

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	APPLICATION FOR PERMANENT VARIATION OF CONDITIONS OF LICENCE
REFERENCE:	LC2022/038
LICENCE NUMBER:	80315480
LICENSEE:	AVC Operations Pty Ltd
PREMISES:	Shenannigans Irish Pub 69 Mitchell Street DARWIN NT 0800
LEGISLATION:	Section 110 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Bernard Dwyer (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	2 September 2022
DATE OF DECISION:	7 October 2022

Decision

1. For the reasons set out below and in accordance with section 112(2) of the *Liquor Act 2019* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) has determined to refuse the application to permanently vary the conditions of the licence of AVC Operations Pty Ltd (“the licensee”) for the premises known as Shenannigans Irish Pub (“the premises”).

Reasons **Background**

2. On 15 April 2022, an application for a permanent variation of licence conditions was lodged pursuant to section 110(3) of the Act by Mr Richie McFarlane on behalf of the licensee, namely AVC Operations Pty Ltd, for the premises known as Shenannigans Irish Pub situated at 69 Mitchell Street, Darwin. Although the licensee is the applicant in these proceedings, because they hold liquor licence number 80315480 (with Public Bar and Late-Night Authorities) they will be referred to as “licensee” in these reasons.

3. The licensee is seeking to have the trading hours condition of the licence changed from a closing time of 2am to 4am “Monday to Sunday not including Good Friday and Christmas Day”.
4. The following documents have been provided to support the application:
 - a. Affidavit in accordance with section 54 of the Act;
 - b. Public Interest and Community Impact Assessment Summary under sections 49 to 52 of the Act.
5. A referral document that was 95 pages in length was provided to the Commission; which included documents in addition to those set out above. This referral was tendered into evidence and became exhibit 1.

Publication and Consultation

6. Pursuant to section 111 of the Act, notice of the application was published in the NT News on 23 April 2022 and advertised on the webpage of the Director of Liquor Licensing (“the Director”). In addition, the licensee was directed to display the “Green Sign” at a prominent external area of the premises. The Commission was informed by Mr Mark Wood, the Delegate of the Director, that this was done.
7. As a result of the advertising, two objections were received. The first objection was from Mr Mario Madaffari, CEO of “Deva Short Stay Pty Ltd” who operate premises known as “The Youth Shack”, that is directly next door to the premises. An objection was also received from the Northern Territory of Police (“the NT Police”). Each of these objections will be referred to in these reasons.
8. Notification of the application was also given to the Chief Executive Officer of the Department of Health (“DOH”), and the Chief Executive Officer of the City of Darwin (“DCC”).
9. The Commission was informed that the DOH had raised a number of matters in relation to “public health concerns” but had not seen fit to lodge an actual objection. The Commission was further informed that DCC had not provided any response despite receiving notice.

Compliance

10. The Commission was informed that there had been no recorded adverse compliance issues since the licensee took over the premises in October 2017.

Public hearing

11. On 4 July 2022, the Delegate of the Director referred this matter to the Commission to be determined by way of a hearing. A number of attempts were made to list the matter for hearing at various dates. Requests were made from the objectors and the licensee in relation to those dates. There was significant correspondence required between the Commission and the parties to be able to finalise the hearing at a date and time convenient to all interested and parties and assemble a panel. As a result, the application was finally able to be listed for a public hearing on 2 September 2022.

12. At the hearing the Licensee was represented by Mr Richie McFarlane and Ms Monika Cala who appeared by video link, with Mr Jeremy Fraser appearing in person. Mr Jeff Verinder appeared for the Director. Mr David DeSilva appeared for the objector, Youth Shack, with Ms Macadam in attendance. Mr Bortoli instructed by Ms Thompson appeared for the Commissioner of Police with Superintendent James O'Brien also attending in person. The Commission is grateful for the assistance provided by all such persons.

