by virtue of another licence condition, will not be

required to comply with the permit system. However, malfunctions will be required to be reported and the server system will know when store nodes are not functioning. Licensees will not be required to record purchase details of individuals if the Alcohol Management System is not functioning.

PRIVACY AND DISCRIMINATION ISSUES

- 15) In response to the prior recommendations of the Commission a number of responses were sought from the Northern Territory Information Commissioner, the Northern Territory Anti-Discrimination Commissioner, and the Australian Consumer and Competition Commission (“the ACCC”). Each organisation was provided with full details of the Harmony Group’s application. Each organisation made it clear that it was not their role to provide legal or policy advice in relation to the proposal.
- 16) The Information Commissioner addressed a number of issues such as the necessity to collect all types of information, the collection of sensitive information, use and disclosure of information, data security and privacy principles. The Information Commissioner also suggested amendments to the permit application form to properly inform applicants of their privacy rights and the potential use of their information. The Information Commissioner also noted that the Information Privacy Principles in the Northern Territory *Information Act* were very similar to the National Privacy Principles in the Commonwealth’s *Privacy Act*.
- 17) The NT Anti-Discrimination Commissioner identified a number of points of concern which were satisfied, and did not express a view that the proposal was discriminatory in operation.
- 18) The ACCC advised that it was not its role to provide legal or policy advice in relation to specific changes to liquor regulatory arrangements. The ACCC advised that a regulatory framework which requires Licensees to implement a permit system governing the supply of takeaway alcohol to consumers is unlikely to lead to concerns under *the Trade Practices Act 1974* (Cth). However, the ACCC noted that contracts, arrangements or understandings between competitors may be at risk of contravening the Act, including agreements that have the purpose of preventing, restricting or limiting the supply of goods or services to particular persons or particular classes or persons by any or all of the parties to the agreement.
- 19) The responses make it clear that none of the entities are able or willing to provide legal advice, nor are they in a position to definitely state whether the proposed system would breach various laws in any particular circumstance. That is not surprising given many of these bodies would be called upon to resolve complaints or disputes. The Commission is not inclined to seek the views of any further bodies such as the Human Rights and Equal Opportunity Commission or the Office of the Federal Privacy Commission, on the basis that it is unlikely they would be able to offer any view other than those which have already been expressed. The Commission is of the view that the Harmony Group’s application does not raise any significant or insurmountable issues in relation to privacy, discrimination or competition which would put the Commission or Licensees in breach of the law.

COMMUNITY STRATEGY

20) In accordance with the Commission's suggestions the Harmony Group developed an extensive community strategy including both the East Arnhem Homelands and the township of Nhulunbuy. The strategy aims to ensure that all members residing in the East Arnhem region are fully informed in all aspects of the proposed permit system. The Commission understands a considerable effort has been undertaken to develop a range of strategies to meet with different stakeholder needs. As at the date of the hearing the Commission was informed that consultation has occurred with:

- CEO, Chairperson and members belonging to the Laynhapuy Homelands Association;
- Yirrakala Women's Resource Centre;
- Yirrakala Dhanbul Community Association;
- Marngarr Community Government Council;
- Dhimurru Land Management Corporation;
- Gumatj Association;
- Aboriginal Resource and Development Unit;
- Licensees;
- Local Education staff;
- Northern Land Council;
- North Australian Aboriginal Justice Agency;
- Alcohol and other Drugs Program;
- Federal Government;
- Nhulunbuy Electoral Office;
- Alcan; and
- Australian Government

21) The Commission was informed that the strategies are being funded by the Department of Justice. Furthermore the Commission was informed that much time had been spent meeting with government departments, community government councils, NGO's, clubs and community groups to raise awareness of the proposed alcohol permit system. The response to the proposed submission has been overwhelmingly supported.

THE HEARING

22) A number of written submissions were received by the Commission in relation to the hearing. Submissions were received from Northern Territory Police (in the form of an alcohol issues presentation), Mr Tourish of the Walkabout Lodge, Woolworths Ltd and Mr James Segedin.

