

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *APPLICATION FOR GENERAL RESTRICTED AREA OVER PERTE THERRE [2024] NTLiqComm 35*

FILE NO.: LC2024/029

APPLICANT: Troy Erlandson

AREA: Perte Therre
Iwupataka Aboriginal Land Trust
Lot 1691
Larapinta Drive
ALICE SPRINGS NT 0872

LEGISLATION: Part 8 Division 3 of the *Liquor Act 2019* (NT)

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Ms Ebony Abbott-McCormack (Health Member)
Mr Katrina Fong Lim (Community Member)

DATE OF HEARING: 7 August 2024

DATE OF DECISION: 22 August 2024

Decision

1. For the reasons set out below and in accordance with s 177 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to declare a general restricted area (**the GRA**) over the Perte Therre family outstation situated on land owned by the Iwupataka Aboriginal Land Trust.
2. In accordance with s 172 of the Act, the Commission will declare the GRA by *Gazette* notice specifying that:
 - a. The boundaries of the GRA are as depicted in Annexure One to this decision notice.

- b. Other than in accordance with a permit issued under s 201 of the Act (**a liquor permit**) that has not been revoked or suspended, the following are prohibited in the GRA:
 - i. The bringing of liquor into the area;
 - ii. The possession of liquor in the area;
 - iii. The consumption of liquor in the area; and
 - iv. The sale, supply and service of liquor in the area.
 - c. Any restrictions imposed from time to time on the purchase of takeaway alcohol in Alice Springs by the *Liquor Regulations 2019* (NT), by the Minister for Alcohol Policy pursuant to s 88 of the Act, or by the Commission pursuant to s 113 of the Act, are hereby deemed to also apply to the bringing of liquor into the GRA.
 - d. A resident of the GRA who holds a liquor permit is permitted to possess and consume liquor anywhere within the GRA.
 - e. The Director of Liquor Licensing (**the Director**) may on their own initiative suspend a liquor permit of a resident of the GRA for a period of up to six months with immediate effect.
 - f. The declaration of the GRA expires in 99 years.
3. By way of compliance with s 178 of the Act the Commission has determined to publish information about the GRA by posting this decision notice on the Commission's website, and by sending a copy of this decision notice to:
 - a. Iwupataka Aboriginal Land Trust
 - b. Central Land Council
 - c. MacDonnell Regional Shire Council
 - d. Ingkerreke Outstations Resource Services Aboriginal Corporation
 - e. NT Police
 - f. Minister for Alcohol Policy
 - g. Office of the Central Australian Regional Controller
 - h. Alcohol Policy Unit, Department of the Chief Minister and Cabinet
 - i. Office of Aboriginal Affairs, Department of the Chief Minister and Cabinet
 - j. Harm Minimisation Unit, Northern Territory Department of Health

- k. National Indigenous Australians Agency
4. The declaration of the GRA will take effect on the date of publication of the *Gazette* notice referred to above.
5. The Commission considers that it is not necessary to take steps to warn the public of the GRA at the places where a road or other customary route enters the GRA.

Reasons

Introduction

6. Perte Therre is one of some twenty small homeland communities on the Iwupataka Aboriginal Land Trust that extends over an area of about 305 square kilometres to the west of Alice Springs. Perte Therre, which is less than 1 square kilometre in size, is about 26 kilometres west of Alice Springs on the north side of Larapinta Drive, between Itperlyenge to the west and Itchy Koo Park to the south east.
7. The sole residents of the community are traditional owners of that area, and their families.
8. Although Perte Therre is a “dry” community, all but one of its adult residents possess permits allowing them to bring liquor onto the community and consume it there.
9. The relevant history, circumstances and legal issues pertaining to this matter are similar to those set out in the decision of the Commission dated 19 June 2024 to declare a General Restricted Area for Itchy Koo Park.¹ It is unnecessary to now repeat the detailed consideration of those matters set out in that decision.

The Application

10. On 15 March 2024 Mr Troy Erlandson applied for a declaration that Perte Therre be declared a General Restricted Area. The application was accompanied by a letter (**the letter of support**) signed by four adult Perte Therre residents who identified themselves as Perte Therre traditional owners: Troy Erlandson, Trevan McCormack, Annette Bray and Georgie Erlandson.

¹ *Application for General Restricted Area over Itchy Koo Park [2024] NTLiqComm 25*

Consultation

11. Section 175 of the Act requires the Director to give notice of a proposed GRA to:
 - a. Any licensee whose licensed premises are in the area – there are no such licensees.
 - b. Any applicant for a licence whose proposed licensed premises are in the area – there are no such applicants.
 - c. Any local council in the proposed area – the Director notified both the McDonnell Regional Shire Council and the Central Land Council. Neither of these councils responded.
12. Section 175 also requires the Director to take reasonable steps to consult with the people who reside in the area. Licensing NT has visited the community and consulted with Perte Therre members, who the Commission is satisfied are well aware of the circumstances of the application, and support it.
13. In addition, the Director consulted with NT Police, who have not raised concerns about the application. The Director has informed the Commission that NT Police are generally supportive of applications of this type.

