

Northern Territory Licensing Commission

Application for Public Restricted Area, Groote Eylandt

Applicant:	Director of Licensing, Karen Avery
Date of Hearing:	3 July 2014
Legislation:	Part VIII, Division 1B of the Liquor Act
Heard Before:	Mr Richard O'Sullivan (Chairman) John Brears Helen Kilgariff
Appearances:	Mr Alex Brennan, Senior Sergeant NT Police Mr John Hansen, Superintendent External Affairs, Groote Eylandt Mining Company Pty Ltd Mr Richard Tomlinson, Communications Specialist, Groote Eylandt Mining Company Pty Ltd Ms Jodi Kirstenfeldt, Licensing Inspector, representing Director of Licensing
Date of Decision:	28 August 2014

Background

- 1) Mr Ben Yaksich, General Manager, Groote Eylandt Mining Company Pty Ltd ("GEMCO") in September 2012 made application to the Northern Territory Licensing Commission ("the Commission") for four areas within the Alyangula township of Groote Eylandt to be declared Public Restricted Areas pursuant to the *Liquor Act* ("the Act").
- 2) GEMCO is the leaseholder for Special Purpose Lease 393, which includes the entire area of the Alyangula Township, inclusive of the four sites or areas which are the subject of the Public Restricted Area application. The four areas, for which GPS co-ordinates were provided by GEMCO are described as:
 - the old boat ramp bbq area
 - the bbq area at the squash courts
 - the Directors Cottages
 - the Alyangula Golf Course.
- 3) Pursuant to Section 76 of the Act an application for declaration of a Public Restricted Area must contain required information and can only be made by the Commissioner of Police, the Director or Local Government Council.

"76 Application for declaration

- (1) *An application for a specified area of land to be declared a restricted area shall:*
 - (a) *be lodged with the Director; and*

- (b) *be in writing; and*
 - (c) *be signed by the applicant; and*
 - (d) *include a description of the relevant area in sufficient detail to enable the Commission to identify the location of the proposed restricted area; and*
 - (e) *include a statement of the applicant's reasons for desiring the relevant area to be declared a general restricted area or public restricted area; and*
 - (f) *if the applicant desires the relevant area to be declared a general restricted area in respect of liquor other than a type of liquor – state the type of liquor.*
- (2) *An application for the declaration of a public restricted area may only be made by one or more of the following:*
- (a) *the Commissioner of Police;*
 - (b) *the Director;*
 - (c) *if all or part of the relevant area forms all or part of a local government area – the local government council for the local government area.”*
- 4) In October 2013 the Director of Licensing, as a person recognised under Section 76(2)(b) of the Act as able to make application, made application to the Commission for the declaration of the four areas specified by GEMCO as Public Restricted . Effectively the Director has stood in the shoes of GEMCO and has cited similar reasons for the application originally provided by GEMCO.
- 5) All of Groote Eylandt including Alyangula has previously in 2008 been declared a General Restricted Area. This prohibits residents of and visitors to Alyangula from purchasing and consuming alcohol in public areas, with permit holders able to purchase alcohol for consumption in their homes or residences. The declaration of an area as Public Restricted will enable permit holders to obtain a permit to consume alcohol at the declared Public Restricted Areas for hours specified under the application.
- 6) The application from the Director to the Commission provides the following reasons in support of the application:
- “One of the main purposes of the submission to make the areas a PRA is to prevent people from breaching the conditions of their liquor permit and quite possible the Act. It is understood that for many years people have used these recreational areas, while at the same time consuming alcohol in a responsible manner. This has been occurring prior to and ever since, the declaration of the General Restricted Area and the introduction of the liquor permit system.*
- By declaring these areas PRA, Groote Eylandt liquor permit holders and their visitors will be able to legally possess and consume alcohol in these areas. Further, Police will have the power to intervene when people breach their permit conditions and/or PRA legislation.”*

- 7) Following consideration of the application in October 2013 the Commission determined to conduct a Hearing pursuant to Section 86C and to conduct consultations to ascertain the view of residents and other relevant persons or organisations. Section 86C prescribes how the Commission is to inform itself of the matter.

