

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *DARWIN SERVICES CLUB APPLICATIONS FOR SUBSTITUTION OF PREMISES AND VARIATION OF LICENCE CONDITIONS [2025] NTLiqComm 5*

REFERENCE: LC2024/051

LICENCE NO.: 81401558

APPLICANT: Darwin Services Club Incorporated

FORMER PREMISES: 27 Cavenagh Street
DARWIN NT 0800

PROPOSED PREMISES: 70 Esplanade
DARWIN NT 0800

LEGISLATION: Part 3 Division 4 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Ms Ebony Abbott-McCormack (Health Member)
Mr Denys Stedman (Community Member)¹
Ms Rachael Shanahan (Community Member)²

DATES OF HEARING: 8 January 2025, 15 January 2025

DATES OF DECISION: 8 January 2025 (preliminary hearing decision)
3 February 2025 (substantive hearing decision)

Decision

1. For the reasons set out below and in accordance with s 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined two associated applications by Darwin Services Club Incorporated (**the applicant**) by amending the applicant's liquor licence number 81401558 (**the licence**) as follows:

¹ Member Stedman was a member of the Commission panel only for the purposes of determining the issue decided at the preliminary hearing conducted on 8 January 2025.

² Member R Shanahan was a member of the Commission panel only for the purposes of determining the issues decided at the substantive hearing conducted on 15 January 2025.

a. substituting the premises of the licence from 27 Cavenagh Street DARWIN NT 0800 (**the former premises**) to 70 Esplanade DARWIN NT 0800 (**the proposed premises**); and

b. varying the conditions of the licence as follows:

i. The condition under the heading “Takeaway Hours to Financial Members Only” is varied by omitting the current condition and substituting the following condition:

Liquor shall be sold only for consumption away from the premises to financial League members only during the following hours:

(i) Sunday to Friday inclusive between the hours of 10:00 and 22:00;

(ii) Saturday and Public Holidays between the hours of 09:00 and 22:00; and

(iii) No trading on Good Friday or Christmas Day.

In this condition “League members” means persons who are members of the Darwin Services Club Incorporated who are also Service members of the Returned & Services League of Australia (South Australia branch) Darwin Sub-branch Incorporated.

ii. Noise management

a. The Licensee must comply with the Northern Territory Noise Management Framework Guideline issued by the Northern Territory Environment Protection Authority in September 2018 and as may be varied from time to time.

b. The licensee must establish, maintain and operate in accordance with a noise complaints register and noise complaints management policy.

c. Pre-recorded and live entertainment may be provided and shall be consistent with the concept of the premises. It shall be in the nature of light, background music intended to complement the relaxed nature of the premises.

- d. Entertainment must not be of such volume as to cause nuisance to nearby residents.
 - e. No amplification shall be directed towards the neighbouring residential units.
 - f. After 22:00 Sunday to Thursday, and after midnight on Friday and Saturday, all outdoor speakers must be switched off.
 - g. The Director on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such sound attenuation and noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director's view a reasonable requirement in the circumstances then prevailing.
- iii. The licensee must prominently display the National Health and Medical Research Council Australian guidelines to reduce health risks from drinking alcohol at the premises, and notices approved by the Director regarding the risks of drinking alcohol while using Electronic Gaming Machines.
 - iv. The condition under the heading "Trading hours" is varied by omitting "Sunday 10:00 and Sunday 22:30" and substituting "Sunday 10:00 and Sunday 23:30".
2. The proposed premises are designated by the area bounded in red on the plan at page 774 of Exhibit 1 admitted at the hearing of the applications.
 3. The Commission approves the appointment of Mr Paul Winter (**Mr Winter**) as a licence nominee jointly with the current nominee Mr Guy Dunne (**Mr Dunne**).
 4. The varied licence must not be issued unless and until the Director of Liquor Licensing (**the Director**) has accepted the surrender of or cancelled the existing liquor licence number 80817835 held by Char Darwin Pty Ltd over the proposed premises.

5. Liquor must not be sold under the licence until the Director gives the applicant written approval to do so, following the provision to the satisfaction of the Director of documentary evidence relating to the premises of:
 - a. planning approval
 - b. building approval, including a certificate of occupancy
 - c. compliance with the *Heritage Act 2011* (NT)
 - d. compliance by the licensee with the *Associations Act 2013* (NT)
 - e. fire safety approval
 - f. a smoking plan

Reasons

Background

6. These applications are brought by the Darwin Services Club, the recently acquired name of what has long been commonly known as the Darwin RSL, which is described by the applicant as follows:³

The Darwin Services Club, established initially as the Darwin RSL in 1917, has been an integral part of the Darwin community for over a century. Its origins trace back to a small group of returned servicemen seeking a place to gather, support one another, and honour those who served. Over the years, the club grew in membership and significance, becoming a hub for social, recreational, and commemorative activities. The club was pivotal in preserving military history and supporting veterans and their families. In 2018, the club faced a significant setback when a devastating fire destroyed its premises, leaving a void in the community. The fire displaced the club and interrupted its services and support to veterans and the broader community, with its membership dropping from around 3500 members in 2016 to under 200 current members today. In the years leading up to the fire, the club faced challenges maintaining a consistently profitable hospitality operation.

³ Exhibit 1, p 252

7. Further background to these proceedings may be found in *Complaint Against Darwin RSL Incorporated* [2024] NTLiqComm 19. For the reasons set out in that decision, the licence is currently suspended. The existing licence nominee, Mr Dunne, is a director and principal of DCL Hospitality Pty Ltd (**DCL**), which operates several licensed venues in Darwin.
8. Old Admiralty House is a heritage-listed Burnett “B” type tropical bungalow built in 1937 that was the residence of the District Naval Officer until 1983, and from 2007 the home of Char, a well-known licenced restaurant. However, in recent times, Char suffered repeated break-ins. Its owners ceased trading in September 2023.
9. In addition to holding a liquor licence with a club authority, a takeaway authority and a late night authority, the applicant holds a gaming licence that authorises it to operate 55 electronic gaming machines (**EGMs**).

The applications

10. On or about 4 November 2024 the applicant applied to the Director to substitute its premises and vary its licence conditions, using the single form approved by the Director pursuant to s 110(3) of the Act for an application to vary the conditions of a liquor licence. On 18 November 2024 a delegate of the Director approved or purported to approve the use of the single form for these two applications.
11. Section 75(1) of the Act (“Substitution of premises”) provides that licensees who apply for substitution of premises “must apply for a new licence for those new premises”. However, s 75(2) provides that “[d]espite subsection (1), instead of issuing a new licence, the Commission may, on application by the licensee, amend a licence to substitute other premises...”, in which case the Commission may impose conditions on the substitution (s 75(2A)(a)).
12. As has been observed by the Northern Territory Civil and Administrative Tribunal (**NTCAT**), “The wording of ss75(1) and (2) is a little ambiguous”.⁴ Arguably, the applicant did not comply with s 75 of the Act, because it did not apply for a new licence. On the other hand, it is also arguable that the applicant’s application was validly made in accordance with s 75(2). It is unnecessary to resolve this fine point of statutory construction. To the extent that there was any irregularity, the Commission considers that it would not be such as to invalidate the application. That is because whether the Commission considers the substitution application as an application for a new licence, or as

⁴ NTCAT, *JDI Properties Pty Ltd & Ors v Northern Territory Liquor Commission & Ors* (2023-03127-CT), 7 October 2024 (**JDI**) at [11]

part of an application to vary licence conditions, in either case, the public interest and community impact requirements apply, and the Commission is required to consider the same matters in much the same way.

13. In a nutshell, the applicant seeks:

- a. to move about 500 metres from its destroyed premises in Cavenagh St to the currently vacant premises of the former Char licensed restaurant in Old Admiralty House on the Esplanade;
- b. to extend its current late night trading hours to 02:00 from two nights a week to seven nights a week; and
- c. to extend its current trading hours on ANZAC Day to authorise the sale and supply of liquor on premises from 05:30.

14. A contentious aspect of these plans is the applicant's intention to engage DCL to manage the club.

Consultation

15. As required by ss 57 and 111 of the Act, on 25 November 2024 the applications were advertised in the NT News and on the Department of Tourism and Hospitality website. In addition notice was given by way of signs posted on the fence of the proposed premises.

16. In accordance with ss 56 and 111 of the Act, notification was given to Department of Health (**DOH**), NT Police and the City of Darwin. The Director also notified NT Fire and Rescue Services (**NTFRS**).

17. The Director informed the Commission that NT Police had no objections, that NTFRS were supportive of the application (subject to the usual requirements regarding certification of building works), and that the City of Darwin did not respond. DOH made the following comments:⁵

Suggest consideration is given to maintaining the current licence operating hours rather than the extended operating hours they are requesting. To serve alcohol to patronage from 10am to 2am (the following day) for all days of the week will potentially have a number of patrons leave the premises in the early hours of the morning on any day of the week, which may cause health and safety concerns in Darwin City.

⁵ Exhibit 1, p. 790

It is suggested that consideration is given to the current operating hours being sufficient (or a more nuanced schedule could be proposed). The request also asks for extended hours to enable ANZAC day breakfast and service of alcohol to commence at 05:30am. It is suggested that service of alcohol is concluded at the end of food service in the morning, say 8:30am – leaving a break before alcohol service opens again at 10am.

18. Before lodging its applications with the Director, the applicant conducted its own neighbourhood consultations, by way of an online and letterbox survey that elicited 88 responses.⁶ The survey leaflet distributed by the applicant was couched in upbeat, promotional terms:⁷

After six years without a home due to fire, the Darwin Services Club (formerly Darwin RSL) is finally relocating to Admiralty House. This move is more than just a new location, it's about restoring a vital community hub. We need your feedback to help us create a space that truly serves our veterans, their families, and the wider community.

19. Although the introductory overview to the survey correctly stated “Operating hours: 10 a.m. to 2 a.m. daily”, it did not disclose that this was a significant change to both the licensee’s pre-existing trading hours and the pre-existing trading hours of the Char restaurant at the proposed premises. Instead, the overview stated “All liquor licence conditions will remain substantially similar to the previous Darwin RSL”.⁸ The Commission considers this to have been rather misleading.

20. Most respondents were supportive of the proposed relocation, although only about 20 respondents identified as residents of the neighbourhood. Some fifteen individuals, including several who identified themselves as nearby residents, were critical of the proposed extension of trading hours and/or other aspects of the application. Representatives of the four nearby businesses that responded were supportive of the applications.

⁶ The applicant provided the Director with the complete survey results, comprising over 340 pages, all of which was included in the Director’s brief to the Commission. At the Commission’s request, the applicant supplied a 41 page summary of the survey. The Commission does not encourage future applicants (or the Director) to encumber it with such voluminous material. If such a survey is challenged by an objector, the applicant may elect to tender the complete survey results into evidence, but otherwise, applicants would provide greater assistance to the Commission by supplying a succinct (i.e. less than five page) summary of survey results.

⁷ Exhibit 1, p 428

⁸ Accessed at <https://www.surveymonkey.com/r/dscsurvey>

The objector

21. Ms Holly O'Donnell (**Ms O'Donnell**), the General Manager of the nearby Palms City Resort (**Palms**) lodged an objection on behalf of Palms, a property in the portfolio of Coombes Property Group (**Coombes**). In addition, on 2 December 2012, Ms O'Donnell circulated a letter among nearby residents urging them to join her to oppose the applications: "This decision has the potential to change the character of our neighbourhood permanently, and it is crucial that we make our voices heard".⁹ Notwithstanding her efforts, no other objections were received within the statutory notification period for objections, which expired on 9 December 2024.

The licensee's record of compliance

22. As mentioned above, the applicant (under a former name) has recently been the subject of disciplinary action by the Commission. This arose as a result of the lengthy and unsatisfactory delay by the applicant following the 2018 fire to take effective steps to re-commence trading as a liquor licensee.

23. The Commission accepts the Director's assurance given at the hearing that the applicant has complied with all of the directions to take action issued by the Commission by way of disciplinary action on 24 May 2024 against the applicant.

24. The Commission also accepts the Director's report that prior to the 2018 fire, the applicant had no adverse compliance history.

25. Significantly, for the purpose of the current applications, the Commission ordered that if the licensee is not ready to re-commence operations by 24 May 2025, the licence be cancelled immediately.¹⁰

26. The Commission received evidence, which it accepts, that the applicant is currently compliant with its lodgement requirements prescribed under the *Associations Act 2003* (NT).¹¹

27. In 2015, a formal warning was issued to Char restaurant following complaints about late night noise from a number of social functions being conducted at the Old Admiralty House premises by that licensee. The Commission does not suggest that the applicant had any involvement in these events, but considers

⁹ Exhibit 6

¹⁰ *Complaint Against Darwin RSL Incorporated* [2024] NTLiqComm 19 at [2(d)]

¹¹ Exhibit 1, p 780

that this history is of relevance to its consideration of the public and interest and community impact requirements.

