

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE: LC2019/060

LICENCE NUMBER: FLL1010

LICENSEE: Katherine Regional Cultural Precinct Ltd

PREMISES: Godinymayin Yijard Rivers Arts and Culture Centre
Lot 3287
Stuart Highway
KATHERINE NT 0850

APPLICANT: Godinymayin Yijard Rivers Arts and Culture Centre

NOMINEE/S: Kerry Jayne Nankievell and Penelope Searle

OBJECTOR/S: Nil

LEGISLATION: Section 119(2), Part V of the *Liquor Act 1978*

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 2 May 2019

DATE OF DECISION: 2 May 2019

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the applicant.

Reasons

Background

2. On 19 March 2019, Ms Kerry Jayne Nankievell, Nominee, on behalf of Godinymayin Yijard Rivers Arts & Culture Centre ("the applicant") submitted an application to the Director-General pursuant to section 119(2) of the *Liquor Act 1978* ("the Act"), for approval to make a material alteration to the licensed

premises. The substance of the application is to extend the licensed premises to incorporate the amphitheatre for one single day, being 5 May 2019, for a period of two (2) hours, being 6.00pm to 8.00pm, for the performance of "A Midnight Summers Dream". No other conditions are sought to be changed.

3. Despite being submitted on that date, the Commission was advised that the application was deemed incomplete at that time and further documents were sought by the Director-General. On 2 April 2019, all supporting documents for the application were received.
4. Unfortunately for the applicant however, the matter did not progress as a referral to the Commission in a prompt manner thereafter. It is clear that this was through no fault whatsoever of the applicant. In fact the failure for the application to progress and be referred to the Commission rests with the Acting Deputy Director-General (Operations) for numerous reasons which are unnecessary to detail in this decision. This meant however that when the application was finally referred to the Commission on 1 May 2019 it was in fact only 4 days prior to the date relevant to the application and only 2 business days prior to that event.
5. Fortunately for the applicant, and particularly because the failure for this matter to progress was not their fault, the Commission did all it could to attempt to hear the application as a matter of urgency and in time for the event. It was fortuitous indeed that a panel was able to be formed on such short notice. Whilst section 53(1)(a)(ii) of the Act requires the Commission to give a minimum notice of 7 days of a public hearing, the Commission exercised its authority under section 127(1) of the Act to abridge time so as to enable the application to be heard on 2 May 2019, the day after the referral.

Advertising and Objections

6. The Commission has been advised that on 8 April 2019, the Acting Deputy Director General determined that this application was not required to be published in accordance with Section 119(3) and (4) as there was insufficient public interest. This was based on the application "being a single event of two hour duration and was a simple extension of the licensed area with all conditions of the current liquor licence applying to this proposed extended area".
7. It is noted that section 119(5) of the Act requires that if the application relates to premises within the area of a shire council or a regional council; the Director-General must inform the Chief Executive Officer ("CEO") of the council that the application has been made. That occurred with respect to this application and although notice was given to the Katherine Town Council on 8 April 2019, no response was received prior to this application being heard by the Commission.
8. The Commission notes also that although there has been a general practice of also forwarding these types of applications to the Department of Health ("DOH"), the Commissioner of Northern Territory Police, Fire and Emergency Services ("NT Police") and the NT Fire & Rescue service ("NTFRS") for comment; that did not occur in relation to this application. The Commission notes there is in fact no requirement under the Act for the Director-General to do so.

9. Despite the failure of the Katherine Town Council to respond, the Commission considers sufficient time has been provided to the Council and has determined to proceed to hear the matter.

Compliance History

10. The Commission was informed that Licensing NT has no previous negative compliance history in regards to this particular licensee at the time of referral.

Public Hearing

11. The term “material alteration” is defined under section 4 of the Act as follows:

“**material alteration** means an alteration to licensed premises which:

- (a) increases or decreases the area used for the sale of liquor or the sale and consumption of liquor; or
- (b) involves structural alteration; or
- (c) alters access to or egress from the premises; or
- (d) alters the external appearance or facilities”.

12. The substance of the application is to increase the area for the sale and consumption of liquor. This is therefore clearly an application for a material alteration. Pursuant to section 50 of the Act, the Director-General must refer inter alia applications under section 119 of the Act to the Commission. Therefore this application must be heard and determined by the Commission.

13. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.

14. The public hearing commenced at 10.00 am on 2 May 2019. Ms Penelope Searle attended by phone on behalf of the applicant. Ms Tania Chin as representative for the Director-General of Licensing was also present to provide information and assistance to the Commission during the course of the hearing.

Assessment of the Application

15. Whilst the Commission has noted the issues in relation to the delay in referral of this matter, it is the Commission’s view that there was nothing contentious about this application. As was noted by the applicant in its application:

“There are no physical alterations being made to the licensed premises.

The request is for a temporary extension to the location in which alcohol can be consumed.

On 5 May 2019 there will be a performance held outdoors at the Katherine Regional Cultural Precinct.

The outdoor Amphitheatre is a designated performance area at the Centre.

It is proposed that Alcohol will be sold from the designated bar.

The temporary alteration to the licence requests that ticket holders are able to consume alcohol in the Amphitheatre on the evening of 5 May 2019 prior to and during the interval of the performance.

The performance commences at 6.30pm and will conclude by 8.30pm.

The maximum time alcohol will be served for this event will be from 6.00pm to 8.00pm.”

16. The application is effectively to allow ticket holders who are attending a single event on a single evening for a two (2) hour period to be able to consume alcohol in an area attached to licensed premises that are already able to serve alcohol for consumption between 11.00am and 11.59pm, whilst enjoying a performance of Shakespeare. This is not what could ever be described as a high risk event.
17. The Commission notes that the Act places an onus upon all applicants to satisfy the Commission that the approval of the application meets the public interest and community impact test. With respect to this application, the Commission notes the submissions that have been provided on behalf of the applicant. In fact, despite the limited nature of this application, the Commission notes such submissions were detailed and directly addressed the matters relevant to each of the tests. As a result, the Commission is satisfied that the approval of the material alteration meets the public interest and community impact test.
18. During the course of the hearing the applicant also advised that there would be signage in place informing people they were entering the licensed area and that staff would monitor the area to ensure no one was able to go outside the boundary with alcohol. In addition, ticket holders would be provided with wristbands and only persons wearing such wristbands would be permitted to purchase and consume alcohol in the extended licensed area.
19. Based on the evidence presented to this Commission, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the material alteration sought.
20. The Commission also finds there is no evidence that would suggest there is likely to be an impact upon law and order, community safety or public amenity by virtue of this material alteration. Further that there is no evidence to suggest that there will be a social impact upon the community to such an extent that it would merit a finding against this application.

21. As earlier noted, the applicant does not intend to do anything to change the manner in which it provides liquor to its customers. The evidence before the Commission is clear that to date the applicant has provided liquor in a manner which is safe and minimises any adverse impact and has ensured its staff are properly trained to do so. The applicant has in the past demonstrated a good track record in respect of the operation of its business activities.
22. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined decided to approve the material alteration to the licensee's licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights:

23. 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.
24. 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.
25. 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.



JODI TRUMAN
Presiding Member
Deputy Chairperson