

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: OWN INITIATIVE VARIATION TO CONDITIONS OF PEPPIMENARTI CLUB LICENCE [2024] NTLiqComm 14

REFERENCE: LC:OMV:2023-001

LICENSEE: Peppimenarti Club Association Incorporated

PREMISES: Peppimenarti Club
Peppimenarti
NT 0822

LICENCE NUMBER: 80304129

NOMINEE: Regina Wilson

LEGISLATION: Section 113 of the *Liquor Act 2019* (NT)

CONSIDERED BY: Mr Russell Goldflam (Chairperson)
Dr Sean Taylor (Health Member)
Mr Bernard Dwyer (Community Member)

DATE: 25 March 2024

DECISION

1. Pursuant to s 113 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to vary the conditions of liquor licence 80304129 (**the licence**) held by the Peppimenarti Club Association Incorporated (**the licensee**) for a trial period of six months, following which the operation of the licence will be further reviewed, as follows.
2. The hours of operation be:
 - Tuesday 17:00 to 20:00
 - Wednesday 17:00 to 20:00
 - Friday 16:00 to 20:00
 - Saturday 16:00 to 20:00

3. The licensee must maintain an attendance book and require all persons to sign it when they enter the premises, including the following details:
 - a. Name
 - b. Residential address
 - c. Date and time of entry to the premises
 - d. Status (member, guest or visitor)
4. The licensee must only serve alcoholic drinks in open cans.
5. The licensee must not sell a person who is purchasing their second or subsequent alcoholic drink for the day unless the person returns to the licensee the empty can that the person had last consumed.
6. The licensee must not serve a person more than four drinks in a single transaction.
7. The licensee must display the National Health and Medical Research Council Australian guidelines to reduce health risks from drinking alcohol at the premises in appropriate language.
8. The licensee must not provide persons with credit by lending them money.
9. The licensee must establish and maintain a list of persons prohibited from entry to the licensed premises (**the banned list**), including the following details for each person on the banned list:
 - a. Name
 - b. Residential address
 - c. Period of prohibition
 - d. Reason for prohibition
10. The licensee must record on the banned list all persons who:
 - a. the licensee has banned from entering the premises;
 - b. a police officer has informed the licensee is on the Banned Drinkers Register; or
 - c. a police officer has informed the licensee is prohibited from entry to the Daly River Inn.
11. The licensee must not sell, supply or serve liquor to any person who is on the banned list, and must exclude or remove from the premises any person who is on the banned list.

12. The licensee must make the banned list available upon demand for inspection by a police officer or licensing inspector.
13. The licensee must exclude or remove from the premises any person who is intoxicated, which means that their speech, balance, coordination or behaviour appears to be noticeably impaired by the consumption of liquor.
14. The licensee must ban from entering the premises for at least one month any person who is excluded or ejected from the premises for being violent, quarrelsome or disorderly.
15. The licensee must ban from entering the premises for at least three months any person who purchases liquor at the premises which they then supply or attempt to supply to persons who are not on the premises.
16. At the request of police following, where practicable, consultation with senior members of the community, the licensee must cease the sale of liquor and close the bar during any period of violent, quarrelsome or riotous conduct within the community.
17. The licensee must provide for persons on the premises cooked hot food free of charge from 18:00 hours to 19:00 hours during each day when the premises are operating.
18. Within six months of being notified of the varied conditions, the licensee must provide to the Director of Liquor Licensing a plan for the provision of recreational activities, entertainment and additional cooked food at the premises.
19. Within three months of being notified of the varied conditions, the licensee must install a CCTV system in accordance with the Code of Practice established by the Northern Territory Liquor Commission for CCTV system in licensed premises, and maintain and operate the CCTV system from then on.
20. Within six months of being notified of the varied conditions, the licensee must provide to the Director of Liquor Licensing a training plan for Board members, including:
 - a. Governance of an incorporated association;
 - b. Licensee's requirements under the *Liquor Act 2019*;
 - c. Supervision of manager and staff; and
 - d. Prevalence and nature of alcohol related harm in the community

