

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Borroloola Hotel Motel
<b>Licensee:</b>	Davis Whitman Pty Ltd (ACN: 133 717 067)
<b>Licence Number:</b>	80517853
<b>Dual Nominees:</b>	Andrew Robert Davis Toya Elizabeth Whiteman
<b>Proceedings:</b>	Application for Variation of Liquor Licence-Section 32A of the <i>Liquor Act</i> -Hotel Licence
<b>Heard Before:</b>	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Wally Grimshaw
<b>Date of Hearing:</b>	29-30 June 2010
<b>Date of Decision:</b>	23 September 2010
<b>Appearances:</b>	Mr Antony Downs for the Applicant Mr Mark Wood as representative of the Director of Licensing

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## Background

- 1) Davis Whitman Pty Ltd, Licensee of the Borroloola Hotel Motel, situated at Lot 771, Robinson Road, Borroloola, has made an application for a variation of liquor licence number 80517853, pursuant to Section 32A of the *Liquor Act* ("the Act") to allow for alcohol to be served without the consumption of a meal in specified areas of the premises.
- 2) In effect, the application sought to re-open the former public bar and beer garden areas of the premises under the authority of a Public Hotel Licence for the sale of light and mid-strength beverages, with an alcohol by volume content not exceeding 3.5%, without the requirement that the alcohol be sold ancillary to the consumption of a meal. The original application proposed operating hours for the Hotel Licence as identical to those currently existing for alcohol sales in the licensed restaurant, being a total of 77 hours per week, as follows:

Sunday 11:00 to 22:00  
Monday to Thursday 12:00 to 22:00  
Friday and Saturday 12:00 to 23:59

## Objections to the Application:

- 3) A total of 14 objections were received in response to the advertising of the application for variation of the licence conditions. The objectors were:
  - Ms Jane Alley, Senior Director, Licensing, Regulation and Alcohol Strategy
  - A/Commander Brent Warren, Northern Territory Police
  - Mr Neil Wright, Senior Policy Adviser, Alcohol and Other Drugs, Department of Health and Families

- Mr Brian Kimmings, Director Mawurli Wirriwangkuma Aboriginal Corporation (MAWA)
- Mr Samuel Evans, Joint Chairman, MAWA
- Mr Fraser Baker, Nominee, Malandari Store
- Bruce Hansen, Borroloola Community Action Group (BCAG)
- Ms Lizzie Hogan, Manager, Woman's Safe House Borroloola (WSH)
- Mr Brian Kimmings, Director, Malandari Properties Pty Ltd
- Mabunji Management Committee (MMC) lodged by Mr Fraser Baker
- Mr Dave Chalmers, AO, CSC, State Manager, Northern Territory Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA)
- Mr Charlie Radovic and Ms Trish Elmy, Savannah Way Motel, Borroloola
- Mr Etienne Moller, General Manager, McArthur River Mining (MRM)
- Ms Malarndirri McCarthy, MLA, Minister for Local Government

The substance of the objections is set out in the Objections Decision published on 8 April 2010. All of the objections were considered valid in terms of the satisfying the requirements of the Act.

### **Applicant's Response to Objections**

- 9) Mr Downs, Counsel for the Licensee, advised that in response to the objections the applicant intended to further limit the trading hours for the Hotel Licence areas as follows:
- Monday – Thursday 16.00 – 22.00 hours
  - Friday 16.00 – 23.59 hours
  - Saturday 16.00 – 23.59 hours
  - Sunday No trading

This represents 39.58 hours trading per week for the public bar and beer garden areas.

- 10) Mr Downs noted that many objections were very similar in content and substance. In relation to the specifics of the objections Mr Downs confirmed that the Licensee would adopt the following measures in response to the issues raised:
- The Licensee will apply self-imposed restrictions on the trading hours under the Hotel Licence;
  - Meals and / or snacks will be available at all times the premises are trading under the Hotel Licence;
  - The Licensee will ensure that a minimum of two (2) security personnel are present during the trading hours of the Hotel Licence; and
  - The Licensee will consider the provision of a courtesy bus for patrons.
- 11) Mr Downs' response also noted that the Licensee is actively participating in the development of the Borroloola Alcohol Management Plan ("the AMP") and that there have been no adverse incidents involving the current restaurant Licensee. He also submitted that the current Licensee was not responsible for the behaviour of the previous Licensee,

nor the adverse impact the former operators of the Borroloola Hotel had on the Borroloola community.

## The Hearing

- 12) At the commencement of the hearing Mr Downs informed the Commission that, as well as his clients, he intended to call Mr Don Garner and Mr Dennis De Gussa to give evidence in support of the application for a Hotel Licence.
- 13) Mr Wood informed the Commission that Mr Martin Clive-Griffin would be presenting evidence in support of the objection submitted by Ms Jane Alley, Sergeant Johnsson would be giving evidence in respect of the Police objection, Mr Mike Williams would give evidence in respect of the objection of Mr Etienne Moller of MRM and Ms Julie Reece would give evidence in respect of the objection by Mr Neil Wright of the Department of Health and Families. Mr Brian Kimmings, Mr Samuel Evans, Mr Fraser Baker and Mr Bruce Hansen intended to give oral evidence in support of their objections. Mr Wood advised the Commission further that Ms Liz Hogan and Mr David Chalmers would not be presenting evidence to the hearing but wished that their written objections be taken into account. Mr Wood also confirmed that the objection by Mr Charlie Radovic and Ms Trish Elmy, the proprietors of Savannah Way Motel, had been withdrawn following the amendment of the application by the Licensee.
- 14) Mr Downs provided the Commission with an overview of the variation sought by the Licensee, primarily an application to amend the authority of the current licence so as to allow the sale of light and mid-strength beverages for consumption on premises in the bar and beer garden areas without the requirement for the consumption of a meal. Mr Downs tendered a document titled "Borroloola Hotel Motel Management Plan" (Exhibit 1) which included the revised operating hours. He also advised that the Licensee was not seeking any amendment to the conditions applicable to the restaurant licence.
- 15) The additional conditions outlined in the Management Plan that were to be imposed voluntarily by the Licensee include:
  - Consumption of liquor without a meal not be advertised or promoted;
  - Substantial meals available in the bar and beer garden areas at all times the restaurant is serving meals. Substantial plate food and snacks available at all times. Water to be available at all times at no charge;
  - Premises to close no later than 1½ hours after closure of the kitchen;
  - Community friendly entertainment including pre-recorded music and live entertainment but no "nightclub" style entertainment. Noise restrictions to be applied and enforced;
  - Installation of CCTV equipment as approved by the Director with footage retained for 30 days;
  - Dress standards to apply after 6.00 pm; and
  - No direct egress to or from the bar and beer garden to the restaurant area.
- 16) At this point the hearing was adjourned for a viewing of the premises by the Commission and the parties.
- 17) At the resumption of the hearing Mr Downs presented his opening submission on behalf of the applicants, Davis Whiteman Pty Ltd with Mr Andrew Davis and Ms Toya Whiteman as Directors. Mr Downs informed the Commission that his clients had invested all their savings into the purchase and development of the Borroloola Hotel Motel in December 2007. If the current application for a Hotel Licence is successful they are proposing to operate a community focused social venue incorporating the responsible service of alcohol.

They intend to operate the business with 3 key staff, Mr Davis, Mr Whiteman and their current chef.

