

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

CITATION: *REVIEW OF DIRECTOR OF LIQUOR LICENSING'S DECISION OF MICHAEL JOHN WILLIAMS* [2023] NTLiqComm 2

REFERENCE: LC2022/060

APPLICANT: Michael John Williams

ADDRESS: 7/20 Peko Road
TENNANT CREEK NT 0860

LEGISLATION: Part 4 of the *Liquor Commission Act 2018*

HEARD BEFORE: Ms Jodi Truman (Acting Chairperson)
Professor Phillip Carson (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: Dealt with on the papers

DATE OF DECISION: 18 January 2023

DECISION

1. For the reasons set out below and in accordance with section 32 of the *Liquor Commission Act 2018* (NT) the Northern Territory Liquor Commission (**the Commission**) has determined to set aside the decision of the Director of Liquor Licensing (**the Director**) and to substitute the following decision; the declaration of restricted premises over the premises occupied by Mr Williams being 7/20 Peko Road, Tennant Creek in the Northern Territory of Australia be revoked.
2. The revocation will take effect upon publication of this decision.

REASONS

BACKGROUND

THE APPLICATION

3. The background to this application is set out in the decision notice of the Delegate of the Director (**the Delegate**) dated 23 August 2022. The Director summarised that background in his decision dated 15 November 2022. For the purpose of this review and to assist those persons who may be interested in this decision at a later date, the Commission will repeat that summary noting that it has not been suggested that the summary is inaccurate.

4. On 9 August 2022, in accordance with section 199 of the *Liquor Act 2019* (**the Act**), Ms Maithili Mishra, a solicitor with North Australian Aboriginal Justice Agency Ltd, acting on behalf of Mr Michael Williams of 7/20 Peko Road, Tennant Creek (**the premises**), applied to the Director for a revocation of the declaration of restricted premises. The premises which Mr Williams occupies is owned by Housing.
5. The premises was declared a restricted premises on 9 January 2018 as a result of an application lodged by Mr Williams.
6. In the application for revocation considered by the Delegate the following submissions were made on behalf of Mr Williams:
 - a. Mr William’s wife passed away earlier this year (2022). As such, the risk of disturbances to his wife is no longer a concern for Mr Williams;
 - b. There is currently no anti-social behaviour or any unwelcome visitors at the residence, and Mr Williams does not foresee any risk of this in the future should the declaration be revoked;
 - c. Mr Williams would like to enjoy the freedom of consuming alcohol in his own home. Since his residence was declared restricted premises, Mr Williams has been limited in where and when he can drink alcohol, and would like to be able to “have a beer in his own house”;
 - d. Mr Williams applied for the declaration of restricted premises at the premises of his own volition in 2017 and was not subject to any restrictions on his ability to purchase alcohol at the time of the application. It should therefore be available to Mr Williams to ‘opt-out’ of the declaration; and
 - e. Mr Williams is willing to continue to work co-operatively with Territory Housing and NT Police in relation to this matter.
7. As per the usual practice, Mr Williams’ application for revocation of the private restricted premises declaration was referred to NT Police and Housing for consideration. NT Police advised that it had no objection to the application.
8. “Housing” objected to the application and alleged that:
 - a. Mr Williams has not been able to control his visitors and that substantiated drinking was occurring at the premises including observations made by Public Housing Safety Officers (**PHSOs**) below:
 - i. Drinking occurred at premises on 15 June 2022, during which six persons were removed from the premises with alcohol in their possession; and
 - ii. On 13 July 2022, Mr Williams assisted with the removal of a person who was drinking at his residence.
 - b. Police have issues with the tenant of the premises and that visitors to the premises spill onto the common property.

