

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Applicant:</b>	TRFCK Pty Ltd
<b>Nominee:</b>	Mr Trevor (aka Terry) Ross Roddick
<b>Premises:</b>	Borroloola Hotel Motel 174 Robinson Road, Borroloola NT 0854
<b>Application:</b>	Application for a Liquor Licence
<b>Relevant Legislation:</b>	Sections 3, 6 and 26 to 28 of the <i>Liquor Act</i>
<b>Dates of Hearing:</b>	28-30 August 2007 and 11 September 2007
<b>Members:</b>	Mr Richard O'Sullivan (Chairman) Ms Merran Short Mr Ian O'Reilly
<b>Appearances:</b>	Mr L Silvester and Mr D Crowe for the Applicant Mr T Pritchard for Northern Territory Police Mr W Priestley as Counsel Assisting the Commission Mr G Lye and Mr P Boyle for Director Licensing

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## Background

- 1) On 14 December 2006 by decision of the Northern Territory Licensing Commission ("the Commission") the Liquor Licence ("the Licence") for the Borroloola Hotel, ("the Hotel/Pub") was cancelled.
- 2) The Licence was cancelled due to numerous complaints spanning a period from 1 July 2005 when Cashcow Holdings Pty Ltd ("Cashcow") became the Licensee and took over the Licence until 16 October 2006 when the Nominee Ms Terina Maria Kahn ("Ms Khan") abandoned the Hotel.
- 3) The breaches were significant, serious and ongoing, including contributing to rioting within Borroloola, culminating in the Commission's decision to cancel the Licence pursuant to Section 72 of the *Liquor Act* ("the Act").
- 4) Prior to the cancellation of the Licence, Mr Terry Roddick, Director of TRFCK Pty Ltd and owner of the Hotel sought to transfer the Licence to himself as Nominee. This request was considered by the Commission at the time of cancellation and the Commission assumed Mr Roddick would be a fit and proper person and that a licence transfer "... was a valid option available..." but in light of the "deplorable course of conduct ..." from Ms Khan and her associates the Commission felt it should cancel the Licence.<sup>1</sup>
- 5) It is against this background that Mr Terry Roddick, Director of TRFCK Pty Ltd has applied for a Public Hotel Liquor Licence for the Borroloola Hotel ("the new Licence"). The initial application included takeaway as a component as follows:

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<sup>1</sup> Borroloola Hotel, Northern Territory Licensing Commission ("NTLC") decision 14 December 2006; para 29.

*Liquor may be sold for consumption away from the premises between the hours of 14:30 hours and 17:30 hours, Sunday to Saturday.*

*Only one carton of light or mid strength beer may be sold for consumption away from the premises to any local resident per day.*

Noting the current moratorium on takeaway licences (as per above) Mr Roddick amended his application to exclude the reference to takeaway sales.

- 6) The amendments to the advertised application meant that the objections already received were only relevant in so far as they related to the “on premises” part of the application. The Commission required Mr Roddick to arrange for the amended application to be displayed in prominent places at Borrooloola, but it still means that some of the objections received were in response to the initial application which included takeaway.

## **Application for the New Licence**

- 7) On 16 December 2006, Mr Terry Roddick, Director of the Applicant company, and Mr Eddy Van Oosten applied for a Public Hotel liquor licence for the Hotel. This application was superseded by a further application dated 14 March 2007 substituting Mr Robert William Alistair Douglas as the joint applicant instead of Mr Van Oosten who had taken a position elsewhere.
- 8) On the first morning of the Hearing the Commission was advised that Mr Douglas was no longer applying as a Nominee and instead Mr Roddick was now the sole Nominee applicant.
- 9) The initial application was advertised on Wednesday 17 and Friday 19 January 2007 in the following terms:

*Proposed Trading Details for the sale of liquor are as follows:*

- *The business proposed to be conducted on the premises will be in the nature of a rural Hotel with motel accommodation.*
- *Liquor may be sold for consumption on the premises between the hours of*

### **Lounge Bar and Garden**

*Sunday to Thursday 11:00 hours to 22:00 hours  
Friday to Saturday 11:00 hours to 23:59 hours.  
New Years Eve 11:00 hours to 02:00 hours. (the following day).  
Darwin Cup 11:00 hours to 02:00 hours. (the following day).  
Melbourne Cup 11:00 hours to 02:00 hours. (the following day).  
Full Strength Beer will NOT be sold in the Lounge Bar.*

### **Local Bar and Garden**

*Sunday to Saturday 11:00 hours to 22:00 hours  
Light Beer, Mid Strength Beer and UDL cans will ONLY be sold in the Local Bar.  
Full Strength Beer will NOT be sold in the Local Bar.*

- *Liquor may be sold for consumption away from the premises between the hours of 14:30 hours and 17:30 hours, Sunday to Saturday.*

*Only **one** carton of light or mid strength beer may be sold for consumption away from the premises to any local resident per day.*

- *The concept of the premises is that of providing a social hub for locals and tourists to socialise in a quiet and relaxed atmosphere.*

- 10) This application was displayed at the Post office in Borroloola, the Borroloola Police Station, the Mabunji Aboriginal Resource Association, the Borroloola Health Clinic and the Borroloola Town Council. Finally, a green sign giving details of the application was also displayed in a prominent position at the Hotel. When the application for takeaway liquor was withdrawn, the applicant similarly displayed the relevant application information at these locations.
- 11) There were several variations to the application from that originally advertised, including a number made during the course of the Hearing, with the final application ("the Application") in the following terms:

## **The Final Application**

### ***Lounge Bar and Garden***

#### ***Hours of Trade***

*Monday to Thursday: 12:00 to 22:00*

*Friday: 12:00 to 23:59*

*Saturday: 11:00 to 23:59*

*Sunday: 11:00 to 22:00*

#### ***Conditions***

*Light and mid strength beer.*

*No VB or XXXX full strength or other full strength standard products (non boutique)*

*Boutique Beers (eg Coronas / James Squires)*

*Bottled Wine*

*Spirits*

*Dress standards to apply during lunch and after 18:00 hours and to consist of clean shoes / sandals, clean washed presentable shorts / pants, clean washed presentable shirt. Tradesman work clothes allowed but not for dining.*

*Provision of water.*

*Provision of snacks.*

*No access between the Lounge Bar and the Local Bar and Beer Garden;*

*Extensive CCTV coverage, as approved by the Director, which is to be held for 30 days,*

*Conditions as set out above to be available to bona fide guests of the Hotel for the same hours of trade.*

### ***Local Bar –***

#### ***Hours of Trade***

*Monday to Friday: 12:00 to 19:30*

*Saturday: 11:00 to 19:30*

*Sunday: 11:00 to 14:00*

#### ***Conditions***

*Sales in Local Bar only to persons who have a wrist band affixed and limited to 10 mid-strength or light beers per person per day Monday to Saturday and limited to 7 mid-strength or light beers per person per day on Sunday.*

*Finger food such as pies, pasties, hot chips, and chicken nuggets and substantial meals at meal times available in the Local Bar;*

*Public Bar may remain open after alcohol trading hours completed for purposes of entertainment / televised foot games and meals.*

## Relevant Chronology

12)

- Undated: Letters/emails of complaint sent by Ms D Maloney of the Borroloola Community Health Clinic to the Licensing Division commencing 1 November 2004 and continuing through 2005 and 2006. No records of these are held by the Licensing Division.
- 1 July 2005: Roddick (TRFCK Pty Ltd) purchases freehold.  
Cashcow commences as Licensee.
- 21 Feb 2006: Riots in Borroloola.
- 11 Feb-Aug 06: Numerous and various complaints made against Cashcow and investigated by the Licensing Division.
- 19 Sep-16 Oct 06: Hearings commenced: Section 48A of the Act: Emergency Power to cancel Licence for seven (7) days; continued until licence cancelled permanently.
- 16 Oct 2006: Hotel abandoned by Ms Kahn.
- 21 Nov 2006: Hearing by Commission into complaints against Cashcow.
- 14 Dec 2006: Commission delivers Reasons for decision: Cashcow's licence is cancelled by the Commission.
- 16 Dec 06: Application made by TRFCK Pty Ltd for new Licence.
- 28,29,30 Aug 07: Hearing commenced at Borroloola regarding the application for a new Licence.
- 11 Sept 07: Hearing continued in Darwin.

## Objections

- 13) Numerous notices of objection were received in response to the initial application which included takeaway. There were some twenty-four (24) pro forma Notices of Objection, entitled "Objections to the Hotel re-opening" received from residents of Borroloola, which, with the exception of some additional handwritten comments by some of the residents, were identical. These became Exhibits 3 and 7 at Hearing.
- 14) Exhibit 3 comments on the recent improvements in the town since the Hotel closed, significantly the decrease in the level of anti-social behaviour and injuries since the Hotel lost its Licence.
- 15) The letter also submits that the sale of light beer only from Borroloola Bulk Discounts ("BBD") is enough alcohol being sold in the community.
- 16) There were numerous witnesses who gave evidence at the Hearing and the Hearing was consistently well attended by residents of Borroloola.

## Witnesses

### Mr James Mason

- 17) Mr James Mason, a named author of the pro forma letter (Exhibit 3), also gave oral evidence at the Hearing. Mr Mason has lived in Borroloola for eight years and was

previously a CDEP Co-ordinator; he now works for the Batchelor Institute as a tutor in literacy and numeracy.

- 18) Mr Mason gave evidence that since the Hotel had closed public drunkenness, violence, crime, and nightly disturbances had decreased substantially. Mr Mason submitted that the “scale of influence of the Borroloola Inn” led to a negative community environment in the town. He was of the view that the light beer available at BBD was sufficient for the town. He was impressed that the owner of BBD had introduced, of her own volition, a limit on each local resident to one (1) carton (30 cans) of mid-strength or light beer per day.
- 19) Mr Mason gave evidence that since the Hotel had closed his student attendance had improved, children in the town appeared more relaxed and happy, the town was tidier and he could sleep soundly through the night because the noise levels had decreased. Mr Mason saw two futures for the township of Borroloola:
- Borroloola returns to the past situation of destructive alcohol consumption characterized by loud disruptive nights with fighting and public drunkenness, or,
  - The Hotel remains closed and the township continues to flourish and enjoy a safe and healthier environment for the residents, where there is time for primary and preventive health care rather than “patch up jobs” and the town enjoys an improved social amenity.
- 20) Mr Mason in his statement associated Mr Roddick with the previous Licensee and blamed Mr Roddick for allowing the Cashcow situation to develop. Under cross examination Mr Mason for the most part stood by his evidence and at the conclusion of his evidence he submitted his written statement which became Exhibit 2.

### **Ms Trish Elmey**

- 21) Ms Elmey is the owner manager of the Borroloola Guesthouse which is located directly across the road from the Hotel. Ms Elmey submitted a letter of objection which in substance complains of public drunkenness, intoxicated persons loitering around her establishment, noise, fighting and general untidiness which she said led to a loss of trade due to her guests not coping with these factors and moving on earlier than intended, some saying they would never return.
- 22) Ms Elmey complained of the effect of heavy beer and UDL cans being sold at the hotel. Ms Elmey proposed limited hours of trade should a licence be granted.
- 23) During oral evidence Ms Elmey reiterated her written statement and expressed concern that if the locals were able to go into the Lounge Bar and access full strength boutique beer (even though somewhat highly priced), as well as spirits, then similar problems to the Cashcow era may occur. Ms Elmey emphasised the negative impact on the tourist industry that the Hotel had when it was licensed.