REASONS

21. On 16 October 2023, following an extended period of unrest and violence in Peppimenarti, some of which was alcohol-fuelled, NT police wrote to the Director of Liquor Licensing (**the Director**) proposing that the conditions of the licence be varied. The office of the Director immediately commenced discussions with the licensee, inviting it to apply for a variation of its licence conditions. The licensee gave appropriately serious consideration to this invitation, but did not accept it. Accordingly, on 7 November 2023 a Delegate of the Director requested the Commission to consider using under s 113 of the Act to vary the conditions of the licence. On 10 November 2023 the Commission met and determined to commence a s 113 inquiry.
22. On 20 November 2023, the Commission conducted a hearing in Peppimenarti. Also in that week, the Commission conducted hearings in Wadeye and Nauiyu.
23. On 17 January 2024, in accordance with s 113(2) of the Act, the Commission issued a Notice of Proposed Variation of Licence Conditions (**the Notice**),¹ including the background to and reasons for the proposed variations, and an invitation to the licensee to submit a response to the proposed variations within 28 days. The Commission also invited the Commissioner of Police and the Director to respond to the proposed variations.
24. On 21 February 2024 the Commission granted a request on behalf of the licensee to extend the time allowed for it to respond to the Notice to 29 February 2024.
25. The Commission received and has considered responses to the Notice from NT Police, the Director and Mr Ray Whear (**Mr Whear**) on behalf of the licensee.
26. The Commission sent the Notice, including the invitation to the licensee to respond, to Mr John Wilson, the chairperson of the Board of the licensee, at his nominated Deewin Kirim email address. When no response was received within the designated 28 days, Licensing NT suggested to the Commission that it contact Mr Whear, which it did. In his response on behalf of the licensee, Mr Whear, the CEO of the Deewin Kirim Aboriginal Corporation, stated:

I write this response with delegated authority on behalf of the Peppimenarti Club Licensee Ms Regina Wilson. Unfortunately I have been unable to consult the Club Board due to most of the board members being dispersed throughout regional NT (escaping community violence.)

¹ LC:OMV:2023-001, accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0006/1328793/lc2023-001-proposed-variation-peppimenarti.pdf

27. The Commission appreciates the candid, conscientious and obviously sincere response from Mr Whear, who the Commission accepts was authorised by the licensee's nominee to submit the response. However, the Commission would have preferred to receive a response from the Club Board itself, and the absence of a response from the Board raises a concern for the Commission about the Board's capacity to comply with the conditions the Commission has decided to impose. In these circumstances, it is all the more important that the Commission will review the licence conditions again in six months.
28. On 20 March 2024 the Director notified the Commission that the licensee had that day, in compliance with s 105 of the Act, given the Director Licensing written notice of the nominee's telephone number and a new email address. The Commission commends the licensee for addressing this issue.
29. In his response to the Notice, the Director supported all of the variations proposed by the Commission.
30. All of the proposed variations were supported by the other responding parties except the variations regarding:
- a. trading hours (paragraph 2)
 - b. the purchase of subsequent drinks (paragraph 5)
 - c. inclusion of persons on the BDR on the banned list (paragraph 10(b))
 - d. the minimum banning period for ejected patrons (paragraph 14)
 - e. the closure of the bar at the request of police (paragraph 16)
31. In considering the variations it has determined to impose, the Commission has had regard to the public interest and community impact requirements set out in s 49 of the Act. In the view of the Commission, each of the ten public interest objectives set out at s 49(2) is relevant to one or more of the twenty conditions the Commission has decided to impose. For example, the Commission has had regard to:
- the objective set out at s 49(2)(e) when fixing the condition at paragraph 18;
 - the objective set out at s 49(2)(g) when fixing the condition at paragraph 20;
 - the objective set out at s 49(2)(h) when fixing the condition at paragraph 8.
32. Noting that in the view of the Commission there are no community impact assessment guidelines issued under s 50 in force (s 49(3)(i)), and there is no other matter prescribed by regulation (s 49(3)(j)), in considering the conditions it has decided to impose, the Commission has had regard to all of the remaining eight community impact matters set out at s 49(3).
33. The Commission now turns to discuss the above-listed contentious matters.

