

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR APPROVAL OF A MATERIAL ALTERATION TO LICENSED PREMISES AND PERMANENT VARIATION OF CONDITIONS OF A LICENCE

REFERENCE: LC2021/007

APPLICANT: PINT Club Incorporated

LICENCE NUMBER: 81401481

PREMISES: The PINT Club and Marrara Cricket Grounds
165 Abala Road
Marrara NT 0812

LEGISLATION: Part 4 Divisions 2 and 5 of the *Liquor Act 2019*.

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Elizabeth Stephenson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 2 March 2021

DATE OF DECISION: 17 March 2021

[ERRATUM 17 MAY 2021: At paragraph 6(a) insert: “Thursday from 17:00 hours to 20:30 hours”]

Decision

1. For the reasons set out below and in accordance with the *Liquor Act 2019* (NT) (**the Act**), the Northern Territory Liquor Commission (**the Commission**) has determined to approve a material alteration to the licensed premises of the PINT Club Incorporated (**the applicant**), to vary the licence conditions, and to issue the licensee with a community event authority.
2. The size of the licensed premises is varied by extending the current premises delineated in blue on the plan at Appendix One to this Decision Notice (**Area A**) by adding the area delineated in red (**Area B**).
3. The current takeaway authority, club authority, and late night authority, and the prescribed licence conditions set out in Divisions 20, 6 and 10 in Part 4 of the *Liquor Regulations 2019* (**the Regulations**) to which Liquor Licence 81401481 (**the licence**) is thereby subject, apply only to Area A.

4. The following existing conditions of the licence apply only to Area A:
 - a. Trading Hours
 - b. Takeaway Hours to Financial Members Only
 - c. Club Condition
 - d. Noise Management
5. A community event authority is issued only in relation to Area B, and the operation of the licence in Area B is therefore subject to the prescribed conditions set out in Part 4 Division 8 of the Regulations.
6. The following additional conditions are fixed, applicable only to Area B:
 - a. Liquor may only be sold for consumption from bars or kiosks located within the area delineated in yellow shown in the plan of the premises depicted at Appendix One to this Decision Notice.
 - b. Liquor trading hours are limited to:
 - Wednesday from 17:00 hours to 20:30 hours
 - Thursday from 17:00 hours to 20:30 hours
 - Friday from 17:00 hours to 20:30 hours
 - Saturday from 11:00 hours to 20:00 hours
 - Sunday from 11:00 hours to 20:00 hours
 - c. Liquor is only to be permitted to be sold or served in opened plastic or metal containers.
 - d. A maximum of four alcoholic drinks is permitted to be sold to any one customer at any one time.
 - e. Liquor is not permitted to be sold for consumption off the premises.
 - f. The sale, supply, possession or consumption of liquor is not permitted at events using amplified sound other than announcements or notifications (such as a quarter-time siren during an AFL game) issued in the ordinary course of or incidental to the conduct of a sporting event.
 - g. The licensee must comply with the Northern Territory Noise Management Framework Guideline issued by the Northern Territory Environment Protection Authority in September 2018 and as subsequently amended from time to time.

Reasons

Background

7. The PINT Club, which was established in 1968, is adjacent to two adjoining cricket grounds (**the Marrara Cricket Grounds**). The eastern ground is at its closest point about 60 metres from a residential precinct (**Northlakes**). A golf course fairway runs between the eastern cricket ground and Northlakes. The western ground is (apart from its border with the PINT Club) surrounded by bushland. Both grounds are operated by the NT Cricket Association, which has a Crown Lease in Perpetuity over the Marrara Cricket Grounds.
8. In February 2020, the Development Consent Authority approved the installation of six 42 m high lighted poles at the Marrara Cricket Grounds, so as to enable cricket, AFL and potentially other sporting codes to be played on the grounds at night.
9. In recent years, the applicant has sold liquor to people attending cricket matches at the Marrara Cricket Grounds pursuant to a Special Liquor Licence.