### **Mr James Ralph Dash**

- 24) Mr Dash is a pensioner who undertakes part time work for the Batchelor Institute; he has lived in Borroloola for seven and a half years. Mr Dash is a resident of the new subdivision and gave evidence that since the Hotel had closed the nights were much quieter with less violence and public drunkenness and that he believed the closure of the Hotel was the reason for the improved situation. Mr Dash in response to Counsel for the Applicant’s comment that “a town with no pub was a town with no heart” said he was “proud to have no pub” and felt it was something the community could embrace. Mr Dash did not believe that re-opening the Hotel was in the best interest of the town.
- 25) Mr Dash was in favour of the Hotel not reopening at all but if it did, only for limited opening hours and with restricted alcohol.

**Mss Isa McDinny, Mirriam Charlie, Myra Rory and Mavis Timothy**

- 26) The next witnesses were four (4) aboriginal women residents, Ms Isa McDinny, Ms Mirriam Charlie, Ms Myra Rory and Ms Mavis Timothy.
- 27) The substance of their joint evidence was that since the Hotel had closed there was far less violence and fighting in the camps, that there was “no troubles, no riots”, which was very important to Ms Myra Rory whose sister was killed as a result of a riot.
- 28) Their evidence was that parents were spending more time with their children, there was more money for food for the children and families generally, because “mother and fathers not drinking”.
- 29) They said that although there was still drinking in the camps it was less violent and the men were easier to control because they were with their families.
- 30) In respect of the alcohol sold from BBD they said underage drinking does occur when young people steal alcohol from older people, and if a person had reached their limit of one carton from BBD they arranged for a sober person to buy more for them. As to the heavy alcohol available as proposed in the Lounge Bar portion of the Application, they believed that residents, including aboriginals would dress appropriately to enter the Lounge Bar to access the heavy beer and spirits and “then go home and drink their takeaway grog,” that the drinkers would be organised enough to take advantage of the heavy beer and spirits in the Lounge Bar.
- 31) Their evidence was that if the Hotel was to re-open with conditions of light and mid strength beer and limited to 10 cans (later reduced to 7 on Sundays by the Applicant) per day in the Local bar the “good drinkers would be okay but the bad drinkers would still cause problems”.

**Mr Dennis Tranter**

- 32) Mr Tranter has lived in Borroloola for 10 years and is a Pastor with the Australian Indigenous Community Church. He and his wife were the authors of the second pro forma objection letter which is Exhibit 4. Mr Tranter considers the whole of Borroloola his flock and is much immersed within the community, his family having been adopted by an Aboriginal family. He is an adoptive parent to 4 Aboriginal children as a result of members of his extended family being involved in “grog related incidents”. It was Mr Tranter’s observation that the township as a whole is much improved since the Hotel has closed.
- 33) Mr Tranter gave evidence that he had attended up to 150 funerals in the recent past some of which were as a result of “grog related incidents” such as wife bashings, riots, and liver and other diseases. It was his evidence that there have been no funerals since the Hotel closed.
- 34) Prior to the Hotel closing Mr Tranter and his wife had 5 or 6 children per week coming to them complaining of hunger. Since the Hotel has closed there have been none. He has also noticed that there are no longer children fighting on the oval at the school which had been a regular occurrence when the Hotel was open. Mr Tranter considers “the rights of the children to be paramount.”
- 35) Mr Tranter commented that there was “a palpable difference” in town, since the Hotel closed. The whole town was affected when the cost of four slabs per week at BBD was \$200.00 compared to \$600.00 for an equivalent number of cans at the pub as there was now more money spent on food and toys for the families and children.
- 36) If the Hotel was to open then Mr Tranter asked it not be allowed to sell spirits. He said that a town is not built around a Hotel, that he did not think it likely that locals would be employed in the pub and that to re-open the Hotel was to sacrifice the well being of the children of the town.

### **Mr Warren Timothy**

- 37) Mr Timothy is an Aboriginal Health Worker who has lived all his life in Borroloola. The substance of his evidence was that during Cashcow's term at the Hotel the in-fighting between the four clans that live in the Borroloola area reached crisis point as a result of excessive drinking. He spoke of fights leading to rioting and deaths. The drunken fights would spill out from the Hotel into the street and wake the town with the on-going noise all the way down the main street, (Robinson Road).
- 38) There was also a lot of fighting between the children in the town, he assumed as a result of the children following the example set by their parents, and of being unsupervised. Since the Hotel has closed he had not noticed any fighting between the children.
- 39) Mr Timothy did not believe the town needed the Hotel to attract tourists and was of the view Borroloola was a better community since the Hotel closed. Families spend more time together and most importantly children were happier.

### **Mr Brian Hearn**

- 40) Mr Hearn is the General Manager of McArthur River Mine ("MRM"). Mr Hearn gave evidence that MRM had difficulty recruiting and retaining aboriginal workers and alcohol was a factor. MRM has a zero alcohol and drug policy.
- 41) Prior to the Hotel cancellation there was a daily rate of failure of testing of 40% with 80% of these due to alcohol. Failure rates since the Hotel closed are substantially lower.
- 42) Mr Hearn is a regular visitor to Borroloola and has observed that the town was tidier and town safety had improved. His view was that the number of indigenous and non indigenous workers of MRM who could live in Borroloola would likely increase.
- 43) MRM has a Traineeship programme and successful trainees of MRM go on to permanent work in other areas such as Darwin and Katherine once their traineeships are completed. The traineeships included a numeracy and literacy programme to help the trainees obtain relevant skills to assist in career development.
- 44) Ultimately, Mr Hearn believed the re-opening of the Hotel would mean a downturn in successful trainees and he at the very least encouraged opening hours on Sundays to be reduced to allow trainees to sober up for work on Monday morning. Mr Hearn provided a letter to the Commission outlining his views on behalf of MRM (exhibit 11) in which he emphasised the need for an appropriate alcohol management plan. Finally, Mr Hearn recommends in his letter that the Commission clarify and consider the sale of full strength beer in relation to the hours of operation; the Commission accepts this relates to the availability of full strength beer in the Lounge Bar.