The referral

28. On 17 December 2024, the Director referred these applications to the Commission to be determined by way of a public hearing.

29. The Director provided the following documents to the Commission with the referral (**the brief**):

- a. Memorandum to Commission, 17 December 2024 (Mr Wood)
- b. Liquor licence 81401558 issued 18 November 2024
- c. Application to vary a liquor licence and substitute premises
- d. Section 54 affidavit, 13 December 2024
- e. Applicant's Board members
- f. Applicant's 2024 Annual General Meeting Minutes
- g. Company Extract for Admiralty House Property Pty Ltd
- h. Company Extract for DCL Hospitality Pty Ltd (**DCL**)
- i. Executed Lease between applicant and Admiralty House Property Pty Ltd
- j. Draft management agreement between applicant and DCL (**the management agreement**)
- k. Public Interest Assessment
- l. Community Impact Assessment
- m. Letters from applicant to Licensing NT (no date)
- n. Heads of Agreement between applicant and DCL, 10 October 2024
- o. Letter from applicant chairman authorising DCL to act for applicant, 24 July 2024

- p. Accountant's review of the management agreement, 30 September 2024
- q. Correspondence between applicant and Director Gaming Machines
- r. Applicant's Constitution
- s. Contract of Sale for 10/68A Esplanade, Darwin, from Admiralty House to applicant, 13 September 2024
- t. Applicant's Business Plan
- u. CCTV Surveillance Plan
- v. Insurance Schedule
- w. Community Benefit Fund annual reports
- x. Financial documents
- y. Consultation flyer and responses
- z. Scope of works
- aa. Site plan
- bb. Draft public notice of application
- cc. Financial forecasts
- dd. Applicant's liquor licence compliance history, 11 November 2024
- ee. Applicant's *Associations Act* compliance history, 11 November 2024
- ff. Public notice and green sign
- gg. Stakeholder notification of publication, 25 November 2024
- hh. Stakeholder response: NT Fire and Rescue Service, 25 November 2024
- ii. Stakeholder response: NT Health, 5 December 2024
- jj. Stakeholder response, NT Police 12 December 2024

kk. Objection: Palms City Resort (**Palms**), 3 December 2024

ll. Documents re proposed objection by Marlin Darwin Pty Ltd (**Marlin**)

The preliminary hearing

30. On 19 December 2024 the Director referred further material (**the out of time objection brief**) to the Commission in relation to the standing of a further potential objector, Marlin, the licensee of the Hotel Darwin. This material included the following documents:

- a. Memorandum to Liquor Commission, 19 December 2024 (Mr Wood)
- b. Request to extend advertising period, 6 December 2024 (Marlin)
- c. Approval to extend time, 8 December 2024 (Ms Ganzer)
- d. Green sign facing the Esplanade
- e. Request for review of delegate's decision, 9 December 2024 (Mr Dunne)
- f. Director's review decision, 10 December 2024 (Ms Garde)
- g. Statutory Declaration, 13 December 2024 (Mr Te Whata)
- h. Objector's submissions and attachments, 12 December 2024 (Marlin)
- i. Applicant's response to late objection, 13 December 2024 (Ms Hill)
- j. Reply to applicant, 16 December 2024 (Mr Wood)

31. On 20 December 2024, the chairperson of the Commission wrote to the applicant, the Director and Marlin notifying them that it had determined to conduct a preliminary hearing on 8 January 2025 at 10 am, and a substantive hearing on 15 January 2025 at 10 am. The preliminary hearing was for the sole purpose of determining the standing of Marlin. The Commission indicated that it proposed to admit the out of time objection brief into evidence at the preliminary hearing, but not to adduce any further evidence at the preliminary hearing. The chairperson made directions for the filing of submissions.

32. The Commission panel for the preliminary hearing, which proceeded on 8 January 2025, comprised the chairperson, health member Abbott-McCormack and community member Stedman. Ms Hill appeared for the applicant. Mr Baddeley SC instructed by Ms Cassettai appeared for Marlin.

Mr Wood appeared for the Director. The Commission received considerable assistance from the written submissions provided by each of these parties at short notice over the Christmas holiday period.

33. As the chairperson had foreshadowed, the only evidence adduced was the out of time objection brief, which was admitted without objection. None of the parties sought to call oral evidence.

34. At the conclusion of the preliminary hearing the Commission delivered its decision to grant leave to Marlin to appear at the hearing, together with its reasons, which in substance now follow.

Reasons for granting leave to Marlin to appear at the hearing

35. Section 61(4) of the Act provides that an objection must be lodged with the Director within 14 days after publication of the last public notice issued under s 57 or s111 of the Act. The last day of the 14 day period in this instance was Monday 9 December 2024.

36. Section 318 of the Act confers power on the Director, at their discretion, to extend a time limit specified under the Act related to the Director. The Commission finds that the time limit in s 61(4) is a time limit related to the Director, as it concerns objections that must be lodged with the Director.

37. Section 11 of the Act confers powers on the Director to delegate any of their powers or functions to certain public sector employees.

38. On Friday, 6 December 2024 at 4:17 PM, Marlin's solicitors sent an email to the Director, stating:¹²

We are instructed to provide an objection and submissions. However, given the late instructions we respectfully request a further 7 days to provide this. Please urgently confirm if you will grant us a 7 day extension until 16 December 2024.

39. On Sunday, 8 December 2024 at 1:57 PM, Ms Ganzer, Senior Director Liquor Licensing and Compliance, a delegate of the Director, decided to grant the extension (**the delegate's decision**), and notified Marlin's solicitors accordingly, stating:

¹² Exhibit 1, p 802

I approve of the further 7 days for advertising for this application, until the 16 December 2024.

40. On Monday, 9 December 2024 at 10:47 AM, Mr Wood, Southern Region Manager Liquor – Licensing and Compliance, notified the applicant by email of the delegate’s decision and the reasons for it.

41. Section 26 of the Act provides that as soon as practicable after making a decision a delegate must give written notice of the decision and the reasons for it to affected parties, together with notice of the right of affected parties to apply for a review of the decision to the Director, and the period allowed for applying for a review.

42. Section 27 of the Act provides that in the case of a decision regarding an application, the applicant is entitled to apply to the Director for a review of a decision made by the Director’s delegate. Section 27(3) of the Act provides:

The application must:

(a) be in the form approved by the Director; and

(b) state the grounds for the review and the facts relied on to establish the grounds

43. The approved form for an application for a review of a liquor delegate’s decision is available on the Director’s website.¹³

44. In this instance, it appears that neither Ms Ganzer nor Mr Wood complied with the requirement that the applicant be notified of their s 26 appeal rights. However, this non-compliance does not appear to have prejudiced the applicant because at 2:59 PM on the day the applicant was notified of the delegate’s decision, it lodged a “formal objection regarding the extension granted to Marlin”. The “objection” was not in the form approved by the Director, but it did state the grounds for review and the facts relied on to establish those grounds.

45. On Tuesday, 10 December 2024 the Director issued a decision notice setting aside the delegate’s decision and affirming that “the expiration date for objections in relation to this matter is Monday, 9 December 2024”. Having received no evidence to the contrary, the Commission finds that prior to making her decision, the Director did not inform Marlin that the delegate’s decision was

¹³ <https://nt.gov.au/industry/hospitality/law-and-management/apply-for-a-review-of-a-liquor-delegates-decision>

subject to an application to review it, or provide Marlin with an opportunity to be heard in relation to the issue.

46. In her decision, the Director stated, at [42] to [46]:

I find Marlin Darwin Pty Ltd has not been hindered in their ability to exercise their rights as to merit the extension of time granted. They have been provided with the same opportunity as all other persons similarly circumstanced.

It is also not uncommon for counsel to seek additional time in circumstances where they have only just been engaged.

This may be the case in this matter, however, as the applicant has an onus to act in accordance with the provisions of the Act, so does any potential objector if they wish to exercise their rights.

A failure of a potential objector not to act in a timely manner should not be a burden on an applicant when they have complied with the Act.

It is on the above that I have formed my opinion to overturn the decision.

47. The Director then went on to say, at [47]:

It should also be noted the Commission is granted wide powers to inform themselves in any matter they consider appropriate. This may include accepting an objection which is otherwise made outside of the prescribed period.

48. The Director further stated that by operation of s 29(1)(b) of the *Liquor Commission Act 2019*, her decision was not one reviewable by the Commission. The Commission respectfully agrees.

49. Arguably, the Director's decision was affected by jurisdictional error stemming from the failure by the applicant to comply with s 27(3)(a) of the Act and lodge its application for review in the approved form. In the absence of a valid application for review, the Director may have lacked jurisdiction to review her delegate's decision, and the Director's purported decision was arguably a nullity. However, in view of the conclusion the Commission has ultimately reached regarding the standing of Marlin, it is unnecessary to make any findings in relation to this issue, and the Commission makes no such findings.

50. On Thursday, 12 December 2024, notwithstanding the Director's decision, Marlin's solicitors lodged with the Director submissions and supporting documentation running to over 100 pages, objecting to the applications (**the Marlin material**).

51. On Friday, 13 December 2024, the applicant's solicitors wrote to the Director, strenuously submitting that Marlin's "invalid objection" not be supplied to the Commission, because to do so would be "prejudicing my clients at the highest level".

52. On Monday, 16 December 2024, Mr Wood responded to the applicant's solicitors in detail, stating that he had determined to refer the Marlin material to the Commission, and explaining his reasons for doing so.

53. On Thursday, 19 December 2024, Mr Wood referred the Marlin material, together with the associated correspondence summarised above, to the Commission. In his memorandum to the Commission, Mr Wood suggested that the Commission determine whether to exercise its discretion under s 318 of the Act to extend time as requested by Marlin.

54. However, the Commission's view is that s 318 does not confer on it power to extend time in the circumstances of this matter. Section 318(1) provides:

The Commission or Director may, at their discretion, extend or abridge a time limit specified under this Act for a procedure, power or function *related to them respectively* [emphasis added].

55. As stated at paragraph 36 above, the disputed time limit in this case concerns a procedure administered by the Director. Conversely, it is not a procedure, power or function related to the Commission, and the Commission has no power to extend it.

56. The Commission considers, however, that there is another avenue by which it may allow Marlin to join the proceedings. Section 22(1) of the Act provides:

The following persons and bodies may appear at a hearing conducted by the Commission regarding a matter referred to in section 19(a), (b), (c), (d) or (e):

- (a) the applicant;
- (b) a person who or a body that lodged an objection in accordance with section 61;
- (c) a person who or a body that has not lodged a valid objection

in accordance with section 61 but who is granted leave by the Commission to appear;

- (d) any other person requested by the Commission under section 314 or under section 22 of the *Liquor Commission Act 2018* to give specified information or documents to the Commission in relation to the matter.

57. The applications in this matter are those referred to in s 19(b) and (c) of the Act, and accordingly, the Commission finds that s 22(1) of the Act is engaged. Section 22(1)(c) expressly states that the Commission has the power to grant leave to a person who has not lodged a valid objection to appear at a hearing. The Act does not define the expression “appear at a hearing”. The Macquarie Dictionary gives the following definition of “appear”:

Law. To come formally before tribunal, authority, etc., as defendant, plaintiff, or counsel.

58. In the view of the Commission, the power to grant leave to a person to “appear at a hearing” conducted by the Commission includes the power to grant leave to that person to become a party to the proceedings, or in other words, to accord that person standing to participate as a litigant in the proceedings.

59. Section 31(2)(d) of the Act provides that a person who has made a submission, complaint or objection the subject of a decision by the Commission may apply to the Northern Territory Civil and Administrative Tribunal (**NTCAT**) for a review of that decision. It would be anomalous for the Commission to be precluded from according standing to a person in a Commission hearing, where, as of right, that person has standing before NTCAT to challenge the Commission’s decision. The Commission considers that Marlin is a person who made a submission the subject of a Commission decision, and accordingly would have standing to apply to NTCAT for a review of the Commission’s decision.

60. In reaching its view, the Commission has also had regard to s23(3) and (4) of the Act, which provide:

- (3) The Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate.

- (4) All parties to the hearing must have an opportunity to be heard in accordance with the rules and procedures of the Commission.

61. Having concluded that the Commission has the power to grant leave to Marlin to participate in the hearing, the Commission now turns to consider whether to exercise that discretionary power.

