

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *DARWIN PERFORMING ARTS CENTRE – MATERIAL ALTERATION [2023] NTLiqComm 25*

REFERENCE: LC2023/024

LICENCE NO: 80804541

APPLICANT: Darwin Performing Arts Centre

PREMISES: Darwin Entertainment Centre
96 Mitchell Street
DARWIN CITY NT 0800

LEGISLATION: Part 4 Division 2 of the *Liquor Act 2019*.

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Professor Phillip Carson (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 30 August 2023

DATE OF DECISION: 30 August 2023

Decision

1. For the reasons set out below and in accordance with section 97 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) approves an application by Darwin Performing Arts Centre (**the Arts Centre**) for a material alteration to the Darwin Entertainment Centre at 96 Mitchell Street Darwin City NT 0800 (**the licensed premises**) by extending the licensed premises to include the area bounded in green on the plan at page 20 of the document marked as Exhibit One at the hearing of the application (**the forecourt**).
2. The Commission fixes as a condition of liquor trading in the forecourt that trading may only be in conjunction with functions, performances or events specifically arranged by the management of the Arts Centre and/or for the attendance by groups specifically associated with the Arts Centre.
3. Trading hours in the forecourt will be seven days a week between 11:00 hours and midnight.

4. The Commission approves the immediate commencement of the conduct of business on the materially altered premises.

Reasons

Background

5. The Darwin Entertainment Centre, located in the Mitchell Street hospitality, tourism and entertainment precinct of the Darwin CBD, has been a prominent and indeed the pre-eminent Darwin concert and theatre venue since 1986. It comprises two theatres, a gallery and associated services and facilities, with the capacity to cater for up to 1,500 patrons.
6. The Arts Centre holds a liquor licence with a special venture authority and a late night authority, authorising it to sell liquor ancillary to the attendance at the premises of patrons of shows and events presented at premises. The licence specifically provides that liquor trading:

may only be in conjunction with functions, performances or events specifically arranged by the management of the Arts Centre and/or for the attendance by groups specifically associated with the Arts Centre.
7. The Arts Centre is currently licensed to sell liquor from four designated areas within the venue, the "Playhouse Bar", the "Studio Bar", the "Studio Theatre" and the "Art Gallery", seven days a week between 11:00 hours and 02:30 hours the following day.
8. The Arts Centre premises include the forecourt, an outdoor rectangular area 14 x 39 metres comprising an elevated concrete deck partially shaded by a colonnade, with a set of six steps along the length of the forecourt leading down to the Mitchell Street footpath. Following the advent of COVID-19, and the associated shift towards conducting public events in well-ventilated areas, the Arts Centre has, during the dry season, on occasion installed a pop-up bar in the forecourt, enabling patrons to purchase and consume food and drink in the open air. Since May 2023, the Arts Centre has applied for and been issued with nine separate special event authorities for this purpose, and has accordingly operated the forecourt as a licensed area on some 41 days. On these occasions, the Arts Centre has erected an unobtrusive temporary paling fence at the top of the steps separating the forecourt from the Mitchell Street footpath, allowing security staff to control who has access to the forecourt.
9. Apart from these occasions, the forecourt is simply a pedestrian thoroughfare open to the public.

The application

10. On 12 July 2023, the Arts Centre lodged an application with the Director for a material alteration of the licensed premises, the purpose of which was to

authorise the continued use of the forecourt in the manner described above, without having to repeatedly apply for a special event authority.

11. The Arts Centre proposes to utilise the forecourt as a licensed venue on selected occasions for a period from one hour prior to a scheduled theatre performance until after the performance's intermission. In addition, the Arts Centre proposes to operate a pop-bar in the forecourt at other times for special events such as the Garmalang Festival and the Darwin International Jazz Festival, which may also include food tents, market stalls and live music.

Consultation

12. The Acting Director, in the exercise of her discretion pursuant to s 96(4) of the Act, did not require the licensee to publish notice of the application. As required by s 96(6A) of the Act, the Director consulted with NT Police, the Department of Health and the City of Darwin regarding the application. None of these stakeholders objected to the application.

Referral to the Commission

13. On 24 August 2023, the Director referred the application to the Commission, which fixed the application for hearing on 30 August 2023.
14. The Director provided the following documents to the Commission with the referral (**the brief**):
 - a. Application for approval of a material alteration
 - b. Liquor licence 80804541 dated 12 October 2022
 - c. Detailed application, including site plan and public interest and community impact statements
 - d. Lease agreement between City of Darwin and the Arts Centre
 - e. Correspondence between licensee and Director
 - f. Correspondence with stakeholders

The hearing

15. On 30 August 2023, the application proceeded as a public hearing. The licence nominees, Ms Wixted and Ms Jones, appeared on behalf of the Arts Centre. Ms Kimber appeared for the Director. The Commission thanks them for their attendance and assistance.
16. The brief was tendered and admitted into evidence without objection.

Compliance history

17. The Director informed the Commission that the Arts Centre has no history of non-compliance with the Act or the conditions of its licence. The Commission

accepts Ms Wixted's evidence that no complaints have been received regarding noise emanating from the forecourt to date when the Arts Centre has used it for social events, some of which have included the playing of amplified background music.

Assessment

18. In accordance with section 97 of the Act, the Commission has considered the public interest and community impact requirements. In doing so, the Commission has had particular regard to the following:

- Liquor is only sold and consumed on the premises ancillary to and in conjunction with the Arts Centre's principal function of presenting performing and visual arts events.
- The Arts Centre has a long-established and good record of compliance with the Act and its licence conditions.
- The proposed alteration will do no more than simplify the process for authorising the use of the forecourt as a licensed venue, a practice that the Arts Centre has successfully developed and established in recent years.
- The Arts Centre has demonstrated its capacity to minimise any harm associated with the material alteration through the use of appropriate physical screening of the forecourt, and the engagement of security staff.

19. The Commission is comfortably satisfied that the alteration will be in the public interest, and that it will not have any adverse impact, let alone a significant adverse impact, on the community.

20. Noting that the forecourt is in a relatively open area immediately adjacent to Mitchell Street, a street often frequented by late-night revellers, the Commission has determined that the supply and consumption of liquor in the forecourt will not be permitted after midnight.

21. The Commission is also satisfied, having regard to s 95(2) of the Act, that the alteration will not result in a contravention of any law of the Territory that regulates the sale of liquor or the construction of facilities used for the sale of liquor. The Arts Centre is a non-smoking venue, and so a Designated Smoking Area will not be established, and is not required. The Commission accepts that as the material alteration will not involve any construction work, no permits or consents are required to comply with planning and building laws.

22. As required by s 3(4) of the Act, the Commission has had regard to the purposes of the Act, and considers that its decision has been made in a way consistent with those purposes.

23. For these reasons, the Commission approves the material alteration.

NOTICE OF RIGHTS

24. Section 31(1) read with section 97(4) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal. 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.

25. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director and the Arts Centre.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
4 September 2023

On behalf of Commissioners Goldflam, Carson and Fong Lim