### **Mr Fraser Baker**

- 45) Mr Baker is the Chairman of the Homeland Resource Centre and current CDEP co-ordinator. Mr Baker gave evidence that there were 470 people participating in the CDEP programme per year and since the Hotel closed a higher percentage of those workers were turning up for work from 8:00am to 4:00pm. He is concerned that should the Hotel re-open attendance will drop and participants will revert to not attending until lunchtime or not at all.
- 46) Mr Baker also noted that since the Hotel had closed there are more people asking for jobs and more kids going to school.

### **Ms Deborah Maloney**

- 47) Ms Maloney is a nurse who has lived in Borroloola for 6 years and worked for 5 years at the Health Clinic. She gave compelling evidence of the number and severity of alcohol related incidents she and her staff had to deal with when the Hotel was open compared to the

period since it has been closed. Ms Maloney said there had been a real reduction and change in presentations, for example:

- the number of sick children presenting during clinics hours had increased and the presentations during out of hours had decreased;
- more people with chronic disease were presenting to collect their medicines, and
- the number of alcohol related illnesses, such as fitting, had reduced markedly.

48) In response to questioning regarding the benefit of the Hotel for tourism, Ms Maloney proffered that tourists did not come to Borroloola for the Hotel and in fact in her observation tourists were uncomfortable with the drunkenness and violence that was so often on display. Ms Maloney was not convinced dress standards in the Lounge Bar would prevent Aboriginal people dressing up to access heavy alcohol. She noted the noise level within the town was noticeably reduced since the Hotel closed and she was not in favour of the Hotel re-opening.

49) As the sole Health provider, the Health Clinic noted that when the Hotel was licensed children suffered the effects of alcohol misuse through failure to thrive, foetal alcohol syndrome, failure to attend ante natal check ups, presenting with injuries associated with being used a shields in episodes of alcohol-fuelled violence, and family problems associated with parents drinking at the Hotel and relying on aunties or grandparents to care for them. She stated that when the Hotel was open it was a common event to have a parent attend the clinic intoxicated; since the Hotel had closed this was almost non-existent.

50) It became clear during the course of the Hearing that Ms Maloney had made personal representations and had sent several letters and/or emails of complaint regarding the Hotel to both Police and the Licensing Division. Ms Maloney was able to provide the Commission with copies of letters as follows:

- 1 November 2004 – sent to the “Licence Inspector, Liquor Commission” but with no address (exhibit 13);
- 21 March 2005 – addressed to “The Publican, Borroloola Hotel;
- undated (late 2005) – labelled “Liquor Commission Report” but not addressed to anyone;
- 22 February 2006 – to Mr Gregory Lye and Mr Peter Boyle, received by them either by hand or email;
- 1 March 2006 and 7 August – to Mr Gregory Lye and Mr Peter Boyle and received by them either by hand or email, (“the letters”).

51) The letters complain of various incidents such as the abuse of Ms Maloney and ambulance officers when they attended incidents at the Hotel, fights, injuries, behaviour of “bouncers”, the lack of control at the Hotel, intoxicated anti-social behaviour and health/safety issues generally.

52) It is clear to the Commission that Ms Maloney, as the person in charge of the Health Clinic, held grave concerns, for a considerable period of time, regarding the impact of the Hotel on the community of Borroloola and tried to take appropriate steps to bring those concerns to the attention of the proper authorities. However, when asked about the ultimate outcome of the results of her complaints to the Licensing Division, Ms Maloney said “the Hotel closed, so I suppose someone did something”.

### **Ms Gloria Friday**

53) Ms Friday has been a resident for thirty-nine (39) years and was against the Hotel re-opening. She was of the view that the Hotel had a negative impact on the community in particular children and parents.

### **Dr Steven Skov**

- 54) Dr Skov is Chief Health Officer and the Senior Public Health Physician for the NT Department of Health. He has worked for three (3) years in the area of Alcohol and Drugs.
- 55) After considering the statistics from the clinic Dr Skov was able to say that since the Hotel had closed there had been a decline in the number of attendances at the clinic for alcohol related incidents.
- 56) Dr Skov stated that all evidence pointed to an increase in alcohol related harm if the Hotel was to reopen, this was based on evidence and outcomes reported in the "Restrictions on the Sale and Supply of Alcohol" report prepared by the National Drug Research Institute, Curtin University of Technology, Perth WA ("the Report"), kindly supplied to the Commission by Dr Skov.
- 57) In the Report conclusions are reached after assessing the extrinsic evidence gathered both nationally and internationally and "taken together, international and national evidence indicates a particularly strong and consistent relationship between the increased number of licensed premises and the levels of violence"<sup>2</sup>.
- 58) Dr Skov agreed that responsible drinking practices could reduce the number of alcohol related harm incidents.
- 59) Dr Skov also provided information regarding standard drink levels. The daily recommended consumption of alcohol for males is 4 standard drinks (it is less for women), whereas the Applicant's proposed 10 can limit was actually equivalent to 11 standard drinks, well in excess of the recommended daily amount. It should be noted that the Applicant later reduced the allowance of number of beers to be sold on Sundays to 7 per person in the Local Bar.

