

# NORTHERN TERRITORY LICENSING COMMISSION

## Reasons for Decision

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<b>Premises:</b>	<b>Top Springs Hotel</b>
<b>Licensee:</b>	Jones Cattle (NT) Pty Ltd
<b>Nominee:</b>	Ms Pauline Haseldine
<b>Licence Number:</b>	81203330
<b>Proceedings:</b>	A Review of Commission Decision Pursuant to Section 27 of the <i>Northern Territory Licensing Commission Act</i>
<b>Heard Before:</b>	Ms Brenda Monaghan (Presiding Member) Ms Helen Kilgariff Mr John Brears
<b>Appearances:</b>	Ms Bronwyn Haack, Counsel Assisting the Commission  Mr Alan Woodcock for the Licensee  Mr Kelvin Currie for the Director of Licensing
<b>Dates of Community Consultations</b>	15 April 2014 - Yarralin 16 April 2014 - Kalkarindji 1 May 2014 - Lajamanu
<b>Dates of Hearing:</b>	28, 29, 30 April and 2 May 2014 in Katherine 13 May 2014 in Darwin
<b>Date of Decision:</b>	17 July 2014

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## BACKGROUND

- 1) On several occasions in recent years, concerns have been expressed about the harm being caused by the excessive consumption of takeaway alcohol in Aboriginal communities surrounding Top Springs Hotel ("the Hotel"). Northern Territory Licensing Commission ("the Commission") records show that as far back as 1997, the Daguragu Community Government Council wrote to the Commission about this issue. This was followed in 2003 and 2004 by correspondence from the Community Government Councils from Lajamanu, Yarralin and Daguragu requesting assistance in dealing with harm caused by takeaway alcohol from the Hotel. The records show that from time to time, temporary or limited restrictions on the sale of takeaway alcohol from the hotel have been imposed either voluntarily or at the instigation of the Commission.

- 2) In May 2011, the Commission temporarily suspended the hotel's takeaway licence for 6 days following a drunken incident at the Grid -the informal drinking area outside Kalkarindji community- when police were assaulted and their vehicle damaged.
- 3) Another incident followed in September 2011 when a motor vehicle accident near Lajamanu involving large amounts of alcohol purchased from Top Springs Hotel resulted in a death. At the Supreme Court sentencing of the driver of the vehicle, Justice Mildren stated:

*"This is just appalling, that such an enormous amount of alcohol can be supplied... There should be restrictions placed on them. The number of cartons that people can buy at one time."*

- 4) On 8 August 2012 the Commission considered a detailed report prepared by the Director of Licensing regarding the harm being caused to Aboriginal communities as a result of the volume of alcohol being sold as takeaway by Top Springs Hotel. A decision was made by the Commission to vary the Hotel's liquor licence and a formal notice pursuant to Section 33 of the *Liquor Act* ("the Act") was served upon the Licensee in the following terms:

*Section 33(1) of the Liquor Act provides that "Subject to this section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a Licensee.*

*The following conditions will be inserted in Liquor Licence 81203330.*

*The sale of takeaway liquor is restricted to twelve heavy beers or thirty light or mid-strength beers per person not being bona fide residents of the premises per day with a maximum of three individual purchases per vehicle only.*

*Sale of liquor on purchase order to nearby cattle stations must be pre-ordered on account and is exempt from the takeaway liquor restriction.*

*Pursuant to Section 33(2) of the Liquor Act, you may seek a Hearing with the Commission into the conditions of your licence. Should you seek a Hearing, your request in writing, must be received at this office within twenty-eight (28) days of your receipt of this notice.*

- 5) On 23 August 2012, the Licensee sought a hearing before the Licensing Commission on the matter. The hearing proceeded in Katherine in December 2012 and a final decision was handed down on 24 May 2013. The decision varied the licence as follows:

- *The takeaway hours of the Hotel are to remain unaltered, that is from 10:00am to 10:00pm Sunday to Friday and 09:00am to 10:00pm on Saturday and Public Holidays and no trading on Good Friday or Christmas Day.*
- *Pre-ordered station purchases on account are allowed and are unrestricted providing pick up of such supplies is within takeaway licensing hours.*
- *The takeaway sale of cask wine is prohibited.*

- *The takeaway sale of*
    - *takeaway beer, cider, premixed drinks and other similar products greater than 3.5% by volume is restricted to one sale of twenty-four 375 ml cans per person per day, or*
    - *one bottle of spirits per person per day, or*
    - *one bottle of wine per person per day,*
- with a maximum of three such purchases per vehicle.*
- *The takeaway sale of beer, premixes and similar products below 3.5% alcohol by volume in containers of 375ml cans or less is unrestricted.*
  - *These conditions are to come into effect from 31 July 2013 to enable the Hotel to adjust its wholesale purchases and clear stocks as commercially necessary in conformity with this Decision.*
- 6) The Licensee appealed the decision to the Northern Territory Supreme Court. Before the appeal was heard however, a Notice of Discontinuance was filed on the basis that the Commission would conduct a review of its earlier decision using its powers under Section 27 of the *Northern Territory Licensing Commission Act*.
  - 7) A review panel was appointed by the Commission on 23 September 2013. There followed some delay in progressing the review due at least in part to the unavailability of counsel for the licensee, wet season weather conditions and changes to the membership of the Commission. In February 2014, a new hearing panel was appointed to conduct the review. The decision dated 24 May 2013 varying the licence conditions of Top Springs Hotel was stayed until further order.
  - 8) Two Directions Hearings were held on 16 February 2014 and 1 April 2014 to determine the form and substance of the review. It was decided that the review should proceed by way of a hearing de novo with the Licensee and the Director of Licensing as the only parties. Opportunity was provided to others interested in or likely to be impacted upon by the decision to provide submissions or appear as witnesses for the Director of Licensing or through Counsel Assisting the Commission. A hearing brief was compiled and approved by all counsel. It contained relevant parts of the earlier brief prepared for the initial hearing, agreed portions of the transcript of the initial hearing and a copy of the decision dated 24 May 2013.
  - 9) Community consultations and a hotel site visit were arranged and a formal Hearing was held in Katherine commencing on the afternoon of 28 April 2014.

## **HEARING**

### **The Evidence**

- 10) At the outset of the hearing process, the Commission confirmed that its primary concern was the alleged harm being caused to the Aboriginal communities

surrounding Top Springs Hotel as a result of alcohol abuse. As the hotel is the most accessible takeaway outlet frequented by residents of affected communities, the Commission's focus was on the takeaway component of the Hotel's liquor licence rather than the sale of liquor to customers on the premises.

- 11) Top Springs Hotel is the most accessible hotel and takeaway liquor outlet for several isolated Aboriginal communities including:
  - Yarralin (approx 350 people and 100 kms away from Hotel),
  - Kalkarindji/Daguragu (approx 800 people and 170km away from Hotel); and
  - Lajamanu (approx 1000 people and 365 km from the Hotel).<sup>4</sup>
- 12) It is clear from the evidence that Top Springs is not the only supplier of takeaway alcohol to the surrounding communities. There are other takeaway outlets such as:
  - Victoria River Roadhouse (174 km from Yarralin, 403km from Kalkarindji and 499km from Lajamanu)
  - Timber Creek (138 km from Yarralin, 400km from Kalkarindji and 500km from Lajamanu); and
  - Dunmarra (268 km from Yarralin and 355km from Kalkarindji)<sup>5</sup>
- 13) Further, alcohol is purchased in Katherine when community members visit there and is then brought back and consumed in the drinking areas bordering each community.
- 14) The Commission visited Top Springs Hotel on 15 April 2014. The hotel is situated at the intersection of the Buntine and Buchanan Highways some 290 kilometres south-west of Katherine. Although there is no significantly sized population living at Top Springs, the hotel plays a very important role as the sole accommodation provider and main recreational hub for several isolated cattle stations, visiting government workers and contractors.
- 15) Like many wayside inns, the hotel was built many years ago and has a very basic structure and layout. It is however reasonably maintained and functional. It consists of a principal building with 2 small bars, a kitchen, eating area, reception/service area and storage. Other buildings located on the site contain basic accommodation (some 21 rooms) and storage areas. The land behind the hotel is big enough to enable large numbers of people to camp when attending events and functions at the hotel or in the area. Guests and the public can also purchase a few very basic supplies such as petrol, canned and takeaway food, baby supplies and alcohol.
- 16) Ms Pauline Haseldine, the hotel nominee for the past 6.5 years, accompanied the Commission on the site inspection and she gave evidence at the hearing on behalf of the licensee. She described a busy life in a hotel that offers the only meals and accommodation available in the region for locals and visitors such as temporary contractors. The hotel employs 4 to 6 staff. Most cattle stations have a staff canteen

<sup>4</sup> Information from Current Intelligence Report –NT Police -26 March 2014 but it is noted that oral evidence from Police at hearing suggests population figures in reality are lower.