The Application

10. The applicant now seeks to have its licence footprint extended so as to enable it to sell liquor for consumption by the public at the Marrara Cricket Grounds at sporting events. To this end, the applicant prepared two applications: an application dated 15 October 2019 under section 110 of the Act to vary a liquor licence; and an application dated 16 October 2020 under section 96 of the Act for approval of a material alteration to a licensed premises. No explanation was provided to the Commission as to why two applications were made, or why the first application is dated a year earlier than the second application. In substance, the two applications seek the same thing.
11. The Commission has been provided with evidence in the form of a Fee Receipt that on 16 October 2020 a single application for a material alteration was lodged with the Director of Liquor Licensing (**the Director**). It is unclear whether the applicant intended the second application to replace or subsume the second application. In referring these proceedings to the Commission, the Director provided a Memorandum to the Commission dated 29 January 2021, in which, under the heading "*THE APPLICATION*", the Director stated that "On 30 October 2020 *an application* was lodged. *The application* is [for] Material Alteration. Permanent Variation" (emphasis added).
12. The Act does not expressly provide whether a licensee in the applicant's circumstances is precluded, required or permitted to make application under both section 96 and section 110. Section 97(3) of the Act confers power on the Commission to attach conditions to the approval of a material alteration. Section 110(5) provides that a licensee who wishes to vary the size of the licensed premises must apply under section 96 for approval to make a material alteration.
13. This is not a mere technicality. The requirements for section 96 applicants are different to those for section 110 applicants, and the matters which the Commission is required to consider when determining these two categories of application also differ.

14. In determining an application to approve a material alteration, the Commission is required to consider any objections received, any response to the objections, and the public interest and community impact requirements.
15. By contrast, before granting an application to vary conditions, the Commission must be satisfied that to do so is in the public interest and would not have a significant adverse impact on the community, after having considered, firstly, an affidavit made on behalf of the applicant disclosing persons of influence and potential beneficiaries; and secondly, the same matters as it is required to consider when determining an application for a material alteration.
16. In this case, the Commission considers that it is expedient to have regard both to the matters it is required to consider under section 97 (which regulates material alteration determinations), and sections 110(2) and 112(1) (which regulate licence condition variation determinations).

Consultation

17. In accordance with section 96(4) and section 111(1) of the Act, the Director required the applicant to publish notices of the application. Notices were published in the NT News on 11 and 14 November 2020.
18. In accordance with section 96(6) of the Act, notification was given to the chief executive officer of the local council, the City of Darwin. In addition, the Director notified the Department of Health, the Commissioner of Police and the Northern Territory Fire and Rescue Service of the application. None of these agencies raised any objections or concerns regarding the application.

The Objectors

19. Two objections were received from the public. One was from Brendan and Maria Lawson. The other was from Greta Oblonk. The objectors are Northlakes residents. No challenge was made to the standing of the objectors or the validity of their objections. The Commission finds that the objectors are persons residing in the neighbourhood of the licensed premises, and are accordingly entitled to make an objection under section 61(4)(a) of the Act. The Commission finds that the objections are made on the ground that the making of the material alteration would adversely affect the amenity of the neighbourhood of the licensed premises, which is a permissible ground for an objection under section 61(2)(a)(i) of the Act.

The Licensee's Record of Compliance

20. The licensee has been the subject of significant disciplinary actions imposed on three occasions, in 2018, 2020 and 2021, arising from numerous noise complaints by (among others) Brenda and Maria Lawson and Greta Oblonk. All of these complaints related to musical events conducted by the licensee in Area A.
21. There is no record of complaints against the licensee arising from its previous supply of liquor in Area B. However, following a complaint by Brendan Lawson about the conduct of the CareFlight Gala Ball, a function held at the Marrara Cricket Grounds on 26 August 2017, LBA Holdings Pty Ltd (an entity that does not appear to be related to the applicant) was issued with an infringement notice for breaching a condition of its

liquor licence. The Commission has not been informed of the details of the complaint or the nature of the breach, but infers from the nature of the penalty imposed that it was not treated as a serious breach by the then Director-General of Licensing.