Director's Report

14. In accordance with s 176 of the Act, on 15 July 2024 the Director provided the Commission with a brief (**the brief**) including the following documents:
 - a. Application for general restricted area dated 15 March 2024
 - b. Letter of support for application signed by four traditional owners
 - c. Record of Administrative Interests and Information for Iwupataka Aboriginal Land Trust
 - d. Correspondence between Perte Therre residents and Licensing NT
 - e. Community Alcohol Plan for Perte Therre dated 15 March 2024
 - f. Notices of application sent to McDonnell Regional Shire Council and Central Land Council
 - g. Draft map of proposed GRA
 - h. "BUSHTEL" community profile for Perte Therre

The hearing

15. On 7 August 2024 the application proceeded as a public hearing. Mr Troy Erlandson appeared for the applicant. Mr Wood appeared for the Director. Ms McMaster, an officer of the Department of Health Harm Reduction Unit, also

attended and participated in the hearing. The Commission thanks them all for their attendance and assistance.

16. Pursuant to s 23 of the Act the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. The Commission conducted the hearing with a minimum of formality.
17. The brief, together with a map prepared by the Commission setting out the potential boundary of the GRA, were admitted into evidence.
18. On behalf of the applicant, Mr Erlandson provided the following information at the hearing:
 - a. He is one of six adults who live at Perte Therre. No children live there, but grandchildren sometimes visit for overnight stays.
 - b. All of the resident adults have liquor permits except for the caretaker of the home of Ms Doreen McCormack, who is unable to return to live at Perte Therre because of her advanced age, but who is aware of and supports the application.
 - c. Doreen McCormack's grandchild might one day move into Doreen McCormack's house. Doreen McCormack's niece is planning to apply for a development permit so that she can build a house at Perte Therre.
 - d. All of the liquor permit holder residents, four of whom signed the letter in support of the application, support the application. The fifth permit holder was away at the time the application was lodged, which is why she did not sign the letter.
 - e. On 20 December 2023, Mr Erlandson received a letter from the Director stating that his permit might be revoked, which prompted him to make the application.
 - f. In relation to s 181 of the Act, Mr Erlandson would prefer not to have GRA warning signs erected, and does not consider that they are necessary: the only time anyone enters Perte Therre uninvited is the rare occasion when there has been a vehicle breakdown. In addition, there are prominent signs on Larapinta Drive at the entrance to the Iwupataka Aboriginal Land Trust warning the public that they are entering a controlled area.
 - g. Mr Erlandson supports all of the conditions set out at paragraph 2 above.
19. On behalf of the Director, Mr Wood supported the application, together with the conditions set out at paragraph 2 above, and provided the following information and submissions:
 - a. Perte Therre has too few residents to justify establishing and operating an Alcohol Committee.

- b. None of the Perte Therre resident liquor permit holders have had their permits revoked in the past.
- c. NT Police area aware and supportive of the application.
- d. In late 2023 the Director sent letters to numerous liquor permit holders who reside in interim alcohol protected areas, including Perte Therre residents, informing them that their permits may be revoked. The purpose of this notification was to encourage recipients to apply for revocation of the interim alcohol protected area, if they wished to continue to drink alcohol there.

ASSESSMENT OF THE APPLICATION

20. Section 177 of the Act requires the Commission to consider:

- a. the application;
- b. the Director's report;
- c. the public interest and community impact requirement

The application

21. The Commission finds that the application complies with the requirements for applicants set out at s 174 of the Act. Section 3 of the application ("Consent of the registered owner of the area") is signed by Annette Jane Bray, who describes herself as "Traditional Owner". As the registered owner of the area is not Annette Bray, but the Iwupataka Aboriginal Land Trust, the application is in this respect irregular. The same issue arose in similar circumstances when the Commission considered an application for a GRA over Itchky Koo Park. For the reasons given at [2024] NTLiqComm 25 [41] to [54] in that matter, the Commission now finds that despite the irregularity, the application now under consideration is valid.

22. The Commission now turns to consider the substance of the application.

23. In addition to requiring that an application be in the approved form, s 174 provides that it must include:

- a. A detailed explanation of the restriction being proposed;
- b. A detailed description of the proposed general restricted area.
- c. The reasons for the proposed restriction.
- d. A copy of a community alcohol plan, if any.

24. The Commission is satisfied that the applicant has provided sufficient detail of the restrictions it proposes, and, noting that they are supported by the Director, the Commission considers that those restrictions are appropriate, as reflected in this decision.
25. The Commission notes that its determination of the boundary it has specified is solely for the limited purpose of declaring the GRA. The Commission does not intend or purport to determine, declare or affect the property rights of Perte Therre traditional owners vis a vis the property rights of traditional owners of any neighbouring community areas.
26. The Commission is satisfied with the applicant's reasons for imposing the restrictions he has proposed.
27. The applicant has prepared and provided a community alcohol plan. GRA applicants are not required to develop a community alcohol plan, but the Commission commends the applicant for having done so, and strongly encourages any future applicants to do so. The Commission accepts the submissions of the applicants, the Director and the Harm Minimisation Unit that the Perte Therre community alcohol plan has been developed by the community, has the support of the community, and is strong. The Commission notes that the plan is compliant with regulation 111B(2) of the *Liquor Regulations*, which prescribes that a community alcohol plan must include measures aimed at:
 - a. Managing the supply of alcohol in the community.
 - b. Reducing demand for alcohol in the community.
 - c. Reducing harm or risks of harm that may be caused the consumption of alcohol in the community.
28. The Commission finds that the Perte Therre community alcohol plan is fit for purpose and thoughtfully formulated.