<sup>5</sup> Information from Current Intelligence Report –NT Police -26 March 2014

or wet mess and their staff generally do not buy takeaway alcohol from the hotel. Instead, the drinking done by station workers takes place at the hotel on their days off. Because of the tyranny of distance, these workers tend to stay at the hotel overnight rather than drive home.

- 17) Residents of the Aboriginal communities are occasional users of the hotel's on-premises licence but their main purchase is takeaway alcohol. In fact Ms Haseldine confirmed that 95% to 98% of takeaway alcohol sold at Top Springs Hotel was to residents of Aboriginal communities such as Yarralin and Daguragu, Kalkarindji and Lajamanu. There appears to be no significant tourist population that needs to be specifically considered by the Commission at this hearing.
- 18) At the viewing and later at the hearing, Ms Haseldine outlined the important role that the hotel plays as the social hub for many isolated residents and contractors. She gave examples of the various community and sporting events that take place regularly at the hotel. Ladies Day, football games and the Annual Variety Bash were 3 examples given. The hotel does a good trade in food, alcohol and accommodation but there are some wet seasons when regional flooding will mean that the hotel's trade is minimal for periods.
- 19) Ms Haseldine also gave examples of the important regional service she and her staff routinely provide by advising police, travellers and local residents on the height of the river in the Wet season or whether travellers have safely made it to the Hotel. It is also widely known that Ms Haseldine will help travellers with food and fuel when they have been stranded by floods, vehicle breakdown or similar unexpected events. Her generosity on those occasions has extended to workers from stations, contractors and residents travelling from various Aboriginal communities.
- 20) As part of the hearing process, the Commission visited each of the communities of Yarralin, Kalkarindji/Daguragu and Lajamanu and held public meetings and some private meetings there. At the public meetings at Yarralin and Kalkarindji, residents spoke of the importance of Top Springs Hotel to their communities. Some members of those communities said they were occasional users of the hotel's on-site facilities but by far their main purchases were fuel, takeaway food and takeaway alcohol, particularly VB beer, Bundaberg Rum and whisky .
- 21) There were a few residents at the public meetings that spoke of the harm alcohol was causing within their communities including domestic violence, violence, community disruption and foetal alcohol syndrome. Others thought there should be some limits. The strongest voices (mainly men) however opposed changes to the takeaway liquor licence of the Hotel.
- 22) Many residents saw it as their right to drink alcohol. Comments were made on several occasions that it was up to each individual to choose whether they drank to excess or controlled their drinking. It was argued that control was not something that should be imposed on communities by an external body such as the Licensing Commission.

Some residents appeared to play down the concerns expressed by others of the problems that alcohol was causing in their communities.

- 23) There was a view expressed by some that it was up to police and night patrol to deal with any problems caused by alcohol in the community. These residents appeared to take little responsibility as drinkers for their actions in causing community disruption. In fact, the police's later description of alcohol regulation being a 'cat and mouse' game was very evident by comments made. An example was the story of drinkers from Daguragu waiting until the police were asleep at night before they snuck alcohol back into the community where they would continue drinking and causing noise and disruption to others.
- 24) The meeting at Lajamanu was somewhat different. Although some community members put forward the same views opposing change heard at earlier meetings, there was a strong opposing view heard. The senior community members from the Lajamanu Law and Justice Group played a significant role at the meeting and spoke to their community members, powerfully advocating takeaway liquor restrictions at Top Springs Hotel. They spoke of the social dysfunction and family breakdown that they attributed to alcohol purchased principally from Top Springs Hotel. They spoke openly of the number of family members who had died, been injured or jailed as a result of alcohol related violence and motor vehicle accidents. They strongly put forward their wish for restrictions on the amount of takeaway alcohol being sold at Top Springs and consumed at the Grid or within the community itself. They were publicly supported by some community members while others passionately advocated no change or minimal change. There was some support for a list of community members on Alcohol Protection Orders to be given to Top Springs Hotel by Police to enable them to refuse service to those people.
- 25) An earlier letter to the Commission in October 2012 from the Law and Justice Group, which was signed by twenty senior community members, proposed restrictions of a maximum of one carton of mid or light beer per person per day with a further limit of three cartons per vehicle. The proposal also sought a total ban on occasions '*such as ceremony and sorry*'. At the community meeting, the proposal by the Group appeared to have relaxed to allow full strength beer as well.
- 26) Several community members at each of the meetings raised concerns that restrictions at Top Springs Hotel would mean that people would simply drive further into Katherine or elsewhere for alcohol. They were worried that more people would drink and drive and cause motor vehicle accidents on the rough and isolated roads. Another concern was that takeaway restrictions at the hotel might mean some people would choose to move to Katherine or other larger centres to drink and live 'rough' rather than remain on the community. Finally, they did not want to lose the hotel if restrictions made it unviable.
- 27) The formal hearing took place in Katherine. Oral evidence was called as follows:

## Evidence Called by the Director

### **Professor Peter d'Abbs Menzies School of Health Research-**

- 28) The Director of Licensing-tendered an expert report from Professor Peter d'Abbs of Menzies School of Health Research and called him to give evidence at the hearing. Professor d'Abbs' report and evidence were of great assistance to the panel in a number of areas.
- 29) Professor d'Abbs commented that measures to reduce harm from alcohol misuse falls into one of three categories: supply reduction, demand reduction and harm reduction. Supply reduction measures are designed to reduce harm by reducing access to alcohol; demand reduction measures cover preventative action such as education campaigns and interventions such as residential treatment programs. Harm reduction measures are not designed to reduce consumption per se but rather to reduce the likelihood of drinkers inflicting harm on themselves. He gave as examples establishing sobering up shelters and community night patrols. He advised that any strategy to reduce and manage alcohol related harms needs to include measures of all three types, rather than rely on one alone.
- 30) Professor d'Abbs report specifically considered the types of supply reduction measures available and reviewed the evidence on the impact and effectiveness of various supply reduction measures imposed in parts of Northern and Western Australia in recent times. The Commission was particularly interested in the impact of recent supply reduction measures in the Kimberley region of Western Australia.
- 31) In September 2007, the WA Director of Liquor Licensing imposed restrictions prohibiting the sale of liquor exceeding 2.7% alcohol, other than to lodgers, from two liquor outlets in Fitzroy Crossing.

*'The restrictions were initially introduced for a trial period of six months, but in May 2008 were extended indefinitely (Kinnane, Farrington, Henderson-Yates & Parker, 2010). An evaluation conducted by researchers from the University of Notre Dame assessed the impact of the restrictions after they had been in place for two years, drawing on both quantitative and qualitative data. The report concluded that the community continued to enjoy sustained benefits in the form of:*

- *Reduced severity of domestic violence;*
- *Reduced severity of wounding from general public violence*
- *Reduced street drinking;*
- *A quieter town;*
- *Less litter;*
- *Families purchasing more food and clothing;*
- *Families being more aware of their health and being proactive in regards to their children's health;*
- *Reduced humbug and anti-social behaviour;*

- *Reduced stress for service providers;*
- *Increased effectiveness of services already active in the valley; generally better care of children and increased recreational activities; and*
- *A reduction in the amount of alcohol being consumed by Fitzroy and Fitzroy Valley residents. (Kinnane, et al, 2010, p10)*

*The evaluation, however qualified this assessment by stating that the benefits appeared to have attained a high point after about 12 months, with evidence of weakening effects during the second 12 month period. These they attributed to two factors: a failure of the State to implement promised programs to complement the supply reduction measures, and disruption and other changes following a fire that destroyed the Fitzroy Crossing shopping centre in July 2009.<sup>6</sup>*

Outcome indicators further reported in the evaluation included:

- A decline in alcohol related presentations at the Fitzroy Crossing Emergency Department in the first year, partially offset by an increase in the second year;
- A decline in drink-driving offences-an improvement which was sustained in the second year;
- Reported improvements in school attendance and behaviour and performance of students (not attributed solely to the restrictions)
- *'A complex picture with regard to domestic violence, the number of domestic violence incidents recorded by police increased by 21% in the first 12 months following restrictions (from 73 to 93 incidents), and a further 37% in the second 12 month period. The report attributes the trend to increased willingness to report DV episodes, and notes that the severity of violence decreased over the period;'<sup>7</sup> and*
- An increase in sales of liquor for on premises consumption that did not however offset the decline in takeaway sales.