The Referral

22. On 29 January 2021, the Director referred this matter to the Commission to be determined by way of a public hearing. Notice was subsequently given to the applicant and the objectors that the matter would be listed for a public hearing. The conduct of the hearing was delayed by a week at the request of the Lawsons, who were unavailable to attend on the originally listed date.
23. The Director provided a brief to the Commission that included the following documents **(the brief)**:
 - a. Application for approval of material alteration (16 October 2020)
 - b. Application to vary liquor licence (15 October 2019)
 - c. Affidavit and Declaration of Associates pursuant to section 54 of the Act
 - d. Search Certificate: Crown Lease in Perpetuity, Section 3094, Bagot
 - e. Site plan showing Area A (outlined in blue), Area B (outlined in red)
 - f. PINT Club Inc committee meeting minutes (28 May 2019)
 - g. Northern Territory Cricket letter of support for application (29 April 2020)
 - h. Community Impact Assessment (19 October 2020)
 - i. Public Interest Criteria (October 2020)
 - j. Brendan and Maria Lawson letter of objection (9 December 2020)
 - k. Greta Oblong letter of objection (10 December 2020)
 - l. Applicant's response to objections (22 January 2021)

The Hearing

24. Pursuant to section 23 of the Act, the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate.
25. On 2 March 2021 the application proceeded as a public hearing. Darren Howard, the applicant's manager and nominee, appeared on behalf of the applicant. Jeff Verinder appeared for the Director. Brendan Lawson appeared on behalf of the objectors. Three other neighbourhood residents, including the two other objectors, attended the hearing. The Commission thanks them all for their attendance and assistance.
26. The brief (Exhibit 1) was tendered and admitted into evidence without objection.

27. The following additional documents were admitted into evidence:

<u>Exhibit 2:</u>	Special Liquor Licence SLL1620 authorising Northern Territory Cricket Club Incorporated to sell liquor in Area B (17 April 2019 to 17 October 2019)
<u>Exhibit 3:</u>	Development Consent Authority Meeting NO. 349 Minutes (7 February 2020)
<u>Exhibit 4:</u>	Bundle of emails between applicant's representative and Jeff Verinder (18 – 24 February 2021)
<u>Exhibit 5:</u>	Current PINT Club Incorporated liquor licence (issued 1 March 2021)
<u>Exhibit 6:</u>	Brendan Lawson submission (1 March 2021)
<u>Exhibit 7:</u>	Correspondence re CareFlight Gala Ball complaint (25 November 2020)

28. Following the hearing the Commission invited the parties to make further written submissions regarding a legal issue that had not been raised at the hearing, but which the Commission considered required consideration. In response, helpful submissions were received from the applicant, Mr Verinder and Mr Lawson. This matter is discussed below, commencing at paragraph 65.

ASSESSMENT OF THE APPLICATION

29. In accordance with sections 97(1) and 112(1) of the Act, the Commission has considered the objections, the response to the objections, the public interest and community impact requirements, and the applicant's affidavit required by section 54.
30. In accordance with section 110(2) of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

The Applicant's Associates

31. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of section 54. The Commission considers that the contents of the affidavit do not give rise to a concern that the application should be refused.

The Public Interest Test

32. To determine whether the issue of the license is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:
- (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.
33. Having considered each of these objectives, the Commission is satisfied that it is in the public interest to grant the application, subject to the conditions set out at paragraph 6 above. In essence, the object and intended effect of the application is to place on a permanent footing the previous special liquor licence arrangements pursuant to which the applicant had supplied liquor to people at sporting events on the grounds adjacent to the applicant's existing licensed premises. The conditions the Commission has now determined to impose are based on and similar to the conditions of the previous special licence.
34. That said, the Commission acknowledges that with the installation of the lights that have been approved by the Development Consent Authority, it is all but inevitable that there will be greater use of Area B for evening sporting events. The Commission considers that this will result in an increased recreational benefit for the local community area, which militates in favour of a finding that the public interest will be advanced by granting the application. On the other hand, the Commission does not consider that the use of Area B for evening sporting events is inconsistent with the other objectives enumerated in section 49(2) of the Act. In reaching this view, the Commission bears in mind, firstly, that the sale and consumption of liquor in Area B will be ancillary to the principal activity of preparing for, playing and watching sporting events, and secondly, that attendance at these events will be modest, having regard to the fact there are no grandstands at either of the two cricket fields.