9. In the decision notice dated 22 August 2022, the Delegate noted that while she understood Mr Williams' desire to consume alcohol at his residence, the evidence submitted by Housing suggests that current issues involving alcohol already exist at the premises and revoking the declaration is likely to increase those issues.
10. The Delegate determined that revocation of the private restricted premises declaration would not be in the public interest and, in light of the submissions from Housing, there was sufficient evidence to refuse the application.
11. On 21 September 2022, pursuant to section 27 of the Act, Mr Williams applied for a review of the Delegate's decision. His application was accompanied by a supporting letter from Ms Mishra which included the following submissions in support of the application for review:
 - a. There have been no recent incidents involving anti-social behaviour at the Residence. The conduct of visitors observed by the Public Housing Safety Officers (PHSOs) at the Residence on 15 June 2022 and 13 July 2022, did not constitute anti-social behaviour;
 - b. A revocation of the declaration of restricted premises at the Residence will not result in an increase in anti-social behaviour at the Residence as Mr Williams is willing and able to control visitors and drinking at the Residence. There has been no recent anti-social behaviour that would indicate a likelihood of increased antisocial behaviour in the future; and
 - c. NT Police have expressly stated that they hold no concerns about the declaration of restricted premises being revoked.
12. In the decision notice dated 15 November 2022, the Director accepted the submission that the incidents identified in June and July 2022 "may not have amounted to anti-social behaviour, as that term is defined in the *Housing Act 1982*." However the Director stated that:

"the test to be applied in determining whether to revoke a declaration of private restricted premises is whether the revocation would be in the public interest. Anti-social behaviour is clearly not in the public interest however the test is much wider than consideration of only the occurrence of anti-social behaviour. In respect of this application, the public interest includes consideration of whether the applicant has a history of compliance with the law generally and, in this instance, the *Liquor Act* specifically."
13. The Commission will return to this aspect of "the test to be applied" later in these reasons.
14. The Director determined that the two incidents in June and July 2022 were breaches of the Act and had occurred when "Mr Williams was aware at the time that his residence was the subject of restricted premises declaration and yet he allowed his visitors to enter the residence with liquor contrary to section 189(1)(a) of the *Liquor Act*".
15. The Director noted that Mr Williams had "knowingly allowed his visitors to breach the restricted premises provisions of the Act on two separate occasions" and that there was "nothing before me to indicate that Mr Williams would have acted to stop the actions and behaviours of his visitors but for the intervention of the PHSOs" and that

“Mr Williams’ only concern about his visitors bringing liquor into his residence was that he may be caught by the Police”.

16. As a result the Director determined that he was “not satisfied that Mr Williams is capable or willing to control the drinking of his visitors should the declaration be revoked” and in all the circumstances the Director found he was “not satisfied that the revocation of the restricted premises declaration ... would be in the public interest” and affirmed the decision to refuse to revoke the restricted premises declaration”.
17. On 13 December 2022, pursuant to section 29 of the *Liquor Commission Act 2018*, Mr Williams applied for a review of the Director’s decision. His application was accompanied by a supporting letter from Ms Mishra which “reiterated” the grounds for seeking a revocation as was outlined in their original application and then included the following submissions “dealing” with the “three section 193 matters that are relevant to this application”:
 - a. The public interest and community impact reasons underpinning the declaration were no longer applicable and that “maintaining the declaration of restricted premises at the residence (did) not advance the objectives set out in section 49(2) of the Act” and that “revocation of the declaration (would) not hinder these objectives”.
 - b. In relation to the two incidents in June and July 2022:
 - i. Mr Williams “is an elderly male with poor eyesight and hearing and was not aware that people brought alcohol into the premises on those dates”; and
 - ii. Once he “realised people had brought alcohol to the premises and were drinking, he promptly sought assistance from PHSOs to remove these individuals. We are instructed that the Applicant was aware that these people should not have had alcohol at the premises and did not want himself or these individuals to “get into trouble” with the police”.
 - c. Mr Williams “is a law-abiding citizen and a fit and proper person. NT Police have raised no objections to the revocation of the declaration at the residence”.
 - d. The declaration no longer reflected the wishes of the occupier of the premises and continuation was “against the wishes” of Mr Williams and would result in him being “forced to drink at local pubs when he wants to consume alcohol in a responsible manner” which “is an undue inconvenience for him” and he “would find it much easier to enjoy responsible alcohol consumption at his residence ... for the following reasons”:
 - i. Mr Williams “is an elderly man who has recently had surgery and finds it difficult to commute to the pub to socialise and drink” and “very difficult to walk to the pub, which affects his ability to socialise and engage with his support network”;
 - ii. “The cost of drinking at the pub is significantly more expensive ... than the costs associated with drinking responsibly at home. It would be a lot cheaper ... to purchase alcohol from a local bottle shop and drink responsibly at home”.