32) Professor d'Abbs' report further discussed the impact of similar restrictions introduced at Halls Creek and in the Kimberley. Similar positive results were recorded with a note of caution that supply restrictions are an essential part but cannot stand alone and must be accompanied by other complementary measures if the positive impact is to be sustained.

33) The Director asked Professor d'Abbs to review the academic literature and respond to 3 questions. Both questions and answers contained in his report and oral evidence are summarised as follows:

1) *What are the likely effects of reduced access to alcohol for members of the affected communities?*

A review of the evidence from supply restrictions imposed in WA, Curtin Springs, Tennant Creek and Elliott suggests that restrictions of the types reviewed have

<sup>6</sup> Report of Professor d'Abbs dated 17 April 2014 at pages 5 & 6.

<sup>7</sup> Professor d'Abbs report at page 6



beneficial effects in reducing alcohol related harms. Professor d'Abbs notes that there is evidence of unintended consequences, most of which only partially offset demonstrated benefits.

In oral evidence, Professor d'Abbs advised that a '*significant reduction*' of availability and access would contribute to a reduction in harm. He noted that some of the acute harms are high in these communities and supply reductions will impact on acute harms and in the level of chronic harms also. In his view after reviewing the literature, there will be a net benefit in terms of a reduction in domestic violence and violence generally.

2) *If the proposed restrictions are put in place, to what extent is it likely that community members from the affected communities will travel to larger centres to access alcohol? In answering this question, please also consider risks that may be posed by driving greater distances and drink driving.*

Professor d'Abbs advised that there is likely to be some geographic displacement if significant liquor restrictions are imposed on Top Springs although he noted that this was not always the case (e.g. it did not occur when supply restrictions were imposed on Curtin Springs). He commented that the movement of people to towns was a complex issue and part of a world-wide pattern. His report examined the Halls Creek and Fitzroy Crossing experiences and concluded that despite some displacement, there appeared to be a net gain in terms of a reduction in alcohol related harm in those communities when restrictions were imposed.

3) *If the proposed restrictions are put in place, to what extent is it likely that members of the affected communities will turn to replacement substances such as illicit drugs to replace lower levels of access to alcohol.*

Professor d'Abbs advised that there is no good evidence on this issue. Cannabis use in Aboriginal communities has continued since the 90's and poly-drug use is very prevalent. Increased cannabis use cannot be sheeted home to a declining use of alcohol. The use of Opal fuel in the affected communities means that a chronic level of sniffing does not occur.

34) At the hearing, Professor d'Abbs was advised that there was a fair amount of resistance expressed at community consultations at the thought of liquor restrictions being imposed at Top Springs. He was asked to comment on this issue in terms of the impact or effectiveness of any control measures that might be imposed. Professor d'Abbs advised that it is very rare to attain a genuine consensus on liquor supply restrictions. He advised that the Commission should not aspire to consensus on this issue but instead it should look to the legitimacy of its decision. He commented that drinking of alcohol should not be seen as a right but '*a conditional privilege-like driving a motor vehicle*'. He commented that if '*tokenistic*' supply restrictions are imposed, there will be little benefit gained. Even if strong restrictions are imposed, they will dissipate over time. They needed to be supplemented by demand reduction and harm reduction strategies. All 3 types of controls are needed. When asked about the effectiveness of licence conditions targeting specific problem drinkers,

Professor d'Abbs gave his view that the Banned Drinkers Register initiative was not in action long enough for its effectiveness to be evaluated. Without something as sophisticated as the BDR electronic scheme, he was concerned that a banned drinker's list would be difficult to enforce.

- 35) In response to questions from counsel for the licensee, Professor d'Abbs confirmed that high levels of community involvement are the best measures combined with a very clear commitment by government. He agreed that people on the ground may know best what the problems are but they may not know what options there are to address these problems. When asked whether a useful mechanism would be for a list of people on Alcohol Management Orders to be given regularly to the licensee, Professor d'Abbs expressed reservations.

**Sergeant Garrin Metcalfe – Officer in Charge – Lajamanu Police Station**

- 36) Sgt Metcalfe tendered a statutory declaration and gave oral evidence at the hearing. He has been stationed at Lajamanu since early 2014 and has previous experience living and working as a police officer in Katherine (with some months of relieving in Kalkarindji and Lajamanu), Maranboy and Alice Springs. When asked to put the problems in Lajamanu in context, Sgt Metcalfe said it was one of the worst he has seen- based on the sheer volume of alcohol involved incidents.
- 37) Sgt Metcalfe advised that although alcohol came from other places, an estimated 90% came from Top Springs Hotel. He advised of a direct link between alcohol harms and the hotel. He gave numerous examples in his statutory declaration and in his oral evidence including the following:
- Promis 6310352-(Liquor Offence) where the evidence was that 10 cartons were purchased overnight from Top Springs;
  - Promis 6312512 (Breach of Apprehended Violence Order) where the evidence was that 10 cartons were purchased from Top Springs and 6 were left when police arrived;
  - Promis 6341811 (Aggravated Assault on a woman) where the evidence was that the highly intoxicated offender had consumed alcohol purchased from Top Springs.
- 38) Sgt Metcalfe also described the 2 previous weekends (20/21 April and 26/27 April 2014) at Lajamanu when police were *'run off our feet pretty much'*. On 26 April there were about 300 people at the 10 Mile (the drinking area outside of the community) with only 2 police in attendance. There were 5 or 6 fights going on-all involving intoxicated people. All those questioned said they purchased their alcohol from Top Springs. As there is no sobering up shelter at Lajamanu, and being only a 2 man station, Sgt Metcalfe advised that police resist taking people into protective custody unless they have no choice. Protective custody means that the clinic has to assess the intoxicated person, police have to monitor them and nothing else gets done. On the weekend of 26/27 April alone, police placed 12 intoxicated people back with their families to deal with. Sgt Metcalfe said that the night patrol members were always a great help to

police and a good source of information about grog runners but that they stayed within the community and did not patrol the drinking areas.

***Mr Peter Clottu - the Drug and Alcohol Coordinator for the Katherine West Aboriginal Health Board, based in Katherine***

- 39) Mr Clottu is an occupational therapist and has been the Drug and Alcohol Coordinator for the Katherine region for the past 4 years. He and his small team provide counselling and support to individuals and are also involved in community education. Mr Clottu sees alcohol as the '*Number 1 Issue*'. Other community issues include overcrowding, unemployment and continual loss and grieving.
- 40) Mr Clottu gave evidence that the primary problem in the affected communities is binge drinking that normally occurs at the community boundaries (e.g. the Grid and 10 Mile). The drinking is exacerbated when royalty payments are made leading to binges of 2 to 3 days. Mr Clottu estimated people might drink 2 to 3 cartons each over a 2 to 3 day period at the drinking areas. There is little shade, no drinking water and a long walk home. The drinking leads to incidents of violence such as killings, assaults and self-harm, accidents and neglect of children. There is sometimes no money left for food and clothing and community members suffer a significant rate of illness. Cardiovascular disease and diabetes are prevalent and even people in their late teens and early 20's are seen with chronically elevated liver enzymes levels.
- 41) When asked what demand reduction strategies were in place in the affected communities, Mr Clottu said that positive alternatives to drinking such as hunting, ceremony, sport and an emphasis on culture are encouraged. He noted that there is now a gymnasium at Lajamanu and one is being built at Yarralin. AFL is very important in these communities and the whole community spirit is lifted when their team does well. Lajamanu and Kalkarindji both have good art centres and there is a growing Baptist Church in both Kalkarindji and Lajamanu which he considered could have very positive influences on people's lives. Despite these positive measures, significant numbers of residents are indulging in binge type drinking at serious levels. This behaviour leads to a huge toxic overload on individuals and extremes of behaviour, including self-harm.
- 42) When asked whether relocation would be a major issue if supply restrictions at the Hotel were imposed, Mr Clottu gave his view that relocation would be the choice of a minority of residents. If they are a dependent drinker, he thought it likely that they were already in Katherine or Kununurra in the 'long grass'. He commented that when the Kalkarindji Club brought in a restriction that it could only sell mid or light beer, the people said they would not continue to go to the club. In reality however, clientele numbers have picked up with a change in the nature of the Club to one with a focus on meals and family rather than drinking.
- 43) When asked about substitution of other drugs for alcohol, Mr Clottu considered that this was possible but that it would occur in a minority of cases. Cannabis was very expensive and there were seasonal problems with supply.

