

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE: LC2018/021

LICENCE NUMBER: 81402530

LICENSEE: Club Eastside Incorporated

PREMISES: Club Eastside

Lot 8059
28 Undoolya Road
ALICE SPRINGS, NT 0870

APPLICANT: David Harte on behalf of Club Eastside Incorporated

LEGISLATION: Section 119(2), Part IV and V of the *Liquor Act*.

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)

Ms Pauline Reynolds (Health Member)

Mr Blair McFarland (Community Member)

DATE OF HEARING: 18 May 2018

DATE OF DECISION: 18 May 2018

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

1. The Club Eastside Inc. ("the licensee") currently holds a Club Liquor Licence ("the licence") authorising the sale of liquor for consumption on or at the licensed premises by members and guests.

2. On 28 October 2017, Mr David (Max) Harte on behalf of Club Eastside, made application under the Act pursuant to section 119(2) of the Act for approval to make a material alteration to the licenced premises.
3. At the time of lodgement, the application was deemed incomplete. Further materials were therefore sought, and these were received on 10 January 2018.
4. 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.
5. The substance of the application is for a material alteration, to the licensed premises known as Club Eastside. Club Eastside is a bistro, bar and social club that provides a social and recreational service to the local community of Alice Springs. The club is situated on the outskirts of the Central Business District of Alice Springs.
6. A survey was conducted by Club Eastside in 2017 with their patrons which resulted in negative comments being received pertaining to the issue of second hand smoke drifting from the Designated Smoking Area (DOSA) known as DOSA 2 into the Bistro, which was claimed to have led to discomfort for patrons.
7. The Bistro and the DOSA 2 are currently separated by a half height panelled partition. Club Eastside proposes to alleviate the concerns of their non-smoking patrons by extending the partition to the ceiling with a clear safety glass panel to enclose the DOSA 2. In addition, an external colourbond fence will be replaced with perforated cladding to aid ventilation of the DOSA 2.
8. Pursuant to section 6A of the Act, a section 119 applicant is required to satisfy the Commission that the approval of the application meets the public interest and community impact test set out in section 6(2), and to that end the applicant prepared and submitted a detailed statement addressing the relevant elements of the test.
9. The applicant advised that they have obtained a Government grant to assist with the cost of the material alterations. The applicant has requested several extensions to the grant timings and has advised that it has a final extension that is required to be acquitted in early May 2018. It is a request of the applicant that the matter be determined by the Liquor Commission expeditiously.

10. On Tuesday 13 March 2018, Mr Harte, General Manager, Club Eastside, advised that the applicant had been afforded an extension to acquit the Government Grant until end of May 2018.

Advertising and Objections

11. Pursuant to section 119(3) of the Act, the Delegate of the Director-General of Licensing (“the Director-General”) determined that it was in the public interest to publish notice of the application. As a result, details of the application were advertised in the Central Advocate on Tuesday 16 January 2018 and on Friday 19 January 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period ended on 18 February 2018. A statement of display form has been completed.

12. No objections were received.

13. As required by section 119(5) of the Act, on 22 January 2018, the Director-General notified the Chief Executive Officer of Alice Springs Town Council of the application.

14. In addition, and although not required by the Act, the Director-General, in accordance with her standard practice in matters involving proposed amendments to liquor licences, notified the following agencies of the application:

- Commissioner of Police
- Chief Executive Officer of the Department of Health;
- Northern Territory Fire and Rescue Service;
- Development Consent Authority

15. These agencies were also each notified of their entitlement to object to the application by way of the procedure set out at s 47F of the Act. No section 47F objections were lodged with the Director-General, and none of these agencies appeared or notified the Commission that they wished to appear at the ensuing Commission hearing.

16. With respect to this application.

- a. The NT Police raised no objections to the application.
- b. The DOH made no adverse comment.
- c. Northern Territory Fire and Rescue Service made no objection to the application for material alteration for Club Eastside, provided that all works meet the requirements of the National Construction Code 2016. Following a site inspection of the premises on 23 January 2018, NTFRS advised the licensee that exit lighting for the area of works would require upgrading.
- d. Development Consent Authority raised no objections to the application.
- e. Chief Executive Officer of Alice Springs Council – No Response received.

Public Hearing

17. Pursuant to section 50 of the Act, the Director-General must refer applications under section 119 of the Act to the Commission. Therefore, this application must be heard and determined by this Commission.
18. Mr Harte appeared at the hearing on behalf of the Applicant and Mr Mark Wood, Manager Licensing – Liquor, Gambling, Racing, Licensing NT, provided information and assistance to the Commission during the hearing.
19. The applicant confirmed that the recommended exit lighting upgrade had been installed.
20. During the course of the Hearing, it was established that recent alterations had been undertaken at Club Eastside which consisted of modification to one fire door and construction of a new fire door. The applicant sought leave to amend the Application to include the new fire door. Leave was granted by the Commission to amend the application.
21. The Commission queried the public interest decision by the Director-General's Delegate to require the applicant to publish notices of the application, and noted that as a result, the determination of the application had been delayed, which in turn had raised a risk that funding for the alterations would be withdrawn. The Commission however accepts that the Director-General's Delegate acted on this occasion conscientiously, out of an abundance of caution.
22. The Commission experienced some doubt as to whether the proposed works fell within the scope of "material alteration" as defined by the Act, but proceeded on the unchallenged and untested assumption that the proposed works involved "structural alteration".

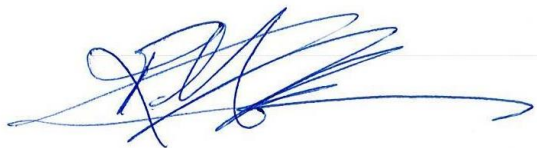
Assessment of the Amended Application

23. In considering the amended application, the Commission has had regard to the objects of the Act (s 3), the application of the public interest and community impact test (s 6), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to section 6A, and the onus on the applicant to satisfy the Commission that the approval of the application meets the public interest and community impact test (section 6B).
24. The Commission read a statement provided by the Applicant addressing the Community Impact Assessment.

25. 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.
26. The Commission finds that the proposed alteration will improve the amenity offered to patrons by protecting non-smokers from exposure to tobacco smoke from the adjoining smoking area.
27. The Commission finds that the addition of a fire door enhanced the safety of the premises for patrons.
28. The Commission is satisfied that the approval of the amended application for 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.

Notice of Rights:

29. 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.
30. 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.
31. 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.



RUSSELL GOLDFLAM
Acting Deputy Chairperson
Northern Territory Liquor Commission

On behalf of Commissioners Goldflam, Reynolds and McFarland
23 May 2018