“86C Inquiry by Commission

- (1) The Commission must conduct an inquiry to inform itself about the application.*
 - (2) The inquiry:*
 - (a) must be conducted in or near the relevant area; and*
 - (b) may be conducted in any way the Commission considers appropriate.*
 - (3) The Commission must give notice about the inquiry:*
 - (a) to each local government council mentioned in section 76(2)(c) in relation to the area; and*
 - (b) in a newspaper circulating in the area.*
 - (4) The notice must:*
 - (a) specify the area; and*
 - (b) invite individuals and bodies to make submissions about the application by a specified time; and*
 - (c) include any other information the Commission considers appropriate.*
 - (5) For subsection (4)(b), the submissions may be in writing or made in any other way the Commission considers appropriate.*
 - (6) In conjunction with the inquiry, the Commission may also inform itself about the application by conducting investigations and consultations as it considers appropriate.”*
- 8) The following advertisement advising of the application was placed in NT News and on community notice boards in Alyangula:

NORTHERN TERRITORY LICENSING COMMISSION

NOTICE OF APPLICATION FOR DECLARATION OF PUBLIC RESTRICTED AREAS - AREAS WITHIN THE ALYANGULA TOWNSHIP

Pursuant to section 78(2)(c) of the *Liquor Act*, the Director of Licensing, on behalf of the Groote Eylandt Mining Company Limited (GEMCO), has applied to the Northern Territory Licensing Commission to declare areas within the Alyangula Township as Public Restricted Areas pursuant to Part VIII of the *Liquor Act* (the Act). The proposed areas include:

1. The old boat ramp barbeque area
2. The barbeque area at the squash courts
3. The director's cottages
4. The Alyangula golf course (excluding the Alyangula Golf Club)

As a guide, maps of the proposed Public Restricted Areas are below:



The old boat ramp barbeque area



The barbeque area at the squash courts



Director's cottages and Alyangula golf course (excluding the Alyangula Golf Club)

GPS coordinates of the proposed areas and further information on this application may be obtained from Gambling and Licensing Services.

If the proposed public areas mentioned above are gazetted as Public Restricted Areas, it will be an offence to consume liquor in the prescribed areas without a permit.* Penalties for consuming alcohol without a permit can include:

- Forfeiture of liquor
- Liquor being tipped out or confiscated
- An infringement notice being issued
- A maximum court imposed fine of 20 penalty units if the matter goes to court (one penalty unit is currently \$144)
- In the case of repeat offenders (multiple infringement notices) or complaints made by Police, a person may go before the court of summary jurisdiction and be referred to the Alcohol Court.

The Northern Territory Licensing Commission is legally required to conduct an inquiry and consider the views of the community. Groote Eylandt residents and organisations are hereby invited to lodge written submissions with the Licensing Commission at GPO Box 1154, Darwin NT 0801, faxing to 8999 1888, or by emailing to licensingcommission@nt.gov.au

For further details please contact Gambling and Licensing Services on 8999 1800. The deadline for lodgement of the submissions with the Licensing Commission is close of business Thursday, 2 January 2014.

Richard O'Sullivan, Chairman, 4 December 2013

* Permits may be issued to organisations and members of the public for special one-off events, community functions or regular sporting fixtures. Sporting groups and community organisations that hold liquor licences to sell alcohol in public areas will still be permitted to sell alcohol, however a permit will be required to allow for the consumption of alcohol in public places.

- 9) Key stakeholders were advised of the application in writing and invited to make a submission to the Commission. In response to the advertisements and consultations over the application submissions were received from 3 parties, namely the Anindilyakwa Land Council, the Alyangula Golf Club and NT Police.
- 10) The Anindilyakwa Land Council Submission of 26 February 2014 advised that the Board in a unanimous decision determined not to support the application for the consumption of alcohol at the barbeque area adjacent to the jetty, generally referred to as the old boat ramp area, the squash courts and the GEMCO Directors Cottages. Particular mention was made to the barbeque area near the jetty. The submission referred to Warnindilyakwa residents of Groote Eylandt and Bickerton Island who frequently travel by boat between the island and pass the jetty barbeque area and who would be confronted with the sight of permit holders consuming alcohol in the area if the application is granted.
- 11) The Alyangula Golf Club in correspondence of 11 December 2013 advise that the Club Committee fully supports the application.
- 12) NT Police, through Acting Senior Sergeant Rick Magree, in correspondence of 2 January 2014 advised that Police are supportive of Public Restricted Areas being declared over the Golf Course, Directors Cottage and the barbeque area near the

squash courts. Police do not support the declaration of the area referred to as the “old boat ramp”, being the barbeque area near the jetty. The Police submission maintains that the consumption of alcohol at this site would pose safety management issues.

- 13) Following these responses the Commission determined to convene a Public Hearing at Alyangula on 3 July 2014 with community members, interested persons and parties who had made written submissions invited to attend.