- 18) The applicants were having difficulty in securing finance for the improvement and on-going operation of the premises for a variety of reasons. Mr Downs advised that, if the application was approved, his clients would engage 2 security staff at all times the bar was open for business. Both Mr Davis and Ms Whiteman were in the process of obtaining Security Officer licences. Mr Downs submitted that several of the changes to the original application, namely the reduction in trading hours and no Sunday trading, were made in an effort to conform with the proposed conditions of the AMP as an indication of the bona fides of the applicants in responding to many of the concerns of the objectors.
- 19) Mr Downs submitted that several of the objectors were in effect seeking a blanket prohibition of on premise consumption of alcohol, allowing that there were currently no licensed hotel or tavern premises in Borrooloola. He stated that to a considerable degree those objections rely on the past performance of the previous Licensee and the effect that had on the amenity of the Community. He submitted that his clients should not be tarred with that horrible brush.
- 20) So far as licensed premises in Borrooloola region are concerned, the community is currently serviced by licensed restaurants at the Savannah Way Motel and the Borrooloola Hotel Motel, the Malandari Store which holds a take away licence and the licensed premises at King Ashe Bay Social Club, some 35 to 40 km from Borrooloola.

## **Evidence on Behalf of the Licensee**

### **Evidence of Mr Andrew Davis**

- 21) Mr Davis confirmed that he had been unable to secure finance for the business due to its location in Borrooloola. He advised that he and Ms Whiteman are not currently drawing a wage and profits from the operation of the restaurant and motel are being invested directly back into the business. He advised that, despite those difficulties, he had paid \$5,570 for an upgrade of the CCTV equipment at the premises.
- 22) Mr Davis informed the Commission that he and Ms Whiteman had organized for a petition to be circulated in Borrooloola to gauge public support for the grant of a Hotel Licence. The petition was submitted as Exhibit 4. Exhibit 5, a graph depicting the outcomes of the petition, indicated that it contained 264 signatures, broken down to 74% Borrooloola residents and 26% tourists. The majority of the persons who signed the petition were in favour of the re-opening the Hotel for on premises consumption of alcohol. Mr Davis added that the public support was contingent on the premises being properly managed and operated.
- 23) In respect of the previous management of the former hotel, Mr Davis confirmed that he was not resident in Borrooloola at that time however he understood the manner in which the hotel operated previously had created a bad situation in the town in respect of alcohol abuse and anti-social behaviour. He stated that the proposal to limit sales to light and mid-strength beverages, together with the limited opening hours applied for, would prevent a recurrence of the type of problems the premises had experienced in the past.
- 24) Mr Davis informed the Commission that the population of Borrooloola at the last census was 1,050, including approximately 500 people under the age of 18 years. He stated that since opening the restaurant, trade had been reasonably good.
- 25) Mr Davis added that since the closure of the Borrooloola Hotel the only places within proximity to the town where residents could consume alcohol on premises were the King Ash Bay social club, situated approximately 35 kilometres from Borrooloola and Heartbreak Hotel, 110 kilometres away on the Carpentaria Highway.

- 26) Mr Downs submitted a bundle of photographs, marked as Exhibits 8 and 9. Mr Davis confirmed that Exhibit 8 comprised photographs that were taken the day prior to the hearing and depicted accumulations of empty beer cans and rubbish located within 200 metres of the Borroloola Store and well within 2 kilometres of licensed premises. Exhibit 9 showed a similar situation in terms of beer cans and litter strewn around the site of the McArthur River bridge crossing.
- 27) Mr Davis submitted that the primary cause of the litter was the fact that many Borroloola residents, particularly those residing in areas where alcohol restrictions applied<sup>1</sup>, had no local place to go where they could legally consume alcohol, apart from the restaurants in the town. This resulted in large numbers of people purchasing take away beer from the Malandari Store and drinking in the bush areas within and surrounding the town in an unsupervised environment in breach of the 2 kilometre law. Mr Davis stated that the grant of a Hotel Licence, on the limited conditions applied for, would provide a safe and supervised premise for residents and tourists to meet for a social drink. He added that in his opinion the re-opening of the Hotel would have a significant effect in reducing not only the littering at drinking spots but also the associated anti-social behaviour resulting from excessive drinking in an unsupervised environment.
- 28) Mr Davis was questioned regarding the impact of the grant of a Hotel Licence on the proposed AMP for Borroloola. He responded that drinking in premises that were supervised and operated responsibly was preferable to unsupervised drinking of take away alcohol in bush areas within and outside the township. Mr Davis confirmed that he was prepared to vary the application before the Commission so as to incorporate any provisions of the AMP that would affect the operation of the Hotel. This included the adoption of 2 additional "alcohol free" days and the introduction of an electronically linked ID system.
- 29) In respect of crowd controller arrangements, Mr Davis informed the Commission that both he and Ms Whiteman were in the process of obtaining security licenses and that he was considering the engagement of additional security personnel for the hours of operation of the Hotel. If the Hotel Licence were granted he intended to have 2 licensed security personnel on duty whenever the Hotel was open for trade.

### **Evidence of Mr Don Garner**

- 30) Mr Downs called Mr Don Garner to give evidence on behalf of the applicants. Mr Garner stated that he was formerly a member of Northern Territory Police for 30 years and had been the OIC of the Borroloola Police Station from 2003 to 2006. He has resided in Borroloola for approximately 8 years and is currently the owner of a service station / general store close to the Borroloola Hotel Motel. Mr Garner stated that he was familiar with the operations of the Borroloola Hotel prior to its closure and during the period the licence was held by Cashcow Pty Ltd and was aware of the negative impacts the premises had on the wellbeing of many residents of Borroloola during that period.
- 31) Mr Garner stated that the problems with the hotel had arisen due to the irresponsible manner in which the previous Licensee had operated the premises. Staff numbers were reduced from around 15 to 3 or 4 and those kept on were mainly backpackers. He added that the management of the Hotel deteriorated to the point there were constant issues with excessive drinking, out of hours sales and the supply of fortified liquor products. Mr Garner stated that he had reported those issues to Licensing Inspectors Lye and Boyle and that his complaints led to the suspension of the licence for 7 days and the ultimate cancellation of the licence.
- 32) Mr Garner stated that in his opinion the premises were currently well run by Mr Davis and Ms Whiteman and the opening of the restaurant had provided an additional venue for socialising in Borroloola. He agreed that the lack of a licensed venue for on-premise

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<sup>1</sup> Town camp areas declared Restricted under *The Northern Territory National Emergency Response Act* ("NTER").

consumption of alcohol had the effect of forcing many drinkers into the scrub and to other secluded and unmanaged areas within the town.

- 33) Mr Garner observed that the closure of the Hotel had resulted in negative comments from tourists and in a reduction of the tourist numbers staying in Borrooloola overnight or for longer periods. He added that the lack of a hotel was also having an impact on the wider community with many people leaving the township. He added that, in his opinion, the grant of a restricted Hotel Licence as proposed would have a beneficial impact on the community, including the financial benefit of encouraging tourists to stay in Borrooloola.
- 34) Mr Garner commented on the photographs of alcohol related littering around Borrooloola (Exhibits 8 and 9) and stated that the littering depicted in the photographs was less than he had observed on other occasions. He noted that the problem was compounded as no authority in Borrooloola seemed to accept responsibility for cleaning up the litter. Mr Garner concluded his evidence by stating that he could see no detriment to the town of Borrooloola if the Hotel Licence was granted and the premises operated in accordance with the proposed licence conditions and the *Liquor Act*. On the positive side, the operation of a well-run hotel would provide residents of Borrooloola with a safer drinking venue than uncontrolled drinking in the bush and the associated littering and anti-social behaviour. Mr Garner stated that the current Nominees were well aware of the consequences of any breach of licence conditions and that they would be under close scrutiny by both the Police and the community at large if the Hotel Licence was to be granted.