- e. Mr Williams was “grateful that the declaration of restricted premises was made at his residence in 2018 while his wife was terminally ill. However, he is adamant that he would now like the declaration to be revoked so he can enjoy responsible alcohol consumption at his residence”.
 - f. That revoking the declaration was “the most practicable decision” and that maintaining the declaration “is impracticable as it unreasonably impinges on the Applicant’s personal freedoms. In addition to this, the logistics required to enforce the declaration would weigh against the declaration being maintained”.
 - g. “Consumption of alcohol by the Applicant at the residence does not pose a risk of the commission of anti-social behaviour” and “(in) light of this, the cost and logistics associated with the maintenance of the declaration mean that revocation of the declaration is the most practical decision available to the Commission”.
18. The Commission notes that when that application for review was lodged on 13 December 2022 it was not in the proper form and instead undertaken by way of correspondence to “Licensing NT”. Section 29(4)(a) of the *Liquor Commission Act 2018* makes clear that any application for review “must” be in the form approved by the Commission. This was not complied with.
19. Nevertheless, the grounds on which the application was made had been clearly set out. Section 29(3)(b) of the *Liquor Commission Act* provides the Commission with a discretion to extend time to “any later date allowed by the Commission” to lodge the application and as a result further time was extended to the Applicant to lodge the application in the proper form to 22 December 2022.
20. This was undertaken by the Applicant and accepted by the Commission, particularly noting that Ms Mishra advised that she had been “informed” by Licensing NT staff that there was “no approved form for applying for review of the Director’s decision and ... that the correct process was to write a letter to the Liquor Commission” addressed to the address to which she had written on 13 December 2022. In all the circumstances the Commission considered it reasonable to allow the additional time.

CONSULTATION

21. Upon receipt of the Application for Review, the Commission considered the application and the nature of the matters raised. As a result the Commission was of the opinion that it was not appropriate in all the circumstances to conduct a hearing in public as it did not consider it would be worthwhile. The Commission therefore determined to deal with the application on the papers.
22. Notice of the application was provided to the Director and he was invited to provide any further submissions or evidence. The Director responded on 3 January 2023 that the referral brief provided to the Director for the purpose of the application appeared “to include all the documents that were before me at the time I made the decision” and that the Director did “not intend to take any active role or make any submissions in the Commission’s review process”, but would be “available to provide any assistance or advice ... as required by the Commission”.
23. Notice of the application was also provided to “Barkly Housing” of the Department of Territory Families, Housing and Communities and they were invited to provide any

further submissions or evidence. Despite notice being given to “Barkly Housing” on 4 January 2023, no response was received.

24. In reviewing the decision of the Director, section 32(1) of the *Liquor Commission Act 2018* provides that the Commission must:
 - a. take into account any matter that the Act under which the decision of the Director was made requires the Director to take into account in reviewing the decision; and
 - b. follow the procedures for review determine by the commission; and
 - c. comply with the rules of natural justice.
25. Notice has been given to all relevant persons and an opportunity provided to make further submissions or provide further material. The Director has also confirmed that all relevant material that he considered is included in the application for review.
26. Section 31 of the *Liquor Commission Act 2018* provides that the Commission “must” review the Director’s decision, unless satisfied that the application was frivolous or vexatious”. The Commission does not consider the application to be frivolous or vexatious and in these circumstances the Commission met on 18 January 2023 and proceeded to consider and determine the application on the papers.
27. As was stated by the Commission in “Application for review of decision of Director General of Licensing” with respect to the PINT Club¹; a review conducted by the Commission is not in the nature of a rehearing, and the role of the Commission on review is not (for example) to correct any error in the decision of the Director or the decision making process that occurred. The Commission looks at the matter afresh and, apart from the requirements of section 32(1) may take into account facts that exist as at the date of review in order to arrive at the correct or preferable decision².
28. Pursuant to section 32(2) of the *Liquor Commission Act 2018*, after reviewing the decision of the Director, the Commission must:
 - a. confirm the decision; or
 - b. vary the decision; or
 - c. set aside the decision and substitute a new decision.