The Hearing

- 14) At the scheduled Hearing commencement time of 10:00am on 3 July 2014 Licensing Inspector Kirstenfeldt made contact with the office of the Anindilyakwa Land Council to establish if a member of the Council or representative would be attending the Hearing. Inspector Kirstenfeldt was advised that the Council wished to rely on its written submission of 23 February 2013 and that it would not appear or be represented at the Hearing.
- 15) At the outset the Chairman advised that under Section 86C of the Act “The Commission must conduct an inquiry to inform itself about the application” and that the consultations already conducted, together with this Hearing, constituted the required inquiry.
- 16) Inspector Kirstenfeldt outlined the history of alcohol restrictions on Groote Eylandt which commenced with the declaration of a General Restricted Area in August 2008 and the establishment of permits to allow holders of these permits and their bona fide guests to consume alcohol in their homes. Following GEMCO’s application for the four nominated areas to be declared Public Restricted, to provide legal certainty to the application process, the Director of Licensing then made identical formal application to the Commission for the declaration of the areas.
- 17) Mr John Hansen, Superintendent External Affairs, GEMCO outlined that his employer had title through Special Purpose Lease 393 over the township and mine area, inclusive of the four areas under application. He advised that these nominated areas were in use as recreation and barbeque areas prior to the declaration of the General Restricted Area status in 2008. Since that time permit holders had continued to make use of the recreation areas, including the consumption of alcohol which he admitted was in breach of the General Restricted Area declaration until the Director of Licensing recently approving temporary permits for alcohol to be consumed by permit holders at these locations.
- 18) In addressing the issue of discrimination between permit holders, who are usually GEMCO employees or non-indigenous persons working in the community, and non-permit holders who are usually indigenous residents, Mr Hansen cited the arrangement for the barbeque area at the Alyangula football oval. Previously the right to consume alcohol at the very public and frequented barbeque area was restricted to permit holders, but following consideration that this gave a public perception of discrimination, the right of the permit holders to consume alcohol at this location was removed by the Permit Committee.
- 19) GEMCO, Mr Hansen advised, was an active member and supported of the Permit Committee which also included Police, traditional owners and health officers. He

informed the Hearing that there were 1,500 permits currently on issue. Very few were on issue to Indigenous people as a permit to have alcohol usually resulted in family and other community members “humbugging” for access to alcohol.

- 20) Mr Hansen submitted that Police supported the application, apart from the boat ramp barbeque area and that there was general community support for the application. When queried over the Anindilyakwa Land Council opposition to the application Mr Hansen referred to the parties “agreeing to disagree”. The main opposition of the Council appears directed at the boat ramp barbeque area which Mr Hansen described as an area convenient to the fly in/fly out GEMCO workers accommodation.
- 21) Senior Sergeant Brennan then addressed the Hearing on the Police position. He advised that while he was representing the Police on the matter before the Commission his knowledge and experience with the area was limited as he had only recently been stationed at Alyangula. Notwithstanding this lack of comprehensive local knowledge, Mr Brennan advised that the public consumption of alcohol at Alyangula is a responsibility of Police as there is no licensee or licence conditions governing the regulation and oversight of drinker behaviour at the proposed locations.
- 22) The Senior Sergeant in evidence provided the police position with respect to the area under application and the hours applied for as follows:
 - i. Golf Course

Police have no objection to the application and for the hours sought, being from 7:00am to 8:00pm, noting the Golf Course caters for shift workers.
 - ii. Directors Cottages

Police have no objection to the application and for the hours sought, being from 6:00pm to 11:00pm
 - iii. Squash Court Barbeque Area

While Police do not object to the application, they do have concerns over the hours sought for alcohol to be consumed, being from 6:00am to midnight. Senior Sergeant Brennan outlined that the area has high public visibility and that up to 18 hours of public drinking is excessive in his and the Police submission.

He submitted that a break in consumption is useful in preventing harm. Following discussion he suggested a commencement time of 7:00am to 10:00am followed by a permit from 7:00pm to 11:00pm.
 - iv. Boat Ramp Barbeque Area

The Senior Sergeant outlined the reasons for Police objection to this application, including that it was out of sight and close to the Bickerton Island boat traffic. He explained that allowing alcohol at this site could enable the supply of alcohol to non-permit holders and constituted “a high risk from a Police point of view”.