62. Marlin is the occupier of land in the neighbourhood of the proposed premises, and is accordingly a member of the class of persons entitled to make an objection. Its proposed objection is framed on the permitted ground that the grant of the applications would adversely affect the amenity of the neighbourhood.
63. Nevertheless, the Director and the applicant both strongly submitted that Marlin should not be granted leave to appear at the hearing because as a direct competitor of the applicant it is motivated by commercial interest, and is not genuinely concerned with either the public interest or any adverse community impact. Furthermore, the Director and the applicant disputed the two factual bases advanced by Marlin in support of its application for an extension of time, namely that the notice on display at the premises had only been erected “recently”, and that on the notice the closing date for submissions was obscured by foliage.
64. The Commission made no finding at the preliminary hearing as to whether, as in effect submitted by the applicant and the Director, Marlin’s application for an extension of time was disingenuous, misleading and not made in good faith. It would have been preferable for the Director’s delegate to have given the applicant an opportunity to respond to Marlin’s application before deciding to grant it. Had the delegate done so, it is possible she would have made a different decision. That said, it will be recalled that Marlin’s solicitors did not send to the office of the Director its application for the extension of time until 4:17 PM on the Friday before the Monday on which the statutory notification period expired. The Commission has not been informed as to when the application came to the attention of Ms Ganzer. In any event, it is clear that Ms Ganzer knew the application required urgent attention, and she addressed it with commendable promptness.
65. Importantly, had the delegate not granted the extension of time, Marlin would have had ample opportunity to submit an objection up until midnight on Monday, 9 December 2024. The Commission finds that in reliance on the delegate’s decision to extend time, Marlin waited until after the objection period had expired to lodge an objection.
66. In these circumstances, the Commission considers it would be unfair to refuse to grant leave to Marlin to appear at the hearing. That unfairness is compounded when regard is had to the failure by either the applicant or the Director to notify Marlin that the delegate’s decision was being challenged. Marlin has submitted that this omission constituted a breach of s 29(2)(c) of the Act, which requires the Director to comply with the rules of natural justice when reviewing a delegate’s decision. As stated above, the Commission has no

jurisdiction to review the Director's decision, and accordingly, the Commission does not express a view about the extent, if any, to which this alleged error might have vitiated the Director's decision. However, if the applicant had copied Marlin into its email to the Director sent on 9 December 2024 at 2:59 PM, or if the office of the Director had promptly forwarded that email to Marlin, that would have given Marlin several hours – enough time, in the view of the Commission – to lodge an objection and thereby avoid the possible extinguishment of its rights.

67. In conducting the preliminary hearing, the Commission did not disregard the submissions by the applicant and the Director that Marlin is primarily or even solely actuated by commercial interest. However, the Commission considered that the exploration, consideration and determination of that issue, which goes to the weight to be attached to Marlin's objections, should be undertaken at the substantive hearing of the applications.
68. The Commission also gave consideration to the prejudice to the applicant that might have flowed from granting leave to Marlin to appear at the hearing. There was no discernible prejudice arising from the delay of three days between 9 and 12 December when the Marlin material was filed.
69. Permitting Marlin to appear at the hearing exposed the applicant to a second contradictor (in addition to one other objector), and the Commission accepted that this may have prolonged the hearing, but the Commission had allowed a full day for the hearing of the matter, which it anticipated would be sufficient to complete the hearing of evidence and submissions. The Commission was unable to identify any substantial prejudice to the applicant that would arise from the granting of leave to Marlin to appear at the hearing.
70. On the other hand, had the Commission refused leave to Marlin to appear at the hearing, that decision might itself have been susceptible to an application by Marlin for NTCAT to review it, which would potentially have given rise to further delay. That in turn could have seriously prejudiced the applicant, which is on a strict timetable imposed by, as it happens, the Commission. The Commission considers that in all the circumstances the fairest and most expedient course was to grant leave to Marlin to appear at the hearing, and then to conduct the hearing at the earliest available opportunity in order to enable these proceedings to be finalised as soon as possible.
71. For these reasons the Commission determined to grant leave to Marlin to appear at the substantive hearing, to adduce evidence, to cross-examine witnesses and to make submissions.

The substantive hearing

72. On 15 January 2025 the application proceeded as a public hearing. Dr Ford SC appeared on behalf of the applicant with Ms Hill, accompanied by Mr Winter, the chairman of the applicant's board, and Mr Darren Lynch (**Mr Lynch**), a director and principal of DCL.¹⁴ Mr Wood appeared for the Director with Senior Licensing Officer Raut. Mr Ryan appeared for Marlin, accompanied by Mr Michael Rasheed, Marlin's General Manager, and Mr Ben Rasheed, Marlin's Chief Executive Officer. Mr Bobillier, the General Manager Development of Coombes, appeared for Palms, accompanied by Ms O'Donnell.

73. The brief was tendered and admitted into evidence without objection (Exhibit 1). The Commission also admitted a version of the brief which the Commission had redacted in accordance with s 23(2)(d) of the Act to protect the commercial confidentiality and privacy of the applicant and its officers and associates (Exhibit 2). The Commission had distributed the redacted brief to the parties in advance of the hearing. Prior to the hearing Marlin applied to the Commission to reconsider its decision regarding the redactions it had made. The Commission declined that application and confirmed its decision. At the commencement of the hearing Marlin renewed this application, and the Commission again declined it.

74. In addition, the Commission admitted the following documents into evidence:

- a. Exhibit 3: Marlin objection support material¹⁵
- b. Exhibit 4: The out of time objection brief¹⁶
- c. Exhibit 5: Letter from Marlin to Mr Winter dated 21 April 2022¹⁷
- d. Exhibit 6: Letter from Ms O'Donnell to neighbouring residents
- e. Exhibit 7: Aerial view of location of current and proposed premises

¹⁴ Mr Dunne, the lead author of the applicants' material, had planned to attend and participate in the hearing, but was unavailable to do so for personal reasons that were explained to the satisfaction of the Commission.

¹⁵ Admitted over the applicant's objection. The applicant also renewed and maintained its objection to the grant of leave to Marlin to appear at the hearing. The Commission notes that the entire contents of Exhibit 3 are duplicated within Exhibit 4.

¹⁶ Admitted over the applicant's objection

¹⁷ Mr Winter gave evidence, which the Commission accepts, that in fact this letter was sent in about April 2024

- f. Exhibit 8: Close up aerial view of proposed premises
- g. Exhibit 9: Hotel Darwin premises amendment of lease
- h. Exhibit 10: Hotel Darwin premises title search
- i. Exhibit 11: Palms City Resort Equifax report

75. Mr Winter and Mr Lynch gave oral evidence on behalf of the applicant.

76. The Commission summarises Mr Winter's evidence as follows:

- a. The applicant was renamed from "Darwin RSL Incorporated" in compliance with a policy of the South Australian branch of the Returned & Services League of Australia (**RSL**) that its sub-branches (of which the Darwin RSL is one) not operate liquor and gaming licences, and that "RSL" not be part of the name of a liquor and gaming licensee.
- b. The applicant, which is distinct from the Darwin RSL sub-branch, has always welcomed non-service people to become associate members. Members of the Darwin RSL sub-branch (who are all returned service personnel) are "automatically" members of the applicant club as "League members", and only former service personnel are eligible to be members of the applicant's Board. The applicant club remits a portion of its income to the RSL.¹⁸
- c. Before the 2018 fire, the club, which was then managed by its board, had been running at a loss. At its peak the applicant had 2000 members, comprising about 400 League members and 1600 associate members, but since the fire, all the associate memberships have lapsed.
- d. Mr Winter served in the Australian army for 25 years, is now employed in construction and property development, has previously been a liquor licence nominee, and is currently the licence nominee for the Darwin River Tavern. He seeks appointment as a joint nominee with Mr Dunne of the applicant's licence.
- e. Following Mr Winter's unopposed election as chair of the applicant's Board in April 2024, at his initiative, the Board determined to engage an

¹⁸ The first stated object in the Constitution of the applicant includes "in particular to support financially... the [Darwin RSL] Sub-Branch in its charitable works": Exhibit 1, p. 199

established corporate licensee to manage the club's new venue. Mr Winter approached four experienced Darwin-based licensees, two of which, DCL and Marlin, expressed interest. The Board decided to engage DCL, and negotiated an agreement with DCL pursuant to which DCL will take a percentage of the profits made from both food and beverage, and gaming.

- f. The applicant proposes to install secure roller shutters downstairs and over the bar, to encase the internal stairwell in a "cage", and to secure the external first floor entry with a steel door. Security guards will be on duty during operating hours. A cleaner will work on-site after closing time until about sunrise, to further mitigate the risk of intruders. The applicant has already installed a temporary fence around the proposed premises, since when there have been no break-ins.
- g. Since 2019, the Hotel Darwin has been the venue for the ANZAC Day "gunfire breakfast", which starts at about 04:30, before the dawn service. Patrons are served coffee with a capful of rum, and after the dawn service they are served beers and breakfast.
- h. The applicant has engaged a heritage architect, and will present its plans to the Heritage Council on 22 January 2025.
- i. The applicant proposes to use the same noise mitigation measures as Char used.
- j. The applicant has requested the City of Darwin to approve four additional disabled carpark places near the premises, which Mr Winter anticipates will be approved.
- k. The purpose of the proposed extension of late-night trading is "for better profit".
- l. Neither Mr Winter nor any of the companies he works for receive any financial benefit from DCL.

77. The Commission summarises Mr Lynch's evidence as follows:

- a. Mr Lynch provided a 6 page summary of the applications to the chairperson of the body corporate of the residential building adjacent to the proposed premises, and asked that it be circulated to members of the body corporate.

- b. The Darwin Waterfront Precinct is a mixed usage area that includes residential blocks and a hotel. Mr Lynch is involved in the operation of several liquor licences at the Precinct, but over the last five years has not encountered any noise issues or complaints from residents.
- c. DCL plans to mitigate noise emissions with speaker control and zoned speakers, which can be turned down or off as required. Mr Lynch believes that neighbouring residents will be more affected by noise from nightclubs 200 metres away that trade until 04:00 than by noise from the applicant's club. DCL would be comfortable with the standard noise mitigation conditions that apply to similar venues.
- d. Mr Lynch estimates that on an average Saturday night in the dry season, there will be 250 to 300 patrons, 200 of whom will be downstairs, inside and out. The restaurant kitchen will close at 21:00.
- e. The application to extend late night trading from weekends to every day is to accommodate patrons who book a function or event, and want to stay on after midnight. He expects that the venue will get a similar level of function and events bookings as Char did, which he estimates was about 200 a year.
- f. The expected income from takeaway sales will be "negligible".¹⁹
- g. There is ample parking along the Esplanade, and a nearby public carpark in the Coles shopping complex.
- h. The menu will be more restrictive than the Char menu was. It will be more "club-style" than "pub-style", although there is little difference between the food available at clubs and at pubs.

78. The Commission heard further evidence from Mr Lynch in a closed hearing regarding commercial-in-confidence information.

79. Neither of the objectors elected to call any oral evidence. Mr Bobillier made brief oral submissions, and the other parties elected to make written submissions, which were received by the Commission on 20 January 2025.

¹⁹ The current licence conditions limit takeaway sales to financial members only

ASSESSMENT OF THE APPLICATIONS

The relevance of EGMs

80. Both at the commencement of and during the substantive hearing, the Commission Chairman reminded the parties that in several decisions, both the Commission and NTCAT have held that the Commission is not entitled to have regard to the presence of EGMs for the purpose of considering an application under the Act.²⁰ The Chairman cautioned the parties that if they sought to adduce evidence in relation to the presence of EGMs, they would need to make detailed submissions with a view to persuading the Commission that its previous decisions on this issue were wrongly decided. At the hearing, no such submissions were made, and no such evidence was led.

81. Nevertheless, and somewhat surprisingly, following the hearing Marlin submitted that the presence of the 55 EGMs “is an important factor that must be considered as part of determining the public interest”,²¹ without reference to any of the relevant decisions by the Commission or NTCAT, or indeed any reference to the applicable Northern Territory statutory scheme. Marlin supported its decision by citing the following passage from a 2008 decision of the Licensing Court of South Australia:²²

In my opinion, it would be pointless to try and assess the effects of the proposed removal which result only from the liquor aspect of the proposal, and ignore the fact that the venue will also contain gaming machines. This would be an unduly narrow and artificial approach, and would prevent me from assessing the true nature of the proposal when considering the exercise of the s53 discretion.

82. The Commission does not suggest that this statement of the law in relation to the *Liquor Licensing Act 1997 (SA)* is erroneous. However, the regulation of liquor and gaming in the Northern Territory is governed by a different legislative scheme. The Commission reaffirms its previous decisions on this issue. That said, the Commission maintains its view that, as it has previously held, the general prohibition on having regard to the presence of EGMs on premises is subject to a limited exception, namely that “the Commission is entitled to have

²⁰ For example, see the detailed discussion and consideration of this issue in JDI, at [34] – [42]

²¹ Marlin’s written submissions, at [22]

²² *Hackham Community Sports & Social Club* [2008] SALC 19 (28 November 2008), at [21]

regard to the effect of the presence of EGMs on how liquor is consumed on the premises”.²³

The survey

83. Marlin submitted that the survey conducted by the applicant “was of little probative value... due to the nature of its design, dissemination and responses”.

