

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Mandorah Beach Hotel
Licensee:	Stanjon Pty Ltd
Licence Number:	81201510
Nominee:	Steven Brown
Proceeding:	Complaint pursuant to section 48 of the <i>Liquor Act</i>
Complainant:	Belyuen Community Government Council
Heard Before:	Ms J Huck (Presiding) Mr A Clough Mr P Costigan
Date of Hearing:	15 July 2003
Date of Decision:	18 August 2003
Appearances:	Mr T Young and Mr P Zucchi for the Complainant Mr P McIntyre and Mr J Johnson for the Licensee

Background

1. This hearing arose from a complaint by Belyuen Community Government Council (BCGC) against the Mandorah Beach Hotel (MBH) lodged under section 48 of the *Liquor Act* (the Act). There had been negotiations between the parties prior to the hearing, and counsel for both sides came to the hearing with an agreed solution to the complaint in the form of draft special conditions to be incorporated into MBH's liquor licence. At the request of the parties, the hearing proceedings were limited to oral submissions by legal counsel and discussions with the Commission around the "special conditions" they had put forward. Counsel for both sides argued that it was appropriate for the Commission to make a decision in this matter without taking evidence from witnesses.
2. By agreement between the parties and the Commission, written submissions and other written material was submitted after the hearing with copies being provided to all concerned. Both parties to the complaint were given an opportunity to have the hearing reconvened if further oral submissions were considered necessary but both parties declined the opportunity, being content for the Commission to proceed to make a decision on the basis of the material already before it.
3. At the commencement of the hearing, Mr Young, counsel for BCGC, made it clear that the complaint was about the existing licence conditions of MBH and was not, in any way, an allegation that the nominee or licensee had breached existing licence conditions or acted improperly. The nature of the complaint was that the availability of take-away alcohol from MBH was contributing to alcohol related problems at Belyuen and that more restricted licence conditions might go some way to alleviate these problems. It was conceded by BCGC that MBH was not the only source of alcohol for Belyuen residents, with alcohol being brought into the Community from Darwin.
4. Mr Young stated that there had been concerns for many years about serious alcohol related health and social problems at Belyuen, including alcohol related violence. In 1993 the Community had been able to negotiate with the Liquor Commission and local licensees

(MBH, Wagait Supermarket and the Litchfield Hotel) to trial voluntary restrictions on the sale of certain alcohol products to Belyuen community members. This voluntary trial was originally planned to run for 3 months and was then extended to 6 months. A comprehensive description of the alcohol related problems at Belyuen in 1992/1993 and the design and outcomes of the trial are contained in a report titled "*Jaraku-Booje Rek Ngadarra Bootung (Strong Minds in Our Community): An alcohol intervention initiative at Belyuen, December 1993*" contained in the hearing brief. The trial was considered to be very successful and appears to have been continued in an informal way over the subsequent years. Special conditions consistent with the trial conditions were eventually incorporated into the licence conditions of Wagait Supermarket and the Litchfield Hotel.