Trading hours

34. The licensee's current trading hours are Tuesday, Wednesday, Friday and Saturday, from 17:00 to 20:00. During the hearing, which was attended by several members of the licensee Board of Management, the issue of trading hours was discussed at some length. Persons involved in the management of the licence made various suggestions, including the opening of the club on Thursday, and the extension of hours of trade. As set out in the Notice, following this discussion the hearing was adjourned to enable the Board to meet to consider the issue. On the resumption of the hearing, the Board informed the Commission that it had decided to seek an extension of trading by opening earlier one hour on Friday and two hours earlier on Saturday. Notably, the Board decided not to seek an additional trading day.

35. In the Notice, the Commission adopted the Board's proposal. The Commission did so for several reasons. Firstly, the Board's proposal appeared to reflect a consensus that had been arrived at by the significant proportion of Board members and other community members who attended the hearing. Following the delivery of the Board proposal to the Commission, no-one spoke up against it. Secondly, having formed the view, as stated in the Notice, that "the Club has the potential to become an important amenity to help heal community division, strengthen social bonds and promote cultural harmony",² the Commission considered that it should support the Board by respecting its views and its authority. Thirdly, as stated in the Notice, the club's financial viability is uncertain, and the Commission considered that a modest increase in operating hours may make the club more profitable. Fourthly, the Commission considered that this small increase in trading hours was unlikely to lead to a substantial increase in alcohol-related harm.

36. In their response, NT Police, after commenting that the club serves not only residents of Peppimenarti but also residents of Wadeye and other communities in the region, stated:

Any increase in the availability of alcohol, including extending the club's opening hours, brings with it the consideration for an increase in harm. Police therefore do not support the additional trading hours on Fridays and Saturdays and would seek that the licence remain at the limit of three hours trading per day, four days a week.

37. The Commission readily accepts that whenever it is dealing with an application to extend hours, it must consider whether, and if so, how much additional harm will be caused. Section 113(3)(c) of the Act, which is engaged in this matter, requires the Commission to consider the public interest and community impact

² Notice, at [36]

requirements before varying the conditions of the licence. The first of the public interest objectives set out at s 49(2) of the Act is “minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor”. Among the community impact matters set out at s (3) of the Act is “the risk of harm from the excessive or inappropriate consumption of liquor”.

38. It does not, however, necessarily follow, as NT Police appear to have submitted, that any increase in trading hours should be rejected as a matter of course.
39. On behalf of the licensee, Mr Whear objected to the additional proposed second hour of trading on Saturday, on the ground that it “could result in potential unruly behaviour and place an excessive burden on security personnel and staff”. The licensee supported the opening of the club an hour earlier on Friday and Saturday.
40. The Commission has decided to adopt a compromise position and vary the trading hours by allowing the club to open an hour earlier on Friday and Saturday, instead of, as the Board had asked the Commission to do, an hour earlier on Friday and two hours earlier on Saturday.

Purchase of subsequent drinks

41. On behalf of the licensee, Mr Whear opposed the proposal that patrons returning for a second or subsequent drink return the empty can they last consumed, on the basis that it is “simply unmanageable”. This condition was proposed by the Commission at the suggestion of the manager of the club, at a hearing attended by a substantial group of club patrons, none of whom spoke against it. The Commission is satisfied that it is a suggestion worth trialling. If it turns out to be unmanageable, it can be modified when the conditions are reviewed in six months.

Inclusion of persons on the BDR on the “banned list”

42. NT Police stated in their response:

Police support the banned list condition especially the condition incorporating the Banned Drinker Register information. Additionally, police would request consideration of a technological solution to the recording of the banned list such as the sign-in process at the Walkabout Lodge in Nhulunbuy.