84. Although there is currently no obligation on applicants to conduct such surveys, the Commission encourages applicants to engage in community consultation. In this instance however, having regard to the Commission’s observations at paragraphs 18 to 20 above regarding the design of and responses to the survey, the Commission considers that the survey is of limited probative value.

The permissible scope of the objections

85. Both Palms and Marlin are members of the class of persons defined by s 61(4)(b) of the Act as eligible objectors, namely “the owner or occupier of land in the neighbourhood of the proposed licensed premises”.

86. Both Palms²⁴ and Marlin²⁵ framed their objections, at least in part, within the grounds permitted by s 61(2) of the Act, which provides:

An objection may be made on only one or both of the following grounds:

- (a) that issuing the licence or authority, varying the conditions, substituting other premises or making the material alteration would adversely affect:
 - (i) the amenity of the neighbourhood of the licensed premises or proposed licensed premises; or
 - (ii) the health, education, public safety or social conditions in the community of the licensed premises or proposed licensed premises;

²³ *DCL Hospitality Pty Ltd Application for substitution of a liquor licence and permanent variation of authority and conditions* [2023] NTLiqComm 22, at [83]. In dismissing an application to review this decision, including this finding, NTCAT affirmed that “that there was no error on the part of the Liquor Commission in the way it considered the issue of gaming machines in the [licensee’s] premises”: JDI, at [42]

²⁴ Exhibit 1, p 799

²⁵ Exhibit 4, p. 29

(b) that the applicant is not a fit and proper person.

87. The applicant submits that the Commission should disregard the objectors' submissions to the extent that they go beyond these grounds.

88. During the hearing, over the applicant's objections the Commission gave substantial latitude to Marlin to cross-examine the applicant's witnesses regarding issues the Commission considered to be relevant to the public interest and community impact requirements, even when, arguably, the questions being asked were not relevant to the s 61(2) grounds.

89. In the view of the Commission, which "is not bound by the rules of evidence and may inform itself in any manner it considers appropriate" (s 23(3)), although s 61(2) operates so as to confine the grounds of an objection, once the objection has been made and accepted (or, as in this case with respect to Marlin, the maker of the objection has been given leave by the Commission to appear at the hearing), the Commission has the discretion to admit evidence and consider submissions from the objector that are not so confined, provided that they go to an issue the Commission is required to consider. In contentious proceedings the Commission may well be assisted by the participation of a contradictor. On occasion, that hat is worn by the Director, but, in this case, whether or not it was due to the presence of an objector represented by counsel, the Director refrained from donning that hat.

90. Accordingly, the Commission does not accept this submission by the applicant.

Should the objections be discounted because they are commercially motivated?

91. The applicant alleges that the weight given to both the objections should be discounted because both the objectors are primarily motivated by their private interest: Marlin, as a commercial competitor of the applicant; and Palms, as a business associate of Marlin. Similarly, the Director submitted that "little weight should be given to what may more correctly be described as commercial objections".

92. The Commission makes the following findings:

- a. Since the destruction of the Darwin RSL clubhouse by fire in 2018, the Hotel Darwin, which is owned by Marlin, at the request of the RSL, has hosted Darwin ANZAC Day events, including the gunfire breakfast.

- b. In about April 2024 Marlin accepted Mr Winter's invitation to lodge an expression of interest in managing the applicant's proposed licensed premises;²⁶
- c. Thereafter, there were no more than preliminary discussions between Marlin and Mr Winter regarding Marlin's expression of interest.
- d. The applicant subsequently entered into an agreement with DCL to manage the proposed premises.
- e. Mr Peter Coombes, the Chairman of Coombes Property Group, which owns Palms, is also a director of Paspalis Hotel Investments Pty Ltd, the registered owner and lessor of the land on which the Hotel Darwin is located, and of which Marlin is the lessee.²⁷

93. The applicant invites the Commission to draw the inference that the relationship between Palms and Marlin is so close that it "effectively makes Palm City Resort's objections commercial and tainted by its subjectivity".

94. If the proposed premises are established as the applicant proposes, they will operate in direct competition with the Hotel Darwin. The applicant will not however be in competition with Palms, which is an inner-city hotel offering various types of accommodation in a garden setting. Palms operates a liquor licence with restaurant bar, lodging and late night authorities. The Commission infers that patrons supplied liquor under the Palms licence are primarily if not exclusively persons staying at the hotel. Palms does not have EGMs or a full-service restaurant. If Coombes instigated the Palms objection in order to protect its commercial interest as the landlord of the Hotel Darwin, then in all likelihood Coombes would have taken steps to ensure that its lessee, Marlin, also made a timely objection. Perhaps Coombes did so, and Marlin was slow to respond. Alternatively, perhaps the Palms objection was uninfluenced by its proximity to and association with the Hotel Darwin. Neither Marlin nor Palms called any witnesses. The applicant submits that in these circumstances the Commission should draw an inference adverse to the objectors on this issue.

95. Whether or not the Commission accepted that submission, which it is unnecessary to decide, the Commission is not satisfied to the Briginshaw

²⁶ Exhibit 5

²⁷ Exhibit 9

standard of proof²⁸ that Palms and Marlin colluded to frustrate a competitor's business aspirations.

Consideration of the Palms objection

96. The Commission now turns to the Palms objection. It is convenient to set out the succinctly expressed Palms objection in full:²⁹

Impact on Neighbourhood Amenity

Relocating the club to 70 The Esplanade risks significantly affecting the neighbourhood's amenity. The extended trading hours until 2 a.m. daily, coupled with early liquor sales from 5:30 a.m. on ANZAC Day, are likely to exacerbate nighttime noise disturbances. The current location is set in a predominantly commercial area, but its new setting, adjacent to mixed residential and commercial zones, poses challenges in maintaining a peaceful environment. Amplified music and late-night gatherings, even with proposed noise management policies, could disturb residents. Furthermore, there is no robust strategy for managing parking demands, particularly during events, leading to potential congestion in surrounding streets. The absence of explicit measures to mitigate antisocial behaviours associated with late-night alcohol consumption raises concerns for community safety.

Inadequacy of Proposed Premises

The proposed premises are ill-equipped to function as an RSL club. For example, at just 102m², the gaming room area space is insufficient to house 55 gaming machines while meeting fire safety, evacuation protocols, and accessibility requirements. The application lacks specific details or compliance documentation for fire protection, disability access, and adequate toilet amenities. Simply installing gaming machines in a limited space does not make it suitable for occupation as a full-service club, which requires significant infrastructure to support safety, comfort, and accessibility for all patrons, including veterans with mobility challenges.

²⁸ (1938) 60 CLR 336

²⁹ Exhibit 1, p 800

Inappropriate Gaming Machine Density

The proposal to house 55 gaming machines in a 102m² space is unprecedented for a venue of this size. Comparatively, similar-sized pub establishments are limited to 20 machines, underscoring the disproportionate scale of the intended operation. This high density of gaming facilities may encourage problem gambling and adversely affect the local amenity by increasing foot traffic, parking issues, and noise levels. The presence of such a large-scale gambling operation within a confined space is inconsistent with community expectations for venues of cultural and historical significance, such as an RSL.

Lack of Community Impact Assessment

The submitted application fails to adequately assess the environmental and social impacts of the relocation. While the applicant highlights historical and cultural benefits, they have not presented comprehensive measures to mitigate the tangible issues of noise, traffic, and antisocial behaviour. The operational policies, such as a noise complaints register, while useful, are reactive rather than preventative. The lack of a clear site plan further complicates the assessment of how the club intends to address these logistical and operational concerns.

Conclusion

The relocation of the Darwin Services Club to the proposed site at 70 The Esplanade, without detailed mitigation strategies for noise, parking, and antisocial behaviour, poses risks to neighborhood [sic] amenity and public safety. The inadequacy of the premises to support a full-service RSL club, coupled with the disproportionate gaming machine density, underscores the unsuitability of the venue for the proposed use. We urge the Director of Liquor Licensing to reject this application unless these concerns are addressed comprehensively, ensuring the club's operations align with community standards and regulatory compliance.

97. The Commission accepts that the objector, as a nearby accommodation provider, has a legitimate interest in minimising the risk of undue offence, annoyance, disturbance or inconvenience to its paying guests. This objector's concern is private and commercial, but it also raises relevant public interest and community impact issues.

98. Having heard from the applicant's witnesses, the Commission is satisfied that the applicant has appropriate parking management and security strategies. The Commission has imposed conditions that it considers are appropriate to manage noise emissions. The Commission accepts that late-night alcohol-related anti-social behaviour in the Darwin CBD is an on-going concern, and in order to limit its increase the Commission has determined not to allow late night trading by the applicant additional to that permitted under its current licence.
99. As is usual when issuing a licence for new premises, the Commission has imposed conditions that require the applicant to satisfy the Director of compliance with planning, building and fire safety regulatory regimes. However, the suitability of the premises to accommodate 55 EGMs, and the density of EGMs in the neighbourhood is not within the Commission's remit, and the Commission disregards these aspects of the objection.

Consideration of the Marlin objection

100. The Commission is satisfied that the Marlin objection was at least in large part actuated by the objector's commercial interest. In reaching this view, the Commission has had regard to:
- a. the circumstances in which the objection was made;
 - b. aspects of the substance of the objection;
 - c. the manner in which the objection has been prosecuted;
 - d. the previous dealings between the objector and the applicant;
 - e. the nature of the business conducted by the Hotel Darwin; and
 - f. the objector's election not to call witnesses at the hearing.
101. Accordingly, the Commission reduces the weight it attaches to Marlin's objection.

102. In contrast to the Palms objection, the Marlin objection and supporting material was over 100 pages long including some 40 pages of census data for Darwin City.³⁰ The Commission summarises the Marlin objection as follows:

- a. Increased alcohol related anti-social behaviour: the venue will run more like a pub than a club or the previous restaurant (which was forced to close because of repeated break-ins and assaults on staff). The takeaway trade will increase the risk of harmful drinking and associated anti-social behaviour in the nearby parklands.
- b. Noise minimisation is insufficiently addressed by the applicant.
- c. There is insufficient evidence of planning, parking and building approvals.
- d. There are already sufficient late-night authorities in the neighbourhood.
- e. The applicant is not a fit and proper person to be a licensee, because it was suspended for 12 months by the Commission in May 2024, and before and since then has been slow to take the steps required to recommence trading.
- f. The applicant has failed to properly identify at-risk groups within the local community and to implement measures to minimise alcohol-related harm to members of these groups.
- g. Increased burden on emergency services, which are already stretched, to maintain order and safety in the neighbourhood.
- h. There are already sufficient liquor licences with takeaway authorities in the area.³¹
- i. The applicant has failed to identify a stock list for its proposed takeaway trade.
- j. As the applicant has not traded for over five years, the application is in effect for a new liquor outlet, and should be assessed accordingly.

³⁰ Exhibit 4, pp 26 – 134

³¹ Curiously, in the list it provided of seven nearby liquor licensees authorised to sell liquor for consumption off the premises, the objector did not include its own property, the Hotel Darwin, which has a takeaway authority. The Commission is aware of twelve such licensees, not including the applicant.

- k. The heritage value of the proposed premises and immediate vicinity will be devalued.
- l. The applicant “is seeking to ‘open up’ its membership to nearly anyone, seeking to circumvent the Club Authority and operate as a quasi-public bar”.³²
- m. The management agreement between the applicant and DCL (the details of which have not been disclosed to the objector) suggest that “the Applicant may be seen to have effectively transferred their licence to DCL. This will create a scenario whereby the Applicant operates the premises in name only and the New Premises is in fact operated by a private operator.”³³

103. In relation to the items at paragraph 0(a) to (d), the Commission repeats its observations at paragraph 98.

104. The Commission rejects the contention at paragraph 0(e) that the applicant is not a fit and proper person to be a licensee. The Commission made no such finding when it took disciplinary action against the applicant in May 2024, and indeed since then the applicant has duly elected a new Board, the chair of which, Mr Winter, is an experienced liquor licence nominee. Reliance on such an obviously unmeritorious ground of objection contributes to the Commission’s concern regarding the objector’s underlying motivations.

105. In relation to paragraph 0(f), firstly, the Commission is unable to discern from the extensive census data provided by the objector a basis on which to find that there are particular at-risk groups in the catchment area of the proposed premises. Secondly, the Commission accepts the evidence of Mr Lynch and Mr Winter that the proposed premises are likely to attract a similar cohort to those patrons who attend other Darwin CBD venues, with the distinction that the proposed premises are likely to be patronised by a rather older demographic. The Commission does not accept this ground of objection.