- 23) In relation to the old boat ramp barbeque area, Mr Hansen stated that there were no permit holders from Bickerton Island and therefore they could not purchase alcohol and take it back to the Island. Senior Sergeant Brennan referred to the isolation of the area and that illegal sale of alcohol could take place in a 2 minute transaction. He referred to previous such sales of alcohol taking place at this site.
- 24) Mr Hansen summarised by saying that the sites and hours chosen for the application are based on historic use, including the need to cater for the recreation of shift workers. He submitted that the Commission could provide a temporary declaration of the areas and times applied for and adjust if necessary, following a review.

Consideration of the Issues

- 25) The Commission is aware that what is being sought through the application for four discrete Public Restricted Areas is to fully legitimise the prevailing use of areas by permit holders for recreation purposes. While the areas are part of the wider General Restricted status of Groote Eylandt, liquor permit holders have recently been allowed to consume alcohol in these areas under the permit conditions granted to provide temporary legitimacy for such usage of the areas.
- 26) Opposition to the application has been through a letter from the Anindilyakwa Land Council of 26 February 2013 in response to the application. This letter refers to the barbeque area adjacent to the jetty and squash courts and the GEMCO Directors Cottages and does not mention the application for the Alyangula Golf Course. Specific reference is made to the non-support of the barbeque area adjacent to the jetty due to the sensitivity of exposure to Bickerton Island residents who would be passing through this area.
- 27) While GEMCO holds a lease over the land and performs community government functions by administering the town through road and parkland maintenance, the provision of power and water and emergency services, the Commission must give consideration to the wishes of traditional land owners. Some weight is therefore accorded to the written objection by the Anindilyakwa Land Council.
- 28) The Commission has been informed at Hearing that GEMCO representatives have raised with the Anindilyakwa Land Council prospects of the application succeeding. Evidently if the application were to be granted it would not cause irreparable or significant damage to the relationships between the two entities. Unfortunately the Commission only heard from GEMCO at the Hearing and was not able to pursue questioning of the Anindilyakwa Land Council on this subject.
- 29) A complicating aspect of the application is that GEMCO are seeking what has been referred to as “evergreen” conditions for permit holders to consume alcohol at the declared sites. This means usage of the areas for the consumption of alcohol is not to be dependent on individual application but rather that the permit enables the consumption of alcohol at the areas and times declared for the duration of the permit.
- 30) Also sought in the application is the ability of a non-permit holder who is the guest of a permit holder, to consume alcohol at these areas when in the company of a permit holder. Currently a guest of a permit holder is able to consume liquor, on invitation

by a permit holder, at a premise owned or occupied by a permit holder. This concept of a guest sharing the rights or privileges of a permit holder is to be extended to the Public Restricted Areas under the application before the Commission.

- 31) In considering the hours for which any Public Restricted declaration is to apply to the specified areas the Commission needs to be mindful of public welfare and safety issues as outlines in Police evidence. If a declaration is to be made for an area, the timeframe should not overlap with another declared area so as to enable users of a site, where time has elapsed, to simply move on to another site.
- 32) Given both the Anindilyakwa Land Council and Police have opposed the declaration of the area near the jetty; the Commission is reluctant to approve this area of application. Besides it being out of sight for ready monitoring by Police, it is also close to where residents of Bickerton Island commute to and from that Island to Groote Eylandt and the sensitivity of exposing indigenous residents to alcohol consumption in such circumstances is recognised. The argument proffered by GEMCO that this area is close to employee living areas is countered by the fact that the barbeque area adjacent to the squash courts is even closer to those living areas.
- 33) There has been no argument presented to the Commission in written submission or at Hearing against the declaration of the Alyangula Golf Course or the hours proposed by GEMCO. The Commission sees no impediment to granting this aspect of the application, including the hours sought, being from 7:00am to 8:00pm to cater for golfers including shift workers.
- 34) The GEMCO Directors Cottages comprise a discrete residential area some distance from the town residences. It is noted that any use of this premium accommodation requires approval of the General Manager of GEMCO and that the hours applied for are not excessive, that is from 6:00pm to 11:00pm. The Anindilyakwa Land Council have opposed this application but have not particularised reasons. Police have not proffered any objection. The Commission foresees little risk in granting this element of the application.
- 35) The barbeque area adjacent to the squash courts is within a recreation precinct including the tennis courts and swimming pool. It is surrounded by watered grasslands/lawns with an outlook onto the beach and sea water. From the Commission viewing the area presents as a pleasant environment where recreation and barbequing would be expected. It has reasonable visibility from the shopping area of the township. Police do not oppose this application but have sought that the hours applied for are reduced and provide for a midday break for the time when alcohol is able to be consumed. It is opposed by the Anindilyakwa Land Council.
- 36) The visibility of permit holders and potentially their invited guests consuming alcohol does highlight the differing rights or entitlements of permit holders verse those without permits. However this differing of entitlements regarding access to alcohol was envisaged when application for the General Restricted Declaration over Groote Eylandt was made. It was made to minimise alcohol fuelled violence.
- 37) While mindful of the sensitivity of differing entitlements amongst indigenous residents, other residents and workers on Groote Eylandt, the Commission has no