ASSESSMENT OF THE APPLICATION

29. As noted earlier, section 32(1)(a) of the *Liquor Commission Act 2018* provides that the Commission must take into account any matter that the Act under which the decision of the Director was made requires the Director to take into account in reviewing the decision.
30. In relation to an application for revocation of a declaration of restricted premises, section 199 of the Act is silent on what is to be considered. The Commission however

¹ Decision Notice dated 28 May 2020

² Ibid, para 28

agrees with the approach taken by the Director that “it stands to reason” that it “take account of the same matters taken into account in determining whether to make a declaration”. The Commission will return to this aspect further in these reasons.

31. As noted above, consultation has taken place with relevant persons and has revealed that:
 - a. Mr Williams (now the sole occupier) of the place no longer wishes for the declaration to remain in place and in fact very much wishes for it to be removed;
 - b. “Barkly Housing” of the Department of Territory Families, Housing and Communities (the owner of the place) does “does not support” the revocation and alleges Mr Williams “has not been able to control his visitors and the reported/substantiated drinking occurring at” the place; and
 - c. The Commissioner of Police has “no objections” to the application for revocation.
32. In relation to the response from “Barkly Housing”, the Commission notes that the response lacks material particulars as to what is alleged to have actually occurred on the occasions referred to in June and July 2022 other than vague references to “drinking” with no reference by whom and certainly not alleging Mr Williams was involved in the drinking, nor the possession.
33. Further, the occasion referenced in July 2022 (although still limited in detail) includes reference that Mr Williams “assisted with the removal of POI who were drinking at his residence”.
34. The Commission in fact considers that on the limited material provided by “Barkly Housing” alone; the occasion in July 2022 provides support for a finding that Mr Williams is in fact capable of taking control of his residence and in fact has been proactive in ensuring compliance with the declaration of restricted premises.
35. That however is not all the material before the Commission. The Commission also notes the submission made on behalf of Mr Williams that with respect to **both** those occasions, once Mr Williams:

“... realised people had brought alcohol to the premises and were drinking, he promptly sought assistance from PHSOs to remove these individuals. We are instructed that the Applicant was aware that these people should not have had alcohol at the premises and did not want himself or these individuals to “get into trouble” with the police.”
36. The Commission notes that this material was not before the Director when he made his decision and is additional material. The Director however has also not raised any objection to that material nor sought to provide anything to the contrary.
37. There has been no material provided to the Commission to suggest the submission made on behalf of Mr Williams is not a truthful reflection of the events and the Commission is therefore satisfied that this supports a finding that Mr Williams is proactive in ensuring compliance with the Act and that when he became aware of the breaches he took action to bring them to an end, including calling for assistance. This is not behaviour to be criticised, it is in fact to be encouraged.