#### **Evidence of Mr Dennis de Gussa**

- 35) Mr De Gussa informed the Commission that he had been a resident of the NT for approximately 7 years and had worked at Heartbreak Hotel and Threeways Roadhouse. He was a regular visitor to Borrooloola on fishing trips.
- 36) Mr De Gussa stated that the current owners had put in a considerable effort in cleaning up the Borrooloola Hotel Motel since purchasing the premises. He stated that he could see no detriment to the community in the grant of a Hotel Licence and, in his opinion, such a venue would add to the amenity of the community generally. Mr De Gussa added that since the closure of the hotel tourists and fishermen were not stopping in Borrooloola as regularly as previously and that this was detrimental to the community. He concluded his evidence by stating that the grant of a Hotel Licence would provide a controlled drinking environment for residents and significantly decrease the littering occurring in the township.

#### **Evidence of Ms Toya Whiteman**

- 37) At the conclusion of the evidence of the objectors, the Commission advised Mr Downs that it would like to hear from Ms Whiteman, joint applicant with Mr Davis and dual nominee of the existing restaurant licence at the Borrooloola Hotel Motel.
- 38) Mr Whiteman informed the Commission that she and Mr Davis had limited funding available after investing their savings in the purchase of the Borrooloola Hotel Motel premises. Currently any profits made from the operation of the restaurant and motel are invested back into the business. Ms Whiteman advised that there is currently no mortgage over the premises and that the business was essentially debt free. The motel accommodation was currently fully booked until the end of November by workers constructing the new bridge and 4 new demountables had recently been purchased to expand the accommodation available.
- 39) Ms Whiteman confirmed that she had prepared the Borrooloola Hotel Motel Management Plan (Exhibit 1). The proposal was to develop the premises in 2 distinct parts, being the restaurant and the Hotel Licence areas.
- 40) Ms Whiteman confirmed that the Licensee company was paying for the training of security staff and they were planning to employ a local person to provide security services, along with herself and Mr Davis. She also asked the Commission to note the proposal to include

CCTV coverage for the premises and referred the camera surveillance plan contained in Exhibit 15 and the associated floor plan at Exhibit 16. Ms Whiteman also advised, should the application be approved, they would provide food in the bar and beer garden areas at all times that part of the premises was open for business. They would also implement the Sober Bob program and were considering providing a courtesy bus to ferry patrons to and from the premises.

- 41) In closing Ms Whiteman submitted that the new business enterprise conducted by her and Mr Davis suffered from the stigma of the previous Licensee and the manner in which it conducted the business at the Hotel. She anticipated that public opinion would change if they were given the opportunity to operate a Hotel Licence in accordance with the Management Plan.

## **Evidence of the Objectors**

### **Evidence of Mr Martin Clive-Griffin**

- 42) Mr Clive-Griffin informed the Commission that he was employed with the Department of Justice in the Alcohol Policy unit based in Katherine. He stated that the objection document was not prepared by him personally but by his Director.
- 43) In respect of progress with the AMP for Borrooloola, Mr Clive-Griffin stated that a draft had been prepared in consultation with stakeholders in the community and had been forwarded to his Director around a month ago, along with his report on the draft AMP. The AMP was to be forwarded to the NT Minister for Alcohol Policy and then on to the Commonwealth Minister. In Mr Clive-Griffin's opinion the AMP would need to be reviewed again if the Hotel Licence currently under consideration was to be granted.
- 44) Mr Clive-Griffin advised that the draft AMP included a strategy to reduce the allowable sales of mid strength beer and mixed sprits from the Malandari Store to 18 cans per person per day, down from the current licence condition limit of 30 cans per day. In response to a question from the Chairman, Mr Clive-Griffin advised that he would seek approval from his Director to make a copy of the draft AMP available to the Commission for the purposes of the hearing. The draft AMP was subsequently admitted into evidence and marked as Exhibit 11.
- 45) In cross examination by Mr Downs, Mr Clive-Griffin stated that the reduction in trading hours submitted by the applicant may not have the degree of success anticipated and that responsible service of alcohol is not always successful in preventing intoxication and the resultant anti-social behaviour. Mr Downs tendered minutes of a meeting concerning the AMP held on 22 March 2010 (Exhibit 10) and referred Mr Clive-Griffin to advice attributed to Mr Brian Kimmings that the Malandari Store sells 600 cartons of beer per week. He suggested that, allowing that a large percentage of that alcohol was being consumed in bush land within the township, there would be benefits to the community if that consumption took place in a controlled environment.

### **Evidence of Sergeant Gert Johnsson**

- 46) Sergeant Johnsson informed the Commission that he currently held the position of OIC of the Borrooloola Police Station. He stated that there were 3 liquor outlets in Borrooloola, namely 2 restaurant licenses and the Malandari Store which held a take away licence allowing the Store to sell 30 cans of mid or light strength beer or pre mixed spirits per person per day. However, the store has implemented a voluntary limit for the sale of 24 cans of mid or light strength beer or mixed spirits per person per day.
- 47) An informal agreement was in place with Heartbreak Hotel limiting its sales to one carton of alcohol per day to Borrooloola residents. Sergeant Johnsson advised that the Heartbreak Hotel agreement was difficult to enforce. He stated that of 1,156 incidents attended by

Police in the past 12 months 528 or 46% were alcohol related. Sergeant Johnsson agreed that not all of the reported incidents of Police intervention resulted in court appearances

- 48) Sergeant Johnsson stated that the Federal Intervention has created something of a divide in the community between those who could drink in their homes and those who could not. People whose premises were subject to alcohol restrictions have little choice as to where they could consume alcohol as the town camps were prescribed areas under the Commonwealth's NTER Act. He added that there are only 3 locations near the township where public drinking is permitted.
- 49) Sergeant Johnsson stated that he supported several of the initiatives proposed in the AMP, namely, the introduction of a permit system, the limiting of take away sales to 18 cans per day, which he would like to see reduced even further and the implementation of an ID system for take away sales of alcohol. He noted that should a Hotel Licence be granted to the Borroloola Hotel Motel then it should conform with the strategies included in the AMP.
- 50) In terms of the lowering of alcohol consumption, Sergeant Johnsson stated that he did not believe the granting of a Hotel Licence would have that effect. In his opinion people determined to drink to excess would simply purchase their take away alcohol before moving on to the Hotel premises to drink. Sergeant Johnsson also noted that full strength alcohol, including spirits, was being brought into Borroloola from Heartbreak Hotel and Katherine and this was difficult to Police.
- 51) Sergeant Johnsson noted that prior to the closing of the Borroloola Hotel having one license in the town for on-premise consumption had the result of forcing disparate clans to mingle at the one venue. In his personal opinion, Borroloola would be better served by a number of licensed premises where people could consume alcohol in a responsible and supervised manner, coupled with a 6 can per person per day limit on take away sales. He added that, in his personal view, the town needed a central place where people could drink in a supervised and controlled environment.
- 52) Speaking as a community resident and not in his capacity as a Police Officer, Sergeant Johnsson stated that he would support the grant of a Hotel Licence to the applicants so long as the AMP was in place and the licence was consistent with and reflected the strategies of the AMP aimed at reducing the supply of alcohol in Borroloola.

#### **Evidence of Ms Jackie Reece**

- 53) Ms Reece is engaged as a nurse at the Borroloola Clinic and appeared at the hearing as representative of objector Mr Neil Wright, Senior Policy Adviser, Department of Health and Families. She confirmed to the Commission that a large percentage of presentations at the clinic were in respect of alcohol related medical conditions or injuries. Ms Reece advised that she had read the letter of objection prepared by Mr Wright and that the views expressed were not necessarily in accordance with her own views as a person residing and working in Borroloola.
- 54) Under cross examination Ms Reece stated, in her capacity as a member of the community, that she supported the grant of a Hotel Licence to the applicants so long as the AMP was in place and the conditions of licence were consistent with the aims and strategies of the AMP. She added that her personal support was contingent on the premises being properly and responsibly managed.