5. Mr Young said that the current complaint has arisen because BCGC believed that the verbal agreement made with the hotel in 1993 restricting the sale of certain take-away products (Moselle, spirits and alcohol in glass containers) to Belyuen Community members was no longer being observed. It was conceded that the restrictions had never been written into the Hotel's liquor licence, that the Hotel had changed hands during the last few years and the new licensee and nominee may not have been aware of the agreement or the details of the agreement. Mr Young said that the alcohol related health and social problems at Belyuen were again at a critical level and the BCGC was anxious to do something to address the problem. Reducing people's access to some types of take-away alcohol was seen as an important step in this process.
6. Mr McIntyre, for the Hotel, said that the complaint to the Licensing Commission had clarified, for the licensee, the nature of the Belyuen Community's concerns and wishes and had also provided a mechanism for resolving the tensions between BCGC and the Hotel over take-away liquor sales. The licensee wanted to make it clear that he respected the wishes of the BCGC and was keen to abide by these wishes. The licensee did, however, have concerns that by being seen to agree to conditions restricting the sale of different types of alcohol to Belyuen residents, he could be exposing the Hotel to potential racial discrimination complaints under the *Racial Discrimination Act* and the *Anti-Discrimination Act*.
7. As already stated, the parties had negotiated the wording of a number of special conditions that they hoped the Commission would incorporate into the Hotel's liquor licence. They proposed that the Commission adopt the exact wording of the draft conditions, as considerable thought and effort had gone into their formulation. They also requested that an introduction be added making it clear that BCGC had sought the conditions.
8. Counsel for BCGC stated that, in acknowledgement of the licensee's concerns about exposing the Hotel to potential racial discrimination complaints, the Council would be applying for a Special Measures Certificate (a Certificate) from the Race Discrimination Commissioner, Human Rights and Equal Opportunity Commission (HREOC). Mr Young said that he considered it was safe to apply for the amended licence conditions and for the Certificate simultaneously, and for the Licensing Commission decision to note that the BCGC had undertaken to seek such a certificate. Mr Young said that he was unsure how long it might take to obtain the Certificate but that it could be many months. His clients were anxious for the new licence conditions to take effect as soon as possible.
9. Counsel for MBH said that the Certificate should be acquired before the Commission made a decision to vary the licence conditions and before any take-away sales restrictions came into effect. He was not satisfied that the imposition of varied licence conditions by the Commission would protect the licensee from complaints under the *Racial Discrimination Act* without a Certificate also being in existence.
10. The Commission drew counsels' attention to a previous decision of the Commission, *Kings Creek Station Pty Ltd (2000)*, which deals briefly with this issue.
11. In acknowledgement of the possible delay in obtaining the Certificate, Mr McIntyre said that the licensee was willing, as an interim measure, to cease stocking cheap cask wine. He said that the nominee had cancelled a large order for cheap wine the day before the

hearing and only had 10 casks left in stock. The nominee was not concerned that this would lead to a racial discrimination complaint as the restriction would apply to all customers, not just to Belyuen residents.

12. Given the differences of opinion about whether the Licensing Commission's decision should be delayed pending the outcome of the Special Measures Certificate application and the need to further research the law around discrimination issues, the parties were invited to make written submissions on the subject. Counsel for BCGC agreed to apply for a Certificate within 7 days of the Commission hearing and also to lodge a written submission with the Commission within this timeframe. Upon receipt of a copy of the BCGC application and submission, counsel for MBH would have a further 7 days to lodge a written submission if necessary. The parties were given leave to apply for the hearing to be reconvened for any final oral submissions the parties considered appropriate.

Proposed special conditions

13. A copy of the special conditions being proposed by the parties was tendered. This document reads as follows:

"Mandorah Beach Hotel

Licence condition amendment sought

- (1) *The only takeaway sales to residents of Belyuen will be beer in cans.*
- (2) *The licensee will be excused from compliance with condition 1 in relation to an individual if he or his staff have bona fide asked "Are you a resident of Belyuen?" (or words to that effect) and have received the answer "No" (or words to that effect).*
- (3) *Before the licensing conditions above are to take effect the Belyuen Community Government Council will provide to Mandorah Beach Hotel 3 signs to be placed in the front, rear and the bar of the hotel which state that condition 1 has been imposed at the request of the Belyuen Community Government Council."*

Comparable special conditions

14. In developing the draft conditions, the parties had referred to the licence conditions of other licensees in the area. For ease of reference the relevant conditions from the Wagait Supermarket licence are quoted below, along with those of the Litchfield Hotel, which also has special conditions as a result of an agreement with the Belyuen Community.

15. The Wagait Supermarket special conditions reads as follows:

"A reasonable written agreement must be in place with the Belyuen Community. If this agreement is breached or there is an indication that it may break down the matter must be referred to the Commission as soon as practicable or in any event within three (3) working days.