Whether the Issue of the Licence will have a Significant Adverse Impact on the Community

35. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must consider 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.

36. The Commission notes there are no such “other” matters prescribed by regulation.
37. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.
38. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50. The Commission has reminded itself of the guidelines and considered them in assessing the application.
39. As can be seen from the above, there are numerous matters the Commission must consider and the applicant 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”.
40. 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.
41. In considering these issues, it is also important to keep in mind that the onus is on the applicant: section 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.
42. The Commission considers that the most important of the section 49(3) matters in the context of the instant applications is (a), namely the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside in the vicinity. That issue is certainly the focus of the objections received.

43. The applicant submitted over 50 pages of supporting material addressing the public interest and community impact tests. This material was compiled by a professional consultant, no doubt at considerable expense. Generally speaking, the material was of little assistance to the Commission, and was not meaningfully directed to the real issues that the licensee must have known would be of most concern to the Commission in considering this matter, and in particular, the issue of noise. In the document titled “Public Interest Criteria”, the applicant addressed the important section 49(3)(a) factor (“risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity...”) as follows:

The granting of this application will have a nominal impact on the amenity of the local community provided that it will result in administrative changes only and will have no effect on the current licensed operations at the MCG and the Club. Furthermore, the licensee takes all reasonable steps to provide a safe environment in and around the premises, by employing good RSA practices and thus mitigating the potential for an adverse impact on the local neighbourhood.

There are residential premises located in the vicinity of the Club (approx. 300m from the venue), however these have co-existed with both licensed premises for a number of years, and management will continue to implore [sic] the current strategies at the premise [sic] to mitigate any future potential impact the operation of the venue may have on these members of the community.

44. This bland, generic and partly inaccurate statement completely fails to grapple with the well-documented fact that over the last four years the licensee’s operations have caused substantial offence, annoyance and disturbance to persons who reside in the neighbourhood, and the fact that with the installation of the lights, the use of Area B will change. The section of this document under the heading “Noise emanations from licensed premises must not be excessive” is similarly inadequate.
45. The Commission encourages applicants and the consultants they engage to familiarise themselves with the relevant provisions of the Act and any previous relevant decisions of the Commission or the Director; and to focus their applications on the actual circumstances of the case at hand.
46. The objectors drew attention in detail to the deficiencies in the applicant’s supporting material. At their core, however, the objections stem from a concern that once the lights approved by the Development Consent Authority have been installed, there will be significant disturbance to the peace and tranquility of the neighbouring residential precinct in the evening.
47. Whether or not that concern is well based, in the view of the Commission, any resulting disturbance is much more likely to be a result of noise caused by sport than noise caused by the supply and consumption of liquor. As the Commission has previously observed:

When a football ground is located within licensed premises, the noise of a crowd at a football game is not, properly considered, noise emanating “from licensed premises”. It is, rather, noise emanating from a football game.¹

¹ *South Darwin Sporting League Incorporated Application LC 2019/108* (16 January 2020) at [49].

48. The Commission does however consider that but for the licence conditions it has determined to fix, there would have been a real risk of a significant adverse impact on the community.
49. Having considered all of these matters, the Commission is satisfied, in accordance with section 110(2) of the Act, that:
 - a. Granting the application is in the public interest; and
 - b. The material alteration with condition variations will not have a significant adverse impact on the community.

Variation of Licence Conditions

50. The conditions set out at paragraphs 6.b), 6.c) and 6.e) above were, in substance, proposed by the applicant, and the Commission considers them to be non-contentious.
51. The condition set out at paragraph 6.d) above is identical to a condition in the applicant's previous Special Liquor Licence for Area B, and is a condition found in many similar liquor licences regulating the sale of liquor at sporting and similar events. The Commission considers this condition to be non-contentious.
52. The condition set out above at paragraph 6.f) above addresses the objectors' concern that Area B would be used for non-sporting events, as occurred in 2017 with the CareFlight Gala Ball. The Commission of course has no power to impose restrictions on the use by Northern Territory Cricket on property over which it holds a Perpetual Crown Lease. However, this condition ensures that any such events are not ones at which liquor will be sold or consumed under this licence. The Commission notes that the applicant did not object to the inclusion of this condition in the licence.
53. Anyone who seeks to hold a ball, concert or other non-sporting entertainment event in Area B that includes the consumption of liquor would need to apply for a liquor licence for that purpose. The Commission considers that it would be in the public interest that neighbourhood residents be provided with an opportunity to object to any such application, and accordingly the Commission expects that the Director would require the applicant to publish notice of the application.
54. As a further measure to address the objectors' concern regarding noise, the Commission has imposed the condition set out at paragraph 6.g) above.
55. In its decision to approve the installation of lights in Area B, the Development Consent Authority stated:

There are statutory obligations under the *Waste Management and Pollution Control Act 1988* (the Act) that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under section 12 of the Act.²

² Exhibit 3.

56. Section 12 of the *Waste Management and Pollution Control Act 1988* requires a person to take all reasonable and practicable measures to prevent or minimise environmental harm. Section 4 defines “environmental harm” to include “environmental nuisance”, which in turn is defined to include “an adverse effect on the amenity of an area that is caused by noise and unreasonably interferes with or is likely to unreasonably interfere with the enjoyment of the area by persons who occupy a place within the area.”
57. In a recent decision to take disciplinary action against this licensee, the Commission held that although section 93 of the Act (“a licensee must not cause or permit undue and unreasonable noise that affects the amenity of the neighbourhood”) and section 160(1)(m)(iii) of the Act (the licensed premises must not be used in a way that causes “annoyance or disturbance to persons residing in the vicinity of the premises”) “use different language, in relation to noise levels they have the same meaning”.³
58. Similarly, the Commission is of the view that although the *Waste Management and Pollution Control Act 1988* environmental nuisance standard set out above uses different language, in relation to noise levels it too has the same meaning as the standard set by the *Liquor Act*.
59. Arguably, it is unnecessary to fix a noise condition in the liquor licence for Area B because, as the Development Consent Authority has noted, the applicant is already required to comply with the General Environmental Duty, which includes an obligation to prevent or minimise environmental nuisance, including noise. However, having regard to the lengthy history of disputation between the applicant and neighbouring residents in relation to noise, and the licensee’s unsatisfactory record of compliance with noise standards, the Commission considers that it is appropriate to fix a noise condition in relation to Area B.
60. In its written response to the objections, the applicant’s representative apparently conceded that the existing Noise Management condition should apply to Area B:
- Should the application receive favourable consideration, the PINT Club as the licensee would be accountable for noise in this area. All conditions imposed on the PINT Club licence would be applicable to the MCG (Area B)⁴
61. However, the Commission is of the view that the licensee’s existing Noise Management condition is unsuitable for Area B. This condition was designed to apply to Area A in relation to its operation as a live music venue. In the view of the Commission, it would be impracticable for the licensee to apply the strict requirements of the existing Noise Management condition to sporting events in Area B.
62. Instead, the Commission considers that in the circumstances it is appropriate to fix a condition for Area B that complements and is based on the regulatory regime established under the *Waste Management and Pollution Control Act 1988*.
63. The condition set out at paragraph 6.a) above addresses a specific concern raised by the objectors that liquor sales points should not be located in the part of the eastern cricket ground closest to Northlakes. The licensee and Mr Lawson submitted their respective proposals in relation to this issue, and the Commission considered them

³ *PINT Club Incorporated Disciplinary Action LC2020/042* (18 January 2021) at [21].

⁴ Exhibit One, p. 112.

both when settling on the area within which it has determined that the sale (as distinct from the consumption) of liquor will be permitted.