106. In relation to paragraph 0(g), the Commission infers that NT Police, who are supportive of the application, would have raised this issue if it were of substantial significance.

107. In relation to paragraph 0(h), although the Commission is inclined to agree that there are sufficient takeaway authorities in the area, it is nevertheless the

³² Exhibit 4, p 32

³³ Exhibit 4, p 40

case that the applicant has long held a licence with a takeaway authority, and the Commission has received no evidence that the applicant's previous or proposed sale of takeaway liquor is of such concern that the authority should be removed or the applications refused. The Commission has however varied the conditions of the applicant's takeaway trading condition to restrict sales to "League members", as explained below. In relation to paragraph 0(i), the Commission accepts the applicant's submission that it will not operate a bottle shop, but merely a single fridge stocked with a limited range of products to purchase.

108. In relation to paragraph 0(j), s 75(1) of the Act requires an applicant for the substitution of premises to apply for a new licence, and the Commission is required to be satisfied of the public interest and community impact requirements when considering the application. However, as Mr Wood emphasised in his submissions at the outset of the hearing, the licence is not in fact a new licence. By analogy with s 51(3)(e) of the Act, the Commission considers that the conditions of the current licence are assumed to meet the public interest and community impact requirements, absent evidence to the contrary.

109. In relation to paragraph 0(k), the objector adduced no evidence to support its submission that the re-establishment of the licence at the proposed premises would compromise the heritage value of nearby heritage properties. Indeed, it is arguable that by restoring Old Admiralty House as a public venue, and moreover a venue that will promote community awareness of its history as a site of military significance, the heritage value of other nearby sites of military significance will be enhanced. The Commission dismisses this ground of objection.

Will the premises be a pub disguised as a club?

110. The issues raised by the objector in paragraphs 0 (l) and (m) require more detailed consideration. The objector relies on a superseded constitution, apparently current in 2016, of the applicant under its previous name, Darwin RSL Incorporated.³⁴ However, in accordance with Mr Winter's oral evidence, and contrary to Marlin's assertion that the applicant is now seeking to open up its membership, a comparison of the 2016 constitution and the applicant's current constitution³⁵ shows that there has been no change in the applicant's membership provisions since 2016.

³⁴ Exhibit 4, p 76

³⁵ Exhibit 1, p 199

111. The Commission agrees that the applicant proposes to operate as a “quasi-public” venue at the proposed premises, but the Commission notes that before its former premises burnt down, the licensee was already operating as a quasi-public venue, as indeed, in the experience of the Commission, do numerous liquor licensees operating with a club authority right across the Northern Territory.
112. Marlin’s objection, however, goes further. The objector contends that the applicant proposes to establish what will be a de facto public bar operated for profit by DCL, which is a commercial enterprise, and that this is inconsistent with and not authorised by a liquor licence with a club authority held by the Darwin Services Club, which is a non-profit charity.
113. Arguably, this is not a permissible ground of objection pursuant to s 61(2) of the Act. However, for the reasons given at paragraph 89 above, the Commission’s view is that it is permissible and can be appropriate to entertain submissions from objectors regarding any issues the Commission is required to consider. This is one such issue.
114. It is common ground, and the Commission finds, that the applicant proposes to engage DCL to manage the premises and conduct the business carried out at the premises, and that DCL intends to profit from the business.
115. The Commission pauses to address an evidentiary issue concerning this finding that arose during the hearing. As stated at paragraph 73 above, Marlin persistently but unsuccessfully applied to be given access to parts of the brief, including the management agreement, that the Commission had determined to redact. At the hearing, the Commission upheld objections by the applicant to Mr Ryan’s cross-examination of Mr Winter regarding his involvement in negotiating the management agreement, and Mr Ryan’s cross-examination of Mr Lynch regarding details of the management agreement. Marlin submitted that as a result, it was deprived of a fair opportunity to develop its submissions on this issue. The Commission disagrees. Mr Ryan’s submission was clearly articulated, and the Commission has considered it in the context of all of the evidence it has received, including the commercial-in-confidence material that the Commission declined to disclose to the applicant’s commercial competitor.

116. Section 47(1)(k) of the Act establishes a club authority:

which authorises the licensee to sell liquor to members of *a club operated by the licensee*, guests of members and visitors to the club, for consumption on or in the licensed premises, with no restrictions on the aggregate annual volume of alcohol that may be sold; [emphasis added]

117. Is it the case, as the objector in effect submits, that the club will not be operated by the licensee, but by DCL? If so, then it may be arguable that the proposed arrangement between the applicant and DCL is inconsistent with the operation of a club authority. However, although, as the Commission has found, it is proposed that DCL will manage the premises and the business conducted on the premises, there is no evidence, and the Commission does not find, that DCL will operate the club. The club is operated and managed by the applicant's board of management, who are elected by the applicant's members in accordance with the applicant's constitution.

118. The Commission is unable to identify any other provisions in the Act that would support the objector's contention that a liquor licence with a club authority must not be managed by a commercial entity. There are however at least three provisions in the Act that point in the other direction.

119. Section 54 in conjunction with s 110(4)(a) of the Act requires an applicant who seeks to vary licence conditions to make an affidavit disclosing each person who may be able to influence the applicant or expect a direct or indirect benefit from the applicant. Section 54(5) expressly exempts from this requirement the disclosure of "a contract, agreement or other arrangement entered into for the purposes of this Act or the regulations that is approved by the Director". This necessarily implies that it is within the scheme of the Act for applicants to enter into contracts, agreements and other arrangements for the operation of their trade in liquor with other parties who may be able to influence or receive a benefit from the applicant. The Commission considers that the management agreement is one such agreement.

120. Section 106(1)(c) requires a body corporate licensee to give written notice to the Director of any change in a person who manages or intends to manage the licensee's business under the licence and who is not the licensee's nominee. (Section 24AA(1) of the *Interpretation Act 1978* (NT) provides that "[i]n an Act, a reference to a person generally includes a reference to a body politic and body corporate as well as an individual".) This necessarily implies that it is within the scheme of the Act for licensees such as clubs to engage a person (whether an individual or a body corporate such as a company) to manage their business under the licence.

121. A similar implication arises from s 291 of the Act, which provides that a licensee must in response to a demand by a liquor inspector produce “all agreements and other records establishing or evidencing the contractual relationship between the licensee and any current manager, lessee or other operator of the licensed premises”.
122. Mr Winter gave unchallenged evidence which the Commission accepts, that prior to the 2018 fire that the licensee was running at a loss. Mr Winter attributed this to a failure of governance and management. At that time, the club employed a manager who was supervised by the management committee. In Mr Winter’s view, the applicant’s Board, which consists of volunteers, does not have either the capacity or the skills required to effectively manage the applicant’s food, beverage and gaming business, and for that reason he proposed to the Board that they engage a professional licensee to run the business. The Commission accepts this evidence, and also accepts that the Board’s decision to engage an established venue operator was not only permitted by the Act, but was also, in the circumstances, reasonable and responsible.
123. The Commission notes that the applicant has by no means abandoned its responsibilities as a licensee. The applicant proposes that Mr Winter, the chairperson of its Board, be a joint nominee of the licence, together with the current nominee, Mr Dunne, a principal of DCL. In addition, the applicant and DCL have agreed to jointly form a Hospitality Committee to manage the relationship between the applicant and DCL.³⁶ The management agreement, which bears the hallmarks of a document drafted by commercial lawyers, includes details of the respective responsibilities of DCL and the applicant.
124. In support of its submissions, Marlin cited *Hackham Community Sports & Social Club* [2008] SALC 19 (**Hackham**), in which Judge Chivell stated:³⁷
- In my opinion, the grant of this application would result in the creation of an entity that is a “club” only in name. In my view, this proposed facility will be much more in the nature of a professionally-operated hotel or tavern than a non-profit association or club.
125. Like the current case, *Hackham* concerned an application for a non-profit club with both a liquor licence and an EGM licence to relocate its premises. In both

³⁶ Exhibit 1, p87

³⁷ At [203], confirmed and approved on appeal by the Full Court of the Supreme Court of Australia: *Hackham Community Sports & Social Club v Joperi Hotel Pty Ltd & Ors* (2009 (SASC) 333 at [21]

cases, the club had agreed to engage a professional manager to operate its business at the proposed premises. However, there were also some significant differences between these two cases, both in the factual circumstances and the applicable statutory framework.

126. Although, like the applicant, the Hackham Community Sports and Social Club had pre-existing liquor and gaming licences, the Hackham club did not intend merely to transplant them to another venue, but to both relocate and substantially expand their operations by adding an additional 25 EGMs to their existing quotient of 15.

127. The applicable statutory scheme was also different. In *Hackham*, the application for “removal” of premises to a new location was made under the *Liquor Licensing Act 1997* (SA). That Act, as in force at the relevant time, included s 99 (“Prohibition of profit sharing”), which prohibited a licensee from entering into a profit-sharing management agreement without the approval of the South Australian Liquor and Gambling Commissioner (or, if the Commissioner referred the application to the Licensing Court of South Australia, the approval of the court). The Commissioner (or court) was conferred power to approve an agreement that:

- i. is likely to assist the liquor industry and industries with which it is closely associated—such as tourism and the hospitality industry; or
 - ii. is otherwise in the public interest,
- or there is some other good reason for approving the agreement or arrangement.

128. The *Liquor Act 2019* (NT) contains no provision corresponding to s 99 of the South Australian statute.

129. In *Hackham*, the Licensing Court had been referred two inter-related applications: an application to remove/substitute the premises, and an application to approve the management agreement. In addition, the applicant club had made concurrent applications including for a variation of trading hours, entertainment consent, and removal/substitution of the premises of its EGMs under the *Gaming Machines Act 1992* (SA).

130. The Licensing Court elected to deal with the liquor licence removal application first. In doing so, however, it gave careful consideration to the scope and nature of the power in s 99 of the South Australian *Liquor Licensing Act*. Ultimately, the court refused the removal application and announced that it

had also determined to refuse the s 99 application. The basis for these decisions was that there had been recent government changes to the liquor and gaming regulatory regime that favoured non-profit clubs over commercial venues. The court held, however, that:

it was not intended that the advantages thereby granted to clubs could be used to create hotels, in another guise, which have a competitive advantage over other hotels, thereby changing the existing balance between the various types of licence in the area.

131. In the view of the Commission, no such considerations arise in the instant proceedings. The applicant is not seeking to change the balance between the various types of licence in the area. It is rather seeking to restore the balance that existed before its former premises were destroyed by fire. The applicant is not using any advantage it has as a club to create a hotel in another guise. It is rather seeking to maximise the opportunity to successfully re-establish its pre-existing business by arranging for it to be professionally managed.

132. Another important feature of the South Australian legislative scheme is that liquor licence applications and gaming licence applications are considered and determined by the same decision-maker, the Liquor and Gambling Commissioner. In the Northern Territory, by contrast, the primary decision-makers under the *Liquor Act* (NT) are the Liquor Commission and the Director of Liquor Licensing, whereas the primary decision-maker under the *Gaming Machine Act 1995* (NT) (**the GM Act**) is the Director of Gaming Machines. As it happens, the Northern Territory positions of Director of Gaming Machines and Director of Liquor Licensing are currently held by the same person, but that does not affect the underlying legal framework. Given these differing statutory schemes, it is unremarkable that, in contrast to South Australian courts, the Commission and NTCAT have repeatedly and consistently maintained the view that (with one limited exception) the Commission has no role to play in assessing the impact of EGMs.

133. For the sake of completeness, the Commission notes that unlike the *Liquor Act 2019* (NT), the GM Act does contain a provision similar to s 99 of the *Liquor Licensing Act 1999* (SA): s 170 of the GM Act prohibits a gaming machine licensee from entering into a management agreement, unless the Director of Gaming Machines, being of the opinion that it is in the public interest to do so, exempts the licensee from this prohibition, subject to such conditions as the Director considers appropriate.

134. It will be a matter for the Director of Gaming Machines to determine whether to authorise the applicant to enter into its management agreement with DCL for the purpose of operating its 55 EGMs at Old Admiralty House, and indeed,

whether to approve the substitution of the applicant's gaming machine premises. These are not, however, matters for the Commission.

135. Finally, in relation to this ground of objection, the Commission notes that it has had regard, as is required by s 3(4) of the Act, to the primary and secondary purposes of the Act. Among the secondary purposes set out in s3(2) are:

- (b) to regulate the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory; and
- (c) to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and
- (d) to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.