### **Mr Jackie Green**

- 60) Mr Green works for Northern Land Council and has lived in Borroloola since 1988. He took an alternative view to previous witnesses and was in favour of the Hotel reopening because he felt it was safer for people to drink in the Hotel than the scrub, although he did think the town was better now than when the Hotel previously had a licence. He was also in favour of reducing the BBD limit to ½ a carton of lights or mid-strength per person per day and wanted to see the return of Night Patrol to Borroloola. It was Mr Green's evidence that some people had left town when the Hotel closed down however he could not say how many.

### **Ms Rona Robertson**

- 61) Ms Robertson is the Licensee of BBD which with the cancellation of Cashcow's licence became the only place in Borroloola licensed to sell alcohol. When the Hotel was licensed all types of alcohol could be purchased at BBD. With the cancellation of the licence Ms Robertson voluntarily restricted alcohol sales to one (1) carton (30 cans) of mid-strength or light beer only per person per day.
- 62) Ms Robertson gave evidence that she did not take that step until Cashcow's licence was cancelled because while the Hotel was licensed it would not have made any difference to the town if she had.
- 63) Ms Robertson is a long time resident of Borroloola and during her evidence she agreed to make her voluntary restriction permanent whether or not a new licence was granted. The Commission commends Ms Robertson for her stance and her co-operation in this matter.

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<sup>2</sup> Restrictions on the sale and supply of Alcohol report prepared by the National Drug Research Institute, Curtin University of Technology, Perth WA; page xiii.

## Other Witnesses

- 64) The Commission also heard evidence from Sergeant Bruce Payne, Officer in Charge of Borroloola Police Station, who gave evidence that the number of callouts regarding alcohol related incidents had reduced dramatically after the Cashcow licence was cancelled. Sergeant Payne was not stationed in Borroloola during the time Cashcow held the Hotel's licence. In addition Sergeant Payne demonstrated a willingness for Police to work with the community to guard against a return to the Cashcow era.
- 65) Constable Wade Rogers, currently serving in Borroloola, also served during the Cashcow era. He gave evidence that the busiest times during the Cashcow era were between 10:00pm and 2:00am – 3:00am. Most callouts were alcohol related including domestic violence, unlawful entries and public disorder, with fights breaking out as patrons exited from the Hotel at closing times. In Constable Rogers's opinion much of the trouble was due to the clashing of four clan groups living in Borroloola who left the Hotel intoxicated and, unable to get home, gathered in a concentrated area outside the Hotel. Constable Rogers told the Commission that the riot in February 2006 began with a small incident at the Hotel which escalated to the camps and subsequently involved people not usually involved in such incidents. It was Constable Roger's evidence that 100-120 intoxicated persons spilling out onto Robinson Road at night caused problems with traffic and impaired road safety. There was danger in people crossing crocodile infested rivers to get home and levels of intoxication meant that many simply slept on the road or in surrounding areas such as the Guesthouse fence line and the bus shelter, which subsequently led to a whole new set of problems in the town such as fighting, noise and general disturbance of the residents.
- 66) The Commission also heard from Sergeant Garner who was the OIC Borroloola during the Cashcow era. It was Sergeant Garner's evidence that due to suspicions regarding Ms Kahn's partner, Mr Chris Taylor, he began an investigation into Mr Taylor and compiled a 'dossier' on him. According to the information received at Hearing Mr Taylor effectively managed the hotel. Sergeant Garner handed his dossier to Ms Hulm, the Licensing Inspector resident at Borroloola at the time. The dossier included information about Mr Taylor's character that cast him in a negative light. Police Officers have the same powers as Licensing Inspectors pursuant to s19 (10) of the Act. Why Sergeant Garner did not act upon the information he compiled was not made clear to the Commission. What happened to it after he gave it to Ms Hulm is also unclear.
- 67) The Commission also heard from Senior Inspector Greg Lye and Inspector Peter Boyle ("the Inspectors") of the Licensing Division. Neither had any knowledge of the 'dossier' or Ms Maloney's complaints of 2004 and early 2005. One explanation was that the emails sent to Ms Hulm may have been lost in 'cyberspace' as she had gone on leave. However a check of the relevant personnel records shows that Ms Hulm was employed during the relevant times.
- 68) Taken jointly the evidence of the Inspectors was that as soon as the Licensing Division became aware of the problems in Borroloola they took steps to investigate. It appears that awareness came in late 2005 or early 2006.

## Petitions

- 69) In support of the Application the Applicant submitted a petition signed by 90 local residents, calling for the Hotel to re-open (Exhibit 9), and have people drink there responsibly. The petition also called for takeaway limits to apply to BBD store – a 6 can limit was suggested as the unregulated nature of takeaway was resulting in underage and irresponsible drinking. A further petition by 36 tourists calling for the re-opening of the Hotel was also tabled (Exhibit 32).