ASSESSMENT OF THE APPLICATION

13. In accordance with section 112(1) of the Act, the Commission must consider:
 - a. the licensee's affidavit required by section 54;
 - b. any objection to the application made under section 61;
 - c. any response provided by the licensee under section 62;
 - d. and the public interest and community impact requirements.
14. In addition to the material contained in exhibit 1, a statutory declaration from Nicole Macadam on behalf of Youth Shack dated 18 August 2022, an affidavit from Superintendent James O'Brien dated 18 August 2022 and correspondence on behalf of the licensee dated 26 August 2022 were also tendered into evidence and became exhibits 2, 3 and 4 respectively. All were carefully considered by the Commission as part of its assessment together short oral evidence from Ms Macadam, information from Superintendent O'Brien and the submissions made by all parties.
15. In accordance with section 110(2) of the Act, the licensee must satisfy the Commission that varying the conditions of the licence is in the public interest and would not have a significant adverse impact on the community. The onus is therefore clearly on the licensee.
16. In considering the application, the Commission has also had regard at all times to the purposes of the Act as set out under section 3.

The Licensee's Associates

17. In the context of a variation application, section 110(4)(a) of the Act requires the application be accompanied by an affidavit made under section 54. This section requires licensees to depose an affidavit disclosing whether certain persons may be able to influence the licensee or expect a benefit from the licensee if the variation is granted.
18. This is an interesting section in the context of a variation application given the fact that in order to be applying for a variation of a licence, an licensee must firstly have obtained a licence and therefore must have previously already satisfied either the Commission or Director as to matters relating to associates in order to hold the licence.
19. Be that as it may, it is clear that despite this fact the legislature has determined that an licensee must nevertheless still satisfy the Commission of the matters under section 54 of the Act. That means that the Commission is **obliged** to consider such matters and in turn licensees, just as in the present application, are obliged to address the requirements of the section. Unfortunately in relation to this application, despite

numerous attempts to have the licensee address the matters required, it was to no avail. On 30 September 2022, final correspondence was received from the licensee attempting to address the issues of disclosure. The licensee has requested that such information be treated as commercial in confidence. The Commission has acceded to that request and as such it has not been provided to the other parties and will not be set out in these reasons.

20. However, whilst the material provided sets out the office holders and the names of “all persons” who have a substantial holding in the body corporate, it does not disclose any information about the nominee. Section 54 of the Act relates (inter alia) to the disclosure of persons of influence. The Act makes clear under section 53 that where a body corporate holds a licence it must also designate a nominee. The nominee is then taken to be a “joint applicant”. As a result it is clear that the nominee *is* a person who may “be able to influence the applicant” or “expect a direct or indirect benefit from the applicant” and should therefore be a person about whom there is disclosure made.
21. Despite all of this, not once did the licensee disclose any information or details about their nominee. As earlier outlined, the Commission accepts that such information is likely to have been provided at some earlier stage in order for the licensee to hold its current licence. However section 110 requires that this information be disclosed again and the licensee has not done so. The Commission is therefore not satisfied that the licensee has complied with the disclosure requirements of section 54.
22. The Commission wishes to make clear that this is not the basis upon which it has refused the application on this occasion. It is however a matter that may form the basis of future refusals if licensees fail to address such matters. Both this licensee and all future applicants are now put on notice about this issue.

The Public Interest Test

23. As previously noted the licensee must satisfy the Commission that varying the conditions of a licence *is* in the public interest (emphasis added). This is a clear reference to the test set out under section 49(2) of the Act and requires the licensee to satisfy the Commission that varying the conditions of the licence would **advance** the following objectives (emphasis added):
 - (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.

24. Further, the licensee must satisfy the Commission that varying the conditions of the licence would **not** have a significant adverse impact on the community. This is also a reference to considering the matters set out at section 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 section 50;
- (j) Any other matter prescribed by regulation.

25. The Commission notes those matters set out within the guidelines as follows:

Criteria	Matters to be considered
The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.	<p>Are there any 'at-risk' groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or

	<ul style="list-style-type: none"> • communities that experience high tourist/visitor numbers. <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises. This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>

<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?
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26. As can be seen from the above, there are numerous matters the Commission must consider and the licensee must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state however that:

"...the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits".

27. In addition, section 50(4) provides that the guidelines "may have general, limited or varied application". Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

Assessment of the application

28. In considering this application, the Commission has at all times kept firmly in its mind that the burden rests on the licensee. It is important however that the Commission note what appears to be the significant issues for the objectors to this application.