- 23) Further, a number of witnesses gave oral evidence at the hearing. Mr Banambi Wunungmurra, the Chairman of the Harmony Group, gave evidence to the Commission. He indicated that the present proposal was the culmination of a long journey that had not been smooth. He gave evidence of the effects of alcohol introduction into aboriginal communities and emphasised the need for taking action to do something to fix the problem. The Commission also heard from a number of Yolgnu women, senior community leaders, who gave evidence in the most powerful terms to the effect that something needs to be done to fix alcohol issues in the community. Their evidence made clear the effect that alcohol was having on Aboriginal communities, particularly on the young people.
- 24) Evidence was also given by Senior Sergeant Fuller, the Officer in Charge of Nhulunbuy Police. Senior Sergeant Fuller gave a detailed history of liquor restrictions in the area. He gave evidence of policing resources in the area. He gave evidence of a number of social issues and of the considerable number of itinerant alcoholics that exist in the area. He gave examples of a number of anti-social behaviours which occur frequently in the community such as humbugging, public drunkenness and criminal damage. He also gave evidence as to the high levels of domestic violence all fuelled by alcohol. He advised of a number of strategies that had been put in place, both in conjunction with the communities and the Licensees. He gave evidence that despite those strategies there was still a high protective custody rate and apprehension rate. He provided frank and specific details of a number of serious crimes, road deaths and alcohol related suicides. He provided specific statistics in relation to alcohol related incidents. He gave evidence that in a twenty-two (22) month period from November 2004 to August 2006, sixteen (16) people had been killed or died in alcohol related incidents all indigenous and all from a population of just over one thousand people. The statistics were stark and depressing.
- 25) Mr Hocking, Town Administrator, Nhulunbuy Corporation Limited, also gave evidence at the hearing including a brief history of the town. He gave evidence of the role of the town corporation which was to manage the township, the industrial estate and the airport. He gave evidence of the functions of the corporation, which is to do all the things a normal municipal body would do including maintaining roads, footpaths, lighting, traffic control, sewerage treatment, garbage collection, street cleaning, storm and water drainage, weed control and mosquito control. He also gave evidence that the town corporation is also involved in a number of community activities including sport and recreation and animal control. He gave evidence as to the operation of the sobering up shelter in Nhulunbuy which has capacity for twelve beds. He gave evidence, in his approximation, that about one hundred to one hundred and fifty people live itinerant lifestyles around the town, and most if not all of those people are hard core alcoholics. He advised the Corporation is fully supportive of the Harmony Group's application. Mr Hocking also gave evidence in his capacity as the treasurer for Harmony Group. He gave evidence of the community work and involvement done to date to try to solve the problems faced by the region. Some of that work has included significant consultation and meetings with stakeholder such as the NLC, Miwatj Health, members of the land councils, ALCAN, Anglicare, Centrelink, Aboriginal Radio Development Service, Department of Justice, Police and the Department of Health.

- 26) Mr Roger Steel, National Licensing and Acquisitions Manager of Woolworths Ltd also gave evidence to the Commission. Woolworths Ltd had also provided written submissions. Mr Steel gave evidence that Woolworths was keen to support the applicants, the community and the Commission in finding a workable appropriate solution to the problems faced by the community. He indicated that Woolworths had a preference for a simplistic and a legal system. He raised a number of issues which had previously been raised at the last Commission hearing, including issues of discrimination and privacy. Mr Steel made it clear that Woolworth's wanted Federal and Territory advice that the implementation of the permit system would not implicate Woolworths in a breach of discrimination, privacy or trade practices legislation. He also raised a number of concerns including the fall back position when the Alcohol Management System failed, ongoing funding for the permit system, whether short term visitors would be prevented from obtaining permits and the need to educate visitors and staff in dealing with the new permit system.
- 27) Evidence was given by Mr John Tourish, Director of Gove and Beyond Pty Ltd and the proprietor of the Walkabout Lodge and Tavern. His oral submissions supplemented his extensive written submissions which had been previously provided to the Commission. Mr Tourish indicated that he would support measures that brought about changes to alcohol abuse in the community. However Mr Tourish had a number of concerns about the Harmony Group's proposal. He had concerns about a lack of communication. He made it very clear that he favoured an exclusionary permit system, as had been proposed in Alice Springs and Katherine. He gave evidence that due to the number of visitors to Nhulunbuy the proposed permit system would not function effectively and indicated concern that short term visitors might not be able to obtain permits. He gave evidence that obtaining permits would be an inconvenience or an impost on a number of residents and visitors.
- 28) Ms Justine Webber also gave evidence to the Commission. Ms Webber gave her evidence in the capacity as a resident of Nhulunbuy. She gave full and frank evidence of alcohol related anti-social behaviour that her and her children see on a daily basis. She made it clear that the things that she was seeing, and her children were seeing, were having an effect on her children. In her words she did not wish her children to grow up thinking that people in Nhulunbuy acted in the way they did when affected by alcohol.
- 29) The final witness to give evidence before the Commission was Mr Peter Perritt the Managing Director of ID Tect Pty Ltd. Mr Perritt gave a presentation of the operation of the Alcohol Management System and answered questions and queries about the system.