evidence that the historic use of the area, including consuming alcohol, has resulted in harm or placed a burden on Police in terms of supervision. However the Commission does view the hours sought, being from 6:00am to midnight, as excessive. The early 6:00am commencement is based on GEMCO workers finishing off their night shifts between 6:00am and 7:00am. Police have sought a lessening of the hours and a break during the middle of the day. There is compelling logic to this approach as otherwise 18 hours of continuous public drinking could result. Accordingly the Commission considers timing appropriate for the Public Restricted declaration to apply would be from 7:00am to 10:00am and from 5:00pm to 11:00pm.

38) To guard against enshrining Public Restricted status and times for the areas declared that may become problematic in terms of consequences, the Commission is of the view that its Decision requires ongoing monitoring with the Director of Licensing to report to the Commission on unintended and adverse consequences or impacts.

39) The application envisages entitlement to consume alcohol by permit holders at the Public Restricted Area as a general or “evergreen” entitlement that does not require a separate permit to be applied for and granted on each occasion the designated area is to be used, inclusive of the consumption of alcohol. In declaring the three approved areas Public Restricted, the Commission agrees that “evergreen” conditions apply.

40) In all areas applied for it is recommended to the Commission by GEMCO and the Director of Licensing that the following apply:

“People consuming alcohol in this area must be Groote Eylandt General Restricted Area liquor permit holders or a guest of the permit holder, who does not reside within the Groote Eylandt General Restricted Area.”

This condition imports that applying to consumption of alcohol in a permit holder’s home or place of dwelling. The Commission supports this condition being included with the Public Restricted declaration and its inclusion in liquor permit conditions.

Decision

41) The Commission declares the following areas to be Public Restricted Areas:

(i) The barbeque area at the squash courts as defined by the following GPS coordinates:

13510589 S / 136245912 E
 13510514 S / 136250243 E
 13510638 S / 136250257 E
 13510699 S / 136250027 E

The Public Restricted Area is declared for the hours of 7:00am to 10:00am and from 5:00pm to 11:00pm, seven days a week.

(ii) The GEMCO Directors Cottages as defined by the following GPS coordinates:

13505098 S / 136244700 E

13505139 S / 136244933 E
 13505468 S / 136244779 E
 13505345 S / 136244648 E

The Public Restricted Area is declared for the hours of 6:00pm to 11:00pm, seven days a week. Any person consuming alcohol in this area must be utilising the premises with the approval of the GEMCO General Manager.

(iii) Alyangula Golf Course as defined by the following GPS coordinates:

13504930 S / 136250214 E
 13504950 S / 136244766 E
 13505245 S / 136245366 E
 13505523 S / 136244926 E
 13505422 S / 136244628 E
 13505616 S / 136244380 E
 13510242 S / 136425480 E
 13510054 S / 136245862 E
 13505439 S / 136245543 E
 13505438 S / 136250236 E

The Public Restricted Area is declared for the hours from 7:00am to 8:00pm, seven days a week. Persons possessing and consuming alcohol must be involved in a game of golf.

- 42) For the Declared areas of the squash court barbeque area, the GEMCO Directors Cottages and the Alyangula Golf Course, people possessing and consuming alcohol must be a Groote Eylandt General Restricted Area permit holder, or a guest of the permit holder who does not reside within the Groote Eylandt General Restricted Area.
- 43) To allow for appropriate signage to be erected and for any public notification of the status of the areas, the Declaration does not come into effect until Monday 3 November 2014.
- 44) The Director of Licensing is to undertake ongoing monitoring of the Declaration and report back to the Commission if there are any harmful or unintended impacts.
- 45) The Commission has determined, given objections by the Anindilyakwa Land Council and NT Police, not to approve the application of the area described as the barbeque area adjacent to the jetty.

Richard O'Sullivan
 Chairman

28 August 2014