## Issues

- 70) Every witness at the Hearing said that Borroloola was better – calmer, more peaceful – than it had been prior to the previous liquor licence being cancelled in October 2006. The quality of life of residents appears to have improved considerably. Statistics regarding alcohol-related callouts by Police and presentations to the Clinic have reduced - in some categories to nil. Anecdotally, workplace absences have reduced and families are spending more time together.
- 71) This evidence contrasted markedly with the excesses of the Cashcow era. Some witnesses were able to offer comparisons to the time of the licence prior to Cashcow and they said that they believed the amenity of the community was much improved now than during either of those periods.
- 72) The Commission believes that the residents of Borroloola were seriously let down by the Police who have the same powers as Licensing Inspectors. It is clear that complaints were made by Ms Maloney to Police as early as 1 November 2004 regarding the problems at the Hotel, which accelerated with Cashcow becoming Licensee on 1 July 2005.
- 73) It is the Commission's view that the Police could have done more to ensure the safety of the residents of Borroloola. There was insufficient evidence from Police as to what steps they took to address the complaints and obvious problems which occurred during the Cashcow era.
- 74) The Commission strongly recommends that adequate funding be provided to allow for the satisfactory policing of remote licensed premises, in particular to Police to allow them adequate staff to undertake a more proactive role in their roles as their Licensing Inspectors.
- 75) That said, the Commission acknowledges that Sergeant Bruce Payne appeared to be a forthright witness who is more than willing to work with the community and Mr Roddick to ensure the Hotel will be properly policed and managed to the best of his staffing levels if a licence is granted. Sergeant Payne is ably supported by Constable Wade Rogers who echoed this commitment.
- 76) The lack of response to Ms Maloney's complaints up until early 2006 is problematic for the Commission. Her unaddressed letters may have been sent by email (but whose email is unclear), or given to Ms Hulm, the resident Inspector in Borroloola, or the Police. The Commission is unable to ascertain how or to whom Ms Maloney gave these letters as the Commission only received them after she had completed her evidence. It was Ms Maloney's evidence that she had complained to Police on more than one occasion, and that the Police attended incidents at the Hotel at the same time she did. Ms Maloney gave evidence that on one occasion, after receiving no response to an email to Ms Hulm, she followed up by speaking to someone in the Darwin office of the Licensing Division by telephone. As a result of that telephone call she was asked to "investigate" but she did not feel it was her role to do so.
- 77) Inspectors Greg Lye and Peter Boyle of the Licensing Division gave evidence at the Hearing that complaints made either to the Police or to the Inspector present in Borroloola prior to early 2006 did not come to their attention nor does it seem, to any other officer in the Darwin. It is possible that early complaints made via Ms Hulm may not have reached the Licensing Division in Darwin. The Commission concludes that operator (either sender or receiver) error or inactivity, or technical problems prevented the communications being received or acted upon. The Executive Director of the Division has since satisfied the Commission that steps have been taken to ensure such communication breakdowns do not happen again.
- 78) It is clear from the Licensing Division file that the letters from February to August 2006 addressed to Inspectors' Lye and Boyle did reach the Darwin office and were investigated. During this same period Ms Kahn engaged lawyers and protracted legal proceedings began, culminating in the hearings pursuant to Section 48A of the Act: Emergency Powers to

cancel the Licence for seven (7) days, which continued each seven (7) days until Ms Kahn abandoned the Hotel on 16 October 2006 and Mr Roddick reclaimed the Hotel pursuant to his lease agreement.

- 79) The Commission heard evidence that it is difficult to maintain an inspection regime in remote areas. When Inspectors did attend their presence was always well known by stakeholders in advance.
- 80) There also appears to have been poor communication by the Police to the Licensing Division. For example, it seems the Licensing Division was not initially aware of a prosecution by the Police against Cashcow for serving underage persons and intoxicated patrons in mid 2006.
- 81) It is worth noting that the Commission felt it was hampered in its decision making by there being no advised position from the Director of Licensing regarding the Application. Although the Commission had the impression that the Application was opposed it would have been more helpful to the Commission to have a definite position from the Director of the Licensing Division.

## **Consideration of the Application**

- 82) There is no doubt that the residents who gave evidence against the Application are signalling their rejection of the massive problems and damage that occurred during the Cashcow period. The Commission can safely conclude that many Borroloola residents have reacted strongly to this Application because of the freshness of these appalling events.
- 83) However, the Commission concurs with the observation of the Applicant that many of these witnesses are objecting to the previous regime, rather than responding to the current Application. When informed of particular licensing conditions applied for, some witnesses responded that these did appear to resolve several of their concerns.
- 84) The Applicant has been responsive to this groundswell of concern, presenting an Application containing a variety of self imposed restrictions and even amending these further during the Hearing. As Mr Silvester observed, the Application now before the Commission is probably unprecedented in the history of licensed premises in the Northern Territory in terms of the restrictions to trade proposed by the Applicant.
- 85) This leaves the Commission inclined to the view that the Applicant is sincere in his desire to develop a premises that encourages and contributes to constructive cultural change (from the Cashcow era) regarding alcohol use in the local community. The onus is on the Applicant to persuade the Commission as to the benefits of the Application to the community. The Applicant submitted that a licensed hotel could provide a regulated area where people could experience a responsible drinking environment. The Commission agrees.
- 86) Some of the purported benefits are of less consequence in the Commission's eyes than others. Enhanced services to tourists on the Savannah Way emanating from the re-licensed Hotel may bring economic benefits to the town. However clever marketing of the concept of a 'pub with no beer' could also reap benefits.
- 87) Increased competition between BBD and the Hotel, as raised during Hearing might bring an element of balance to the town's commerce but this is not as important to the Commission as ensuring community well being.
- 88) There was suggestion at the Hearing that some blame should be applied against Mr Roddick for the behaviour of the Licensee during the Cashcow era because as the owner of the Hotel he did nothing to stem the flow of violence and breaches. There is no doubt that some residents of Borroloola consider he is in some way responsible or partially responsible for the harm that was visited upon the town. The Commission does not accept this is the case. Whilst it is correct that Mr Roddick was the owner of the Hotel during the Cashcow

era there is some doubt as to how and when Mr Roddick became aware of the very real and substantial problems which were occurring. What is apparent however is that when he did become aware he took reasonable steps to eject Ms Kahn from the Hotel. This proved to be a difficult exercise as the lease agreement between Mr Roddick and Ms Kahn required a proven breach of the Act.