136. The Commission does not consider that the applicant's proposals, if approved, would be inconsistent with any of these purposes. The Act does not appear to establish a scheme that favours the non-profit sector over the commercial sector of the liquor industry, or vice versa. For practical purposes, the regulatory regime for licensees trading with a public bar authority is similar to that for licensees trading with a club authority, and all the more so when, as in this case, the licensee also trades with a late night authority, which requires the licensee to comply with the *Code of Practice for CCTV System in Licensed Premises* issued by the Commission in 2023.

137. By contrast, the GM Act has different purposes, and, when read with the *Gaming Machine Regulations* 1995 (NT), restricts the number of EGMs that may be operated by a licensee with a public bar authority to 20, while permitting licensees with a club authority to operate up to 55 EGMs. Presumably, this is in accordance with a policy decision to treat non-profit clubs more favourably than commercial pubs. That, however, is not the Commission's concern.

138. For these reasons, the Commission distinguishes *Hackham*, the reasoning and conclusions in which are not applicable to the instant proceedings. The Commission dismisses this ground of the Marlin objection.

Consideration of the substitution application

139. Section 75(1) of the Act (“Substitution of premises”) requires licensees who apply for substitution of premises to apply for a new licence for the new premises. Although s 75(2) authorises the Commission to amend the existing licence instead of issuing a new licence, and that is the course the Commission has elected to take, the Commission may amend a licence to substitute premises only if satisfied that the substitution satisfies the public interest and community impact requirements listed in s 49. It is not entirely clear whether the Act requires the Commission to consider all of the matters required of applications for a new licence. Out of an abundance of caution, the Commission has done so in this instance. Although this sets the bar higher for the applicant than might be necessary, the Commission considers that this approach has not resulted in any disadvantage or prejudice to the applicant in the circumstances of this case.

141. Section 59 of the Act (which sets out the matters the Commission is required to consider when considering an application for a licence or authority) requires the Commission to consider:

- a. the applicant's affidavit required by s 54;
- b. any objections and their response (which the Commission has dealt with above);
- c. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
- d. the financial stability and business reputation of the body corporate;
- e. the general reputation and character of the secretary and executive officers of the body corporate; and
- f. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

142. In accordance with s 49 of the Act, the Commission has also considered whether approving the substitution is in the public interest, and whether the substituted licence will have a significant adverse impact on the community.

The applicant

143. The Commission finds that the applicant complies with s 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a

corporation. The applicant is an association incorporated under the *Associations Act 2013* (NT).

144. The applicant has provided extensive documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

145. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the application to substitute premises is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of s 54.

146. The Commission considers that it is appropriate to consider whether the principals of DCL are fit and proper persons to be an associate of the applicant.

The suitability of the applicant's premises

147. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application. The Commission has imposed several conditions on the substitution, to ensure compliance with the applicable relevant planning, building and heritage laws.

The financial stability, general reputation and character of the body corporate

148. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

The general reputation and character of the applicant's secretary and executive officers

149. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officers and secretary to be satisfactory.

Fit and proper persons

150. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of the members of the applicant's Board, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.

151. DCL and its principals are well known to the Director and the Commission, having appeared in many matters before the Commission. The Commission finds each of the principals of DCL to be a fit and proper person to be an associate of the applicant.
152. The Commission notes the applicant's submission that at least with respect to the application to vary licence conditions, as the applicant is already a licensee, it does not have to satisfy the Commission that it and its associates are fit and proper, because it has already previously discharged that burden. Without rejecting that submission, and noting also that it has previously dismissed the associated Marlin ground of complaint, the Commission nevertheless records its positive finding that the applicant, its Board members, the principals of its associate DCL, and the two proposed joint nominees, Mr Winter and Mr Dunne, are all fit and proper persons to hold a liquor licence or to be associates of a liquor licensee.

Public notice and consultation

153. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with s 57 of the Act.
154. As set out above, the Commission conducted a preliminary hearing, at significant private and public expense, to determine whether to grant leave to Marlin to appear at the hearing.
155. The Commission considers that this preliminary skirmish may have been avoidable. The notice of the applications that was published in the NT News did not include the date by which objections were required to be lodged. The notice published immediately below in relation to the associated application to substitute the premises of the gaming machine licence included an expiry date of 25 December 2024, 14 days later than the liquor licence objection expiry date.³⁸ Similarly the signs displayed at the premises prominently featured the expiry date of 25 December 2024 for the gaming machine licence application, but rather inconspicuously displayed the earlier date for the liquor licence applications, on the adjoining sign. This was apt to confuse potential objectors.
156. The Commission encourages Licensing NT to take all reasonable steps to ensure that the public is fully and accurately informed of liquor licence applications.

³⁸ Exhibit 1, p 782

Whether the substitution of premises is in the public interest

157. Section 75 of the Act expressly provides that the Commission must be satisfied of the public interest and community impact requirements before approving an application to substitute premises. As a starting point, the Commission assumes that the issue and maintenance of the licence at the former premises was in the public interest and did not have a significant adverse impact on the community.
158. To determine whether the substitution of the premises 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 s 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.
159. The applicant seeks to move its premises a short distance – about 500 metres – to resume trading with substantially similar conditions to those that applied before the destruction of the applicant's former premises. Both the old and the proposed premises are situated in the tourism, hospitality and entertainment precinct of the Darwin CBD. The Commission accepts the applicant's submission that the proposed premises are particularly suitable

because of the historical military associations of Old Admiralty House, and its proximity to other key sites of historical military significance, including the Darwin Cenotaph, which is less than 200 metres away.

160. The Commission has had regard to each of the ten public interest objectives, and is comfortably satisfied that it is in the public interest for the applicant to move its premises to Old Admiralty House. Section 75(2A)(a) provides that the Commission may impose conditions on the substitution. It has done so, as set out in paragraphs 4 and 0 above. One of these conditions is that the licence held by the existing licensee of the proposed premises, Char Darwin Pty Ltd, be surrendered or cancelled. In the view of the Commission, only one liquor licence can properly exist over a single premises. The remaining conditions reflect the requirement in s 59(3)(e) that the Commission consider the suitability of the premises, having regard to any law of the Territory regulating the location, construction or facilities of the premises.

Whether the substitution of premises will have a significant adverse impact on the community

161. To determine whether it is satisfied that the substitution of the premises will not have a significant adverse impact on the community, the Commission must consider the matters set out at s 49(3) of the Act:

- (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 s 50;³⁹
- (j) any other matter prescribed by regulation.⁴⁰

162. In considering the issue of community impact, the Commission has had particular regard to the response to the public notification of the applications. Despite the shortcomings adverted to above in the manner in which the applications were notified to the community, the Commission accepts the evidence of Mr Lynch that he and Mr Dunne took active steps to inform residents of the neighbouring block of apartments about the applicant's proposal. Although some nearby residents raised concerns in their responses to the applicant's survey (concerns that the Commission has had regard to in determining the licence conditions), it is notable that not a single neighbouring resident objected to the applications. The Commission has reduced the weight it gives to the Marlin objection, for reasons explained above. The Commission has addressed the legitimate concerns raised by Palms by way of the conditions set out at paragraph 1(b) above.

163. Having considered all of the s49(3) matters, the Commission is satisfied that with the conditions of the licence the Commission has determined to vary as permitted by s 49(4), the substitution of the premises will not have a significant adverse impact on the community.

Consideration of the application to vary licence conditions

164. Section 112(1)(d) of the Act requires that a licensee who applies to vary the conditions of its licence has the burden of satisfying the Commission that the public interest and community impact requirements listed in s 49, which are set out above, have been met. Section 112(1) also requires the Commission to consider the affidavit required by s 54, together with any objection to the application and any response by the applicant to the objection.

165. The Commission has considered earlier in this decision notice the s 54 affidavit and the objections to the application.

166. Section 49(4) confers on the Commission powers to fix conditions on the licence for the purpose of mitigating a possible adverse impact on the community.

³⁹ In the view of the Commission, no such guidelines are currently in force.

⁴⁰ No such matters have been prescribed by regulation.

167. The applicant has applied for two variations to the conditions of its licence. Firstly, it seeks to extend its trading hours to 02:00 seven days a week. Secondly, it seeks to extend its trading hours to allow it to host “gunfire breakfast” on ANZAC Day. For the following reasons, the Commission has determined to refuse both of these applications, and to fix the additional conditions set out at paragraph 1(b) above.

ANZAC Day gunfire breakfast

168. It is convenient to deal with the gunfire breakfast component of the application first.

169. Regulation 38(4) of the *Liquor Regulations 2019* (NT) (**the Regulations**) provides that a club authority is subject to this condition:

On ANZAC Day, the hours of operation for a club authority operated by a licensee authorised by the Returned Services League are from 04:30 to 10:00 if:

- (a) the licensee gives the Director:
 - (i) written notice of the licensee's intention to open during those hours 28 days before ANZAC Day; and
 - (ii) a copy of the authorisation from a sub-branch of the Returned Services League; and
- (b) a light meal or full meal is available to patrons during those hours.

170. The Commission considers that to the extent that any licence conditions it fixes are inconsistent (in the sense of being less restrictive) with conditions prescribed by the Regulations, then the prescribed conditions prevail. For example, if the Commission were to fix a condition that the applicant be authorised to trade from before dawn on ANZAC Day without a condition that a meal be available, the licensee would still be subject to reg 38(4)(b), which requires that a meal be available.

171. The Director has submitted that the existence of reg 38(4) renders the applicant's proposal unnecessary. The Commission agrees. Provided the applicant has obtained authorisation from the Darwin RSL sub-branch and notifies the Director, the applicant, as the holder of a club authority, will be entitled to open at 04:30 on ANZAC Day. Although the applicant is a separate entity from the Darwin RSL sub-branch, they are intimately associated: the applicant is required by its constitution to provide financial assistance to the

sub-branch. Mr Winter, the chairperson of the applicant's Board is also currently the treasurer of the sub-branch. It seems fanciful to suggest that the applicant would not be given authorisation by the sub-branch to hold the gunfire breakfast once it has commenced to operate from Old Admiralty House. In addition, the sub-branch may decide not to support the Hotel Darwin to continue its practice in recent years of hosting the gunfire breakfast. That may have a significant adverse impact on the commercial interest of Marlin, but that is not relevant to the Commission's performance of its functions or exercise of its powers.

172. The Commission commends DOH for proposing that the gunfire breakfast session be followed by a brief period when no liquor may be supplied. However, the applicant did not support this proposal, and the Commission does not consider that its benefits would outweigh the inconvenience and disappointment to ANZAC Day attendees caused by the disruption to their long-established customs.

Trading until 02:00 every day

173. The applicant currently has a late night authority. Its trading hours (**the trading hours**) are between:

Sunday 10:00 and Sunday 22:30
Monday 10:00 and Monday 23:30
Tuesday 10:00 and Tuesday 23:30
Wednesday 10:00 and Wednesday 23:30
Thursday 10:00 and Thursday 23:30
Friday 10:00 and Saturday 02:00
Saturday 10:00 and Sunday 02:00

174. In addition, although this was not mentioned by the applicant in the copious material it submitted, or at the hearing, the applicant is currently authorised to trade until 02:00 for events and functions it can conduct pursuant to a condition of its licence (**the Club condition**), which relevantly provides:

The restriction of sales of liquor to members and guests shall not apply to the following events and circumstances:

- (a) (i) A member's private function on the premises, being a function hosted by a member for invited persons on a complimentary basis only (such as a wedding or birthday party in the member's family, or a farewell for a member's workmate).

There are no restrictions on the number of such functions which may be held;

(ii) The hiring or use of all or part of the premises by a charitable organisation for a function the purpose of which is to raise money for a recognised charity and attendance at which is only by personal invitation or pre-sold ticket. There are no restrictions on the number of such functions which may be held.

(iii) The commercial hiring of all or part of the premises by any person or body for a function the attendance at which is only by personal invitation and does not involve door sales (such as a business or trade conference or a product promotion) provided that the Licensee shall have given written notice of the proposed function or event to the office of the Director of Liquor Licensing at least two clear days before the holding of the function or event, and provided that no person on behalf of Director of Liquor Licensing shall have notified the Licensee that the holding of the proposed function or event is not consented to by the Director of Liquor Licensing. There are no restrictions on the number of such functions that may be held;

(iv) A club fundraising or promotional event open to the general public, provided that there shall not have been more than five such events at the licensed premises within the six month period immediately preceding any such event or promotion, and provided that the Licensee shall have given written notice of the proposed function or event to the office of the Director at least seven clear days before the holding of the function or event, and no person on behalf of the Director of Liquor Licensing shall have notified the Licensee that the holding of the proposed function or event is not consented to by the Director of Liquor Licensing.

(b) Liquor may be sold or supplied to persons attending all such functions or events as above described until 2.00am of the morning following the commencement of such function or event.

