

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

LICENCE NUMBER: 80803214

REFERENCE: LC2019/085

LICENSEE: The Friends of Araluen Incorporated

PREMISES: Araluen Centre for Arts & Entertainment
61 Larapinta Drive
ALICE SPRINGS NT 0871

APPLICANT: The Friends of Araluen Incorporated

LEGISLATION: Section 119(2), Parts I, IV and V of the *Liquor Act 1978*.

HEARD BEFORE: Ms Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 17 June 2019

DATE OF DECISION: 17 June 2019

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act 1978* (“the Act”), the Commission has determined to approve the material alteration to the licensee’s licensed premises as sought by The Friends of Araluen Incorporated (“the Applicant”).

Reasons

Background

2. The Licensee currently holds an “On Premises” liquor licence for the premises known as Araluen Arts Centre.

3. The substance of the application is to extend the licensed premises for to incorporate Witchetty's, the Circus Lawns, Mural Courtyard and the area in front of Araluen building being the access road and western carpark area. All other conditions of the liquor licence will apply to the area if approved.
4. The application for material alteration to the licensed premises of the Applicant was lodged with the Director-General of Licensing ("Director-General") on 18 December 2018. On 4 June 2019, following consultation, together with an assessment by Licensing NT of the application, a Delegate of the Director-General of Licensing referred the application to the Commission for hearing pursuant to sections 119(6A) and 50(d) of the Act.
5. The Director-General provided the Commission with a brief of evidence ("the brief") including:
 - Application for material variation dated 27 April 2019;
 - The applicant's existing liquor licence number 80803214 effective 2 May 2019;
 - Community Impact and Public Interest Assessment statement;
 - Affidavit for the purpose of s26A of the Act deposed by Michael Smith on 25 February 2019;
 - Diagram of proposed licence area;
 - Evidence of publication of newspaper notice on 9 April 2019 and evidence of display of "green sign";
 - Correspondence between Licensing NT and Alice Springs Town Council;
 - Correspondence between Licensing NT and NTFRES.

Consultation

6. Pursuant to s119(3) of the Act, if the Director-General considers it to be in the public interest, she may require an applicant for a material alteration to publish notice of the application. In this instance, the Director-General, in the exercise of her discretion, determined that the applicant publish notice of the application. The application was advertised in the Centralian Advocate on 9 April 2019, and 12 April 2019. The objection period ended on 13 May 2019. No objections were received.
7. As required by s119(5) of the Act, on 8 April 2018, the Director-General notified the Alice Springs Town Council that an application had been lodged. No response was received from Alice Springs Town Council.
8. Northern Territory Fire and Rescue Service was also notified of the application as part of the Licensing NT'S investigation into the application and on 8 April responded via email stating it has no issues with the material alteration for Araluen Arts Centre to increase the licensed area.

9. Licensing NT informed the Commission that there are no negative compliance concerns recorded regarding Araluen Centre for Arts & Entertainment at the time of referral to the Commission.

Hearing

10. Whilst section 53(1)(a)(ii) of the Act requires the Commission to give a minimum notice of 7 days of the particulars of the public hearing and provide relevant documents, on this occasion, in view of the restricted timeframe, the Commission has exercised its authority under section 127(1) of the Act to abridge the time specified in section 53(1)(a)(ii) to enable the application to be considered and determined ahead of a specific date for which The Friends of Araluen Incorporated are seeking an extended licence area.
11. The public hearing proceeded on 17 June 2019.
12. Ms McIntyre appeared in behalf of the applicant and Mr Verinder appeared on behalf of the Director-General. The Commission thanks them for their attendance and assistance.
13. The brief was tendered and admitted into evidence without objection. The second notice in the Centralian Advocate on 12 April 2019 was also tendered. No further documentary evidence was adduced.

Assessment of the Application

14. In considering the application, the Commission has had regard to the objects of the Act (s3), the application of the public interest and community impact test (s6), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to s6A, and the onus on the applicants to satisfy the Commission that the approval of the application meets the public interest and community impact test (s6B).
15. The Community Impact Statement indicates that the increased area of the footprint has been utilised in the past and approval has been granted on a case by case basis. This is evidenced through previous Liquor Commission Decision Notices.
16. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, this Commission must apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;

- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the Local Government Act; and
 - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. liquor may be sold;
 - v. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;

- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

17. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.

18. The Commission, having considered the matters set out above, assesses the community impact of the proposed alteration as being low.

19. Based on the information presented, this Commission is, on balance, satisfied that the approval of the 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 and as outlined at the start of this Decision Notice.

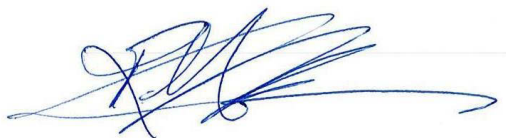
20. The Commission notes that the application is solely to extend the footprint of the licensed premises, and not to change any other conditions of the licence. To avoid doubt, the Commission notes that the existing condition of the licence headed "Formal Function" ("The above hours are only in conjunction with a prearranged formal function") applies to the extended licence footprint, and directs that the amended licence be drafted accordingly.

Notice of Rights

21. 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 s119(8) of the Act is specified in the Schedule and is a reviewable decision.

22. 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.

23. 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

MEMBER, NORTHERN TERRITORY LIQUOR COMMISSION
18 June 2019

On behalf of Commissioners Goldflam, Reynolds and McFarland