COMMONWEALTH EMERGENCY INTERVENTION LEGISLATION

- 30) Since the date of the hearing the Commonwealth Parliament has enacted the *Northern Territory National Emergency Response Act 2007* (Cth) (otherwise known as the Commonwealth intervention legislation) which in part has amended or utilised provisions of the *Liquor Act* (NT). Amongst those changes was the declaration of all prescribed areas (comprising Aboriginal land) as General Restricted Areas.

- 31) Much of the Harmony Group's present application falls over an area that is now a prescribed area under the Commonwealth's intervention legislation, and is therefore a General Restricted Area in any event. It is the Commission's view this does not prevent the Commission from declaring those areas General Restricted Areas under the *Liquor Act*. Further, following the hearing, the Commonwealth Department of Family Community Services and Indigenous Affairs wrote to the Harmony Group and the Commission. The Department indicated that the Minister (ie. the former Minister) would not interfere with the issue of permits in General Restricted Areas if issued on a case by case basis.
- 32) It is the Commission's view that there is no impediment to declaring a General Restricted Area over the proposed area. However, the Commonwealth legislation has implications for the Public Restricted Area application which was also considered and is the subject of the separate decision provided on paragraph 47.

THE DECISION

- 33) On the basis of evidence of the previous hearing, of written submissions received and of evidence received at the most recent hearing, the Commission re-affirms its support for the Harmony application.
- 34) In accordance with its statutory obligations under the *Liquor Act* the Commission is satisfied that it is in the public interest and it is in accordance with the purposes of the Act that the application be granted. However, the Commission realises that a number of other issues need to be resolved before the area can be declared. Those issues include matters relating to the Commonwealth's intervention legislation and issues relating to the amendment of licenses to make compliance with the permit system a licence condition. Further, there will no doubt be added pressure on the social, justice and rehabilitation services in Nhulunbuy and the region. It is the Commission's view that alcohol treatment and rehabilitation are important elements of the successful implementation of the application, and should receive appropriate support by the government. Furthermore, the Commission was informed that ongoing funding will be provided by the Department of Justice in relation to the operation of the Alcohol Management System (including equipment purchase, on-going support and training) and provision of administrative staff in Nhulunbuy to administer the system.
- 35) In order to ensure the effectiveness of the decision, the Commission will informally review the operation of the declaration after six (6) months from the date of implementation, with a formal review after twelve (12) months from the date implementation. The Commission will take measures to formalise this decision in accordance with Sections 81 to 83 of the *Liquor Act*, and it is envisaged that the East Arnhem General Restricted Area will be formally declared at the same time as the Public Restricted Areas. In that respect a proposed time frame for the declaration will be 1 March 2008 which in the Commission's view is a realistic goal for the implementation of the declaration of the General Restricted Area.

