

NORTHERN TERRITORY LIQUOR COMMISSION

Application for Declaration of Restricted Area **DECISION**

Applicants:

Mr Kevin Wirri
Ms Doris Abbot
Ms Louise Abbot
Mpwetyerre Town Camp
Lot 2664 South Terrace
Alice Springs

Represented by Mr Michael Bowden

Opinions:

Northern Territory Police

Represented by Superintendent Morrison

Heard by:

Mr Peter Allen, Chairman
at Alice Springs
Wednesday 7 April 1999
Tuesday 22 June 1999

The matter to be determined by the Commission is an Application for Declaration of a Restricted Area, the Applicants being Mr Kevin Wirri, Ms Doris Abbott and Ms Louise Abbot.

Section 74 of the *Liquor Act 1978* provides that, "the Commission may declare that a specified area of land shall be a restricted area".

Section 76 of the Act specifies the requirements of an application for declaration. The application is dated 26 August 1998 and conforms to the requirements of the Act.

Section 77 (1) (a) and (b) requires the Commission to consider an application as soon as reasonably practicable and if the application is not refused on the grounds that it is frivolous, irrelevant or of malicious nature; conduct a hearing.

The Commission as corporate body, acting in its administrative role, considered the application at a meeting held 8 December 1998 and determined to conduct a hearing.

The hearing commenced on 7 April 1999 and continued on 22 June 1999, an earlier continuation date being vacated as the Chairman was absent interstate on matters of an urgent personal nature.

Pursuant to Section 77 (2) (a), (b) & (c) the Deputy Registrar of Liquor Licences notified, as required, the following licensees; BP The Gap Deli, Alice Springs Airport Hotel/Motel and Piggly's Welcome Mart.

As required by Section 77 (2) (d) the Deputy Registrar notified the clerk of the council for the municipality of Alice Springs.

Section 78 allows a person to express an opinion regarding an application for a specified area of land to be declared a restricted area.

Several persons expressed opinions in writing to the Deputy Registrar.

Mr Nick Scarvelis, Chief Executive Officer of the Alice Springs Town Council advised that the Council "do not have any objections to making this area of land a restricted area".

Ms Tanya Witts, Acting Manager, Central Australian Alcohol & Other Drug Services advised that her organisation "fully supports active community initiatives that will lead to a reduction in alcohol related harm" and that the application "is considered one such initiative and is highly commended".

Mr Russell Totham, Superintendent, Department of Education, advised that his department "have no objections".

Superintendent Iain Morrison of the Northern Territory Police advised that his organisation “has some concerns regarding this application”. The Police concerns are detailed in Mr Morrison’s undated letter to the Deputy Registrar, dated by the staff of the Commission as received on 23 November 1998.

Mr Morrison’s letter is contained at folio #27 of the hearing brief. The letter does not, in the Commission’s view, conform strictly to the letter of Section 78 (2), for although it is clear that Mr Morrison has something to say, he does not plainly state “that he wishes to be heard”.

A strict reading of Section 78 (2) notwithstanding, the Commission allowed Mr Morrison to appear and be heard. Given the significant role Mr Morrison and his colleagues undertake in the policing of restricted areas, it would, in the Commission’s view, be nonsensical to do otherwise.

In allowing Mr Morrison to appear and be heard and to cross-examine the witnesses for the Applicant, the Commission relies on Section 51 (3) (d), which in the Commission’s view allows it to “inform itself in such manner as it thinks fit”.

The opinion of the Police, as put by Mr Morrison in his opening submission is that “the application is inappropriate”, an “inappropriate use of this particular legislation, which was not intended to combat this particular mischief”. Mr Morrison submits that “there is already existing legislation which is more appropriate and certainly adequate”.

Conjecture arose early in the proceedings regarding the applicability of the restricted area sections of the Act to applications such as that before the Commission. Parties outside these proceedings may continue to claim the Act was only ever intended by the legislature to be applied to remote Aboriginal communities. This is not the view of the Commission, nor is it the considered view of the parties in these proceedings.

The Act neither details nor implies any factor of location, environs or ethnicity which must or can be considered by the Commission in determining whether or otherwise to grant an application for the declaration of a restricted area.

The relevant portion of the legislation is to be found at Section 74 (1). The subsection plainly states, "Subject to this Act, the Commission may declare that a specified area of land shall be a restricted area".

In exercising the discretion provided by the legislation, it is proper that the Commission fully considers all information and submissions put before it and provides reasons for its decision.

It is clear to the Commission on the evidence before it that the Applicants have worked hard for many years to improve the unhappy situation that arises from the import of liquor into their camp

The Applicant's witnesses have assisted the Commission with clear and unambiguous testimony to the work undertaken over many years to improve the situation at Mpwetyerre.