175. The Commission considers that paragraph (b) of the Club condition authorises the sale of supply of liquor after the trading hours only to persons attending a designated function or event. Conversely, the Club condition does not authorise the sale and supply of liquor to patrons who are on the premises after the trading hours but who are not attending a designated function or event.

176. At the hearing, Mr Lynch explained the proposal for late night trading seven days a week as follows:

If a function or event is booked, they'll stay to 11:30 or 12 or 1, and then leave, or maybe they'll go on to socialise somewhere else, or go home. There's a trickle or steady flow of people leaving... If you can't trade after midnight it puts a dampener on things.

177. Mr Winter was also asked about the rationale behind the proposal for late night trading all week. Although he expressed an understandable preference that this issue be addressed by Mr Lynch on behalf of the proposed manager of the business, he also said, with refreshing candour, "It's for better profit".

178. The detailed material the applicant presented in support of the application to extend late night trading⁴¹ had two principal foci. Firstly, the applicant referred to the club's role in hosting social gatherings, community events, cultural events and commemorative functions, particularly those involving military and service members. Secondly, the applicant highlighted its plans to provide a secure, controlled, relaxed, quieter non-nightclub setting for "patrons seeking a more, mature, reflective social space".

179. The applicant also submitted that the extension of its trading hours would make it more economically competitive, be convenient for shift workers with irregular hours, and would not significantly increase the density of late-night trading venues in the area.

180. In its written submissions following the hearing, the applicant advanced the following additional arguments in favour of extending the late night trading days:

(a) Char's licence permitted it to trade until 01:00 every day, so the proposed extension of hours amounts to a total of only five additional trading hours per week.

That is correct, but as will be discussed below, Char's business model was significantly distinct from the applicant's. Of greater relevance is, firstly, the difference between the applicant's existing trading hours and its proposed trading hours, and secondly, the timing of the additional proposed hours. The applicant seeks an additional 13.5 hours, ten of

⁴¹ Exhibit 1, pp 118 – 119, p 135, p 139, p 142, p 153

which will be after midnight, which, as will be discussed below, is a period when there is a heightened risk of alcohol-related harm.

- (b) No neighbourhood residents have lodged an objection to the applications.

This also is correct, although, as stated earlier, several neighbouring residents expressed concern about the proposed late-night trading in their responses to the survey conducted by the applicant. As also stated earlier, the Commission has some concerns about the adequacy of the public notification in this matter.

- (c) When considered in conjunction with all of the other measures the applicants will take, overall the issue of the licence with the proposed conditions will advance the public interest objective of minimising harm. In support of this submission the applicant cites the analysis of the applicable law in *TEHG Property Pty Ltd v Northern Territory Liquor Commission* [2024] NTCAT 3 at [48] – [51].

The Commission agrees that, as was stated at [51] of that decision:

While the *Liquor Act* directs that all the objectives in sections 49(2) must be considered by the Commission when determining whether the variation of an existing late-night authority is in the public interest, an evaluative approach to the interpretation of the section means that a finding in relation to one objective can inform the analysis of another objective.

- (d) The premises are not a nightclub: “They will offer a different form of entertainment to different clientele.”⁴²

This final submission begs, but does not answer, the question as to what that different form of entertainment will be.

181. Mr Winter gave evidence, which the Commission accepts, that the first floor of the premises will house a bar, function rooms, members’ rooms and the like. The Commission accepts that when there is a pre-booked function, event, commemoration or social gathering at the proposed premises, it would, in Mr Lynch’s words “put a dampener on things” to close the bar at 23:30 (the current weekday closing time). However, the Commission considers that late night trading for these events is already adequately accommodated within the

⁴² Applicant’s submissions, at [50]

Club condition. The licensee can hold an unlimited number of private member's functions, ticketed charitable functions and commercial hire events for invited guests. In addition, the licensee can hold up to five public promotional or fundraising events in a six month period.

182. By contrast, on an evening when there is no such function or event in progress, a real question arises as to what entertainment will be provided to patrons, and what reason patrons will have to remain at the premises until 02:00.
183. The Commission notes Mr Lynch's unchallenged evidence that the food on offer will be relatively basic "club food" compared to the fine dining fare previously provided by the Char restaurant, and that the kitchen will close at 21:00 hours. The Commission considers it unlikely that many patrons will not have finished their evening meal by 23:30, the current Monday to Thursday closing time.
184. The applicant proposes to install on the ground floor of the proposed premises a 102 square metre gaming room equipped with 55 EGMs, occupying about half of the downstairs indoor area open to members, guests and visitors. The other half of the indoor public area on the ground floor will be taken up by a bar service area, informal seating and a "TAB area".⁴³ The applicant has repeatedly assured the Commission that it will not operate as a nightclub. There will be no dancefloor or stage. There will be piped music, and perhaps on occasion background live music, but the proposed premises have not been presented to the Commission as a venue for concerts, theatre, stand-up comedy or other forms of live entertainment.
185. The Commission infers that the primary and perhaps the only late-night entertainment the applicant plans to provide is EGMs. Furthermore, the Commission infers that the predominant reason for patrons (other than those attending a booked function or event) to remain on the premises after 23:30 hours on a weekday will be to use the EGMs. The proposed premises will have, by a considerable margin, more EGMs than any other venue in the Darwin CBD. The Commission does not have regard to the public interest in and community impact of the EGMs. However, the Commission is not only entitled to have regard to the effect of the presence of EGMs on how liquor is consumed on the premises, but it is obliged to do so, for the purpose of satisfying the public interest and community impact requirements of the Act.
186. Numerous studies have identified a strong correlation between problem drinking and risky gambling. As the editors stated in the Introduction to the

⁴³ Exhibit 1, p 775

special issue of the *Journal of Gambling Studies* on “Relationships Between Gambling and Alcohol Use” stated:⁴⁴

It has long been recognised that gambling is an activity often combined with alcohol intake. Not only do the behaviors of drinking and gambling frequently co-occur, alcohol use disorders and pathological gambling are also commonly co-morbid conditions in both clinical and non-clinical samples.

187. A 2023 survey of 2,704 Victorian adults reported that heavy episodic drinkers (i.e. those who consumed at least six drinks on a single occasion) who drank alcohol while gambling were 3.2 times more likely to engage in risky gambling than participants who were not heavy episodic drinkers and did not drink while gambling. The study also found that “alcohol use while gambling was directly associated with a higher likelihood of experiencing gambling harm (vs no harm)”.⁴⁵ Furthermore, “those who use EGMs were more than twice as likely to drink in a heavy episodic way (and almost 10 times as likely to drink while gambling) compared to those who do not use EGMs.”⁴⁶ The authors of this study recommend that warnings or guidelines about the risks associated with drinking while gambling be displayed at venues.⁴⁷
188. The Commission considers that the group of people who frequent premises after 23:30 on weekdays so they can use EGMs is vulnerable to suffering harm or ill-health caused by the consumption of liquor while they are using EGMs.
189. The Commission was assured by the applicant that DCL will employ well trained and supervised staff who will utilise responsible service of alcohol practices. Nevertheless, the Commission considers that the public interest objectives of minimising the harm or ill-health caused to this group of people by the consumption of alcohol, and the protection of the safety, health and

⁴⁴ Stewart, S, Kushner, M, *J. Gambli Stud* 2005 Fall;21(3):223-31. See also:

- Dowling, N. A., Cowlshaw, S., Jackson, A. C., Merkouris, S. S., Francis, K. L., & Christensen, D. R. (2015). Prevalence of psychiatric co-morbidity in treatment-seeking problem gamblers: A systematic review and meta-analysis. *The Australian and New Zealand journal of psychiatry*, 49(6), 519–539.
- Sakata, K., Jenkinson, R., Vandenberg, B., Greer, N., Wickramasinghe, S., & Jatkar, U. (2024). Bets 'n' Booze research summary Intersections of gambling and alcohol use among Australian youth and young adults. Melbourne: Australian Gambling Research Centre, Australian Institute of Family Studies.

⁴⁵ Smit, K, Jiang, H, Room, R, MacLean, S, Dwyer R, Laslett AM (2024), *Exploring the relationship between alcohol use and gambling participation and their impacts on associated harms*, Victorian Responsible Gambling Foundation, Melbourne, p 7

⁴⁶ Ibid, p 8

⁴⁷ The Commission has determined to impose a condition in accordance with this recommendation.

welfare of people who use the premises, are not advanced by authorising the sale, supply and service of alcohol to members of this group. That said, the Commission must also weigh this assessment together with its assessment of the other nine public interest objectives in s 49(2). The Commission has done so.

190. In considering this issue, the Commission has also had regard to the 2017 Alcohol Policy and Legislation Review (**the Riley Review**). In introducing the *Liquor Bill 2019*, which was subsequently passed with bi-partisan support, the Attorney-General and Minister for Justice stated that the Bill “was based on evidence and findings from the Riley Review”.⁴⁸

191. The Riley Review states:⁴⁹

We note that many clubs are presently authorised to trade until 2 am on Thursday, Friday and Saturday nights. The licensee will have one year to apply, at a nominal cost, for an extended hours authority for Thursdays, Fridays and Saturdays, *but no other days* [emphasis added].

192. In relation to the risks of late-night trading, the Commission adopts the statements by a differently constituted panel of the Commission in *TEHG Property Pty Ltd application for material alteration and variation to conditions* [2023] NTLiqComm 37, at [58] to [61]:⁵⁰

Since its inception, the Commission has received on numerous occasions via the material referred to in the Riley Review and numerous other applications; studies addressing the correlation between trading hours and alcohol related harm. Time and again the scientific literature has demonstrated a strong correlation between extended alcohol trading hours and increased alcohol related harms. This correlation is consistent with what was found and referred to in the Riley Review.

⁴⁸ Northern Territory Legislative Assembly Hansard, 15 May 2019, p 6295, accessed at <https://territorystories.nt.gov.au/10070/787503/0/1>

⁴⁹ Riley Review, p 50, accessed at https://dth.nt.gov.au/data/assets/pdf_file/0005/453497/alcohol-policies-and-legislation-review-final-report.pdf

⁵⁰ The LaTrobe study, referred to in the cited passage, was a systematic literature review of 21 studies from Australia and abroad: Wilkinson, C., Livingston, M., & Room, R. (2016), Impacts of changes to trading hours of liquor licences on alcohol-related harm: a systematic review 2005-2015, *Public health research & practice*, 26(4), 2641644.

There can always be differences found in the circumstances of the studies and the circumstances of a relevant application. The Commission agrees that use of the findings based on large populations of interventions which vary in time and extent need to be contextualized when applied to a specific location and a specific venue within an entertainment district.

However, the Commission is comfortably satisfied that there is general consensus as a result of numerous studies, like those referred to in the Riley Review (i.e. the La Trobe study) and the Copenhagen study, that there is an increase in alcohol related harms with each extra hour of trading. As was stated by the authors of the Riley Review:⁵¹

“The La Trobe study concluded that increasing trading hours tends to result in higher rates of harm, while restricting trading hours tends to reduce harm. The evidence of effectiveness is strong enough to consider restrictions on late-trading hours for bars and pubs as a key approach to reducing late-night violence in Australia”

The Commission finds this is therefore an important factor to be considered in determining this application.

193. In that case, the Commission received and accepted evidence that police statistics showed that the incidence of recorded assaults and disturbances in the Darwin CBD was significantly higher between midnight and 03:00 than during other periods.⁵²
194. The Commission has also had regard to the comments of DOH set out at paragraph 17 above advertent to the risks of harm arising from trading until 02:00.
195. The applicant has submitted that the extension of its trading hours will make it more commercially competitive. The Commission accepts that extending the trading hours is likely to make the business more profitable, but this has only limited relevance to the s49(2) public interest objectives, one of which is

⁵¹ Riley Review, p 87

⁵² *TEHG Property Pty Ltd v Northern Territory Liquor Commission* [2024] NTCAT 3 at [53.3]. NTCAT reversed the Commission’s decision not to permit a licensee to extend its trading hours from 02:00 to 03:00. However, in its decision, NTCAT recited this largely unchallenged evidence given by Superintendent O’Brien to the Commission, while noting that the incidence of disturbances and assaults did not increase significantly between 02:00 and 03:00.

“increasing cultural, recreational, employment or tourism benefits for the local community area”. In essence, this submission goes to the private interests of the applicant and DCL rather than to the public interest.

196. The Commission recognises that the secondary purposes of the Act include the stimulation of the tourism and hospitality industries, and that its decision in relation to trading hours will not stimulate the profitability of this particular enterprise. However, the Act also has other purposes, the primary one being to minimise the harm associated with the consumption of liquor in a way that recognises the public’s interest in the sale, supply, service, promotion and consumption of liquor. Another of the Act’s secondary purposes is to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor. 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 and must do so in a way that is consistent with those purposes. That requirement is on its face simple, but as the various purposes of the Act pull in different directions, complying with s 3(4) necessarily involves adjudicating between competing considerations. In this case, the Commission has had regard to all of the primary and secondary purposes of the Act.