APPLICATION FOR PUBLIC RESTRICTED AREA

BACKGROUND

- 36) This is an application made by Assistant Commissioner Graham Kelly, of the Northern Territory Police, pursuant to Part VIII of the *Liquor Act*, for the declaration of certain areas in the East Arnhem Region to be declared Public Restricted Areas.
- 37) The application follows, and is in conjunction with, a corresponding application by the East Arnhem Harmony Mawaya Mala Inc (“Harmony Group”) for the declaration of a General Restricted Area over the East Arnhem Region.
- 38) In a previous decision of the Commission, dated 6 October 2006, it was suggested that the Harmony Group consider utilising the Public Restricted Area legislation under Part VIII of the *Liquor Act* in order to compliment its General Restricted Area application. However, Section 76(2) of the *Liquor Act* provides that only a local Government Council, the Director of Licensing or the Northern Territory Police may make an application for a Public Restricted Area.
- 39) The Northern Territory Police made formal application by letter dated 17 July 2007. Attached to that letter was a listing of areas which the Northern Territory Police requested be made Public Restricted Areas. Further to that application, and following the public hearings subsequently held by the Commission, a number of amendments to the application were received by the Commission. Those areas similarly have the support of the Northern Territory Police. The areas, the subject of application, can be divided into those areas falling within the township of Nhulunbuy (on leased Crown land) and those areas which fall on Aboriginal land. The relevant areas are as follows:
- 40) **(A) Private Premises on Crown Land Leased to Nhulunbuy Corporation Limited**
- ALCAN Sports and Social Club — Lot 1348
 - Banyan Road Park — Lot 457
 - Captain Cook Community Centre — Lot 1395
 - G3 Wet Mess — Lot 1628
 - Gove Hockey Club — Lot 1538
 - Gove Squash Club — Lot 1133
 - Hagney Park — the portion of land north of Beagle Court between Lots 1266 and 1316
 - Harleys of Gove Hog Shed — NT Portion 1316, Lot 98
 - Jasmine Close Park — Lot 699
 - Jasper Road Park — Lot 477 Lions Club — Lot 1618
 - Lions Park — Lot 488
 - Mimosa Close Park — Lot 163
 - Nhulunbuy BMX Club — Lot 1365
 - Nhulunbuy Community Child Care Centre — Lot 1392

Nhulunbuy Community Neighbourhood Centre — Lot 1258
 Nhulunbuy High School — Lot 23
 Nhulunbuy Primary School — Lot 71 Nhulunbuy Scout Hall — Lot 1229
 Nhulunbuy Senior Citizens Association — western part of Lot 1336
 NT Fire & Rescue Service, Nhulunbuy — Lot 3
 Raintree Close Park — Lot 781
 Rotary South Park — the portion of land on the corner of Chippis Road and Enalu Road
 Sandlewood Avenue Park — Lot 162
 Sinclair Street Park — Lot 798 South Oval — Lot 1438
 Town Hall — Lot 8
 Town Oval No. 1 — Lot 1347
 Town Oval No. 2 — Lot 1626
 Whitewood Circuit Park — Lot 1505
 Wolsey Circuit Park — Lot 1282
 Arnhem Gun Club (incorporating the Bowmen's of Gove Club, Pistol Club, Shotgun Club and Rifle Club) – on a special purpose lease on the airport road.

41)(B) Aboriginal Land

Wirrawuy and Middle Carpark (Cape Wirawoi)
 Banamburrnga (Rainbow Cliffs)
 Yarrapay (Rocky Point)
 Baringgura (Little Bondi)
 Ngumuy (Turtle Beach)
 Garanhan (Macassan)
 Binydjangga (Daliwuy)
 Wanuwuy including Yukuwarra, Rangura and Lumapukurru (Cape Arnhem)
 Ganami (Wonga Creek)
 Guwatjurumurru (Giddy River)
 Gapuru (Memorial Park)
 Wathawuy (Goanna Lagoon and the Latram)
 Ganinyara (Granite Islands)
 Manangaymi (Scout Camp)
 Dhanya Outstation
 Spring Camp
 Marngarr Sports Oval
 Marngarr Reserve
 Marngarr Airport Airstrip southeast of Drimmie Head
 Northern Part of Bremmer Island – occupied by Nomad Fishing Charters

 Nhulunbuy Speedway – located on NT Portion 1646.

42) The Commission has been provided with specific geographic co-ordinates of all locations, which will be used for the purpose of the formal declaration.