38. The Commission also notes that the response from “Barkly Housing” includes a reference to police that is in fact contrary to the response received from the Commissioner of Police. In all the circumstances the Commission does not accept that reference and relies upon the response from the Commissioner of Police that there is “no objection” to the application for revocation.
39. The Commission notes there has been significant reference in the material before it as to what amounts to “anti-social behaviour” and whether the occasions in June and July 2022 amounted to such behaviour. The Commission notes these submissions appear to have been made with reference to the requirement under section 193(1)(a)(i) of the Act that “no declaration may be made unless the Director *is* satisfied that the declaration *would* be in the public interest”.
40. In relation to this issue, the Commission considers it important to return to the basis upon which this application for declaration was made. The Commission has before it a copy of the original application. It forms part of the original referral to the Delegate and was also before the Director. That application was made on 21 December 2017 and refers to the section then in force with respect to applications for such declarations of restricted premises, namely section 101C of the *Liquor Act 1979* (as in force at 27 June 2017).
41. At that time, the 1979 Act provided under section 101C(1) for an “owner or occupier (including a tenant) of private premises” to apply “for a declaration that the premises ... are restricted premises”. Subsection 4(e) required inter alia that the application “include a statement of the applicant’s reasons for desiring the private premises to be declared restricted premises”.
42. Consultation was then required in a manner similar to the current regime under section 193 of the 2019 Act. Thereafter the then section 101E(1)(a)(i) of the 1979 Act provided that:
- “if the application is made under section 101C(1) – will reflect the wishes of the majority of the occupiers of the private premises”
43. It is apparent that as at the date that the application for the declaration of restricted premises was made, there was no requirement when an application was being made by either the owner or occupier (including a tenant) for there to be satisfaction that it was “in the public interest” for such a declaration. It was sufficient if it simply reflected “the wishes of the majority of the occupiers of the private premises”.
44. As a result of there being no such requirement, the Commission finds that it cannot be assumed (or in this case can it be found) that the test of being “in the public interest” was ever satisfied or could ever have been satisfied on the material because that was not required. All that was required was that the majority of the occupiers of the private premises wished for the declaration to be made. No evidence nor material was therefore provided in relation to whether it was in the public interest.
45. On the material before the Commission, both Mr Williams and his then wife signed an application which was clearly completed with the assistance of the owner, namely Territory Housing (as it was then known). They made clear it was their wish as the sole occupants that the declaration be made. That was all that was required. It was then a question as to whether making the declaration was practicable in the circumstances.

46. The Commission considers this to be extremely relevant to the application for revocation now before it. As stated previously, it is no longer the case that the occupier “wishes” for the declaration to be made.
47. The Commission must then consider whether there is any material to support a finding that it is in the public interest for there to be such a declaration. As noted, there is no evidence whatsoever to support such a finding, just as there was none when the application was first made.
48. Although there is reference to two occasions referred to by “Barkly Housing” where they allege “the tenant has not been able to control his visitors”, the Commission has already found that these in fact support a finding of the proactive and responsible attitude of Mr Williams and do not therefore amount to evidence that it is in the public interest for the declaration to remain in place.
49. The Commission is not satisfied therefore that there is any evidence before it that it has ever been, or remains, in the public interest that there be a declaration of restricted premises over this address and therefore has determined to set aside the decision of the Director and to substitute the following decision; the declaration of restricted premises over the premises occupied by Mr Williams being 7/20 Peko Road, Tennant Creek in the Northern Territory of Australia be revoked.
50. Before completing these reasons, the Commission notes that Mr Williams has been described by his lawyer as “an elderly man with poor eyesight and hearing” and “who has recently had surgery and finds it difficult to commute to the pub to socialise and drink”. The Commission recognises that these factors make Mr Williams susceptible to family pressure and what is commonly referred to as “humbug”. The Commission however does note that it was Mr Williams who actively took steps to have the address declared a restricted premises and that both he and “Barkly Housing” are entitled to seek such a declaration again in the future should Mr Williams find such pressures and humbug too much for him. The Commission hopes that this does not prove necessary.

NOTICE OF RIGHTS

51. Section 31(1) of the Act read with section 33 of the *Liquor Commission Act* provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
52. In accordance with section 31(2) of the *Liquor Act 2019*, the persons who may apply to NTCAT for a review of the decision are the Director, the applicant Mr Williams and “Barkly Housing” being the Department of Territory Families, Housing and Communities.



JODI TRUMAN
ACTING CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
18 January 2023
On behalf of Commissioners Truman, Carson, and Hart