43. On the other hand, on behalf of the licensee, Mr Whear agreed to the maintenance of a banned list that comprises persons who the licensee has banned from entering the premises, but opposed the inclusion of the list of persons who a police officer has informed the licensee are on the Banned Drinkers Register or have been prohibited from entry to the Daly River Inn.

44. The licensee submitted that BDR enforcement is a “clearly a Police responsibility”. The Commission rejects that submission. The responsibility to enforce the BDR is shared between various agencies, including police, licensees and courts. The licensee submits that persons on the BDR are not generally restricted from patronising licensed premises. That is correct, but in the view of the Commission, as a matter of principle, it is reasonable that a person who is subject to an order that prohibits them from consuming alcohol be prohibited from entering licensed premises to drink alcohol.
45. The licensee complains that this measure “specifically targets Aboriginal people in the West Daly region”. That is also correct, although the Commission considers that this measure is calculated not so much to “target” Aboriginal people in the West Daly region as to protect them. Section 49(3)(b) requires the Commission to consider the geographic area that would be affected when determining the community impact of the conditions it imposes, and s 49(3)(c) requires the Commission to consider the people or community who will be affected by its decision. The Commission has done so.
46. The licensee also objects on the basis that club staff will be put at “serious risk from the response by the banned individuals”, and that police fail to attend the club 99% of the time when required. In the view of the Commission, any such persons would pose an even higher risk to staff and other patrons after being allowed entry and consuming liquor. At the time of the hearing, two police officers were resident in Peppimenarti, and plans are underway to construct a \$19 million police compound. The Commission does not accept that police only attend the club 1% of the time when their presence is required.
47. Finally, the licensee objects because, Mr Whear says, police have previously refused to provide the licensee with details of persons on the BDR, and have advised the licensee that the BDR is inapplicable to on-premises trading. Whether these allegations are true or not, an issue that it is unnecessary for the Commission to decide, it is clear that NT Police now support the provision of a list of Peppimenarti residents who are on the BDR to the licensee.
48. The Commission’s proposal for the establishment of the banned list is derived from the house rules it observed at the Daly River Inn. After inspecting those premises and conducting a hearing at the adjacent community of Nauiyu, the Commission is satisfied that those house rules operate satisfactorily.
49. The Commission has determined to fix this condition in the terms proposed in the Notice.

Minimum banning period for ejecting patrons

50. In the Notice, the Commission proposed that a patron ejected for being violent, quarrelsome or disorderly be banned from entering the premises for at least three months. The licensee submits that in these circumstances the period of the ban should be at the discretion of the licensee, and proportionate to the seriousness of the “offence”. The Commission considers that there is force in the licensee’s submission. However, in order to reduce the risk to club staff of being pressured to “go easy” on a particular patron who is ejected in these circumstances, and the associated risk of being subject to allegations that they have “gone easy” in favour of some patrons but not others, the Commission considers that a mandatory minimum period of suspension is appropriate and reasonable.
51. The responding parties all support the Commission’s proposal that a mandatory minimum ban of three months be applied to patrons who supply or attempt to supply liquor they have purchased at the premises to persons who are not at the premises. Similarly, the responding parties all support the Commission’s proposal that the licensee be required to exclude or remove from the premises, but not to ban, a person who is intoxicated. In the view of the Commission, generally speaking being violent, quarrelsome or disorderly is more serious than merely being intoxicated, but less serious than engaging or attempting to engage in secondary supply. (Of course, in some instances, an episode of violent, quarrelsome or disorderly behaviour may be extremely serious.)
52. Having considered these matters, the Commission has decided to fix a minimum mandatory period of one month as the period for which a person excluded or ejected from the club for being violent, quarrelsome or disorderly must be banned.