**Andrew Johnson - night patrol worker Lajamanu.**

- 44) Mr Johnson is a community elder and a member of the Lajamanu Law and Justice Group. He was an alcoholic but has been sober for many years now and he has been a night patrol worker for the past 6 or 7 months. Mr Johnson advised that there are only 3 workers employed by the Shire for night patrols. He spoke passionately about his concerns for his community because of alcohol abuse. He was concerned about many issues-violence, deaths, suicide, the welfare of children, violence against women, the impact of royalty payments on binge drinking, and also the loss of culture and respect for elders.

*'It's concerning me seriously. I've seen some young ones passed away because of grog too much in the community. 20 cartons, 15 cartons, too much and the whole community just getting- you know - just getting wild. How can we stop these problems that we have in our own place? It's the grog that comes in, pouring in like water and everyone just getting mad and also people killing themselves, bashing their wife, committing suicide, burning themselves alive which is not good especially for blackfella in those community.'*

- 45) Mr Johnson said that when there is a ceremony, his people don't attend because they are 'more interested in grog'. He takes his role as a community leader very seriously.

*'As a proud blackfella of that community, we're not trying to close the pub down, I'm just concerning and we are trying to put a limit down. One car, two carton; maybe one carton a car; getting 10, 20 or 15 is too much. And I'm not trying to stop anyone or stop them from drinking but I would like to notify them that grog is killing them and drink in a social way and to become a real man in the way of looking after their family and themselves. Getting too much grog at 10 mile, it's too much, people killing themselves and hurting themselves and not showing the respect amongst ourselves. I work from 7 to 3 in the morning and I work every day. I work with Catholic Care from 8 to 5 then I switch on to another job, night patrol and I work from 7 to 3 and I work every day. There is no rest, I don't ever rest in my community, especially where there's grog in my community. I'm trying hard; I'm trying my best to make my community better and a safer place for our children's future. Grog is killing my people. I would like to see a limit.'* (sic)

- 46) Mr Johnson said that the binge drinking of copious amounts of alcohol when royalty money is paid in the community in March, August and September:

*'it's a nightmare in my community. It's a nightmare for night patrollers and for the elders and for the children. It's a real nightmare that people come in drunk and the police sometimes they run 24 hours a day try to stop these issues and I - me and my team - you know - we're trying to stop grog coming into the community; it's just pouring in like water, especially when it's royalty.'*

- 47) Mr Johnson said that nearly all of the takeaway alcohol impacting on Lajamanu comes from Top Springs although some comes from Katherine if someone buys a car with royalty money. He spoke of a number of close family members who had died from alcohol related harm.

*'And my granddaughter, she always say, 'What happened to dad?' And when I look at her I cry for her. I always say to her, 'One day you'll understand' and it's a sad thing that we face amongst ourselves.*

- 48) In response to a question, Mr Johnson felt that court imposed bans on individuals might help.

**Senior Constable Charles Drury –Katherine Police Station**

- 49) SC Drury is currently stationed in Katherine but he previously worked in Kalkarindji for over 3 years until mid- 2011. His current involvement with the affected communities is through traffic patrols and relief stints. He remembers fondly his time at Kalkarindji where his wife and sister were employed at the school. He talked however about the alcohol-related harm that impacts on the community. He spoke of a motor vehicle accident he attended where a young girl –*'a good kid from a good family'*- died. He commented on the disastrous impact her death had on her family and the impact on the community generally. SC Drury was asked what stands out in his memory from his time at Kalkarindji and he responded:

*'There was lots of violence, alcohol related. A lot of domestic violence offending; generally it was male and female. A lot of blunt force trauma'.*

He remembers working long hours especially when royalty payments were made. He spoke of a poignant example of the impact of alcohol on children when he said that 12 to 18 year old girls felt unsafe and often chose to stay at the school away from the drunks.

*'There was nowhere for them to go that, um, they could find other than the school where they felt safe and away from the drunks who obviously saw them as a target'.* He spoke of grog runners entering the community at night: *'It was a massive game'.*

SC Drury spoke positively of some changes in the community since he worked there. The Kalkarindji Club had *'slowed down a bit'* since its licence had changed. Also, some people had *'left the grog and gone over [to] the church side of things'.*

- 50) SC Drury gave his opinion that people would travel further to obtain alcohol if the Top Springs Hotel licence was restricted. He gave an example that on Freedom Weekend, when there were no takeaway alcohol sales at Top Springs; one car drove 800kms to Dunmarra to get alcohol. He acknowledged the impact of alcohol on culture saying that in 3 years at Kalkarindji, he remembers only one proper cultural meeting that took place over a week.
- 51) In response to cross examination, SC Drury agreed that Katherine also has alcohol problems and that alcohol related violence is prevalent throughout the NT. He agreed that it was some 30 to 40 hard core drinkers that cause 90% of the work. He also acknowledged that alcohol was brought in from other places apart from Top Springs.

**Sgt Greg Huddle-Kalkarindji Police Station**

- 52) Sgt Huddle has spent the past 5 years in the region with 2 years at Lajamanu and 3 as OIC at Kalkarindji.
- 53) He confirmed that in both Lajamanu and Kalkarindji, alcohol was a major issue with respect to offences. The amount of alcohol purchased has staggered him.

*'Come the full dry season, it's just a sea of green cans sort floating around out there, just blowing around in the wind.'*

Sgt Huddle spoke of the numbers of people at the Kalkarindji Grid over Easter:

*'there was at least 70 to 80 people sort of milling around the grid either drinking or waiting for the next drinks to come through from somewhere. Now that sort of continued over the Easter period, Thursday was the biggest; Saturday it dropped off a bit. Last weekend we had more people out there, probably only about 30 or 40 out there this time. But to have 70 to 80 people milling around a roadway at the grid waiting for alcohol to come through whether it be at Top Springs, Katherine or wherever, is a dangerous situation.'*

- 54) Sgt Huddle described the toll alcohol takes on police and the health clinic staff. He gave evidence of an arrest the previous day that meant he didn't finish work until midnight. He commented that teachers see the impact on kids when they arrive at school after a big weekend *'and they're just totally ratty, either dog tired or just terrible little kids'*. He spoke of the toll it takes on his own family when he has no time off -or when he is so tired, he sleeps all day.
- 55) He confirmed that the alcohol predominantly comes from Top Springs but also comes from Katherine, Dunmarra and Timber Creek. SC Huddle advised that he had a good relationship with the manager at Top Springs, Ms Haseldine. He also spoke positively of the changes that had taken place at Kalkarindji Club.

*'That's when the Kalkarindji Club went from selling heavy beer to mid to light beer, full stop, end of story. Our call out rate after that it reduced from 5 to a 1; it was an phenomenal drop again and I can honestly say that currently we have very little call outs now to alcohol related instances from the Kalkarindji Club. It is probably two or three at the very most a month now; we get called out directly related to alcohol instances from the club. Before when it was heavy beer I know sometimes it was at least two a night - probably on the average it was working out to 3 or 4 a week in that area. The club also had a very good system of penalising the people which we worked closely with, if police were called out to an alcohol related incident that we can relate back to the club there are penalties that we had in store as in banning those people from the club. When I first arrived there - behind the entrance to the club they have a white board of all the months and on that white board was people's names or when they're allowed to come back in the club after they finish their penalty or their penance. That board was full when I first got there, it was quite a full board. Now, there would only be probably about half a dozen names on that board compared to when I was first*

*there. What I am alluding around to is that we could control what was happening at the club by reducing the alcohol content that the people were drinking; we still had the same hours; they would have been still drinking the same amount as in, you know, if they could drink six cans, they'd still drink six cans but there's a big difference between heavy beer and to the mid beer as in the alcohol content. So they were going home happier - I suppose you could call it - not punch drunk'.*

- 56) Sgt Huddle also advised that police efforts in proactive patrolling has led to more people using a 'sober bob' to drive them. Sgt Huddle said that he doesn't want the Hotel to be shut down but that there do need to be some liquor restrictions. He acknowledged however that if Top Springs wasn't there, people would drive further to get alcohol.
- 57) Sgt Huddle spoke of the services available to support liquor restrictions such as a women's shelter, a men's shed, night patrol, the clinic and alcohol and other drugs unit and police protective custody if family could not take the person. He felt that the leadership was not as strong at Kalkarindji as it was at Lajamanu.