#### **Evidence of Mr Brian Kimmings**

- 55) Mr Kimmings is a Director of Malandari Properties Pty Ltd, the owner of the Malandari Store, and is also a Director of MAWA. Mr Kimmings stated that there would be financial implications for the Malandari Store and the community in general if the Hotel Licence was granted. The Malandari Store is run as a not for profit organisation and the proceeds of alcohol sales compliment the operation of the supermarket and ancillary sales to community residents, tourists and visitors. He stated that the Malandari Store currently sells

in the order of 600 cartons of mid strength beer per week, at a price of \$60 per carton. A six pack of beer sold for \$20.00. Mr Kimmings submitted that if there was a 25% shift in patronage from the store to the proposed Hotel that would represent a loss to the store of the sale of approximately 150 cartons of beer per week. He suggested that the Hotel would sell beer for somewhere around \$5.00 per can and that would leave the consumers with less money available for other purchases.

- 56) In respect of the application for a Hotel Licence, Mr Kimmings stated that past experience when the Borroloola Hotel was operational was that 6 or 7 security staff would be required to effectively control patron behaviour. He also stated that the introduction of an ID system for alcohol purchases would be ineffective unless the same system was used in all licensed premises within the community.
- 57) At this point Mr Downs submitted that his clients were prepared to install an approved ID system if that became a requirement under the terms of the AMP for Borroloola. He envisaged that the ID system would be similar to the one currently in place in Katherine and would have the capacity to monitor purchases by individuals.
- 58) Mr Downs referred Mr Kimmings to his letter of objection at folio 23 of the hearing brief and the concerns expressed regarding problems that had arisen when the former Hotel was operating. He particularly noted the concerns in respect of Aboriginal employees of McArthur River Mine failing to attend for work on Mondays after spending Sunday drinking at the Hotel. Mr Kimmings agreed that the variation of the application currently before the Commission to include no trading on Sundays and 2 additional no trading days per month would most likely alleviate that problem.

#### **Evidence of Mr Mike Williams**

- 59) Mr Williams is the Administration Manager of the MRM and appeared at the hearing in respect of the objection lodged by Mr Etienne Moller, General Manager of MRM. Mr Williams stated that he would support a decision in respect of the application to re-open the Hotel for on premise consumption of alcohol only if that was in the best interests of the Borroloola community. He stated that, in his view, no decision should be taken in respect of the current application until the draft AMP was ratified by all parties concerned.
- 60) Mr Williams confirmed that his major concerns were in respect of alcohol related anti-social behaviour and the potential for increased sales of alcohol via a Hotel Licence to impact on MRM's training initiatives, and especially those aimed at Aboriginal residents of Borroloola. He stated the grant of a Hotel Licence had the potential to exacerbate the alcohol related problems that already existed within the community.
- 61) Mr Williams advised that MRM's Indigenous Training Program was conducted over 12 months and included a 3 week preliminary training schedule. Originally the training was conducted in Borroloola but had been subsequently moved to the mine site due to alcohol related non-attendance of many participants. He also expressed his opinion that the excessive consumption of alcohol within the community had an impact on school attendances.
- 62) Mr Williams confirmed that MRM was fully supportive of the initiatives contained within the draft AMP. However he thought that the proposed 18 can per person per day limit proposed for the Malandari Store remained excessive. He expressed concerns that people determined to drink to excess would purchase take away alcohol from the store and secrete it away while they drank at the Hotel premises and then return to consume the take away once the Hotel had ceased trading. Mr Williams suggested that MRM would reconsider its objection to the grant of a Hotel Licence once the AMP is ratified and on being satisfied there were mechanisms in place to prevent "double dipping" of alcohol purchases.
- 63) The Commission was advised by Mr Williams that MRM currently employed 40 to 50 Borroloola residents at the mine.

- 64) On cross examination by Mr Downs, Mr Williams was referred to the draft AMP and specifically to the 6 strategies identified as measures aimed at reducing alcohol supply in the township. Mr Williams stated that if those strategies were adopted and enforced he would have no objection to the licence application. He added that the conditions of the licence granted should refer to the AMP strategies and that concerns related to work attendance and performance of the Aboriginal employees and trainees of MRM would be ameliorated to a significant extent if there was no trading on Sundays.

### **Evidence of Mr Samuel Evans**

- 65) Mr Evans is the Joint Chairman of MAWA. He confirmed the matters set out in his letter of objection and stated that the re-opening of the Borroloola Hotel for on premise consumption of alcohol could lead to an increase in anti-social behaviour and result in financial hardship within the community.
- 66) Mr Downs showed Mr Evans Exhibits 8 and 9, being the photographs of littering in and around the Borroloola township. Mr Evans stated that as a result of the Federal Intervention many Aboriginal people within the community had nowhere to drink lawfully as they were not permitted to consume alcohol in their own homes. He added that the majority of those people wished to drink in the same manner as "decent Australians and like not dogs out there in the scrub." He stated that the restrictions imposed by the Intervention were the cause of people drinking in the bush and that most residents would prefer to drink responsibly in their own home but were currently prevented from doing so.

### **Evidence of Mr Fraser Baker**

- 67) Mr Fraser Baker is a Committee Member of the Malandari Store and is the nominee for the Store's liquor licence. He is also a Director of MAWA and Chairman of the Mabunji Management Committee. He expressed his concerns in respect of the timing of the application for a Hotel Licence and the impact it may have during the currency of the Federal Intervention and attempts to educate Aboriginal people on the responsible consumption of alcohol. He noted that Mabunji is attempting to train Aboriginal people and to educate them in the responsible drinking and that many of the issues of concern in Borroloola related to how Aboriginal people relate to alcohol and how they react after consuming alcohol.
- 68) Mr Baker stated that boredom was an issue for Borroloola residents and when they moved to Katherine there were no controls over their alcohol consumption other than the white man's controls and laws.
- 69) In respect of the current hearing, Mr Baker stated that he so far had heard nothing positive or constructive, just one group of people telling other people what they could do and how they should behave. He noted that "government people visit Borroloola and make promises then leave and forget".
- 70) Mr Baker stated that there were 2 categories of drinkers in Borroloola, those who would prefer to drink at home and the party drinkers. The Federal Intervention had resulted in those who preferred to drink at home being forced into the bush areas to drink as there were no other options. He advised that Mabunji was engaged in a program of fencing homes in anticipation of a lifting of the prescribed area status and the introduction of a permit system.
- 71) When shown the photographs depicting alcohol related littering in Borroloola, Mr Baker stated that this was a direct result of the Federal Intervention and the fact the town camps were prescribed as alcohol restricted areas. Mr Baker expressed his extreme anger at the prescribed status of peoples' homes and stated that people who reside at those properties have no option but to drink in the bush where there is no control or supervision of the consumption of the resultant behaviour.

- 72) Mr Baker expressed concerns at the prospect of a hotel being open at 4.00 pm on Thursdays, particularly on CDEP pay weeks, and the prospect of workers not attending for work the following day. At this point Mr Downs confirmed that the bar and beer garden would not trade on 2 Thursdays per month, linked to CDEP paydays.
- 73) In conclusion Mr Baker stated that, despite the concerns expressed at the hearing, he did not believe the Hotel Licence would necessarily have a negative impact on the community so long as it was properly managed and so long as the strategies of the draft AMP were incorporated into the licence conditions. On questioning by Mr Downs he agreed that the applicants' agreement to close the Hotel on CDEP pay days was a positive move in that regard. Mr Baker was of the view that if the Hotel Licence was granted it should be for a probation period of twelve months.