43) A significant number of submissions were received in relation to the application. In particular, letters of support were received from all of the community groups and organisations which use or occupy the land described above. The application was further supported by the Town Corporation, Nhulunbuy Corporation Limited. It is envisaged that permit applications will be made by each organisation which has control over an area to allow alcohol

to be consumed at certain times or for certain periods. In that respect the Commission will consider all applications on their merits.

- 44) A formal Commission hearing was held into the application on 8 and 9 August 2007. At this time the Commission also considered the Application by the East Arnhem Harmony Mayawa Mala Incorporated and General Restricted Area for an area of East Arnhem Land. The hearing was pre-dominantly held on the "papers" but oral evidence was admitted. Oral evidence was given by Mr Malcolm Richardson, on behalf of the Director of Licensing, who gave evidence related to the consumption of alcohol in the region and other alcohol related statistics.

CONSIDERATION OF THE ISSUES

- 45) The Commission also took into consideration the significant amount of evidence given at the Harmony Group's application hearing for a General Restricted Area. That included evidence given by traditional owners and senior members of the Aboriginal community. It included evidence given by Senior Sgt Fuller, the Officer in Charge of Nhulunbuy Police, who gave detailed evidence as to the prevalence of alcohol related crimes and deaths in the region. Evidence was also given by Mr Hocking, the Town Administrator, as to the problems associated with alcohol throughout the town area.
- 46) The Commission is of the view that declaring the above Public Restricted Areas provides a balance between the control of alcohol abuse in the region while providing for a mechanism for responsible public alcohol consumption for social and other community events. The Commission's decision is made taking into consideration the purposes of the Act and the public interest. Although specific evidence was not provided, it is the Commission's experience that any declaration will result in habitual and problem drinkers being picked up and brought to the attention of the authorities. There will no doubt be added pressure on the social, justice and rehabilitation services in Nhulunbuy. It is the Commission's view that alcohol treatment and rehabilitation are important elements of the successful implementation of the application, and should receive appropriate support by the government.

DECISION

- 47) On a full consideration of the evidence and submissions received, the Commission approves the Northern Territory Police's application. It does so on the basis that the declaration of Public Restricted Areas is an integral part of the alcohol management plan for the region, and is a necessary part of the operation of the proposed General Restricted Area application. It is envisaged that the Public Restricted Areas will be declared at the same time as the General Restricted Area.

CONSEQUENTIAL MATTERS TO DECISION

- 48) First, in relation to the proposed Public Restricted Areas, all areas are “private premises” as defined in the *Liquor Act*, either being land leased from the Crown or Aboriginal land, where freehold title is held by the relevant land trust. The Commission does not have the power to declare “private premises” Public Restricted Areas unless it is facilitated by regulation. As such the areas detailed above will need to be included in regulations pursuant to Section 74(1A) of the *Liquor Act*. It is understood that the Department of Justice will facilitate the making of the regulations prior to any formal declaration by the Commission pursuant to Section 86E of the *Liquor Act*.
- 49) Secondly, the proposed Public Restricted Areas which are located on Aboriginal land fall within prescribed areas as defined by the *Northern Territory National Emergency Response Act 2007* (Cth) (otherwise known as the Commonwealth intervention legislation). Such areas are deemed to be General Restricted Areas, as if they had been declared under the *Liquor Act*. The Commission does not have the power to declare those areas to be Public Restricted Areas until they are excised from the Commonwealth’s prescribed areas. The Commission understands that negotiations are continuing between the Department of Justice and the Commonwealth government in order to enable that to occur.
- 50) In order to insure the effectiveness of the decision, the Commission will informally review the operation of the declaration after six (6) months from the date of implementation, with a formal review after twelve (12) months from the date implementation. The Commission will take measures to formalise this decision in accordance with Sections 86E and 86F of the *Liquor Act*, and it is envisaged that the Public Restricted Areas will be formally declared at the same time as the East Arnhem General Restricted Area. In that respect a proposed time frame for the implementation of the declaration will be 1 March 2008 which in the Commission’s view is a realistic goal for the implementation of the declaration of the Public Restricted Areas.

Richard O’Sullivan
CHAIRMAN

17 December 2007