- 89) Mr Roddick gave evidence that as soon as he became aware of the serious problems with Ms Kahn he immediately sought legal advice as to his options to remove her from the property, sometime in late September or early October 2006, the advice received from his solicitors was provided to the Commission in confidence during the Hearing and is Exhibit 26.
- 90) As best the Commission is able to determine on the evidence, it seems that the action by the Licensing Division and ultimately the steps taken by the Commission to cancel the Licence began at about the same time, that is, in February 2006 and resulted in the abandonment of the Hotel by Ms Kahn, allowing Mr Roddick to re-enter the Hotel. The details as to who knew what and when differed between the Division, the Police and Mr Roddick – not surprisingly given the lack of documentary evidence and the effect on memories with the passage of time. In all the circumstances the Commission is minded to cautiously extend to Mr Roddick a clean slate in respect of this Application. For these reasons the Commission does not consider Mr Roddick is to blame in any significant manner for the Cashcow era.
- 91) Turning then to the Application made by Mr Roddick and his evidence generally. There is little doubt that the self imposed restrictions on this Application are unique. The Commission found Mr Roddick to be a candid and truthful witness who advised of his willingness to work with the Borroloola community with the aim of providing a Hotel that all could enjoy and that could become a social hub in the community. The Commission agrees that this may benefit the town and add to the amenity of the community by providing an area where responsible drinking can occur. In this regard Mr Roddick suggested regular meetings with community stakeholders to measure the impact the Hotel licence was having on the community.
- 92) The Commission is persuaded that the town could benefit from a restricted licensed premises to remove drinking from the 'shadows', as referred to by Mr Silvester, and allow a meeting place which is regulated and where the responsible service of alcohol is exercised.
- 93) As part of the Hearing the Commission undertook a site viewing of the Hotel where Mr Roddick outlined the steps he had already taken to rectify the physical damage done by Cashcow and outlined the improvements he intended to make should a licence be granted. There is no doubt that some of these improvements will take time. The Commission gives credit to Mr Roddick for his willingness throughout the Hearing to adapt the Application based on the evidence; for example his agreement to voluntarily reduce the number of beers per person per day in the Local Bar (the public bar) after hearing the evidence of Dr Skov as to the recommended standard drinks per day and changing the opening hours of the Local Bar on Sundays after hearing the evidence of Mr Hearn regarding work attendance on Monday mornings at MRM.
- 94) At the time of Hearing the Applicant was not able to demonstrate to the Commission that he had identified capable and competent managers for the hotel should it be granted a licence. It was noted that the Applicant was in discussion with a number of potential managers. This issue would need to be carefully considered by the Director of Licensing should the Commission determine to grant a licence.

## Reasons for Decision

- 95) Throughout the Hearing the Commission was made abundantly aware of the public concerns regarding alcohol misuse in the community in general and alcohol sold at the

Hotel. The Commission must be mindful of the Objects of the *Liquor Act* outlined in Section 3 which includes:

### **3 Objects**

- (1) *The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor –*
- (a) so as to minimise the harm associated with the consumption of liquor; and*
  - (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.*
- (2) *The further objects of this Act are –*
- (a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;*
  - (c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.*

Further, Section 6 outlines the Public Interest Criteria which the Commission must take into account, including:

### **6 Public interest criteria in respect of licence or licensed premises**

- (2) *For subsection (1), the criteria are the following:*
- (a) harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;*
  - (c) public order and safety must not to be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;*
  - (d) the safety, health and welfare of persons who use licensed premises must not be put at risk;*

96) The interests and concerns of the public must be heeded and addressed. While a considerable amount of information on control and containment of alcohol abuse was presented on behalf of the Hotel, there was negligible canvassing or information provided on the whole of township alcohol issues, to provide a broader context. Indeed, this was beyond the scope of the Hearing. On face value a public bar serving a limit of 10 light or mid strength drinks (cans) per person per day (and 7 on Sunday) has a lower attached risk than the sale of 30 cans of light or midstrength drinks as takeaway, as currently applies at BBD. There is also the issue, should the public bar licence be granted, of the culmination of the individual entitlement at the public bar compounded by the takeaway entitlement, potentially leading to even higher alcohol purchase and consumption.

97) The Commission is cognisant of the need to assist Territorians, particularly those whose alcohol use is problematic, to learn to drink socially and responsibly. History shows that prohibition does not improve community well being. The Commission believes this fact can be extended to include the concept of partial prohibition, which exists in Borroloola now. The Commission is concerned that to maintain the status quo in Borroloola, i.e. not grant any part of this Application, will lead to unregulated, unsupervised drinking, and possibly an increase in grog running over time, as is the case in some 'dry' remote communities. This scenario includes well documented associated problems for police and regulators.

98) Since the Hearing the Town Camps in and around Borroloola have been prescribed, i.e. declared "dry" under power vested by the *Northern Territory National Emergency Response Act 2007* (Commonwealth). This in effect means that any purchasers of takeaway alcohol residing in town camps cannot consume it in their homes, or in their community. "Drinking in

the shadows” as described by Mr Silvester could now become all the more prevalent due to the prescribed areas. The unregulated consumption away from any family, community or authority oversight gives the Commission cause for concern. Against that background the Commission sees the benefit of a limited restaurant licence with food at the Hotel as a way of encouraging drinking in a regulated and social environment. A licensed restaurant could also cater for the local need for a social outlet and provide a service to the tourism industry.

99) The Commission is mindful that in other communities where alcohol problems have become significant, there have been processes developed to involve licensees, the community, health and social justice agencies in the development of Alcohol Management Plans to address issues. This has led to community supported measures such as permit systems, alcohol supply plans, “dry” towns etc providing a more holistic approach to the problems.