#### **Evidence of Ms Malarndirri McCarthy MLA**

- 74) Ms McCarthy expressed concern to the Commission as to whether the Borroloola community had been given sufficient time to consider the Hotel Licence application as now amended. She also expressed her concerns about the grant of a Hotel Licence given previous experiences with the former Licensee and the lack of any control over indiscriminate drinking on the premises and the irresponsible sale of take away alcohol.
- 75) Ms McCarthy confirmed that her objection to the application stands, regardless of the concessions made by the applicants and the amendments made to the proposed licence conditions. She acknowledged that the Federal Intervention had resulted in some unfortunate consequences and questioned the timing of the grant of a Hotel Licence in the current environment.
- 76) In respect of the draft AMP, Ms McCarthy stated that, in her view, consideration of the current application should be deferred until the AMP was ratified by the authorities and actually implemented. In response to the a question from the Chairman, Ms McCarthy stated she could not estimate the time it would take for the AMP to be approved by the relevant NT and Commonwealth Government Ministers and implemented, nor how long it would be before the proposals for General and Public Restricted Area declarations and a liquor permit system were implemented.

#### **Evidence of Mr Bruce Hansen**

- 77) Mr Hansen is a member and Chairman of the BCAG and a long term resident of Borroloola. He confirmed that part of BCAG's charter was dealing with social issues in the Borroloola township. He stated that problems relating to excessive consumption of alcohol and related violence with the former Borroloola Hotel go back as far as 1995 and that the Hotel has left a scar on the Community. Problems associated with the Hotel in the past had a marked effect on other parts of the community and not just the drinkers.
- 78) Mr Hansen confirmed that none of the evidence heard by the Commission in respect of the current application had changed his view that the on premises consumption of alcohol should remain banned. He also informed the Commission that anti-social behaviour was still occurring in the community as a result of residents transporting alcohol, including full strength beer and spirits, purchased from Heartbreak Hotel and beyond into the Borroloola community.
- 79) Mr Hansen noted that the BCAG had successfully applied to have takeaway alcohol sales from the Malandari Store closed on 3 separate occasions, including once for a period of 3 days.
- 80) He also submitted that the security arrangements proposed by the applicants were inadequate given the past history of the Borroloola Hotel. Under cross examination Mr Hansen stated that he had seen up to 6 security staff engaged at the Hotel in the past and even that was not sufficient to prevent the violence and anti-social behaviour.

81) In response to questions from Mr Downs, Mr Hansen advised that he was not aware of any unrest or fighting arising from the operation of the restaurant licence currently in operation at the Borroloola Hotel Motel over the past 18 months. He stated that he had been to the restaurant on one occasion and was impressed by the way in which it was operated and managed. Mr Hansen concluded his evidence by stating that he remained opposed to the grant of a Hotel Licence that would provide for 6 to 8 hours of drinking per day on top of the current availability of take away sales.

### **Closing Submissions on Behalf of the Applicants**

82) Mr Downs submitted that the application before the Commission was one lodged by good people with good intentions. He stated that his clients have substantial plans for the development of the business, however it is not possible at this stage to take proposed improvements any further, unless the Hotel Licence is approved, at least in principle.

83) Mr Downs noted that his clients had made significant concessions in respect of the application currently before the Commission. He asked that the Commission take particular note of the restrictive conditions that were now included in the application for a Hotel Licence, to which the applicants had willingly agreed during the course of the hearing. He noted that the Management Plan prepared by the applicants reflected the reduction of hours applied for and took account of many of the issues raised by objectors.

84) He submitted that Mr Davis and Ms Whiteman are responsible members of the community who are determined to implement practices aimed at the responsible service of alcohol, as opposed to the current practices of people purchasing take away alcohol from the Store and consuming it in an unsupervised environment in an irresponsible manner. Mr Downs asked that the Commission note the proposals by the applicants to provide meals and snacks in that bar area at all times the premises were open, to implement the Sober Bob program and to consider providing a courtesy bus. He also asked that the Commission take into account his clients' participation in the development of the draft AMP and, importantly, their agreement to incorporate the key strategies as conditions of licence. He noted that the concessions in that regard were significant, including no trading under the Hotel Licence on Sundays, 2 additional alcohol free days and the installation of an approved ID system. Mr Downs also confirmed his clients' agreement to the Commission conducting a review of the Hotel Licence, if granted, after a 12 month operating period.

85) Mr Downs referred the Commission to its decision of December 2007, in relation to the grant of a restaurant licence, and in particular paragraphs 103 to 106 of that decision. At the time the Commission had deferred its decision regarding the Hotel Licence until the AMP was in place and estimated that time as being between 4 to 6 months. He noted that, whilst a draft was submitted during the course of this hearing, it was now some 2 ½ years later and the AMP had still not been approved, nor was there any certainty as to when that would occur. Mr Downs submitted that his clients had waited long enough and had demonstrated their bona fides in successfully operating the restaurant over the past 18 months. That period had passed without incident of anti-social behaviour or complaint to the authorities on any aspect of the conduct of the business.

86) Mr Downs noted that a number of the issues raised by the objectors in terms of the AMP were beyond the control of his clients. For example, one of the strategies designed to reduce the harmful effects of excessive consumption of alcohol was a reduction in the volume of take away alcohol sales. Mr Downs stressed that his clients had no control over that issue and were not applying for a take away licence. He added that his clients had no options in terms of speeding up the process of having the draft AMP ratified at Ministerial level and had no available remedies to redress the considerable time it was taking to finalise that document.

87) Mr Downs noted that the application before the Commission for a Hotel Licence was significantly more restricted than the one submitted in 2007 and incorporated the measures and strategies recommended in the draft AMP that could be applied to a Hotel Licence.

88) Mr Downs asked that the Commission note that the objection lodged by Mr Charlie Rodovic and Ms Trish Helmy of the Savvanah Way Motel was withdrawn once the operating hours applied for were reduced. He also raised the issue of the objectors who had declined to give further evidence at the hearing, namely, David Chalmers of FAHCSIA and Ms Lizzie Hogan of the Women's' Shelter and submitted that the Commission should give those objections less weight on the basis those objectors not giving evidence at the hearing and not therefore responding to concessions made in the amended application.

89) Mr Downs made the following submissions in respect of the evidence of the parties who appeared at the hearing:

- Mr Garner was a long term resident of Borroloola and was well aware of the past problems associated with the Borroloola Hotel when it was operated by Cashcow Pty Ltd, being the senior Police officer stationed in Borroloola at the time. He noted that Mr Davis and Ms Whiteman were professional operators and he expected them to operate the Hotel properly if the licence was to be granted. Mr Garner was of the view there was a place in the community for on premises consumption of alcohol and he expected the business to prosper and do well.
- Mr Degussa regarded the applicants as good operators who presently managed a well-run business.
- Mr Clive-Griffin was unable to advise the Commission with any certainty at all when the draft AMP was likely to be approved and implemented. Mr Downs stated that Mr Clive Griffin could raise no negative argument against the responsible consumption of alcohol in a controlled environment, as was proposed by his clients.
- Sergeant Johnsson's evidence included that people need places to socialize and to drink responsibly. Mr Downs noted that, in his private capacity as a citizen of Borroloola, Sergeant Johnsson did not oppose a Hotel Licence if conditions were imposed to ensure compliance with the strategies included in the draft AMP.
- Ms Reece had no objection to the grant of the Hotel Licence on the modified conditions now presented to the Commission and so long as the terms of the draft AMP were included and enforced as licence conditions.
- Mr Kimmings raised a number of issues arising from the current sale and consumption of alcohol in the Borroloola community. Mr Downs submitted that most of the current alcohol issues facing Borroloola residents were beyond the control of his clients and arose to a large degree from the significant volume of sales of take away alcohol from the Malandari Store. Mr Downs noted that Mr Kimmings was in a better position to address those issues than his clients as there was no take away component attached to the application before the Commission.
- Mr Evans noted that many of the alcohol related problems in the community had continued for the past few years, including after the Hotel had been closed. If the AMP was adopted and properly enforced, including the acceptance of alcohol free days, then Mr Evans had no objection to the grant of a Hotel Licence. He also agreed that, properly managed, a hotel and a licensed community club could co-exist in the township.
- Mr Baker noted that Aboriginal people want to be educated to consume alcohol in a responsible manner and at present the Federal Intervention is preventing that from happening for many Borroloola residents. He had no objection to the grant of a Hotel Licence if the terms and strategies of the AMP were adopted by the Licensee. Mr Baker suggested a 12 month review of the licence were it to be granted, to which the applicants had agreed.
- Ms Malarndirri McCarthy MLA acknowledged that the delay in finalising the AMP was unacceptable however she could provide no advice as to when the draft AMP would be

endorsed by the NT Government. She stated that she was not prepared to support the application for a Hotel Licence or to change her view opposing the application prior to further consultation within the Borroloola community. Mr Downs noted however that Ms McCarthy had 2 ½ years to carry out that consultation since the grant of the restaurant licence but had not done so.

- Bruce Hansen referred to the “scar left on the community” by the previous Licensee of the Borroloola Hotel and suggested nothing had changed. Mr Downs submitted however that Mr Hansen’s objection was based on the stigma of the prior Licensee and not on the credentials or bona fides of the current applicants.
- 90) Mr Downs noted that in reaching its determination the Commission was charged with taking into consideration the objects of the *Liquor Act* as prescribed by Section 3. He submitted that, in respect of those objects, the photos tendered during the hearing evidenced irresponsible consumption of alcohol in an unsupervised environment, bringing with it the inherent dangers of harm and anti-social behaviour. He submitted that there were better options and one of those was to grant the Hotel Licence and provide a venue where people could enjoy a drink in a safe and supervised environment incorporating the responsible service of alcohol to minimise the risk of harm.
- 91) In terms of the diversity of licensed premises, Mr Downs asked the Commission to note that Borroloola was currently serviced by one licensed take away store and 2 restaurant licences. He submitted that the grant of a Hotel Licence would add to the diversity of licensed premises in Borroloola in providing a licence of the type found in most cities and towns throughout Australia. He also submitted that the applicants had seriously considered the risk that the grant of this type of licence may pose to the amenity of the community. He noted that, in terms of the objects of the Act relating to alcohol related harm, his clients had agreed to implement a number of measures that went far beyond what is normally applicable to a Hotel Licence so as to minimise that risk. Those measures included very restricted trading hours, including the closure of the premises every Sunday and every second Thursday and the installation of a new CCTV system and a customer identification system.
- 92) In respect of the public interest, Mr Downs noted that residents of Borroloola who wished to enjoy a drink on licensed premises were presently faced with a 70 kilometre round trip to King Ash Bay or a 220 kilometre round trip to Heartbreak Hotel. He also submitted that it was in the public interest that tourists passing through or staying in Borroloola should be able to enjoy the services offered by a hotel as they would in most other communities.
- 93) In closing, Mr Downs submitted that his clients had demonstrated their credentials as Licensees through the manner in which they responsibly managed their business under the current restaurant licence. He stated that his clients deserved a fair go and did not deserve to be tainted by the stigma of the past Licensees and the irresponsible manner in which they operated the Hotel. He noted that his clients were prepared to work with the community in respect of the AMP and any other alcohol harm reduction measures that may be implemented in the future and invited the Commission to incorporate AMP strategies into any Hotel Licence if granted. Mr Downs asked that the Commission consider the benefits to the community of Borroloola in determining whether to grant the very restricted Hotel Licence for which his clients now applied.

#### **Evidence received by the Commission following the conclusion of the public hearing**

- 94) At the conclusion of closing submissions the Chairman requested that Mr Wood make further enquiries in respect of the price paid by current applicants for purchase of the premises, the population figures for Borroloola and the records of the volume of liquor sales from the Malandari Store.
- 95) Mr Wood subsequently provided a report to the Commission detailing the results of his investigations in respect of the matters raised at the conclusion of the hearing. The report,

and attachments, were provided to Mr Downs together with an invitation to present any further submission he may wish to make on behalf of his clients.

96) The further information provided by Mr Wood may be summarised as follows:

- **Population figures for Borroloola:** inquiries with the Roper Gulf Shire revealed that the approximate total population of Borroloola was 1,000 people. The Shire was unable to breakdown the population figures any further than this single raw figure.
- **Liquor sales for the Malandari Store:** Mr Kimmings provided the sales figures for the Store broken down to calendar quarters for 2009. Analysis of the figures indicates the sale of 668 cartons of beer per week for the first quarter of 2009, 609 cartons per week in the 2<sup>nd</sup> quarter and 486 cartons per week for the 3<sup>rd</sup> quarter. The figures provided essentially confirm the evidence provided to the Commission at hearing that the Malandari Store averages sales of approximately 600 cartons of light and mid strength beer per week.
- **Purchase details for the Borroloola Hotel Motel by Davis Whiteman Pty Ltd:** Mr Wood's inquiries revealed that the purchase price paid by Davis Whiteman Pty Ltd for the premises was \$320,000, confirming the advice provided to the Commission by Ms Whiteman at the conclusion of the hearing.
- Mr Wood's report also highlighted an issue in respect of the tenure of 821 Town of Borroloola. The premises of the Borroloola Hotel Motel are situated on 3 lots, including lot 821. A search of the land title register revealed that lot 821 is currently vacant Crown Land. Mr Downs, in response to that issue, provided the Commission with a copy of Occupation Licence number 3612, issued by the Delegate of the Minister for Lands, in respect of Lot 821 and granting a permit to occupy that land to Davis Whiteman Pty Ltd.

## Consideration of the Issues

97) The Commission's decision at the time the restaurant licence was granted contained the following extract, which is particularly relevant to the considerations taken into account in determining the current application:

*(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.*

- 110) The above decision was published by the Commission on 18 December 2007, 2½ years prior the current hearing. Since that time the restaurant at the Borroloola Hotel Motel has operated without incident, both in terms of the requirement for Police intervention and in respect of any adverse report to the Director of Licensing.
- 111) The Commission also notes that none of the objectors raised any concerns during the course of the hearing in respect of the operation of the restaurant licence nor in respect of the bona fides as Licensees of Mr Davis or Ms Whiteman. To the contrary, a number of witnesses commented on the professional manner in which the restaurant was operated and the fact that the premises were an enhancement to the social amenity of the township.
- 112) During the 2½ years since the Commission’s previous decision significant community consultation has taken place in respect of the development of an AMP for Borroloola. The key strategies in the draft AMP aimed at reducing the supply of alcohol in the Borroloola community, are as follows:
- The introduction of 2 alcohol free days per month (CDEP and / or government pay day);
  - The introduction of an electronic linked ID system for take away sales from licensed venues in and around Borroloola;
  - A variation to the liquor licence for the Malandari Store so as to limit take away sales to 18 cans of light or mid strength alcohol per person per day;

