

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTERS: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE: LC2020/034

LICENCE NUMBER: 81404283

LICENSEE: Dinah Beach Cruising Yacht Association Incorporated

PREMISES: Dinah Beach Cruising Yacht Association
68 Frances Bay Drive
DARWIN CITY NT 0800

APPLICANT: Dinah Beach Cruising Yacht Association Incorporated

NOMINEE: Ms Wendy McCallum

OBJECTOR/S: Nil

LEGISLATION: Section 96 of the *Liquor Act 2019*.

HEARD BEFORE: Mr Richard Coates (Chairperson)
Dr Phillip Carson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 11 August 2020

DATE OF DECISION: 11 August 2020

Decision

1. For the reasons set out below and in accordance with section 96 of the *Liquor Act 2019* (the Act), the Commission has determined to approve the material alteration to the liquor licence of Dinah Beach Cruising Yacht Association Incorporated (the Licensee) in the terms sought by the Licensee, being to extend the liquor licensed area to adjacent land within the club as depicted in and referred to as Attachment D in the Hearing Brief, for one day each year to accommodate the annual Viking Funeral event.

2. Club Conditions (a) – (iv) of the licence will remain and the following special condition will be inserted:
 - (v) Where one of the events provided for in special condition (iv) is identified in the notice to the Director of Liquor Licensing as the Viking Funeral event, then provided there has been no other such event held by the Licensee in that same calendar year, if the event is approved the licensed premises will be extended for the duration of the event to cover the area delineated in an approved liquor licensed site plan attached to the licence.

Reasons

Background

3. On 19 June 2020, an application was lodged by Wendy McCallum on behalf of the Licensee for a material alteration to their liquor licence to extend the licensed premises to allow for the annual event known as the Viking Funeral. This year's event was planned for 19 September 2020 but is unlikely to take place because of ongoing concerns with the COVID-19 pandemic.
4. The Licensee's proposal is to permanently amend the licence to extend the liquor licensed area for the annual Viking Funeral event which usually takes place in July. This event has been held regularly over the past 30 years and has previously been accommodated through the grant of a temporary variation of licence conditions or material alteration.
5. The Licensee has been encouraged by Licensing Officers to seek a permanent variation of the licence such that the licensed footprint of the premises will be administratively extended each year to enable the Licensee to hold the Viking Funeral event upon giving the Director written notice of its intention to hold the event on a particular date, rather than having to apply for a temporary material alteration each year.
6. In support of the application, the following documents have been provided:
 - Map of proposed liquor licensed area;
 - Map of leased area showing the proposed extended liquor licence area all contained within Lot 6475;
 - Public Interest Criteria responses;
 - Community Impact Statement;
 - Smoking management plan for the extended area.

Publishing of Application and Consultation

7. The Director determined that there was insufficient public interest to publish the application. Accordingly there were no objections by members of the public.
8. The following stakeholders were invited to provide comment on the application:
 - The Chief Executive of the Department of Health
 - The Commissioner of Police;
 - The City of Darwin
9. The Department of Health replied via email dated 1 July 2020 stating that it had no adverse comment.
10. The Northern Territory Police replied via email dated 6 July 2020 stating it supports the application contingent to several conditions being:
 - All existing licence conditions remain in place;
 - The extension applies to the annual Viking Funeral event only;
 - The event is held once in each calendar year on a Saturday to be identified;
 - Notification to invoke this variation is made to Licensing NT at least 14 days prior to the event;

The notification also mentions the Applicant's long standing licence and high level of compliance and good conduct.

11. The City of Darwin replied via email dated 3 July 2020 stating it had no objections.

Compliance History

12. A check of the records held at Licensing NT do not reveal any negative compliance history for the Licensee and in particular for the Viking Funeral event in past years where temporary extensions of the licensed area, similar to the one proposed, have been conducted. The Licensee has recognised the increasing popularity and size of this event and has placed a cap on attendees with tickets now required to attend.

Public Hearing

13. The matter was listed for public hearing on 11 August 2020. Ms McCallum appeared for the Licensee and Mr Jeff Verinder appeared on behalf of the Director. The Commission thanks them for their attendance and assistance.

Assessment of the Application

14. Although the Licensee originally envisaged the holding of this year's Viking Funeral in September, Ms McCallum advised the Commission that because of ongoing uncertainty over the extent of COVID-19 restrictions and public safety concerns associated with the pandemic, the Licensee was reluctant to commit to holding the event this year. The club however was still seeking a permanent variation to its licence condition so that when it sought permission from the Director to hold a function "hosted by the Licensee and attended with or without charge, by members of the public, pursuant to Regulation 42(1)(d) of the Liquor Regulations 2019 (Regulations) and that function was specified as the annual Viking Funeral event", that the material alteration of premises that is being sought, could come into effect for the duration of the event.
15. Mr Verinder advised the Commission that the Director supported and had indeed encouraged the Licensee to make the application, so as to provide greater certainty for the club and reduce the administrative effort by the Director's staff which has in the past had to process applications for a temporary licence variation or material alteration every year.
16. Furthermore, whilst the club has been well served by the professionalism and expertise of its current nominee, Ms McCallum, who has submitted the required application in a timely manner each year, the Commission is well aware of the difficulties that can arise with the loss of corporate knowledge when key officials move on or there is a significant change in a club's board of management. Accordingly, there is a benefit both to the club and the regulating authority in having the process associated with obtaining approval for this iconic event clearly set out within the conditions of licence.
17. The Viking Funeral has been held at these premises for approximately 30 years and has provided a popular means by which to showcase the club's activities and to raise funds. The Licensee has a proven record of conducting this event in a safe and responsible manner. The application to extend the licensed footprint is aimed primarily at providing a safe viewing point for patrons to observe the ceremonial burning of a replica viking boat in the club's waterway channel. This is a family friendly event which also features costume competitions for children and adults, together with shows by the Darwin Pipe Band and the Top End Bow Hunters.
18. In considering the application, the Commission has had regard to the purposes of the Act (section 3), the application of the public interest and community impact test (section 49), the Community Impact Assessment Guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to section 50, and the onus on an applicant to satisfy the Commission that the approval of the application is in the public interest and will not have a significant adverse impact on the community (section 51).

19. Based on the evidence presented, the Commission finds on balance, that there is no evidence to suggest any potential harm or health impact may be caused to the community through the granting of this application, that it is in the public interest and that it will not have a significant adverse impact on the community.
20. Accordingly, for the reasons outlined in this Decision Notice the Commission has determined to approve this application for a material alteration to the Licensee's premises to enable it to hold its annual Viking Funeral event.

Notice of Rights:

21. Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by NTCAT and the following persons (*relevantly*) may apply to NTCAT for a review:
 - in all cases – the Director;
 - in the case of a decision regarding an application – the Applicants; and
 - in the case of a submission, complaint or objection that was the subject of a decision – the person who made the submission, complaint or objection.
22. In accordance with the substance of section 31 of the Act any application for review of this decision must be lodged within 28 days of the date of this decision.
23. Section 97(4) of the Act requires the Commission to give a decision notice, after making a decision under subsection (2), to the Applicant.



RICHARD COATES
Presiding Member
Chairperson
20 August 2020

On behalf of Commissioners Coates, Carson and Cannon