100) This leads the Commission to recommend the establishment of an Alcohol Management Plan for Borroloola as a priority. Similar plans developed in other parts of the Northern Territory have had positive effects. Had an Alcohol Management Plan (addressing liquor supply issues and complementary measures as required) been in existence at the time of Hearing, it would have been of great assistance and provided a framework to the Commission in considering this Application.

101) Mr Roddick has indicated his willingness to be involved in regular meetings with key community stakeholders regarding the effect of his business and related alcohol issues in the town and the Commission recommends that Mr Roddick participates in this process.

102) After considering all of the evidence put before it at the hearing, the Commission is of the view that in the absence of an Alcohol Management Plan, for the Borroloola region, only the Lounge Bar/Restaurant part of the Application can be considered at this time. We are of the view that we cannot consider the Local/Public Bar portion of the Application (likely to be frequented by the local Indigenous community) in the absence of a holistic and coherent alcohol management framework.

103) Since the Hearing, the Commission has been advised that the Department of Justice could prepare an Alcohol Management Plan, following consultation with the wider Borroloola Community and stakeholders. Whilst control of liquor supply is ultimately a matter for the Commission, the Department’s recommendations are sought to guide the Commission in deciding appropriate liquor supply measures for Borroloola and the surrounding region and any necessary complementary measures. With the community’s full involvement and support and the Commission’s approval, it is hoped that a draft plan could be prepared within four months and implemented within six months from this date.

104) Consideration should be given to the following issues in preparing an Alcohol Management Plan:

- a permit system of some kind to ensure drinking by responsible residents only, with a local permit committee introduced made up of representatives of police, health, indigenous organisations, local council, Licensees, further Indigenous representation as appropriate, McArthur River Mine and other stakeholders.
- takeaway alcohol issues such as the amount of takeaway that a person should be able to purchase, at which premises, whether takeaway should only be available to permit holders (as opposed to every person being entitled to a limited amount of takeaway but only permit holders allowed to purchase more), and the places where a person can drink takeaway.
- options for on premises drinking including the appropriate venue for on premises drinking - i.e. a club environment, the public bar of privately run hotel.
- alcohol free day(s).

- establishing bench marks that measure community wellbeing in relation to alcohol use, such as:
  - police callouts on alcohol related matters;
  - alcohol related presentations at the clinic including the number and severity of presentations;
  - reports to authorities of domestic violence and child neglect;
  - litres of pure alcohol sold in the town to its licensed premises.

105) The Commission has therefore decided to allow the Licensee to operate a restaurant in the Lounge Bar area for the “on premises” consumption of alcohol only with food. The Applicant has also sought a licence for the Local (public) Bar. All evidence and submissions have been made to the Commission on this issue and a decision regarding same is to be deferred until the preparation of an Alcohol Management Plan by the Department of Justice in consultation with the Commission and the community. Further written submissions and, if required, a reconvened hearing will take place at a later stage to allow a decision to be made on the adjourned part of the decision.

106) The main neighbourhood amenity issue for the Commission to consider is the impact a Local (public) Bar licence might have on the social fabric of Borroloola. The increased noise, litter and antisocial behaviour that occurred regularly in the public areas of Borroloola when the Local Bar was open are well documented. There is evidence, however, that the Hotel was badly managed. The Commission hopes this Applicant will be an improvement, for the benefit of the town.

107) The Police and some objectors oppose a licence for the Hotel at all. Rather than ignore submissions in support of the Hotel being licensed we have sought to reach a balance between competing interests in the community.

108) The Commission has concerns about the likely impact of a full licence on the community which we hope will be addressed by the proposed Alcohol Management Plan including regional liquor supply issues. We have therefore decided to give the Applicant time to establish the restaurant within the Hotel for “on premises” drinking with food and to adjourn the Application regarding the Local Bar for further consideration, at the request of the Applicant, in the light of the Alcohol Management Plan, no earlier than six (6) months after the date of this decision.

## Decision

109)

- a) The Commission calls on Government, through the Department of Justice, to initiate and undertake a leadership role in preparing and implementing an Alcohol Management Plan for Borroloola including recommendations to the Commission for its consideration on regional liquor supply issues;
- b) The Commission defers further consideration of the licence Application for the Public Bar until such time as an Alcohol Management Plan for Borroloola is in place (to give guidance to the Commission and indicate evidence of a community supported Alcohol Framework).
- c) The Commission grants a Restaurant Licence allowing liquor to be supplied with food for the Lounge Bar and Garden with the hours of trade as follows:

Monday – Thursday: 12:00 – 22:00 hours

Friday: 12:00 – 23:59 hours

Saturday: 11:00 – 23:59 hours

Sunday: 11:00 – 22:00 hours

Normal restaurant conditions to apply as directed by the Director of Licensing provided that the conditions include those set out below:

**Conditions**

*All persons served alcohol are required to be also served a substantial meal (substantial to be determined by the Director but does not include such things as a plate of hot chips or a pie).*

*Light and mid strength beer.*

*No VB or XXXX full strength or other full strength standard products (non boutique)*

*Boutique Beers (eg Coronas / James Squires)*

*Bottled Wine*

*Spirits*

*Dress standards to apply during lunch and after 18:00 hours and to consist of clean shoes / sandals, clean washed presentable shorts / pants, clean washed presentable shirt. Tradesman work clothes not allowed.*

*Provision of water.*

*Extensive CCTV coverage, as approved by the Director, which is to be held for 30 days, Conditions as set out above to be available to bona fide guests of the Hotel for the same hours of trade.*

- d) Further conditions of the restaurant licence are to be determined by the Director in consultation with the Applicant.

Richard O'Sullivan  
Chairman

18 December 2007