29. In relation to the objection made on behalf of Youth Shack, whilst the Commission notes the objection has detailed the matters that the Commission must consider in determining this application and why the Commission should not be so satisfied, the focus of the objection of Youth Shack was submitted to be as follows:

"The objection of Youth Shack is solely focused upon the disturbance to its guests by the noise from Shenannigans Irish Pub and/or its patrons"¹.

30. In this regard the Commission notes the evidence provided on behalf of Youth Shack and in particular the oral evidence given by Ms Macadam before the Commission at the hearing. The Commission accepts that noise has been an issue.

31. Reliance was placed by Youth Shack upon certain decibel readings. As stated in the hearing, the Commission notes that the noise was obviously sufficient for Ms Macadam

¹ Submissions of Youth Shack, para 29

to seek to ascertain a level, however the Commission places little weight whatsoever on the reading alleged given the lack of evidence of the proper calibration of the device and all of the risks associated with the accuracy of such “apps”. The Commission does accept however that there has been noise that has caused the objector to receive complaints from its guests which has, from time to time, caused a disruption.

32. The Commission also accepts however that such disruption does not appear to have been significant enough for the objector to communicate with the licensee about the issue until this application was lodged and publicised. This is a matter that the Commission takes into account in determining the weight to be given to the objection in light of obvious competition issues between the objector and the licensee.
33. That is not however to suggest that the concerns relating to noise are irrelevant and/or given no weight at all. The Commission considers them to be particularly relevant in relation to such a built-up area that has numerous hotels and other residences in the immediate vicinity including the objector.
34. In relation to such noise however, the Commission notes that during the course of the hearing the licensee indicated it would accept a condition that it is not permitted to broadcast the games on the external screens. The licensee also indicated it would accept a condition that only the internal area be licensed and that there be further restrictions on that internal area in order to reduce the noise likely to be heard by guests of the objector through the closing of an area known as the “function room” from a certain time.
35. The Commission notes that in fact the closure of the function room from midnight in the weeks leading up to the application was acknowledged by Ms Macadam as having reduced the noise such that there were no complaints. The Commission also notes that the licensee has stated that it intends to continue that practice until a sound proofing solution can be implemented.
36. The Commission also notes that what is proposed by the licensee is that they will not have any live music or DJ during the extended hours and that only the internal “house” system would be utilised for the playing of background music during breaks in the sporting games. The Commission considers each of these matters go a significant way to address the noise issues raised on behalf of the objector Youth Shack.
37. During the course of the hearing and particularly submissions, significant reliance was placed by Mr DeSilva on behalf of the objector to the Commission’s previous decision in *Fleurieu Holdings Pty Ltd*². As was noted by Mr De Silva, the same panel as that which constitutes the present Commission determined the application made by *Fleurieu Holdings Pty Ltd*. The Commission also notes that it was DeSilva Hebron who appeared for the applicant in that application. As such, the Commission would have expected that it would have been well understood by Mr DeSilva how significantly different these applications were and how little relevance the comments made by the Commission in that decision have to the present application.
38. This is not an application where we are dealing with a new application for a licence. This is a well-established and well-run premises undertaken by a well-respected licensee. It is also not an application where “no thought appears to have been given by the Applicant” as was the case in *Fleurieu Holdings Pty Ltd*. There were numerous

² Fleurieu Holdings Pty Ltd application LC 2021/029 (12 October 2021)

matters **significantly** lacking in that application for which clearly little to no thought had been given by the applicant. That is **not** the case with this application.

39. The Commission does agree however that evidence should have been provided to the Commission concerning the level of public interest in certain international sports being broadcast. Whilst the Commission is willing to accept that certain international sports are extremely popular, for example “The World Cup”, the Commission was provided with no evidence as to what was proposed in terms of the broadcasting of sporting games that do not carry that level of multi-national popularity or notoriety and/or the level of public interest in such sporting games.

40. The Commission agrees with the submission made by Mr De Silva that instead what the Commission was provided was³:

“... a broad submission unsupported by evidence ... made as to growth from the European section of the Darwin community. This is mere speculation on the part of the Applicant. No effort has been made to even identify such a demographical growth within the City of Darwin let alone the ethnic groups’ interest in attending late night sporting events at Shenannigans”.