No sales of beer in glass containers to known Belyuen residents.

No sales of wine or spirits to known Belyuen residents.

16. The special conditions of the Litchfield Hotel read as follows:

"A reasonable written agreement must be in place with the Belyuen Community. If this agreement is breached or there is an indication that it may break down the matter must be referred to the Commission as soon as practicable or in any event within three (3) working days.

The agreement with the Belyuen Community is as follows:

- (1) *No sales of alcohol to known members of the Belyuen Community. The Belyuen Community will supply a list of the registration numbers of the vehicles in the community to assist in the identifying of Belyuen residents. In the event of a resident breaking the rules the Belyuen Community will inform, and identify him or her to Litchfield Trading Pty Ltd to prevent further sales to this person.*
- (2) *The Litchfield Hotel will not stock for sale wine in containers known as “Flagons” ie half gallon glass containers”.*

Discussion of the proposed special conditions for Mandorah Beach Hotel

17. Introduction to the special conditions. As already stated, it was agreed by the parties that the introduction to the special conditions should clearly indicate that the restrictive conditions had been sought by the BCGC. The licensee would also like some reference to having agreed to the conditions, or having reached an accord with BCGC about the conditions, out of respect for the Belyuen Community.
18. Condition No.1. This proposed condition restricts sales of takeaway alcohol to Belyuen residents to *beer in cans* only. Beer is perceived by the Community to be less harmful than other types of alcohol and the lack of glass containers is seen as an important step in reducing injuries from alcohol related violence.
19. Mr Mclyntre pointed out that the proposed wording of Condition No. 1 is different to that in place for Wagait Supermarket (as set out above), with the proposed wording of the MBH condition expressed in the positive rather than the negative.
20. Mr Young stated that the original position of BCGC was that the restrictions should apply to both *visitors* to Belyuen and *residents* of Belyuen and that there was the potential for serious problems to arise if the restrictions did not extend to visitors. However, the licensee argued that it would be very difficult to police the restrictions if they extended to visitors. This would involve staff asking everyone they served whether they were intending to visit Belyuen. The current position of the restrictions only applying to *residents* was arrived at after extensive negotiations, and only resolved on the morning of the hearing. Mr Young said that BCGC would monitor the program under the terms now sought and, if visitors bring grog to the community and this becomes a major problem, BCGC would consider coming back to the Licensing Commission for an amendment to the special conditions
21. Condition No. 2. Again referring to the Wagait Supermarket conditions, Mr Young pointed out that these conditions refer to *known* Belyuen residents. He considered the use of the term *known* imprecise: known to, or by whom; how good is the knowledge and memory of the licensee and staff supposed to be; how can someone else determine whether the person was actually known to the staff member? He considered that the wording in the conditions proposed for MBH were an improvement on those for Wagait in that they provided a process for ascertaining the residency of customers and provided a defence for staff who inadvertently sold restricted types of takeaway liquor to Belyuen residents. It also allowed for the fact that there was a high turnover of staff and allowed the licensee to give reasonable direction to staff. Mr Young said that the use of the term “bona fide” in the condition placed an onus on the licensee and staff to show that they had taken genuine, rather than token, steps to establish whether or not the person was a resident of Belyuen. Mr Young said that, if the question on residency was not posed honestly, the licensee would be in breach of the licence condition. Condition No 2 therefore provides a mechanism for identifying residents, limits the licensee’s exposure to inadvertent breaches of the conditions and gives BCGC confidence that there is a mechanism in place. Mr Young considered that this condition gives “meat to the accord”.
22. Commission members raised concerns about the lack of certainty around the term “resident” used in Conditions 1 and 2. Member Clough gave several examples of situations which would require close consideration including:

- A Port Keats person visiting Belyuen, who may stay for a while. Would the restrictions on takeaway products apply to this person? At what point would he/she become a resident of Belyuen? A week? A month?
 - A person originally from Belyuen might move into Darwin to live but still visit the Community frequently. Should he/she be considered a Belyuen resident for the purpose of the restrictions? and
 - A visitor to Belyuen may be accompanied by a member of the Belyuen Community when he/she buys takeaway alcohol.
23. Mr McIntyre for MBH commented on the need to develop guidelines for deciding who was a resident and to therefore deal with these scenarios. With regards to the last example he suggested that the licensee may have to refuse service if he considers that the visitor was really buying alcohol for the Community member.
24. Condition No.3. The Commission was advised that the idea for Condition No.3, “the signage condition”, came from the hotel at Timber Creek. It was considered that such signs would prevent people taking offence if they witnessed someone from Belyuen being refused service or were themselves asked questions and refused service. Whilst fully supporting the idea behind the condition, the Commission explained the difficulty of inserting the condition as currently phrased into the licence conditions. The current wording requires BCGC to provide the signs, with the restrictions on takeaway sales not commencing until after the signs have been provided. The Commission has no power to direct the BCGC to provide the signs and implementation of the special conditions would be delayed if they failed to do so. There is also the potential for conflict to arise around any failure to provide the required signs. The Commission indicated that it may need to consider some changes to the wording of this proposed condition.
25. Monitoring. There was some discussion about whether the proposed restrictions would be monitored and evaluated. It was noted that Menzies School of Health Research has a current project in the community and that this may be a source of some independent comment. It was also suggested that a mechanism may need to be put in place to resolve minor disputes and complaints.
26. Mr McIntyre for MBH pointed out that the Hotel is only one of many sources of alcohol for Belyuen residents. A considerable amount of alcohol is brought in by ferry or road from Darwin, where there are no agreements or restricted conditions in respect of Belyuen residents in place. It would therefore be very difficult to disentangle the effect, or lack of effect, of changed MBH licensing conditions from other factors.
27. Implementation. The legal machinery for introducing the proposed special conditions was also discussed. Mr McIntyre submitted that the preferable approach would be through a subsection 33(1) notice. This would provide a 28 day period before the variation took effect and may provide sufficient time for the Special Measures Certificate to be obtained. Mr Young said that because the variation was a result of a hearing into a complaint, licence conditions can be varied pursuant to subsection 49(4) of the Act. He suggested that section 33 did not apply to the circumstances of this case and would only protract matters as it leaves open the possibility of a further hearing. A further hearing would be inappropriate and unnecessary.

Further submissions

28. On 22 July 2003 the Commission received a written submission from Mr Young on behalf of the complainant. The submission specifically addressed the issue of whether the amendments to MBH’s licence conditions ought to be imposed before a Special Measures Certificate had been obtained under section 8 of the *Racial Discrimination Act*. Noting that section 9 of that Act provided for both direct and indirect discrimination to be unlawful, Mr

Young argued that the proposed amendments to the licence conditions were not directly discriminatory because the amendment:

is not based on race. It is based on residence. People other than Aboriginal people, albeit a small number, reside at Belyuen. Ipso facto, it is not a distinction based on race.