#### **Sgt Shane Zuber - Yarralin**

- 58) Sgt Zuber gave evidence that he has been at Yarralin since 2011 and is currently the OIC. The community has 27 houses and there is chronic overcrowding. Top Springs is the main takeaway liquor outlet and binge drinking is the problem with VB the liquor of choice.

*'Yarralin people predominantly drink out at the grid which is approximately 6 km out of town. 90 percent of them do the right thing, they consume out there. It's when they come back into town normally in a drunken state that it upsets the whole community. They come back in, in big numbers which it then impacts on everybody, it wakes people up, you know, they humbug, you know they wander around they look for smokes; they look for food. Half the kids don't get to school the next day, half the workers don't get to work the next day, not from the alcohol but because they've been woken and they're tired - tired and cranky. So we have occasions where the whole community is totally dysfunctional because of what has happened the night before.'*

- 59) Sgt Zuber described the scene at the Grid on Good Friday with 60 to 70 people there. He said that in the last 7 to 8 months he has noted that drinkers stay out at the Grid all night and do not return home until their alcohol is drunk. Sgt Zuber noted the improvement in Yarralin in the wet season when there was no access to Top Springs but only to Timber Creek via a rough road. When asked why Top Springs rather than Timber Creek appears to be the favoured hotel, Sgt Zuber stated:

*'It's not because Top Springs is closer but Top Springs is more of a social hub for them because of family links with Kalkarindji and obviously options for Katherine, they run the [Bodhi] bus out there, you know, they're out there all the time, picking people up, dropping them off - it's an easier option for them.'*

- 60) He advised that the arrival of the wet meant season meant that the 12 or so hardened drinkers (generally males from 35 to 45 years of age) left town mainly for Katherine and did not return until the dry season. Sgt Zuber noted that there are few facilities or services to address alcohol harms in Yarralin. Further, leadership and culture was not as strong in Yarralin as there are no traditional owners. He commented however that having resident police at Yarralin in recent years has meant that there is more proactive policing which in turn has had an impact on drink driving and driving unregistered vehicles.

***Licensing Inspector Mark Wood***

- 61) Mr Wood has resided in Katherine and worked in the region as a licensing inspector for several years now. He gave evidence at the hearing. He confirmed that Top Springs Hotel is well managed and well maintained. He advised that the hotel manager Ms Haseldine has worked closely with Licensing and Police on several occasions in the past when temporary liquor restrictions were required.
- 62) Mr Wood confirmed that both Kalkarindji and Lajamanu have liquor permits available to residents who are approved by police. Most permit holders appear to be the non-Indigenous employees working on the communities. None of the communities surrounding Top Springs hotel have permit committees involving representative community members to decide who should be allowed permits. Yarralin does not currently allow liquor permits at the request of the community.
- 63) He tendered a document titled 'Top Springs Liquor Purchases from Katherine Hotel' which shows the amount of alcohol (VB30 & VB24, XXXX Gold, Melbourne Can, Rum and Bourbon (700ml & 1125ml) for the period July 2010 to June 2013. The Commission understands that Top Springs changed its supplier in 2013. These purchase figures are assumed to be for on-premises and takeaway sale by Top Springs. One of the lowest monthly purchases can be seen in March 2012 when Top Springs purchased 240 cartons of VB (24 cans), 72 cartons of XXXX Gold, 28 bottles of 1125ml spirits and 19 bottles of 1125 ml spirits. One of the highest amount purchased in a month seems to be in July 2011 when purchases included 810 cartons of VB (30 cans), 480 cartons of VB (24 cans), 28 x 1125 ml bottles of spirits and 16 x 700ml bottles of spirits. The document tendered includes some bar graphs tracking the monthly variations in purchases over a 3 year period.
- 64) Mr Wood confirmed that Top Springs Hotel has CCTV cameras and is compliant with the CCTV requirement in their licence. These cameras monitor liquor service areas, access and egress and the external vicinity of each entrance/exit to the premises to a radius of 10 metres. Mr Wood confirmed that there are available electronic and manual solutions to assist the licensee and regulators should the Commission decide to impose liquor restrictions on individuals or on the daily amounts of alcohol that can be purchased. There were also available ways that a restriction on the amount of alcohol per vehicle could be regulated.



**Submission from FaHCSIA**

65) A written submission dated 20 March 2014 was provided by Mr Mark Coffey, State Manager, Northern Territory State Office of the Department of the Prime Minister and Cabinet (DPM&C).

66) The report states:

*'The licence variation proposal [in the NTLC decision dated 23 May 2013] being considered by the Commission is an opportunity to reduce harm from excessive alcohol consumption. The Australian Government believes that to be more effective further steps could be taken in this direction including reducing the carton per person per day limit that is proposed, and requesting data from the licensee for monitoring the impact of the proposed variation. From the perspective of reducing alcohol-related harm, lower alcohol beverages compared to full strength beverages, are one component of a harm reduction approach... Restricting the availability of alcohol strength has been identified in reports and studies as an effective strategy, both internationally and in Australia.'*

67) The report then summarised the positive impact of a decision by the Western Australia Director of Liquor Licensing to impose a ban on the sale of alcohol products exceeding a concentration of ethanol of 2.7% at 20°C (i.e. light beer only) at Fitzroy Crossing in 2007. It raised concerns about the level of alcohol related harm in Yarralin and noted that the clinical manager of the Yarralin Health Clinic stated that

*'during the first four months of 2011 when Top Springs Hotel was inaccessible to Yarralin Community there were only two alcohol related medical related evacuations. For a six week period when the hotel was closed in 2012, the clinic reported no alcohol related evacuations. However, in the following nine months when the hotel was reopened and accessible to the community, there were approximately 40 further alcohol related medical evacuations.'*

**Submission from NT Police**

68) A written report titled 'Current Intelligence Report' dated 26 March 2014 was accepted into evidence as a submission from NT Police. The report follows closely the format of a similar report provided to the Commission at the previous hearing of this matter in 2012. Mr Woodcock objected to this report in its entirety on the grounds that it contains assumptions made by persons who are unavailable to be cross examined and it also contains inaccuracies. Mr Woodcock noted that this was not a report prepared by an expert; rather it appeared to have been prepared by junior officers. Counsel for the Director and Counsel Assisting were agreed that the report should simply be treated as a submission from police and that the Commission should wait to see what evidence was made available during the hearing to corroborate its contents. The Commission agreed with this submission and the contents of the report, in particular conclusions reached, have been treated with some caution.

## **Evidence Called by Counsel Assisting**

### ***Superintendent Sachin Sharma***

- 69) Supt Sharma has spent time in many parts of the Territory from Alyangula to Port Keats. He is currently based in Katherine and is responsible for Arnhem and the Western Division including Kalkarindji, Lajamanu and Yarralin. He spoke to the Commission about a current initiative in Katherine called Temporary Beat Location outside licensed premises. The initiative is to try to discourage people from purchasing takeaway alcohol if they intend to drink it in a public place. The Superintendent was of the opinion that if problem drinkers from affected communities relocated to Katherine as a result of restrictions being imposed on Top Springs, this may not be a bad thing. He noted that Katherine has better health and police resources than the affected communities and removing problem drinkers would also give the communities a break. He commented that relying on Alcohol Protection Orders as the only restriction on alcohol supply would not be enough to address alcohol related problems on communities. He noted that there are currently large numbers of community members who are subject to Alcohol Protection Orders and yet there are still problems within communities. The current alcohol related problems in the relevant communities placed a huge strain on police resources and on individual police officers stationed in those communities. Supt Sharma advised that many communities he is involved in have problems but adding alcohol to the mix means that the violence increases and injuries become more serious.

### ***Ms Surinder Crichton - Senior Alcohol Manager - Department of Business, Katherine.***

- 70) Ms Crichton is involved in working with communities on their Alcohol Management Plans (AMPs) which set out the measures to be taken to implement harm reduction, supply reduction and demand reduction strategies in various communities. Whilst there are a number of these measures already operating in the western NT communities, Ms Crichton confirmed that they have no current plan. Her Office is looking at these areas at present and intends to commence engaging with community groups and members on what should be in their Plan. Ms Crichton confirmed that there is ongoing funding for the creation of AMPs. She confirmed that the Commission could definitely have confidence that there will be complementary measures to support any liquor supply restrictions in those communities. *'Resourcing the western region of Katherine is a priority for us'*. She confirmed that if AMPs were not specific to a community's needs, there could be unintended consequences.