41. As indicated earlier and as raised with the licensee during the course of the hearing, the significant concern of the Commission is that these premises not become simply another premises for patrons to drink into the early hours of the morning. There is simply no evidence that this would be in the public interest.

42. Whilst the Commission does accept that there is a level of interest in the community for major international sporting games to be broadcast (as is evident by the number of special licences sought for such occasions in the past by not just by this licensee but by numerous licensees) what the Commission does not have is any evidence of the level of interest in sporting events outside of such major events. Given this application is for a permanent variation of the hours until 4.00am, 7 days per week, the Commission would need to be positively satisfied that there is in fact such interest.

43. In addition to the objection lodged by Youth Shack, the NT Police also objected to the application. Superintendent O’Brien attended the hearing and provided valuable information as to the matters to be considered by the Commission. In terms of the objection filed on behalf of the Commissioner of Police, the Commission notes that this appears to be substantially based on:

a. The premises is located on Mitchell Street which already has three (3) premises authorised to sell liquor until 4.00am⁴.

b. That if the variation were granted it “may give rise to⁵:

i. More people being present in the CBD around the 4:00am closing time;

ii. An increase in reports to NTPF for assistance regarding any manner of incident types;

³ Submissions on behalf of Youth Shack dated 2 September 2022, paragraph 24

⁴ Affidavit of James O’Brien sworn 18 August 2022, para 33

⁵ Affidavit of James O’Brien sworn 18 August 2022, para 34

- iii. A need for NTPF to increase resources to mitigate additional risk arising from the increase to four late night trading premises in Mitchell Street; and
 - iv. Further exacerbation of the existing constraints on insufficient public or ride sharing type transport options that allow people to move out of the Darwin CBD area safely and in a timely manner, particularly between midnight and 4:00am as there is no public transport at all and limited taxi or ride sharing availability.”
- c. That whilst there have been special licences in the past for special events to enable patrons to “view special live international sports broadcasts outside of their current trading hours. The issue of special licences for specified events or periods allows NTPF greater ability to plan and resource City Safe operations in view of special events⁶”.
 - d. That although the application is stated to be “to service sports fans, the practical effect of the variation being granted is that there will be an additional alcohol outlet supplying alcohol to members of the public until 4:00am⁷”.
 - e. That an “increased demand and need for police resources is inevitable in order to address a general increased risk to public safety and adversely affected social amenity arising from an additional late night venue trading until 4:00am daily⁸”.
 - f. “The variations sought, if granted, will provide opportunity for a rise in the consumption of alcohol which could further impact on the rate and incidence of alcohol fuelled violence within the Darwin CBD ... and the public safety and social conditions of the area⁹”.
 - g. This would be the case “regardless of how well managed the venues are¹⁰”.
44. It is important to recognise that the licence already enables the sale of liquor to patrons until 2.00am. It is also relevant that the premises is a public bar with a late-night authority. It is therefore already a licence that includes a very high-risk authority. This is a significant matter and one that has been carefully considered by this Commission given this risk classification.
45. In directly addressing the matters raised on behalf of the Commissioner of Police and to satisfy its onus, the licensee submitted that it “understood” the matters raised in relation to police resources and notes the recommendations made in the *Alcohol Policies and Legislation Review Final Report* (what has become commonly known as “the Riley Review”) in relation to collaboration between police and other organisations and also the operation of community patrols¹¹.
46. The licensee also specifically noted that the Riley Review included recommendations that “acknowledge the fact that Police resources alone are not enough to address the

⁶ Affidavit of James O’Brien sworn 18 August 2022, para 35

⁷ Affidavit of James O’Brien sworn 18 August 2022, para 36

⁸ Affidavit of James O’Brien sworn 18 August 2022, para 37

⁹ Affidavit of James O’Brien sworn 18 August 2022, para 43

¹⁰ Affidavit of James O’Brien sworn 18 August 2022, para 44

¹¹ Letter from licensee dated 26 August 2022

issues associated with excessive alcohol consumption” and that “businesses in Darwin will continue to grow as the requirements of its inhabitants change over time”¹². It was submitted that the application for variation was “a by-product of that growth” and therefore “Police resources should be enhanced in order to encourage such growth”.