29. Mr Young identified the greater hazard as being posed by section 9(1A) which deals with indirect discrimination. He argues that, even if some of the elements of indirect discrimination could be considered to be present (subsections 9(1A)(b) & (c)), the proposed licence conditions should not be considered to be indirectly discriminatory because they are *reasonable having regard to the circumstances of the case*. This would mean that subsection 9(1A), which requires that the condition or requirement *is not reasonable having regard to the circumstances of the case*, would not be met. As the elements of indirect discrimination are cumulative, this means that the test for indirect discrimination would not have been met.
30. Mr Young summarised the circumstances of the proposed restrictions as follows:
- (a) *the measure has been requested by the community itself via an elected council.*
 - (b) *It is a targeted measure designed to limit obvious and harmful effects of particular kinds of alcohol abuse ie. excessive consumption of wine and spirits, and harm from alcohol in glass.*
 - (c) *It does not prohibit the consumption of beer in cans.*
 - (d) *There are good grounds for expecting the measure to be successful in ameliorating some of the most severe effects of alcohol abuse.*
 - (e) *It is a genuine measure and not directed at Aboriginal people in general. Aboriginal people who do not reside at Belyuen will not be affected.*
31. On 23 July 2003 Mr Zucchi, also representing BCGC, provided the Commission with a copy of the application to HREOC for the Special Measures Certificate. On 28 July 2003 the application was granted and a Certificate was signed by William Jonas, the Acting Race Discrimination Commissioner. The certificate remains valid until 31 July 2005. The Certificate states that the Commissioner is satisfied that the restrictions constitute a special measure for the purposes of section 8(1) of the *Racial Discrimination Act* or, alternatively, that the restrictions are reasonable for the purposes of section 9(1A). It also states that the Commissioner is satisfied that the agreement between BCGC and MBH was adopted with the support of the Belyuen Aboriginal Community generally and that it is for their benefit.
32. By 8 August 2003 the Commission had confirmed with counsel for both parties that neither would be applying to reopen the hearing and both were happy for the Commission to proceed to make a decision. Mr Johnson, acting for MBH, provided the Commission with a copy of the submission that he would have made if the Certificate had not been granted before the Commission was ready to make a decision. His submission was, in essence, that the Commission should not impose the special conditions until after the Certificate was acquired because of the risk of exposing the licensee to potential litigation under the *Racial Discrimination Act*. He considered that this risk was not a *minimal* one as claimed by Counsel for BCGC counsel and advised that the previous licensee had been the subject of such litigation some years previously.

Findings of fact:

33. The following facts are not under dispute:

- There are serious, chronic alcohol related problems at Belyuen;

- In 1993 a verbal agreement was reached between MBH and BCGC on a voluntary trial of liquor restrictions;
- The ownership of MBH has since changed;
- In the current written license conditions for MBH the only restriction on the type of alcohol to be sold is the restriction on the take-away sale of fortified wine. This condition is not specific to Belyuen residents;
- Special conditions in respect of sales to Belyuen residents were at some stage incorporated in the licence conditions of the Wagait Supermarket and the Lichfield Hotel.
- The licensee is not in breach of the existing license conditions;
- MBH is not the only source of alcohol for Belyuen residents. A significant amount of alcohol is being brought into Belyuen from Darwin by residents and visitors;
- The request to impose restrictions on the types of alcohol that can be sold by MBH to Belyuen residents has come from the BCGC;
- BCGC is the elected representative body for the Belyuen Community;
- The suggested restrictions are intended to apply in respect of take-away sales to all Belyuen residents, not just Aboriginal residents;
- It has been accepted by all parties that there may be some difficulties in identifying who is a resident;
- The suggested restrictions will not prevent problems caused by ex-residents and visitors buying alcohol from MBH before visiting Belyuen;
- Both parties came to an agreement or accord regarding a variation of licensing conditions; and
- BCGC has successfully applied for a Special Measures Certificate from the Race Discrimination Commissioner in respect of the arrangement with MBH. The certificate has effect from 28 July 2003 to 31 July 2005.

Application of the law:

34. The *Liquor Act* allows the Commission to vary licence conditions at its own initiative (subsection 33(1)) and as an outcome of a hearing (subsection 49(4)(a)). In the case currently before the Commission, we agree with Mr Young that the appropriate mechanism for varying licence conditions is pursuant to section 49 of the Act. This section reads in part:

49) Decision on consideration of complaint

(2) The Commission must consider a complaint, the report or reports of the Director and any comments forwarded to the Commission under section 48(6) and must

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c) conduct a hearing in relation to the complaint.

