

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTERS: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE
APPLICATION FOR A SPECIAL LICENCE
APPLICATION FOR A MATERIAL ALTERATION

REFERENCE: LC2018/084, LC2018/087

LICENCE NUMBER: 81404283

LICENSEE: Dinah Beach Cruising Yacht Association Inc.

PREMISES: Dinah Beach Cruising Yacht Association
68 Frances Bay Drive
DARWIN CITY NT 0800

APPLICANT: Dinah Beach Cruising Yacht Association Inc.

NOMINEE: Wendy McCallum

OBJECTOR/S: Nil

LEGISLATION: Sections 32A, 57, 58 and 119 of the *Liquor Act*.

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 12 July 2018

DATE OF DECISION: 12 July 2018

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* (the Act) the Commission has determined to approve the material alteration to the licensee's licensed premises for the period 12:00noon on Saturday 14 July 2018 to 2:00am on Sunday 15 July 2018.

Reasons

Background

2. The Dinah Beach Cruising Yacht Association is a licensed club and is the applicant in these proceedings. On 5 June 2018 the applicant made application pursuant to section 32A of the Act for a variation to the licence conditions to extend trading hours on 14 July 2018 from 11:00pm until 2:00am the next day to cater for its annual Viking Funeral event.
3. The applicant also made application on 6 June 2018 for a special licence, pursuant to section 57 of the Act in respect of the same event to temporarily extend the licensed premises to the wharf area and carpark adjacent to the club's water channel.
4. The Viking Funeral is an annual club event spanning back to the 1980's held as tribute to the sailors passed away and boats decommissioned over the past year through the symbolic burning of a replica Viking vessel, secured in the water channel.
5. The applicant attached a plan to the special licence application which detailed the area, coloured blue, over which it sought to temporarily extend its licence. The extension was sought not only to cater for additional patrons but because these were the areas where spectators were most likely to gravitate in order to best view the ceremonial boat burning.
6. As required for the application to vary conditions of licence, the applicant swore an affidavit in accordance with section 26A of the Act stating that there are no other persons of influence in relation to the conduct of the business or the proposed licence. The applicant also submitted a statement as required by section 32A of the Act addressing the public interest criteria and community impact guidelines detailed in section 6 of the Act.

Consultation

7. The Commission was advised that the applicant was not required to advertise the application for a variation of conditions of licence because it was for a limited increase in trading hours on one day. There is no requirement to advertise a special licence application.
8. The City of Darwin Council, Department of Health, Northern Territory Police and Northern Territory Fire and Rescue Service were asked to comment on the applications and no adverse comments were received.
9. The Commission was advised that records held by Licensing NT indicated that there was no adverse compliance history in relation to similar events conducted by the applicant.

Public Hearing

10. The Commission convened a public hearing to determine the application for a variation of conditions of licence as required by section 50(b) of the Act and also determined to hear the special licence application at the same time.
11. At the hearing the applicant was represented by its nominee Ms Wendy McCallum and Mr Philip Timney, Director Legal, Licensing NT appeared to assist the Commission. The Commission is grateful for the assistance it received from the applicant and Licensing NT.
12. Mr Timney addressed the Commission at the commencement of the hearing on procedural issues. He submitted the applicant had been misled by officers within Licensing NT into applying for both a licence variation and special licence when it should have applied for a material alteration pursuant to section 119 of the Act in relation to the proposal to temporarily extend the licensed area. He also advised that the applicant was entitled by virtue of its current licence, Club Condition (a) (iv) and (b) to hold an "open day" event until 2:00am, on simply providing the Director-General with seven days' notice. The Viking Funeral event fell within the type of promotional events permitted by this condition and the Director-General had agreed to waive any requirement that the applicant provide any further notice of its intention to rely on this licence condition to hold the event.

Assessment of the Application

13. Mr Timney invited the Commission to treat both the application for a variation of conditions of licence and the special licence application as an application for a material alteration of premises. Fortunately the applicant had addressed the public interest criteria and community impact guidelines set out in section 6(2) of the Act and sworn the affidavit required by section 26A of the Act which are mandated for a material alteration application.
14. Due to the fact that the applicant was not at fault in lodging the wrong applications, the Commission determined to proceed as suggested by Mr Timney and deal with the two applications as a combined application for a material alteration to increase the area used for the sale and consumption of liquor from 12:00 noon on 14 July 2018 until 2:00am on 15 July 2018 within the area shaded blue on the plan accompanying what was the special licence application.
15. The applicant has conducted the Viking Funeral event over many years and it has proved a popular means by which to showcase the club's activities and raise funds. The extension of the licensed area was permitted for last year's event, albeit as a temporary variation rather than a material alteration without any adverse consequences. Due to the layout of the premises it would be natural for patrons to move to the area in respect of which the extension is sought to view the spectacle of the burning boat. It would be unrealistic and potentially unsafe if the club was expected to enforce a "no drinks" policy within this area.
16. The Commission is satisfied that the application meets the public interest and community impact test and approved the proposed material alteration as referred to in paragraph 14 above.

Notice of Rights:

17. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
18. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
19. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
Presiding Member
Chairperson
19 July 2018