### ***Will Crawford NAAJA Katherine***

- 71) Mr Crawford was the senior criminal lawyer in Katherine from November 2008 to April 2011. He is currently the Legal Educator of the legal team and in this role he visits Lajamanu every 6 to 8 weeks to work with the Kurdiji Law and Justice Group. Mr Crawford is the co-author of 2 submissions tendered to the Commission at this hearing. One was on behalf of NAAJA outlining some of the criminal cases where alcohol purchased from Top Springs was a contributing factor to the offending. Mr Crawford also supported the second letter he co-authored from the Kurdiji Group

which recommended restrictions on the amount of alcohol that could be purchased daily by an individual and per vehicle. He advised that mixed community views to the imposition of restrictions should not be the guide for the Commission. Instead the Commission should consider the evidence regarding the amount of domestic violence and alcohol related crime in these communities. Mr Crawford gave his opinion that if the Top Springs liquor licence is only restricted so as to ban those people on Alcohol Protection Orders, then the restriction will be ineffective because kinship obligations will mean that alcohol purchased by others will be consumed by the banned persons.

***Dr Sam Gubicak - Lajamanu***

- 72) Dr Gubicak has worked in Lajamanu for 12 months as a GP registrar. He sees many good aspects to community life but also sees binge drinking as the main issue. It occurs mainly on weekends and leads to violence on the perimeter of communities. It results in afterhours presentations from fights, self-harm and suicide. In the last 9 months, Dr Gubicak advised that there have been several large scale outbreaks of community unrest where a fight between a small group becomes larger when bystanders become involved and a couple of hundred people end up trying to mediate. Dr Gubicak advised that if restrictions were implemented at the Hotel, medical withdrawal symptoms would not be a problem as most drinkers on the affected communities are binge drinkers.

**Evidence Called by the Licensee**

***Ms Pauline Haseldine-Nominee Top Springs Hotel***

- 73) Ms Haseldine has been involved in hotels and clubs for many years and has been the hotel manager at Top Springs for 6.5 years. At the hearing, Ms Haseldine repeated the information she gave to the Commission when they earlier attended on site for a viewing (see paragraphs 16 to 19 of this decision).
- 74) Ms Haseldine has 4 to 6 staff with the numbers varying depending on need. One staff member is generally responsible for the shop and the takeaway alcohol. She helps out as required. Weekends are the busy time for them when guests often stay in the 21 rooms available. She confirmed that the hotel makes a profit from accommodation but there are times in the wet season when there will be no one staying. The hotel sells basic supplies such as bread, milk, corned beef, and nappies. It also makes a profit from food including hot food for the Bodhi Bus and for football teams and cold packs of sandwiches and toasted sandwiches to take away. She confirmed however that there are big costs for electricity generation and for maintenance and repairs when living in such an isolated region. She also gave examples of the number of ways in which the hotel staff show their community spirit.
- 75) Ms Haseldine advised that the former Banned Drinkers Register worked beautifully for them. She confirmed her belief that a banned list of people on Alcohol Protection Orders and similar restrictions would work well as she knows her customers by sight. Ms Haseldine also commented upon a significant downturn in turnover from alcohol sales over the past year. She was not sure why but thought that it may have been

caused by misinformation about liquor restrictions in the Aboriginal communities. Her evidence was that 95% to 98% of takeaway alcohol sold at Top Springs Hotel was to residents of communities such as Yarralin and Daguragu, Kalkarindji and Lajamanu.

- 76) Ms Haseldine tendered a simple MYOB sheet which she advised supported this reduction in turnover. Counsel for the Director of Licensing opposed the acceptance into evidence of the MYOB spreadsheet, submitting that it was of indeterminable accuracy and that issues of profitability would require profit and loss statements.
- 77) The Commission advised Ms Haseldine and counsel for the Licensee that although it would accept the spreadsheet into evidence, it was of little probative value on its own. The Commission gave the Licensee notice that if the hotel intended to make submissions on the issue of viability of the business, then much better evidence would need to be provided. The matter was adjourned to enable the licensee to do that however no further evidence was in fact provided and Counsel for the licensee confirmed that he no longer intended to advance that argument further.
- 78) Ms Haseldine commented in evidence that the viability of the Hotel was an issue if restrictions were to be imposed as the major income for the hotel was from takeaway alcohol sales to Aboriginal communities.
- 79) She was asked in cross examination whether the Hotel was for sale. She confirmed it was but advised that at the moment it can't be sold because of this hearing. She said she did not know the sale price and that she did not see profit and loss figures for the hotel.
- 80) Ms Haseldine advised the Commission of a number of recent voluntary measures she has implemented to address concerns about alcohol harm. She only sells 24 packs of beer rather than 30 packs and no larger than 750 ml bottles of spirits.

***Ms Jennifer Lindsay, Alcohol and Other Drugs Nurse Counsellor, Katherine.***

- 81) Ms Lindsay works in alcohol rehabilitation in Katherine. She previously managed the clinic in Lajamanu for five years and before that she managed the clinic at Beswick. Ms Lindsay knows the affected communities well and she does not believe that any liquor restrictions imposed on the hotel will be effective. She believes that this change would cause more harm than good. It would force community members into the long grass in Katherine and their families might follow them. She believes that drinkers are better off with family at their home community. Also, there will be more traffic accidents and drink driving as a result of any change to the licence at Top Springs Hotel.
- 82) In cross examination, Ms Lindsay confirmed that she was not expressing her employer's views but her own. She also acknowledged that she is the fiancée of the licensee at Katherine Hotel- the supplier of alcohol to Top Springs Hotel until recent times.

- 83) Ms Haseldine advised the Commission at hearing that she had intended to call 3 further witnesses to give evidence but they were unable to attend. The Commission proceeded to accept their evidence without question to prevent any disadvantage to the Licensee. Their letters to the Commission are summarised below.

***Email dated 27 April 2014 from Georgina Macleod, Daguragu/Kalkaringi Ward Councillor for Victoria Daly Regional Council***

- 84) Ms Macleod has spent her life in the region growing up on a station and then spending 30 years at Kalkaringi. Although she understands the harm alcohol is causing, Ms Macleod believes that banning Top Springs from selling alcohol will make no difference. People will simply travel further on badly neglected and dangerous roads or move closer to supply. The Hotel is far more than just a liquor outlet to the local community. It is a very important resource to the community.

***Email dated 27 April 2014 from Kerrie Cokley, Horse and Cattle Lecturer/Workplace Assessor, Charles Darwin University.***

- 85) A great supporter of the Hotel, Ms Cokley advises that Pauline and her staff run an efficient, helpful and safe business. They help the community in many ways including roadside assistance, accommodation, food and communication.

***A letter dated 26 April 2014 from Allison Dakin Manager Wave Hill Station.***

- 86) Ms Dakin advises that there is no station that she knows of that would ever give a purchase order for staff to purchase personal alcohol. She emphasises that the hotel must remain open as it plays such an important role in the region. Ms Dakin doesn't believe that stopping the purchase of alcohol at the hotel will make a difference as people will simply drive elsewhere to get it.

## **CONSIDERATION OF ISSUES**

- 87) The Commission has taken into account the views expressed at the three community consultations, all written submissions received from a number of sources and all oral evidence at hearing. The problem that concerns Police, the Director of Licensing, some health workers and community members is not the on-premises drinking at the Top Springs Hotel. The problem is the level of harm caused to Aboriginal communities because of the huge amounts of alcohol being sold by Top Springs as take away.
- 88) In determining liquor conditions, s32 requires the Commission to consider the objects of the *Liquor Act*. They read as follows:

### **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;*

*(b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and*

*(c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.*

*(3) When the Commission exercises a power or performs a function under this Act, the Commission must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.*

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

*(1) When the Commission has regard to the objects of this Act in:*

*(a) considering or determining an application under this Act in respect of a licence or licensed premises; or*

*(b) determining the conditions of a licence,*

*the Commission must, when taking into account the public interest in the sale, provision, promotion and consumption of liquor, consider any of the criteria specified in subsection (2) that are relevant to the application or conditions.*

*(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;*

*(b) liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;*

*(c) public order and safety must not 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;*