Whether issuing the licence is in the public interest

29. To determine whether the declaration of the GRA is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:
 - (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
 - (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
 - (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;

- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) preventing the giving of credit in sales of liquor to people;
- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

30. Having considered each of these objectives, and having particular regard to the contents of the Perte Therre community alcohol plan, the Commission is comfortably satisfied that it is in the public interest to declare the GRA, the primary practical effect of which will simply be to enable Perte Therre residents to continue to lawfully use alcohol.

Whether the issue of the licence will have a significant adverse impact on the community

31. To determine whether it is satisfied that the declaration of the GRA will not have a significant adverse impact on the community, the Commission must consider the matters set out at section 49(3) of the Act, which are:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;
- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;

- (i) the community impact assessment guidelines issued under section 50;²
- (j) any other matter prescribed by regulation.³

32. The Commission is satisfied that the declaration of the GRA will have a modestly beneficial impact on the community, having particular regard to the s 49(3)(d) and (e) matters. If the declaration were not made, the interim alcohol protected area would continue, and the Perte Therre traditional owners and other residents would justifiably feel frustrated and disempowered. Conversely, issuing the GRA is a gesture of respect and acknowledgement to the Perte Therre community.

33. The beneficial impact of the GRA should not however be overstated: in practical terms, the making of the declaration will have little if any effect on the daily life of Therre Perte residents.

The liquor permit scheme

34. Part 8 Division 6 of the Act establishes a permit scheme administered by the Director, who determines applications by persons to bring liquor into a GRA, possess or control liquor in a GRA, and consume liquor in a GRA. The Director also has the power to revoke a liquor permit, and pursuant to this decision, will also have the power to suspend a liquor permit for up to six months.

Expiry

35. Section 172(3)(c) of the Act provides that the declaration of a general restricted area must specify when the declaration expires. If the law clearly authorised the Commission to decline to fix an expiry date for a general restricted area declaration, the Commission would not have fixed an expiry date in this matter. However, out of an abundance of caution, in order to ensure that the declaration is compliant with this provision, the Commission has specified an expiry date in the distant future.

Warning of general restricted area

36. Section 181 of the Act provides:

- (1) The Commission must take all steps it considers necessary to warn the public of a general restricted area at:
 - (a) The places where a road or other customary route enters the general restricted area; and
 - (b) The customary departure locations for any vessels or aircraft travelling into the general restricted area.

² In the view of the Commission, no such guidelines are currently in force.

³ There are no such "other" matters prescribed by regulation.

- (2) The warning must state the following:
- (a) the details of the declaration;
 - (b) a summary of the offence against section 173;
 - (c) any other matters the Commission considers appropriate.

37. As with the Itchy Koo Park GRA, the Commission considers that it is not necessary to take any steps to warn the public of the Perte Therre GRA, having regard to the following matters:

- a. The only road access to Perte Therre is Larapinta Drive, by way of two inconspicuous unsealed turn-offs about 1 km apart.
- b. Perte Therre is within the Iwupataka Aboriginal Land Trust, an interim alcohol protected area effectively subject to the same prohibitions and restrictions on liquor as the GRA. Anyone who approaches or passes either of the two entrances to Perte Therre is already on land where alcohol is restricted, and must have passed warning signs to that effect.
- c. Perte Therre is very rarely visited by anyone who has not been invited.
- d. Perte Therre has no tourist attractions, facilities or services.
- e. The risk that anyone would bring unwittingly bring liquor onto the GRA in circumstances amounting to an offence against s 173 of the Act is low.
- f. Any warning signs compliant with the strict requirements of s 181(2) would inevitably be intrusively large in size and stern in tone.
- g. Such warning signs would send a message to passers-by that people who live in the area have a particular problem with alcohol, and that they either do not want alcohol to be allowed on their community, or that a government has decided that they must not be allowed to have alcohol on their community. Such a message would be false, misleading and apt to promote negative and unfair stereotypes of Arrernte people.
- h. Perte Therre residents do not want warning signs to be erected at the entrances to their community.

The objects of the Act

38. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.

39. The Commission considers that making the GRA declaration together with the conditions it has determined to impose, is consistent with the purposes of the Act.

NOTICE OF RIGHTS

40. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

41. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the applicants, the Director and the Chief Executive Officer of the Department of Health.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
22 August 2024

On behalf of Commissioners Goldflam, Abbott-McCormack and Fong Lim

Annexure One