- A variation to the liquor licences of the Hi Way Inn, Daly Waters Pub, Heartbreak Hotel and Mataranka Pub to limit the sales of alcohol to residents of Borroloola or the Cape Crawford region to 18 cans per day;
  - The declaration of town camps in Borroloola and land prescribed as General Restricted Areas together with the introduction of a permit system for the residents of those areas; and
  - The declaration of Township of Borroloola as a Public Restricted Area.
- 113) A number of the objectors submitted that no Hotel Licence should be granted to the current applicants until such time as the AMP is ratified and in place. The Commission notes those comments but notes also that the draft AMP does not presently have any official status, despite some 2 ½ years of consultation and negotiation within the community. Prior to the AMP becoming enforceable it will need to be ratified by the NT Minister for Alcohol Strategy and the Commonwealth Minister for Aboriginal Affairs. Several of the measures proposed will then need to be implemented by the Commission, via the powers contained in the *Liquor Act*. At the time of this decision the Commission has been unable to ascertain with any certainty when the ratification process is likely to be completed and when the AMP is likely to be referred to the Commission for implementation of the proposed strategies.
- 114) Of the key strategies identified in paragraph 112 above, only the first 2 are directly relevant to the application currently before the Commission. During the course of the hearing the applicants informed the Commission that they would voluntarily implement 2 further days per month on which alcohol sales would not occur, namely CDEP Thursday paydays. In addition the applicants agreed to purchase and install an electronic ID system capable of monitoring sales to individuals and also capable of being linked to ID systems that may be introduced in other licensed venues in the region at some time in the future.
- 115) Mr Downs advised the Commission that his clients were agreeable to further amendment of their application to take account of all relevant strategies and objectives contained in the draft AMP.
- 116) Taking accounts of the amended application and the concessions made by the applicant in respect of compliance with the relevant strategies of the draft AMP, objection witnesses Sergeant Johnsson, Ms Jackie Reece, Mr Mike Williams, Mr Evans and Mr Baker conceded under cross-examination that they would not object to the Hotel Licence application on the conditions now applied for. Mr Clive-Griffin expressed some reservations regarding the grant of a Hotel Licence in Borroloola but conceded there may be benefits to the community in having a controlled environment for the on-premise consumption of alcohol.
- 117) Whilst staff members of FAHCSIA were present in Borroloola for the first day of the hearing, none presented any evidence at the hearing as to whether the Department's objection remained on foot in light of the amended application or whether the adoption of the strategies of the draft AMP had any impact in respect of the original objection. The Commission does not accept Mr Downs' submission that it should give little weight to the original objection as a consequence of FAHCSIA not giving evidence at the hearing. The Commission is however placed in an awkward position in that it remains unaware of FAHCSIA's response to the amended application, despite the fact FAHSCIA personnel were present for at least part of the hearing. The Commission is in the same position in terms of the original objection lodged by Ms Lizzie Hogan of the Women's Safe House, albeit Ms Hogan did not attend the hearing but asked that her written objection be taken into consideration.
- 118) Mr Kimmings, Ms McCarthy and Mr Hansen remained opposed to the grant of a Hotel Licence, regardless of the concessions made by the applicants and their submissions are canvassed in the following paragraphs.

- 119) Mr Kimmings is a principal advisor to and Director of Malandari Properties Pty Ltd, the owner of the Malandari Store and the only premises in Borrooloola that currently holds a licence for the sale of take away alcohol. There is little doubt, as submitted by Mr Kimmings, that the grant of a Hotel Licence in Borrooloola would have an impact on the level of alcohol sales by the Malandari Store. Those sales are currently significant and in the order of 600 cartons of light and mid strength alcohol per week. The effect on the revenue of the Store should a competitor enter the market is self-evident. There is also little doubt that the objections raised by Mr Kimmings contain an element of commercial objection, albeit the objections also contain significant and appropriate concerns in terms of the wellbeing or the residents of the community.
- 120) Ms McCarthy stated that she could not support the application, even as currently framed, prior to further consultation with community organisations. The Commission notes that a number of those organisations were represented in the consideration of the current Hotel Licence application, both through their formal objections and by presenting evidence at the hearing. In addition, there has been significant and on-going community consultation during the past 2½ years through the development of the draft AMP for Borrooloola. The Commission notes that there is nothing specific contained in the draft AMP aimed at preventing the grant of additional liquor licences within Borrooloola. It is also of significant importance that the current applicants have agreed to incorporate the relevant strategies of the AMP as enforceable conditions of licence, should the Commission be minded to grant a Hotel Licence.
- 121) Mr Hansen's evidence at hearing placed great emphasis on the previous operation of the Borrooloola Hotel and in particular the damage done to the community during the time the licence was held by Cashcow Pty Ltd. The Commission is fully aware of the unscrupulous manner in which that Licensee operated and managed the premises but must apply significant caution to punishing the present applicants for the reprehensible behaviour of Cashcow. The current restaurant licence has been in operation for 2½ years without incident, including the past 18 months when the current Licensee has managed the business.
- 122) Based on the foregoing objections the Commission acknowledges fears in some parts of the community that the granting of any form of Hotel Licence could herald a return to the appalling chaotic conditions experienced when the hotel was operated by Cashcow Pty Ltd.
- 123) The Commission also acknowledges the submissions of Mr Downs that the implementation of the AMP is entirely outside the control of his clients and that they have agreed to voluntarily adopt the strategies aimed at reducing the consumption of alcohol as conditions of licence, regardless of the official standing of the draft AMP. In its previous decision to grant the restaurant licence the Commission noted that it expected the AMP to be prepared within 4 to 6 months of that hearing. That process has in fact taken 2½ years and it would appear it will be some considerable time yet until the AMP is ratified and the strategies actually implemented. In saying that, the Commission acknowledges and is acutely aware of the complexities and difficulties in achieving consensus from the disparate groups involved in developing the AMP to its present stage. However, the Commission is charged with making a determination in respect of the application currently before it and the applicants are entitled to expect that the Commission will perform that task expeditiously.
- 124) The Commission accepts the submissions of Mr Downs that the time taken to develop the AMP to its current draft status is an inordinate time for the current applicants to wait for a decision over which they have no control and which will have a significant impact on the success or failure of a business into which they have invested their life savings. Taking account of the previous decision, the Commission accepts that the current owners of the premises would have had a reasonable expectation, when they purchased the business, that a future application for reinstatement of the hotel licence would be dealt with within the time frames identified previously by the Commission.