*(e) noise emanations from licensed premises must not be excessive;*

*(f) business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or*

*from, or using the services of, a place of public worship, hospital or school;*

- (g) a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 
    - (i) by-laws made under the Local Government Act; and*
    - (ii) provisions of or under the Planning Act;**
  - (h) each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;*
  - (i) the use of credit in the sale of liquor must be controlled;*
  - (j) practices which encourage irresponsible drinking must be prohibited;*
  - (k) it may be necessary or desirable to limit any of the following:
 
    - (i) the kinds of liquor that may be sold;*
    - (ii) the manner in which liquor may be sold;*
    - (iii) the containers, or number or types of containers, in which liquor may be sold;*
    - (iv) the days on which and the times at which liquor may be sold;**
  - (l) it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;*
  - (m) it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;*
  - (n) it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.*
- (3) Also, the Commission must consider:*
- (a) any other matter the Commission believes is relevant to the public interest in the sale, provision, promotion and consumption of liquor in respect of the application or conditions under consideration; and*
  - (b) any information or matter contained in an application, or otherwise provided or raised by the applicant, which is relevant to the public interest in the sale, provision, promotion and consumption of liquor.*

- 89) Any variation of the liquor licence to restrict alcohol will be classified as a special measure which does not offend s10 of the *Racial Discrimination Act*. Although the restrictions will differ from Curtin Springs in that they will apply to all purchasers regardless of race or other attributes, they are clearly designed to target the harm alcohol is causing in isolated Aboriginal communities. The sale of takeaway liquor to tourists is not a significant factor to be considered as 95% to 98% of sales are to the surrounding Aboriginal communities.
- 90) The Commission is aware that it does not have a consensus from community members to back up any imposition of restrictions on the hotel. There are mixed views on the issue. Many people said that they opposed any change to the licence. Others suggested small changes that would still allow large amounts of alcohol to be purchased. Another group would support the imposing of restrictive measures if they were likely to help control the harm. Should this reality of a lack of consensus prevent the Commission from imposing measures?
- 91) In considering this question, the Commission has placed considerable weight on the expert evidence provided by Professor d'Abbs. His advice was that the Commission should not be guided by consensus but by the legitimacy of its decision. The *Liquor Act* requires the Commission to consider such issues as harm minimisation and health, safety and welfare and this is what we intend to do. It is no answer that the problems here may be mirrored in other communities or other regions. The Commission's focus in this decision is this particular region and the Commission must make decisions in accordance with the objects of the *Liquor Act*.
- 92) Top Springs Hotel is the closest and most accessible takeaway outlet to affected communities and this makes it the main supplier. There are also strong familial relationships between Yarralin, Kalkarindji and Lajamanu and the area surrounding the hotel has become a convenient meeting place for family and friends.
- 93) The evidence is that most takeaway alcohol is consumed by people in informal drinking areas on the road-side bordering each community. The drinking areas such as the Grid and 10 Mile are unsupervised and often unsafe with little or no shade and no access to drinking water. Night Patrol don't attend these areas and police generally only attend when they are informed of a problem. Access to and from the drinking areas is generally via the public road. Stories were told to the Commission of large numbers of cartons of beer, mainly VB, and some spirits being purchased and drunk at various drinking areas—particularly on pay weeks or when royalty money was available. Minors were also spending time drinking and socialising in these areas placing them in vulnerable situations.
- 94) Alcohol possession or consumption is prohibited without a permit within the community boundaries although this does not mean that they are protected from the impact of binge drinking and alcohol related harm. Alcohol is still smuggled into the communities and consumed in private homes causing problems and disturbance to neighbours. The community also have to deal with the aftermath of drinking sessions at the Grid and similar places. They have to care for drunk relatives and cope with



domestic violence and family dysfunction caused by alcohol abuse. They have to care for the children of drinkers.

- 95) The evidence of harm caused by alcohol abuse in these communities is significant and the Commission is satisfied that the problems are endemic and serious. Police tendered documentary evidence from the PROMIS database of a large number of incidents over the past few of years that involve violence or other offending by community members at the Grid or other drinking areas on the boundaries of the communities. Most of these incidents involved alcohol purchased at Top Springs. Incidents included motor vehicle accidents and violence where alcohol intoxication was a significant contributing factor. The PROMIS cases referred to in evidence by police officers were all supported by statutory declarations containing the relevant information. Each of the police officers who tendered statutory declarations also gave evidence at the hearing and were available for cross examination.
- 96) Apart from PROMIS records and related documents, the reliable statistical evidence provided by police and other government agencies was limited. Noting the objections of Counsel for the licensee to the Current Intelligence Report dated 26 March 2014, the Commission ultimately did not rely on the statistical evidence contained in that report apart from population numbers (see footnote 1 and 2). Despite this lack of comprehensive statistical data, the oral evidence of witnesses linking harm caused by alcohol consumption to purchases from the Top Springs Hotel was clear and compelling. The Hotel's takeaway liquor licence is allowing far too much alcohol to be sold to affected communities and restrictions are required.
- 97) The Commission accepts that Ms Haseldine is a good operator and that the drinking on premises causes few problems. The voluntary changes Ms Haseldine has made to her licence conditions are to be commended. That is not the issue however as despite good management on premises, the hotel's takeaway sales are causing considerable harm to others.
- 98) No one wants to see the hotel closed and that is definitely not the Commission's intention or belief. In fact, comments made by Ms Haseldine that restriction to the takeaway licence might seriously impact on the hotel's viability were not supported by any reliable data. If viability was in fact a real issue, the licensee would surely have taken the opportunity provided to substantiate these concerns rather than leave the Commission with so little evidence to consider. What we see is a well-managed hotel with a captive customer base and a potential to diversify if there is some drop in takeaway sales. Further, the profitability of a hotel must come second to the health and wellbeing of affected communities.
- 99) It is interesting that the Warnkurr Club at Kalkarindji expressed similar concerns about its viability when its licence was varied in 2012 to restrict on-premises sales to mid and light beer only. In reality, despite an initial downturn in sales and a change of business model to place more emphasis on food, the Club appears to be running well, attracting a wider base of clientele and providing an atmosphere more in keeping with a community club.

- 100) During the third day of the hearing, the Commission advised the parties that there was sufficient evidence of alcohol-related harm linked to takeaway sales from Top Springs Hotel for liquor restrictions to be seriously considered. In response, Mr Woodcock advised that the licensee would agree to the following orders:
- A reduction in licensed hours for takeaway sales from 2pm to 8pm to align hours with Katherine;
  - A restriction on the selling of wine as takeaway and
  - A list of 'banned people' on APOs etc to be sent by the OICs of affected communities to the hotel manager for her to enforce by refusing to serve banned people. Ms Haseldine was confident that she knew by sight adult community members purchasing from her hotel.
- 101) The Commission has considered these options. There is interest in the licensee's offer to standardise licenced take-away hours with that of Katherine. The evidence at this hearing however suggests other restrictions are likely to be more effective in reducing harm. The Commission therefore intends to ask the Director of Licensing to liaise with the licensee following publication of our decision. Should the licensee remain willing to restrict the hours of sale of takeaway liquor, then that provision will be included in the licence by consent.
- 102) The Commission notes that the licensee does not currently sell wine in bottles or casks -a positive measure to minimise harm. It is the Commission's intention to incorporate a limited restriction regarding wine sales in our takeaway licence conditions.
- 103) Finally, the Commission notes that there is conflicting evidence on the likely effectiveness of a 'banned drinkers list'. Some community members suggested this measure at the community consultations. Clearly Ms Haseldine is confident that such a measure in the past has had an impact on alcohol related harm and will work in the future. Her evidence is that she knows many of her customers by sight and therefore could identify them if they were banned. Her evidence is not doubted. So much depends on the rigorousness of the implementation of such a measure however, and Ms Haseldine is not the one who is responsible for many of the takeaway sales which are transacted by other staff. Further, family pressures may well mean that banned drinkers are supplied with alcohol by other family members which will impact on the effectiveness of this restriction as a control measure. Finally, it seems from the evidence that the alcohol-related problems experienced by communities continued during the period that the former Banned Drinker's Register was in place. Even if it did have some impact, it appears this measure alone was not sufficient to protect the communities in question from an unacceptable level of harm.
- 104) Noting the above comments, the Commission agrees that those customers on APO's and other court orders banning alcohol consumption should be the first to be refused access to alcohol and any measure that assists in this regard is of value. For this reason we support the Licensee's suggestion for the implementation of a Prohibition Register to be introduced at the hotel as a measure to reduce alcohol harm. Licensing

Inspector Mark Wood is confident that he and the licensee can work together and create a Register that assists the Hotel staff in maintaining and properly enforcing such a restriction.