4) Where the Commission conducts a hearing in relation to a complaint pursuant to subsection (2)(c), the Commission may, in addition to any other action the Commission may or is required to take under the provisions of this Act, after that hearing –

(a) amend the conditions of a licence or vary the type of licence;

35. Whilst the Act does not specifically state that the Commission should do so, it would seem appropriate to assess an application to vary conditions against some of the same factors that are to be considered in the granting of an application for a liquor licence and in determining the conditions for that licence. These factors are set out in section 32 of the Act and include:
- the location of the licensed premises;
 - the location and conditions of any licensed premises in the vicinity of the premises in respect of which the application is made;
 - the needs and wishes of the community;
 - the nature of any business to be conducted on the premises;
 - the financial and managerial capacity of the applicant;
 - where the premises which are the subject of an application for a licence are located in a community government area and the community government council for that area has the power to make by-laws with respect to liquor, advice offered by that community government council; and
 - any other matter the Commission thinks fit.
36. On this occasion, the Commission has decided that the first 3 factors are relevant in this decision, as well as the general discretion to consider any other matter the Commission thinks fit.
37. Location of the premises. MBH is located in the Cox Peninsula Community Government Council area on the western side of the Darwin Harbour, some 6 kilometres by sea from Darwin City, and 160 kilometres from Darwin by road. It is serviced by a 2 hourly ferry service from Darwin. The community of Belyuen is about 15 kilometres southwest of MBH by road.
38. Location and conditions of other licensed premises in the vicinity. The only other liquor outlet in the immediate vicinity of MBH is the Wagait Supermarket, the licence conditions for which are very similar to those being sought for MBH. The proposed changes would therefore bring some consistency to the licences in the area. It may also be relevant to consider under this heading other liquor licences further afield that may impact on the area. The relevance of the particular licences depends on one's mode of transport, the Litchfield Hotel being relevant if travelling towards Darwin by road. The licence of that hotel bans the sale of any alcohol to Belyuen residents.
39. The real complication in this matter is the existence of numerous liquor licences in Darwin City, just 6 kilometres away from MBH by sea; none of which would appear to have any restrictions on the sale of takeaway alcohol to Belyuen residents. While it is true that there are added costs and inconveniences associated with Belyuen residents bringing alcohol supplies from Darwin by ferry, there is also little doubt that alcohol is regularly transported in this way.
40. The needs and wishes of the community. In this situation the relevant community whose needs and wishes are to be taken into account is the Belyuen community, given that the varied licence conditions only affect the rights of the residents of Belyuen. Belyuen is a small, predominately Aboriginal, community of about 250 to 330 residents. The body purporting to represent the views of the community in this complaint is the BCGC, members of which are elected by residents of the Community every 3 years. Under the *Belyuen Community Government Scheme*, the functions of the Council include, among many other things, *the prevention and control of substance abuse*. The oral and written submissions from Mr Young and Mr Zucchi indicate that there is significant community concern about alcohol related problems at Belyuen and support for the proposed restrictions. The Race

Discrimination Commissioner, in making his decision, was clearly satisfied that the proposed restrictions had community support. The documents contained in the hearing brief for this complaint, also support a conclusion that many Community residents support the proposed restrictions, although there are also some indications of dissent. Some differences of opinion are hardly surprising given the type of problem that is the focus for concern.