Closure of the club at the request of police

53. The licensee submitted that it agreed to this proposed condition “provided that Police are actually present and do actually consult with the Licensee and Elders”.
54. It is common ground that police do not always attend the premises when trouble occurs. Given the litany of unrest and violence in the community in recent times, as briefly summarised in the Notice, which itself quoted at length accounts given by Mr Whear, the Commission considers that to confine the operation of this condition to occasions when police are actually present would expose patrons and staff of the club, as well as the broader Peppimenarti community, to significant avoidable risk. Indeed, in the view of the Commission, on those occasions when police are available to attend the club during an episode of unrest, it is less likely that they will have reason to resort to the extraordinary measure of requesting the club to close down, because by being at the scene, they may well be able to restore order. Conversely, on some occasions of unrest when police are unable to attend,

the use of this condition may well be one of the few effective actions that police can take to reduce the risk of further unrest and consequential harm.

55. The Commission has determined to impose this condition in the terms proposed in the Notice.

Investigation of complaints

56. The Commission referred in the Notice to information provided to the Commission by NT Police of three alleged incidents in which persons consumed liquor at the club and then travelled to Palumpa or Wadeye where, while intoxicated, committed acts of domestic violence while armed. In its response the licensee stated that some of these allegations were “totally false and baseless”, and went on to complain “that Police appear to apportion unwarranted accountability on the Club to cover up their total failure to stem the flow of black market grog across the West Daly region”.

57. Notwithstanding the rather combative tone of this response, it is not without substance. NT Police made a complaint to the Director against the licensee arising from one of the above-mentioned incidents. The complaint alleged that a person who had engaged in a serious altercation requiring the attendance of police at Palumpa had been served liquor by the Peppimenarti Club while intoxicated. On 9 February 2024 a delegate of the Director, after conducting an investigation, issued a decision notice dismissing the complaint, because the allegation that the person involved had been drinking at the club on the day in question was not substantiated by either an eye witness or the attendance records at the club.

58. The Commission readily agrees that on the evidence available, this complaint had to be dismissed. However, in the view of the Commission, the quality of the investigation would have been significantly strengthened had there been CCTV footage available. The condition set out above at paragraph 19 is fixed in order to assist Licensing NT to monitor compliance by the licensee with the Act, the *Liquor Regulations 2019* and the conditions of the licence.

The impact of the Wadeye permit scheme changes

59. In the Notice, the Commission stated that in addition to proposing to vary the licence conditions, it had determined to:³

engage with stakeholders with a view to identifying measures that can be taken to deter, detect and prevent the secondary supply of alcohol – or, as it is commonly called, grog-running – to remote communities both in the Daly River district and elsewhere

³ Notice, at [8(c)]

60. In addition to fixing the condition set out at paragraph 15 above, which is specifically aimed at deterring secondary supply by persons who have purchased liquor from the licensee, the Commission has consulted with the office of the Director in relation to the administration of Part 8 Division 6 (“Permissions and permits”) in Wadeye. The Commission welcomes the Director’s recently announced changes to the Wadeye permit scheme, which the Commission anticipates will lead to a significant reduction in secondary supply to residents of Wadeye. The Commission also anticipates that as a consequence, more Wadeye residents will travel by road to Peppimenarti to drink at the club, particularly during the dry season. Additional patronage of the premises will assist the club’s financial viability, but will also bring significant challenges and risks. The Commission considers that the variations it has made to the conditions of the licence will be of significant assistance to the licensee in meeting those challenges and mitigating those risks.

The objects of the Act

61. Section 3(4) of the Act provides that in exercising its powers and performing its functions, the Commission must have regard to the primary and secondary purposes of the Act.

62. The Commission considers that the variation of conditions it has made is consistent with the purposes of the Act.

NOTICE OF RIGHTS

63. Section 31(1) read with s 113(4) 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.

64. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the licensee, the Director and the Commissioner of Police.



Russell Goldflam

DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
25 MARCH 2024

On behalf of Commissioners Goldflam, Taylor and Dwyer