47. In relation to this submission, the Commission repeats what has already been stated in relation to the lack of evidence to support a positive finding as to the “growth” in the market sufficient to support the proposed variation.
48. In relation to the matters raised by NT Police concerning issues within the Darwin CBD, the licensee in substance made the following submissions¹³:
 - a. “Shenannigans does take pride in the fact its patrons are offered a range of specialised low or zero alcohol beverages as well as food while they are attending the premises at any time of the day or night”.
 - b. That “whilst there are some patrons out in Darwin’s CBD late at night who are looking purely for a venue in which to consume alcohol, Shenannigans’ entertainment offerings of broadcasting live international sports matches after 2:00am aims to provide a noticeable point of difference to other late-night entertainment venues in the area”.
 - c. The premises were distinguishable from what was highlighted by police in relation to the premises known as Mayberry Darwin and that there would in fact “be no live music in the venue after” 2:00am with “only the in-house Nightlife music system providing background music in between breaks in the sound from screens broadcasting live sporting matches”. This was noted as “an obvious distinction” with nearby venues and therefore the impact of the proposed variation would be “negligible” in relation to the matters raised by police.
 - d. The licensee has committed “to employ licensed crowd controllers a minimum of one (1) licensed crowd controller to monitor the exterior of the premises and surrounds until thirty (30) minutes after the cessation of trade on nights where the venue trades after 2:00am”.
 - e. That “regarding the non-availability of public transport options at 4:00am” these options “are the same as what they are at ... current closing time of 2:00am” and that “granting of this application would in fact go some way towards alleviating any pressure on taxi and rid-share services at 2:00am”.
49. Whilst the Commission is pleased to hear of the offering of low or zero alcohol, it does not consider this goes far in addressing the concern raised by police about continued alcohol consumption. Further, given the location of the premises in Darwin’s most built-up late-night area, the Commission also does not consider that “a minimum of one (1) licensed crowd controller” sufficiently addresses the serious concerns raised by NT Police in relation to the problems of alcohol in our community and particularly those associated with late night venues.
50. The Commission acknowledges that this is dependent on the number of persons who are at the premises and that the licensee would be required to ensure compliance with

¹² Letter from licensee dated 26 August 2022

¹³ Letter from licensee dated 17 June 2022

sufficient numbers of crowd controllers at all relevant times, however the Commission considers the licensee's response to be representational of the challenge for the licensee with this application given the lack of detail provided as to the size of the market it would be accommodating and the consideration given to how to best provide for that market.

51. In relation to the concept of these premises and particularly the concerns raised by NT Police highlighting premises like Mayberry Darwin, the licensee has rightly highlighted how different these premises are to such other premises. Submission was made that it is not proposed that there be a significant change in the concept of these premises or the way they would be operated. Whilst the Commission accepts that these premises are very different to some of the examples given by NT Police, as was stated in the hearing these premises are well known to the Commission and are premises that are extremely popular, well known to locals and tourists and well known for their live music and party atmosphere. The premises advertise themselves as "the home of Darwin's live music". Whilst the Commission recognises that sport is also well advertised, it is not near the level of popularity that the premises clearly enjoys in the market for live music.
52. This is an important consideration, given what is being proposed here is that if the variation is granted extending the hours to 4.00am; from 2.00am the venue will not continue to operate in the same manner it has up until that point in time and will divert then to a premises accommodating the broadcast of international sporting events.
53. Whilst at first blush it could be argued that the application is therefore for a narrower purpose, it does mean that in practice, the premises could go from a live music venue with patrons singing and dancing (as one would expect) until 2.00am and then become a venue where the music becomes in house speaker music only and televisions on broadcasting international sport. Just how this would work was not addressed in any significant manner by the licensee, nor (again) the community interest in the same.
54. The concern that the Commission has about such a proposal is that without any real evidence before the Commission as to the size or extent of the market for such a venue to operate in such a manner within the CBD, the Commission considers there exists a real risk that such a variation would in practice result in the premises becoming an additional venue remaining open for another two (2) hours to allow patrons to continue drinking and socialising, just minus the live music (or DJ) and with screens flickering in the background.
55. Whilst the Commission notes that the licensee denied this would be the case and repeated that continued operation after 2.00am would be for international sporting events to be broadcast which was an important point of difference, the Commission was not provided with sufficient evidence to satisfy it that this would be the case and simply is not satisfied that there is a community interest (and/or need) in the market for these premises to be open until 4.00am, 7 days per week.
56. A further concern raised on behalf of NT Police was that if the variation were granted it would "provide opportunity for a rise in the consumption of alcohol which could further impact on the rate and incidence of alcohol fuelled violence within the Darwin CBD"¹⁴ and as a result "(t)he management of NTPF resources and policing responses will