A New Authority to Issue

64. A further condition proposed by the applicant (**the general public proposal**) was that Area B patrons be exempt from the current condition that liquor only be sold, served or supplied to a member of the PINT Club, a member of another club with reciprocal rights granted by the club, a guest of a member who has signed in the guest, or a person attending a club function (only 6 such functions may be held in any 6 month period, and they are subject to the Director's prior consent).⁵
65. At the hearing, Mr Verinder on behalf of the Director appeared to endorse the general public proposal. In his written submissions, Mr Lawson objected to it on the ground that it would "remove a control measure", and open the floodgates for noisy evening entertainment events open to the general public in Area B. The Commission considers that it has addressed this specific concern by the conditions it has imposed as discussed above.
66. In principle, the Commission considers that the general public proposal is reasonable: it would be arguably impracticable and unfair to require everyone attending sporting events at the Marrara Cricket Grounds to go through the rigmarole of joining the PINT Club or signing in as a visitor or guest.
67. However, this particular condition is prescribed by Division 6 of the Regulations for all licensees operating with a club authority. The PINT Club licence operates with a takeaway authority, a late night authority and a club authority. No party has suggested that the Commission is precluded from fixing different trading hours for different areas of the premises, a common feature of many liquor licences in the Northern Territory: see paragraph 4.a) above. Similarly, no party submitted that there was any difficulty in fixing a condition, as proposed by the applicant, that no takeaway sales be permitted in Area B, and the Commission agrees: see paragraphs 3 and 4.b) above. Likewise, by directing that the late night authority not apply to Area B (see paragraph 3 above), the Commission has exempted the licensee from compliance with Division 10 of the Regulations ("Late night authority conditions") in relation to the operation of the licence in Area B, where the late night sale, service or consumption of liquor will not in any case be permitted.
68. It follows that the Commission is of the view that it can structure a licence so that a particular authority is inapplicable to a particular area within the licensed premises. However, section 48 of the Act provides:
- The Commission may issue a licence and one or more authorities to an applicant in accordance with this Division.
69. The Commission construes this to imply that at least one authority must be issued to every area on licensed premises. In other words, liquor can only be lawfully sold in an area if such conduct is authorised by a liquor licence to which is attached at least one of the 22 authorities established by section 47 of the Act.

⁵ See Regulations 39, 41 and 42 of the Regulations.

70. The Commission has considered whether it could give effect to the general public proposal simply by deeming members of the public attending a sporting fixture at Area B to be PINT Club members. However, in the view of the Commission that would be inconsistent with the clear intent of the executive in prescribing Regulation 39(1)(a) of the Regulations, and accordingly, even if such a course were within the power of the Commission, which is doubtful, it would be inappropriate to take it.
71. The Commission has instead decided to vary the licence by providing that the licensee's club authority is inapplicable to Area B. However, having already come to the conclusion that neither of the other two authorities attached to the licence will be applicable to Area B, the Commission considers that this course is only available if the Commission issues another authority specifically applicable to Area B.
72. A similar issue has previously arisen on at least two occasions when the Commission has considered applications for liquor licences by sporting bodies.⁶ In those matters the Commission expressed the view that none of the available authorities appeared to be particularly suitable for their intended use, but as those applications were determined under the *Liquor Act 1978*, there was no occasion for the Commission to issue any authorities, and it was unnecessary for the Commission to express a view as to which authority it considered should be issued.
73. The Commission notes that when those two licences were subsequently converted by the Director pursuant to section 324 of the Act, the Director issued a special venture authority in each case. Regulation 93 of the Regulations provides that licensees operating with a special venture authority are only permitted to supply liquor to patrons who have booked in advance the services to which the liquor is ancillary. If the Commission were to issue a special venture authority to the applicant, the applicant would only be permitted to supply liquor at cricket matches or other sporting events to patrons who had pre-booked their attendance. That would, in the view of the Commission, be impracticable, onerous and unfair.
74. Following the hearing, the Commission wrote to the parties about this issue, and invited submissions from them. The applicant responded by proposing that it be issued with a community event authority. Mr Lawson maintained his general objection to the application, and in particular his concern that if the application were granted, Area B would be used for entertainment events open to the general public. He submitted that if the application were granted, Area B should be made subject to the prescribed club authority conditions.
75. Notwithstanding his apparent support for the general public proposal at the hearing, on behalf of the Director Mr Verinder strenuously opposed the issue of a new authority. He stated:

It is my view and strong submission that any application for an additional authority to attach to an existing licence must be the subject of a fresh application and cannot be considered in this application. This has a different application fee and requires a fresh CIA and other supporting documents to address specifically the application for a new authority and is required at law to be advertised and required at law for relevant stakeholders to be notified. This clearly has not taken place at the moment and the Director and Commission has

⁶ See *ARLC NT Limited Application* LC2019/18 (20 January 2020) at [22]; *Netball NT Incorporated Application* LC2019/127 (6 January 2020) at [4] – [5].

no power to waive those requirements. Whether there are fresh objectors to a new authority is unknown until the end of the objection period.