197. In *Kordister Pty Ltd v Director of Liquor Licensing & Anor*,⁵³ the Victorian Court of Appeal considered the concept of harm minimisation under the *Liquor Control Reform Act 1998* (Vic), the objects of which (at s 4 of that Act) are relevantly similar to those of the *Liquor Act 2019* (NT). Warren CJ and Osborn JA noted as follows (at [34]):

Further, as the Tribunal constituted by Judge Bowman recognised in *Nardi v Director of Liquor Licensing*,⁵⁴ because the concept of harm minimisation is itself anticipatory there may be cases in which a conservative approach should be adopted.⁵⁵ In this context, a conservative approach may mean a precautionary approach leading to the conclusion that if an appreciable risk of harm is identified, harm minimisation favours avoiding such potential risk unless it can be positively justified.

198. The Commission considers that this principle is also applicable in the Northern Territory, particularly in the context of this matter involving an application to extend trading hours under a late night authority for a venue which has not yet

⁵³ [2012] VSCA 325

⁵⁴ [2005] VCAT 323

⁵⁵ *Ibid* at [51]

commenced operation. A conservative/precautionary approach is warranted to promote harm minimisation, which is enshrined in the primary purpose of the Act.

199. Having carefully considered all of the public interest objectives in s 49(2) of the Act in accordance with the approach adopted by NTCAT set out at paragraph 180(c) above, the Commission is not satisfied that it is in the public interest to authorise the sale, supply or service of alcohol to persons after 23:30 on the evening before a weekday, unless those persons are attending a Club condition function or event.
200. Having made this finding, the Commission must refuse the application to extend the hours of operation to 02:00 every day, and it is unnecessary to consider the community impact of the application. Nevertheless, the Commission has also considered whether it is satisfied that the proposed extension of trading hours would not have a significant adverse effect on the community, having regard to the matters listed at s49(3), which are set out earlier in these reasons.
201. The Commission accepts the applicant's submission that the addition of one more late night authority would not significantly increase the density in the area of late-night trading venues, which is relevant to the matters at s 49(3)(g) and (h). The Commission also considers that trading to 02:00 every day is unlikely to have a significant effect on social amenities and public health (s 49(3)(f)). As the applicant submits, allowing the extended hours would have a beneficial effect on employment, although the extent of that benefit would be limited. The Commission is not satisfied that extending the trading hours as proposed would beneficially effect culture, tourism or employment to a significant degree: as the applicant has itself argued, one more late-night venue in the Darwin CBD is unlikely to make much difference.
202. On the other side of the ledger is the matter at s 49(3)(a), the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside in the vicinity of the proposed premises. In the view of the Commission, there is a real risk that late night trade at the proposed premises will result in undue offence, annoyance, disturbance or inconvenience to residents in the adjoining residential tower. As stated at paragraph 20 above, several residents in the vicinity of the proposed premises expressed their concern about this in their responses to the survey conducted by the applicant. The reservations the Commission has articulated about both the conduct of the survey by the applicant, and the conduct of the public notification process by the Director, lead the Commission to assign rather less weight than it otherwise would have to the fact that no objections to the applications were received from residents in the vicinity of the proposed premises.

203. The remaining two matters in s 49(3) are (b) (the geographic area that would be affected) and (c) (the risk of harm from the excessive or inappropriate consumption of liquor). The Commission doubts that the geographic area of the proposed premises would be adversely affected if the applicant were permitted to trade until 02:00 every night. However, as discussed at paragraphs 184 to 188 above, the Commission has come to the view that late-night patrons are likely to be on the premises to use EGMs, and that this cohort is vulnerable to harm or ill-health caused by the consumption of liquor while using EGMs. To use the language of s 49(3)(c), the Commission considers that these patrons will be at risk of harm from the excessive or inappropriate consumption of liquor.

204. The Commission has also had regard to the extensive research literature on the impact of late night trading, as discussed above and succinctly summarised by the Riley Review:⁵⁶

It is well documented that the later on-premises liquor licences operate, the greater the risk of alcohol related harms, particularly those arising from violence and assaults.

205. It is the task of the Commission to consider all of these matters and weigh them together, so as to form an assessment of the impact of the proposed variation on “the community”. Section 4 of the Act states that *community* “includes an individual member and a group of members of a community”. In considering an application for late-night trading in a residential suburb, as the Commission has done on a number of occasions,⁵⁷ it has been a straightforward matter for the Commission to identify “the community” as the residents of the suburb. Identifying “the community” in this case is more challenging, as the proposed premises are situated in a mixed-use precinct inhabited during the day by large numbers of office and retail workers, and during the evening by a significant number of tourists, hospitality workers and Darwin residents on a night out. In addition, there is a significant population of transient hotel, hostel, resort and Airbnb guests, and a smaller but not insignificant group of permanent residents. The Commission considers that members of all of these groups may qualify as members of “the community” of the proposed premises, and indeed that “the community” of the proposed premises may also incorporate the families and friends of these people.

⁵⁶ Riley Review, p 54

⁵⁷ For example, *DCL Hospitality Pty Ltd Application for substitution of a liquor licence and permanent variation of authority and conditions* [2023] NTLiqComm 22; *Armada Hotels and Leisure Pty Ltd Application for a new licence* (LC2022/047), 18 October 2022

206. It is unnecessary to define who is and who is not part of “the community” with precision, but the Commission does consider that for the purpose of applying s 49(3), two groups within the community are of particular importance. The first such group is the patrons who will attend the proposed facilities. They are important because they are the people will be most directly affected – whether beneficially or harmfully – by the conditions of the licence. The second such group is persons who reside in the vicinity of the proposed premises. Their importance stems from their long-term, continuous physical proximity to the proposed premises.
207. As a tribunal of fact, the members of the Commission panel have also brought their individual experience and wisdom to bear on the task of considering all these matters. Having done so, the Commission is not satisfied that the proposed variation of conditions will not have a significant adverse impact on the community.
208. For the above reasons, the Commission has determined not to approve the proposed extension of trading hours.
209. The Commission notes that the current conditions provide that trading on Sundays must cease on Sunday at 22:30, whereas trade on Monday, Tuesday, Wednesday and Thursday is permitted until 23:30. The Commission has determined to extend Sunday trading hours to 23:30, to harmonise with the trading hours on other evenings that precede a weekday. The Commission is satisfied that this is in the public interest and will not have an adverse impact on the community.

Noise management

210. The Commission considers that the service model proposed by the applicant is unlikely to generate significantly more noise than the Char restaurant did, at least until 01:00, Char’s closing time. A series of noise complaints by nearby residents against Char resulted in a formal warning being issued by the Director-General of Licensing to the licensee in 2015.
211. To its credit, the applicant has proposed the following measures:⁵⁸
- (a) establish and maintain a noise complaint register
 - (b) adhere to the Northern Territory Noise Management Framework Guideline

⁵⁸ Exhibit 1, p 128

- (c) construct a soundproof wall on the side of the premises facing the residential apartment block
- (d) not dispose of bottles in hard rubbish in skips after 21:00
- (e) turn off the outdoor speakers at midnight
- (f) manage patron departure to ensure quiet and respectful behaviour

212. The Commission has determined to vary the licence by inserting conditions largely consistent with the applicant's proposed noise management measures. In expectation that the applicant will conduct frequent events and functions at the premises, the Commission requests the applicant to take appropriate steps to ensure that the noise emanating from those events and functions does not unduly annoy or disturb persons residing in the vicinity of the premises.

The takeaway authority condition

213. As well as a late night authority, the applicant also holds a club authority and a takeaway authority. Regulation 98 of the Regulations provides that a licensee who holds a takeaway authority in conjunction with a club authority must ensure that the only persons who may be sold, served or supplied with alcohol for consumption off the premises are members of the club. The current conditions of the licence are consistent with this requirement, in that they restrict takeaway sales to "financial members only".

214. In the material it provided in support of its applications, the applicant appears to have inadvertently misrepresented the scope of this condition, stating:⁵⁹

Takeaway Liquor: While representing only a small portion of overall sales, takeaway liquor will provide an additional revenue stream for the club. It will offer convenience to members *and* *guests* while supporting the club's financial stability through responsible and regulated alcohol sales. [Emphasis added]

215. Following the hearing, the Commission wrote to the applicant and the Director inviting further submissions in relation to the takeaway authority held by the applicant.

⁵⁹ Exhibit 1, p 257

216. The Commission noted the following:

- a. The s 84 moratorium on the issue of takeaway authorities has been in force since October 2017;
- b. The NT government has not yet announced whether the moratorium will be extended beyond 28 February 2025;
- c. The DSC licence has been inoperative since June 2018, and to reinstate the takeaway authority would arguably be inconsistent with the intent of the moratorium;
- d. Most if not all unrestricted takeaway venues in the neighbourhood currently do not trade after 21:00 hours;
- e. The Commission has not been informed of the annual membership fee that will qualify a person to become a “financial member” of DSC, but anticipates that it will be a nominal amount; and
- f. The proposed premises are across the road from parkland frequented by long-grassers who may join the club as an attractive and convenient way to purchase takeaway alcohol.

217. The Commission indicated that it was considering the following options:

- a. Make no change to the takeaway authority and its associated condition;
- b. Remove the takeaway authority; or
- c. Retain the takeaway authority and amend the associated condition by:
 - i. Narrowing the class of permissible takeaway patrons, for example to “League members”; and/or
 - ii. Reducing the operating hours to, for example, 10:00 to 21:00.

218. In their submissions, the applicant and the Director did not support removing the takeaway authority or making any variations to the existing takeaway authority conditions.

219. The Commission does not consider that the evidence it has received is such as to dislodge the Commission’s assumption that the takeaway authority – which was issued to the applicant many years ago – satisfies the public interest and community impact requirements.

220. The Commission accepts the parties' submissions that although most if not all takeaway venues in the neighbourhood currently close at 21:00, their licences authorise them to trade until 22:00, and that accordingly it would be unfair to impose more restrictive hours of trading on the applicant. Accordingly, the Commission has determined not to vary the applicant's takeaway trading hours. However, the Commission strongly encourages the applicant to engage with other licensees in the neighbourhood, perhaps through the Darwin City Liquor Accord, with a view to aligning takeaway closing times.
221. The Commission has determined to vary the takeaway condition by restricting the sale of alcohol for consumption off the premises to persons who are financial "League members" of the applicant. The applicant's constitution establishes several classes of membership. The League member category is for persons who are "Service members" of the Darwin sub-branch of the RSL. In essence, a person who has served in the armed forces is eligible to become a service member of the RSL, and in turn, a League member of the applicant.
222. The Commission has taken this action to mitigate the risk that the proposed premises will become a de facto bottleshop for people who live in or frequent the immediate vicinity of the proposed premises. The Commission notes that the applicant proposes to give a 20% discount to League members for on-premise food and beverages.⁶⁰ The effect of this variation is that, similarly, only the applicant's League members will be able to benefit from the applicant's takeaway facilities.

Extension of time

223. Section 60(2)(c) of the Act provides that the Commission must make a decision whether to allow the substitution of premises application within 28 days of the expiry of the 14 day period allowed for the applicant to respond to an objection. In this case, the response period expired on or about 26 December 2024. The Director referred the applications to the Director with exemplary promptness, on 17 December 2024. On 20 December 2024 the Commission notified the parties that it had scheduled a preliminary hearing for 8 January 2025, and the substantive hearing for 15 January 2025. These were the earliest dates available to hear this matter, as the Commission's offices were closed between 21 December 2024 and 6 January 2025. Following the hearing, the Commission allowed the parties to file written submissions by 20 January 2025, and additional submissions in relation to the issue of the takeaway authority by 28 January 2025. As a consequence, the

⁶⁰ Exhibit 1, p 259

Commission was unable to issue this decision notice within 28 days of 26 December 2024.


224. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision until the date of this decision notice.

NOTICE OF RIGHTS

225. Section 31(1) read with ss 75(3) and 112(3) of the Act provide that the decision set out in this decision notice is reviewable by 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.

226. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director, the applicant, Palms and Marlin.

227. If an application for review of this decision is made to NTCAT, as a consequence the licensee's preparations to commence business at the proposed premises may be delayed. That in turn may make it impracticable for the applicant to comply with the Commission's decision of 24 May 2024 that the licence be cancelled if the licensee was not ready to re-commence operations within 12 months. In that event, the Commission would give due consideration to an application by the licensee to extend the time allowed for it to re-commence operations.



Russell Goldflam
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
3 February 2025

On behalf of Commissioners Goldflam, Abbott-McCormack, R Shanahan and Stedman