41. Without the benefit of any independent survey of community attitudes, it is difficult for the Commission to be absolutely certain of the level of Community support for the proposed restrictions. In considering whether it had sufficient information to make an assessment of the Community's needs and wishes, the Commission took into account the fact that the proposed restrictions did not involve a total ban on access to MBH take-away alcohol for Belyuen residents; only certain types of alcohol. The potential infringement on individual rights is therefore arguably less severe than if the restrictions involved a total ban. Ultimately the Commission formed the view that it was safe to proceed on the basis of the available evidence that the proposed restrictions had a significant level of support from Belyuen Community members.
42. Any other matter the Commission thinks fit. An important factor to be taken into account in this matter is the Community's belief that a change in the MBH licence conditions might give the Community some leverage in bringing the alcohol related problems at Belyuen under more control. Given the apparent severity of these problems and the improvements achieved by similar restrictions in the past, this factor cannot be dismissed. The Commission notes, however, that controlling the supply of alcohol from MBH is likely to be only a small part of the solution to the Community's problems. There is also the very real problem of the supply of alcohol from Darwin as well as the need to develop a range of other strategies to reduce alcohol related harm.
43. A further factor that the Commission considers relevant to its consideration of the MBH licence conditions is the fact that the parties have come to an accord about the nature of appropriate conditions. The Commission appreciates that this has not been easy and that a lot of careful thought has gone into the wording of the suggested conditions. In this case, the Commission must balance the need to be sensitive to, and appreciative of, the efforts of the parties with its own legal responsibility to set the conditions. The Commission must have in mind the purpose of the conditions, the practical implications of the conditions and the Commission's ability to enforce them.
44. Taking all of the factors set out above into account, the Commission has decided to vary the MBH licence conditions along the lines suggested by the parties, with some minor changes. The Commission also decided to make some recommendations to the parties. These recommendations are for the guidance of the parties only and are not binding, although it is possible that the parties could be asked about their implementation if fresh complaints or issues arise.
45. The issue of the timing of the Commission's decision, which loomed large in the proceedings for this complaint, no longer needs to be dealt with given the successful acquisition of an RDA Special Measures Certificate.

The decision

46. Pursuant to section 49(4)(a) of the *Liquor Act* the Commission decided to add the following paragraph to the Special Conditions section of the Mandorah Beach Hotel licence conditions.

Under the subheading "**Residents of Belyuen**":

The following special conditions reflect the wishes of the representative body for Belyuen Community, the Belyuen Community Government Council. The licensee has acceded to these conditions out of respect for the Belyuen Community's wishes. The special conditions are as follows:

- (a) The only takeaway sales to residents of Belyuen will be beer in cans.**
 - (b) The licensee will be excused from compliance with Condition (a) in relation to an individual if he or his staff have bona fide asked the individual "Are you a resident of Belyuen?" (or words to that effect) and the individual has replied "No" (or words to that effect).**
 - (c) Mandorah Beach Hotel will display a minimum of three (3) signs to be placed in the front, rear and the bar of the hotel which state that Condition (a) has been imposed at the request of the Belyuen Community Government Council.**
47. The parties will note that the numbering of the draft conditions has been changed to be consistent with the format of the existing licence conditions. The wording of the first condition is identical to that put forward by the parties, however, the wording of the second and third conditions have been modified by the Commission. The meaning of the second condition is left undisturbed. The Commission has removed the requirement that BCGC provide the signage in the third condition for the reasons previously discussed (see paragraph 24).
48. The date of effect of this decision will be the date that MBH receives a copy of its revised licence conditions.

General comments and recommendations

49. The Commission has been impressed by the spirit of cooperation which has been demonstrated by the parties in the resolution of this complaint.
50. The Commission makes the following recommendations to the parties in this complaint. These recommendations are not part of the formal decision on the complaint and do not take the form of a formal direction. Compliance with these recommendations is therefore voluntary.
1. That BCGC takes steps to ensure that members of the Belyuen Community, and visitors to the Community, are aware of the restrictions and the fact that they have been imposed at the request of the BCGC;
 2. That the parties draw up a list of guidelines on how to manage the task of identifying "residents of Belyuen", including the criteria for deciding whether a person is a "resident" or a "visitor";
 3. That the parties set up a mechanism for periodically reviewing the effectiveness of the special conditions and to deal with any minor disputes in a timely and informal manner. Such a mechanism should involve the nominee of MBH and stakeholders from the community;
 4. That BCGC continues to pursue a range of strategies to address the alcohol problems on the Belyuen Community; and
 5. That BCGC takes responsibility for applying for another Special Measures Certificate from the Race Discrimination Commissioner before the current Certificate expires.

J Huck
Presiding Member

18 August 2003