- 125) In considering the current application the Commission is extremely mindful of its obligations, in respect of the consideration of the objects of the Act as set out in section 3, when considering any application for the grant of a liquor licence. This particular application crystallizes the sometimes competing considerations facing the Commission in balancing the interests of applicants and objectors and reaching its ultimate decision. Namely, the requirement to ensure the public interest is protected through the minimization of harm associated with the consumption of alcohol whilst at the same time regulating the responsible service of alcohol and facilitating a diversity of licensed premises for the benefit of the community as a whole.
- 126) The Township of Borroloola has been without a hotel or any licence allowing the on premises consumption of alcohol since December 2006. That situation arose when the licence of the Borroloola Hotel was cancelled by the Commission following a finding that the Licensee and Nominee, Cashcow Pty Ltd and Ms Terina Khan respectively, were not fit and proper to manage a liquor licence, at that time or in the future. That decision, the most serious that can be taken by the Commission against a Licensee, was found to be warranted following consistent and repeated breaches of the Act and the licence conditions over a significant period of time. The havoc created in the community as a result of alcohol related violence and anti-social behaviour is well known to the Commission, and particularly the residents of Borroloola who suffered the consequences during that period.
- 127) Since the cancellation of the Hotel Licence there has been no on premise licence of any nature operating in Borroloola, as there is in the great majority of towns of a similar size situated elsewhere throughout Australia. Borroloola residents are left with a choice of consuming alcohol with a meal in one of the 2 restaurants in the town or alternatively purchasing take away alcohol from the store for consumption somewhere else.
- 128) As was pointed out during the course of the hearing in the evidence of witnesses representing Aboriginal organisations within Borroloola, since the Federal Intervention the residents of the Borroloola town camps have been prohibited from consuming alcohol in their own homes, nor are they legally permitted to consume alcohol within 2 kilometres of the licensed Malandari Store.
- 129) Whilst that group of people may lawfully purchase alcohol from the store, or from licensed premises outside the community, there is little option other than to drink illegally in an unsupervised and uncontrolled environment in bush land within and around the township. The prevalence and harm of this type of activity was clearly evident from the photographs presented to the hearing and the evidence of several of the witnesses.
- 130) In performing the balancing exercise required by the consideration of the objects of the Act, the Commission has given significant weight to the fact that the residents of Borroloola should at least be given the opportunity to enjoy and participate in the generally accepted activity in Australian society of going to licensed premises for a social drink with friends and family. The Commission does not take this decision lightly given the appalling behaviour and disregard for its clients and the community by the previous Licensee. However, the Commission is not minded to punish the community at large, nor the current applicants, by further depriving them of the opportunity to enjoy what is a generally accepted norm in any city or town in Australia.
- 131) In respect of the potential for future harm, the Commission takes considerable comfort in noting that the current application represents the most restrictive Hotel Licence application to come before it. The application is for the on premises sale of light and mid strength alcohol only. The hours of proposed trade are set out in paragraph 9 above and are limited to slightly less than 40 hours per week, no Sunday trading and a no trading provision on 2 additional days per month, being CDEP paydays.
- 132) Additional licence conditions aimed at the prevention of harm and anti-social behaviour associated with excessive alcohol consumption have been agreed to by the Licensee and include, significantly in the Commission's deliberations, the installation of an approved

CCTV surveillance system and an ID system capable of monitoring the alcohol consumption of individual patrons. The issue of the Hotel Licence will be subject to a pre-condition mandating the installation of a CCTV system and the ID system to the satisfaction of the requirements of the Director of Licensing (“the Director”) prior to commencement of trade.

- 133) As a further measure to prevent the excessive consumption of alcohol by patrons of the Hotel the Commission intends to impose a condition that the sale of alcohol to patrons of the bar and beer garden areas of the premises be restricted to 10 cans of light or mid strength alcohol per person per day. The ID system installed must be capable of recording the amount of alcohol purchased by individual patrons on a given day and must be a system that satisfies the operational requirements of the Director.
- 134) In respect of the limit of amount of alcohol sales per person in the on licence areas, the Commission is mindful that the draft AMP recommends a reduction in the permitted sale of take away alcohol from the Malandari Store from the current 30 allowable cans per day to 18 cans per day. The Commission notes also that the voluntary limit imposed by the Store at 24 cans per day would not necessarily remain in place were there to be a change in ownership of the licence or a change of mind on the part of the management of the Store.
- 135) The Commission supports the reduction of take away sales from the Malandari Store to 18 cans of light or mid strength alcohol per day. The Commission is mindful that if the Hotel Licence were to be granted it should be done in conjunction with a formal and enforceable reduction of the allowable take away limits at the Malandari Store, Heartbreak Hotel and other premises referred to in the draft AMP. The Commission intends to take steps in that regard through the process available to it via Section 33 of the Act and a variation of the licence conditions for these premises.
- 136) In addition to the matters agreed by the applicant, the Commission also has concerns regarding the current condition of the Borroloola Hotel Motel in terms of its state of repair and general appearance. The premises currently display signage and livery for products that are not currently available, and will not be available for sale under the Hotel Licence applied for. This matters need to be rectified, to the satisfaction of the Director, prior to the premises commencing trade.
- 137) Similarly, the former bar area and beer garden have been identified by the applicants as the areas in which on premises consumption will occur. Not surprisingly, given the extended period during which they have been out of use, the bar and beer garden areas require significant improvement and enhancement to bring them up to an acceptable standard in terms of the appearance and amenity of those areas and of facilities available to patrons. The Commission intends to impose a pre-condition to the grant of the Hotel Licence that the premises are refurbished so as to project and promote the community focused environment incorporating the responsible service of alcohol, as indicated in the application for the licence and in submissions made on behalf of the applicants during the hearing. Those enhancements will need to be made to the satisfaction of the Director prior to the formal issue of the licence and the commencement of trade in those areas.
- 138) In granting the Hotel Licence applied for it is the Commission’s intention that the conditions of trade agreed to by the Licensee, including those arising from the strategies identified in the draft AMP, are enshrined in the licence as enforceable licence conditions.

## Decision

- 139) The Commission grants the licence sought by the Licensee of the Borroloola Hotel Motel and grants a Public Hotel Licence for the former bar and beer garden areas of the premises. The issue of the Public Hotel Licence will be subject to the Licensee satisfying the preconditions set out above as they relate to the general appearance, signage and amenity of the premises, the installation of a CCTV surveillance system and a customer

identification system and the adoption of the relevant AMP strategies. In effect therefore the licence is granted “in principle” and is subject to the applicants meeting a number of specific and tailored conditions.

140) In addition to the normal conditions associated with a Hotel Licence the licence granted by this decision will be subject to the following special conditions:

- **Concept:** The premises will comprise a licensed restaurant within a separate and distinct Hotel Licence area that presents a community friendly environment incorporating the responsible service of alcohol and providing mid and light strength beverages sold in conjunction with substantial food and snacks.

- **Hours of Operation of the on licence area:**

Monday – Thursday	16.00 – 22.00 hours
Friday	16.00 – 23.59 hours
Saturday	16.00 – 23.59 hours
Sunday	No trading

The Hotel Licence areas of the premises shall not trade on 2 additional days per month, being CDEP Thursday paydays.

No trading on Good Friday or Christmas Day.

- **Entertainment:** Family friendly entertainment is permitted including pre-recorded music and live entertainment but no “nightclub” style entertainment. There will be no amplification of music in any part of the premises and all music will cease at 11.00 pm.
- **Noise:** The Licensee must ensure that there is no excessive noise caused by the operations on the premises which will affect the amenity of the neighbourhood and that patrons, whilst on the premises or in the course of leaving the premises (including after close of trading), are not rowdy or noisy and do not cause any disturbance to the vicinity of the premises.
- **Crowd Control:** The Licensee will ensure that adequate licensed security personnel are present during trading hours of the Hotel Licence areas.
- **Patron Thoroughfare:** No direct egress to or from the Hotel Licence area and the restaurant area shall be permitted.
- **Provision of food and snacks:** Substantial meals shall be available in the bar and beer garden areas at all times the restaurant is serving meals. Snacks shall be available at all times. Water to be available at all times at no charge. The Hotel Licence areas are to cease trade 1 ½ hours after the closure of the restaurant kitchen.

141) As submitted by a number of the objectors, and agreed by the Licensee, the Public Hotel Licence is granted subject to a 12 month probationary period following which a formal review will be conducted by the Commission. The probationary period will commence from the date of issue of the Public Hotel Licence.

142) Given the deplorable history of Borroloola Hotel during period the licence was held by Cashcow Pty Ltd, the Commission expects the operation of the Hotel Licence will be under close public examination during the probation period. The Licensee should be acutely aware that any breach of the Act or the stringent conditions attached to the licence granted, either during the probation period or after, will be referred to the Commission and may well result in a swift and permanent revocation of the Hotel Licence granted by this decision.

Richard O'Sullivan  
Chairman

23 September 2010