- 105) The next question is whether other measures should be put in place to address the harm caused by takeaway alcohol purchased from Top Springs. The Commission considers further measures are required that impact on the amount of alcohol a person can buy per day and the alcohol content of the products sold.
- 106) As stated previously, we are simply not confident that a Prohibition Register targeting problem drinkers is sufficient to address the harm in the affected communities caused by takeaway alcohol. Even if the hotel staff are impeccable in their implementation of a Prohibition Register, many family members will be pressured to purchase huge amounts of alcohol to share with those on APOs and similar orders. As most drinking takes place in unregulated drinking areas, there is no way that we can have confidence that a Prohibition Register alone will be enough.
- 107) Witness after witness spoke of the devastating volume of alcohol being purchased at Top Springs with grog runs occurring where each car may purchase many, many cartons. This alcohol is normally shared between groups of people and a binge drinking session can continue at the Grid, 10 Mile or elsewhere for 2 or 3 days. The ramifications are felt by each community. Police and health services cannot be expected to be able to monitor and control such behaviour. For this reason, the Commission is satisfied that there also needs to be a maximum amount of alcohol that can be purchased per individual and per vehicle. While sales of smaller quantities of any product are encouraged, the Commission is aware that the most popular sale item is beer (24 cans) purchased by the carton. The decision of the Commission will be principally aimed at placing restrictions on the maximum number of cartons that can be sold each day per person and per vehicle.
- 108) The licensee expressed concerns that a 'per vehicle' limit is unworkable. The evidence for the Director of Licensing and in particular Inspector Mark Wood suggested differently. The Commission itself is confident that the Director can work with the licensee to find a simple and practical way for customers to have their motor vehicle registration numbers manually or electronically recorded.
- 109) This leads us on to consideration of the types of alcohol that should be available for purchase as takeaway. The Commission takes note of the expert advice from Professor d'Abbs that any measures taken must be substantial if there is to be a noticeable improvement in harm. The WA experience in Fitzroy Crossing and Halls Creek provide strong support for his analysis.
- 110) The Commission also accepts Professor d'Abbs' advice that the positive impact of imposing restrictions on alcohol supply should outweigh the negatives such as relocation by some community members. The Commission imagines that chronic drinkers who have not already left the community will be likely to do so. This was discussed at the hearing with police who considered it preferable that chronic drinkers

be in Katherine where there are more support services available. Some binge drinkers may also leave the communities in search of a more varied supply of alcohol. In studies of other regions where liquor restrictions were imposed, there were some who left but later returned to their communities.

- 111) In deciding to impose liquor restrictions, the Commission accepts that this decision may lead to more 'grog runs' to other liquor outlets further afield. The distances involved and petrol costs of travel are considerable but it is accepted that when royalty money is available, grog runs are likely to occur. The Commission has some confidence however that the reduction in alcohol availability in the region will provide a net benefit in terms of community health and wellbeing. The Commission was also pleased to hear comments both from police and community members that recent police initiatives have led to an increase in the use of 'sober bobs' to drive vehicles to and from the communities in question. It is hoped that strong regulation on this issue continues.
- 112) In deciding on restrictions, the Commission looked closely at the evidence presented to the former Commission hearing panel and to their decision. The former panel allowed customers to continue to purchase spirits, wine and full strength beer-albeit in limited amounts. The Commission at this hearing has the added benefit of expert advice from Professor d'Abbs on relocation and substitution concerns. It has before it a detailed analysis of the WA restrictions and some confidence that the restrictions brought in at the Kalkarindji Club in 2012 have been effective. For these reasons, the Commission has elected not to follow the decision of the former hearing panel but considers it in the best interest of the affected communities to impose tighter restrictions.
- 113) The need for the regulators, the Director of Licensing and Police to provide appropriate enforcement for any restrictions is imperative. It is also clear that supply reduction measures work best if they are accompanied by harm minimisation and demand reduction measures in a cohesive plan. There is currently no Alcohol Management Plan (AMP) for the Region although there are a number of measures being taken that fit these categories of support. There are visiting Alcohol and other Drug workers who are available for counselling and public health programs. There are night patrol groups and women's safe houses. The NTG has also placed considerable resources in recent times into mandatory and voluntary alcohol treatment programs. In short, there are some of the core elements of an AMP at work in the region but it would benefit greatly from a cohesive, cooperative approach to alcohol management. The jurisdiction of the Licensing Commission extends to liquor supply measures only. It is up to the affected communities to work with government agencies and vice versa to identify community needs and implement a cohesive AMP. In time, this plan might include functional permit committees to give responsibility back to the community to decide who should and should not be granted a permit. This is more likely to occur if the harm caused by alcohol in the relevant communities is significantly reduced.
- 114) Although some community members consider the purchase and consumption of alcohol is an individual right, the Commission disagrees. It prefers Professor d'Abbs

comment that the right to drink is a conditional privilege. In each of the communities in question, this privilege is being abused by many to the extent that the whole community is affected-by death and injury of family members from domestic violence and violence generally, motor vehicle accidents, frequent community disruption and disharmony impacting on every man woman and child on these communities. The Commission can do nothing about the other factors that impact on community dysfunction such as lack of employment and overcrowded housing but it can provide some relief to these communities in the form of liquor restrictions.

- 115) What the Commission is providing is a framework of supply measures to assist in reducing the harm caused by alcohol in the relevant communities and to provide an opportunity for an Alcohol Management Plan to be developed containing strategies to minimise harm and reduce demand. The WA examples make it clear that the long term effectiveness of liquor supply restrictions are minimised if those restrictions are not supported by appropriate complementary measures.

## DECISION

- 116) After considering all of the evidence and noting the relevant public interest criteria in the Objects of the Liquor Act, the Commission has determined to vary the licence conditions with respect to the sale of take away alcoholic products from Top Springs Hotel. The licence is varied as follows:

### 1. STAY

The decision of the Commission dated 23 March 2013 which is currently stayed is now revoked.

### 2. RESTRICTED SALES

Liquor sold for consumption away from the licensed premises is restricted to any 'mid strength' liquor product in an individual container (e.g. can) not exceeding 400ml in capacity and not more than 3.5% alc/vol.

Liquor sold for consumption away from the licensed premises is restricted to a maximum of 24 individual containers per person per day.

The maximum number of sales of packaged bulk liquor (e.g. carton) for consumption away from the premises per vehicle is three (3) per day.

Photographic identification in a form approved by the Commission under Section 31A of the *Liquor Act* must be provided and recorded for each individual purchase of takeaway liquor. Identification approved under the Act for the sale of takeaway liquor includes an NT or other Australian State or Territory Government issued driver license, evidence of age card, Ochre (Working With Children) Card, and Australian or International Passport. The Director of Licensing is to provide the licensee with the documents required to be maintained for the purposes of compliance with this condition which requires recording the purchaser's name/ identification number/ date of birth/ alcohol type/ quantity/ vehicle description and

registration number. The Director of Licensing will work with the Licensee to assist in this process and minimise the time required to comply with this condition.

### 3. PROHIBITION REGISTER

The licensee will work with the Director of Licensing to implement a workable Prohibition Register to prevent those on Alcohol Protection Orders and similar court orders which may include suspended sentences or court imposed bail conditions from purchasing takeaway alcohol from the Hotel. The licensee will be advised in writing of the names and duration of such orders by the Police or the Department. Once advised, the Licensee will not sell any alcohol to those individuals as take away liquor or otherwise for the period they are advised that the order is current. The Police or the Director of Licensing will also advise the Licensee when those orders have expired and those persons will then be removed from the Prohibition Register. The Licensee will maintain the Prohibition Register and provide a copy to a Licensing Inspector or to Police upon request.

### 4. EXCLUDED PURCHASES

Pre-ordered station purchases are not subject to restrictions on quantity or type of alcoholic beverage but the collection of purchased alcohol must occur within licensed hours. Any other requests for temporary or limited variations to the takeaway liquor licence must be made through the normal application processes.

### 5. COMMENCEMENT DATE

These conditions are to come into effect 30 DAYS from the date of this decision, unless implemented earlier.

### 6. CLARIFICATION

Liberty to apply by way of a written request to the Licensing Commission for further clarification, refinement, addition or amendment of any of the orders to assist in their implementation.

### 7. REVIEW

This Decision is to be reviewed following (12) twelve months of operation of the above licence conditions.



Brenda Monaghan  
PRESIDING MEMBER