¹⁴ Affidavit of Supt. O'Brien dated 18 August 2022, paragraph 43

require re-assessment in light of the additional risk posed to the community”¹⁵. The Commission accepts that this is a real risk and one that it is significant.

57. The Commission accepts what has been said by Superintendent O’Brien in relation to the resources available for policing. There is no doubt that NT Police are required to do a great deal with limited resources in difficult circumstances. The Commission notes with concern the continual review of City Safe operations that clearly offers significant benefit to the community and the Commission is also concerned by the continued closure of the Darwin Watch House on Mitchell Street. No evidence was provided to the Commission as to why this continues to be the case and/or the benefit it provides to the community to have the only Watch House that is operational some 20 kms outside of the Darwin CBD.
58. Likewise, the Commission agrees with the submission made on behalf of the licensee that the growth of Territory businesses should not be limited by the extent of police resourcing. However, it remains the case that on this occasion the Commission simply was not provided with sufficient evidence to support a finding that the growth of the market was such as to support the permanent variation being proposed by this application until 4.00am, 7 days per week.
59. The Commission has considered these matters carefully. As was noted at the end of the hearing, whilst this is an application that is about an additional two (2) hours of service, it has been a very difficult application to determine. This is a well-run, popular and successful premises and the licensee has had no adverse compliance issues since taking over the venue in July 2019. The Commission however is not satisfied on the state of the evidence before it that the licensee has satisfied the onus, i.e. that extending the hours until 4:00am, 7 days per week is in the public interest and would not have a significant adverse impact on the community.
60. The Commission finds this application does not advance the minimising of the harm or ill health caused to people from the consumption of liquor. It does not advance the safeguarding of public order and safety. It does not advance protecting the safety, health and welfare of people who use the premises. It also does not advance the reduction or the limiting of increases in anti-social behaviour. The licensee of course would submit that the application advances the cultural or tourism benefits for the local community area and the recreational benefits. However as has already been stated, the evidence of such advancement is little to none in terms of events outside of major international sporting events and given how little evidence there is, it is outweighed by the likelihood that there would be an increase caused in alcohol consumption.
61. Having made this finding, the Commission notes that the wording of section 110 of the Act is such that the application must be refused, however, to avoid any doubt, the Commission further finds that there is a risk of undue annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the premises. There is a risk of harm from the excessive consumption of liquor. There is, as stated before, insufficient evidence to satisfy the Commission there would be a beneficial effect on culture, recreation, employment and tourism that would outweigh the risk of increased alcohol consumption and anti-social behaviour. Finally the Commission is not satisfied on the state of the evidence before it that such a variation would “benefit” the local and broader community as referred to in the Guidelines. Therefore, the licensee has not satisfied the Commission that the variation to 4:00am would not have a significant adverse impact on the community

¹⁵ Affidavit of Supt. O’Brien dated 18 August 2022, paragraph 44

62. For these reasons, the Commission has determined to refuse to vary the conditions of the licence as outlined at the commencement of this Decision Notice.

Notice of Rights:

63. Section 31(1) read with section 112(3) of the Act provides that the decision set out in this decision notice is reviewable by Northern Territory Civil and Administrative Tribunal (“NTCAT”). Section 94(3) of the NTCAT Act provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

64. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensee and the persons who made the submission or objection.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
7 October 2022

On behalf of Commissioners Truman, Dwyer, and Corcoran