76. There is force in this submission. The Commission's power to issue an authority or authorities attached to a licence is conferred by section 48 (in Part 3 Division 4 of the Act) "in accordance with this Division". The application under consideration, whether made under section 96, section 110, or both, is an application (or applications) under different Divisions (Part 4 Division 2 and Part 4 Division 5 respectively) of the Act. Neither of these Divisions contains a provision that expressly confers power on the Commission to issue an authority to be attached to a licence.
77. Applicants for the issue of a licence and one or more authorities under Division 4 are required to take the following steps:
- Submit a section 54 affidavit disclosing persons of influence and potential beneficiaries (section 52(3)(a))
 - Submit a draft public notice (section 52(3)(b))
 - Submit a public interest and community impact statement (section 52(3)(c))
 - Pay the prescribed application fee (section 53(3)(e))

In this case, the applicant submitted a section 54 affidavit, a draft public notice and a public interest and community impact statement. The applicant paid an application fee of \$100, the prescribed application fee for a material alteration.⁷ An application for a variation of condition attracts the same fee. Arguably, the applicant should have been required to pay two fees of \$100, one for each of its two applications, but perhaps the Director waived this requirement. The prescribed application fee for "licence and community event authority" is \$20. The prescribed fee for "adding one or more authorities to an existing licence, other than special event authority" is \$200. In all the circumstances, the Commission is satisfied that the applicant has complied with the section 53(3) requirements applicable to Division 4 applicants, including the section 53(3)(e) requirement.

78. The Director must inform the Department of Health, the Commissioner of Police and the local council of a Division 4 application (section 56(4)). In this case, the Director informed each of these stakeholders of the application.
79. A public notice of a Division 4 application must include, among other things, a list of which authorities are being applied for (section 57(4)(b)). However, the Director may exempt an applicant for a licence with only a community event authority from the public notice requirements (section 57(2)(a)). In this case a public notice was published. It did not specify (and in the circumstances set out above, could not have specified) that a community event authority was being sought. In all the circumstances, the Commission is satisfied that there has been substantial compliance with the section 57 requirements applicable to Division 4 applicants.
80. If an objection is made to a Division 4 application, the Director must notify the applicant of the objection, and any response by the applicant must be provided within 14 days

⁷ Exhibit 1, page 16. Regulation 7, Schedule 1 of the Regulations prescribes a fee of 83 revenue units. The value of a revenue unit for the period 1 July 2020 to 30 June 2021 is \$1.21.

(section 62). Section 318 provides that the Director may extend that time limit. In this case, the Director extended the time limit to 22 January 2021. The applicant provided its response on that date. The Commission is satisfied that the applicant complied with the section 62(2) requirement applicable to Division 4 applicants.

81. Finally, the Commission is required to determine an application made under Division 4 for the issue of a licence or authority within 28 days of the expiration of the time limit on the applicant to respond to objections. Section 318 provides that the Commission may extend this 28 day period. The Act does not set a time limit for the Commission to make its decision in response to an application for a material alteration or to vary licence conditions. In each case, the Commission is simply required to give a decision notice “as soon as practicable after making a decision” (section 97(4) and section 112(3) respectively).
82. It was impracticable for the Commission to convene a hearing by 19 February 2021 (28 days after the applicant was required to respond to the objections). The first listed hearing date was adjourned at the request of one of the parties, without opposition by any of the other parties. The hearing proceeded on 2 March 2021. The parties were requested to provide further submissions in relation to the issuing of a further authority by 12 March 2021. If this matter had been an application made under Division 4, the Commission would have considered it to be fair and reasonable to extend time for the making of its decision to 19 March 2021.
83. If the submissions made on behalf of the Director were to be accepted, the Commission considers that it would be required to refuse the application and invite the applicant to make a fresh application, a process that the Director has submitted would take 3 to 4 months. In the view of the Commission, that would be unreasonable, unfair to the applicant, not in the public interest, and contrary to the clear intention of the legislature to establish a scheme for the expeditious determination of applications for liquor licences and authorities.
84. Section 6(3) of the *Liquor Commission Act 2018* provides:

The Commission has the power to do all things that are necessary or convenient to be done for, or incidental to, the performance of its functions.
85. In the unusual circumstances of this case, the Commission is satisfied that although no application under Division 4 has been made, considered together the applications before the Commission have in substance been made, processed and determined “in accordance with this Division”, as required by section 48 of the Act. The Commission therefore considers that it may issue an authority to the applicant.
86. If the Commission is wrong about this, the Commission is satisfied that its decision is one made in the exercise of its power to do all things convenient to be done for or incidental to the performance of the function assigned to it by the Act to determine applications under Part 4 of the Act.
87. Accordingly, the Commission rejects Mr Verinder’s submission set out at paragraph 75 above that the Commission has no power to issue a new authority to the applicant in the circumstances of this case. Moreover, the Commission considers that it should exercise that power: the granting of a community event authority applicable to Area B does not, in the view of the Commission, affect the substance of the applications lodged by the applicant with the Director, the substance of the public notification of the

applications, the substance of the Director's consultations with stakeholders, or the substance of the objections to the applications by neighbourhood residents. Rather, resort to the granting of a new authority is a formal step that the Commission considers is appropriate to give effect to a discrete component of the applicant's original proposal.

88. As noted above at paragraph 72, the Commission considers that none of the available authorities is particularly suitable for liquor licences operated at sporting venues such as the Marrara Cricket Grounds. For the reasons given at paragraph 73 above, the Commission does not consider it appropriate to issue a special venture authority in this case. The Commission accepts the applicant's submission that a community event authority is the preferred option, and should be issued.
89. Section 47(1)(p) of the Act provides that a community event authority:

authorises the licensee to sell liquor to patrons at events organised by the licensee on a regular but infrequent basis for consumption on or in the licensed premises
90. Conditions for this authority are prescribed by Regulation 50 of the Regulations, which requires the licensee to give written notice to the Director at least 14 business days before holding the event, to make a reasonable range of non-alcoholic beverages available for purchase by patrons, and to make complimentary tap water available to patrons. The applicant has indicated its capacity and willingness to comply with Regulation 50. The Commission notes that the first of these conditions may operate to some extent as a "control measure", as sought by Mr Lawson.⁸
91. On behalf of the Director it was submitted that this authority is not well suited in this case because the cricket matches at which liquor will be sold are not events organised by the licensee, but by Northern Territory Cricket. That is so, but there are also competing considerations. Firstly, it is anticipated that other codes will also use the premises for events organised by other sporting bodies, and it would be highly impracticable, if not unlawful, for each individual organiser to obtain a separate liquor licence over the same venue. Secondly, as Mr Verinder submitted during the hearing, it is in the public interest that the PINT Club hold a single liquor licence over its current premises and the Marrara Cricket Grounds, because in the event of any breach of conditions, the club's entire licence will be at risk. This will provide this licensee with a particularly strong incentive to operate the licence in strict compliance with its conditions.
92. The Commission has therefore decided to issue a community event authority to the applicant, which will apply only in Area B.
93. The Commission recommends that the Northern Territory Government, in its forthcoming technical review of the Act, establish a new category of authority tailored to the circumstances of licensees seeking to supply liquor to members of the public at sporting events.

⁸ See paragraph 65 above.

The Objects of the Act

94. Section 3(4) of the Act provides that in performing its functions, the Commission must have regard to the primary and secondary purposes of the Act.
95. Throughout its consideration of this matter, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that its decision is consistent with the purposes of the Act.
96. For these reasons, the Commission has determined that the application should be granted, with the conditions set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

97. Section 31(1) read with sections 97(4) and 112(3) of the 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* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
98. 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 objectors.

Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
17 May 2021

On behalf of Commissioners Goldflam, Stephenson and Cannon