The camp is subject to a no-grog rule. A large fence has been erected. The gate is locked overnight. The camp was viewed by the Commission and found to be generally tidy and well presented. The Applicants are rightly proud of their achievements in this regard. An agreement has been made with the taxi association that taxis are not to enter the area other than in special circumstances. The housing association meets regularly to discuss issues affecting the community, particularly alcohol issues. The continuing concern of the community for the safety and well being of all its members, and in particular the elderly and the very young, is clearly apparent from the evidence adduced by Mr Bowden.

Significantly, in the Commission's view, some seven persons have been in effect, evicted from the community for alcohol related breaches of their tenancies.

The community receives the regular and fullsome support of the Tangentyere Council, in particular, the assistance provided its Wardens, Mr Taylor and Mr Kell. The Council's housing office coordinator, Ms Smark, also gives able and informed assistance to the community.

Mr Kevin Wirri seeks and receives the assistance of the Police who regularly attend the camp. Mr Wirri sometimes initiates trespass notices, although it appears, on the evidence before the Commission that such notices are not carried through to their potentially effective conclusion.

The essence of the Police opinion is that there is other legislation that is more appropriate than the *Liquor Act* to the circumstances at Mpwetyerre.

The legislation preferred by the Police is the *Trespass Act* and the relevant provisions of the *Police Administration Act*.

It is the opinion of the Police that the residents of Mpwetyerre appear to be attempting to absolve themselves from the problem that has given rise to their application. That is, the problem of alcohol being brought into the camp. The Police submit that the minutes of the April meetings of the housing association make it clear that the reason for the application is so Police can assist in the removal of alcohol from the camp.

The Police have concerns with limiting their options to those prescribed in the *Liquor Act* when stronger and far broader powers are available to the Police and to the community itself by way of trespass orders.

Importantly, in the Commission's view, the Police submit that the Restricted Area provisions of the *Liquor Act* will not assist the residents of Mpwetyerre to deal with those intoxicated persons who are not carrying liquor and thus not in breach of the *Liquor Act*.

The evidence of the Applicant is that such people are of concern, whether through incidents of violence or by creating disturbance within the community.

The Police submit they have earlier suggested that the community and the police work together for a period of three to six months during which all breaches of the *Trespass Act* and Section 128 of the *Police Administration Act* will be carried through to prosecution.

The Commission understands this suggestion to be in the nature of a trial, subject to further meetings between the community and the Police and a working together towards the most effective strategies for the community.

Determination:

As earlier stated in this decision, the Commission may declare a specified area of land, a restricted area. The question in these proceedings is whether the Commission should declare the Mpwetyerre Town Camp to be a restricted area.

The Commission having considered the evidence adduced by Mr Bowden on behalf of the Applicants and the opinions put by Mr Morrison on behalf of the Northern Territory Police finds on balance, in favour of the opinion put by the Police and accordingly, the application is denied.

The Commission is moved to this decision by the much wider and potentially more effective provisions of the *Trespass Act* and the relevant provisions of the *Police Administration Act* for dealing with the diverse liquor related problems faced by the residents of Mpwetyerre. The *Trespass Act* empowers the householders at Mpwetyerre to deal effectively with those persons, predominantly uninvited visitors, whose actions detract from their quality of life.

By comparison, the powers available under the *Liquor Act* are limited in the main to the Police and those powers are limited to dealing with persons bringing liquor into the restricted area.

If the Mpwetyerre Town Camp was an isolated community with no permanent police or regular Police presence, it is probable the Commission would have

found in favour of the Applicant, in order that the community might at least benefit from the sporadic apprehension of “grog runners”.

In the circumstances of this application the area sought for proclamation is in reality, a small suburban housing estate situated within a large town possessed of a permanent and relatively large Police presence, a presence almost immediately available on a call-out basis.

In coming to its decision the Commission has taken note of the positive attitude of the Police towards assisting the residents of the camp.

Particular note has been taken of the willingness of the Police to work closely with the community association so as to develop appropriate strategies to ameliorate the problems faced there.

The Commission is not able to make orders pertaining to the future workings of the police with the Mpwetyerre community. Nevertheless the Commission recommends that senior Police and community leaders strive to formalise working arrangements between them without further delay.

The Commission will continue to pursue an active interest in events at Mpwetyerre and to this effect will instruct the Registrar of Liquor Licences to provide a report on future developments and issues arising at Mpwetyerre, such report to be provided to the Chairman by 30 June 2000.

Peter R. Allen
Chairman

13 December 1999