

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *GODINYMAYIN YIJARD RIVERS ART AND CULTURAL CENTRE MATERIAL ALTERATION [2023] NTLiqComm 33*

REFERENCE: LC2023/027

LICENCE NUMBER: FLL1010

APPLICANT: Katherine Regional Cultural Precinct Ltd

PREMISES: Godinymayin Yijard Rivers Arts and Culture Centre
Lot 3238 Stuart Highway
Katherine NT 0850

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

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Mr Bernard Dwyer (Health Member)
Dr Sean Taylor (Health Member)

DATE OF HEARING: 20 September 2023

DATE OF DECISION: 20 September 2023

Decision

1. For the reasons set out below and in accordance with section 97 of the *Liquor Act 2019* (NT) (**the Act**), the Northern Territory Liquor Commission (**the Commission**) has determined to approve an application by Katherine Regional Cultural Precinct Ltd (**the applicant**) for a material alteration to liquor licence FLL1010 (**the licence**) on premises at the Godinymayin Yijard Rivers Arts and Cultural Centre located at Lot 3238 Stuart Highway Katherine NT 0850 (**the licensed premises**).
2. The Commission approves the following alterations to the licensed premises:
 - new outdoor amphitheatre with park like landscaping;
 - new entry area;
 - outdoor deck with cafe services and new bar area;
 - expansion of the retail shop; and
 - new office.

3. The footprint of the altered licensed premises is designated by the area bounded in red on the site plan at page 54 of Exhibit One tendered at the hearing of the application.
4. The applicant is authorised to continue to conduct business comprising the sale, supply, service and consumption of liquor within the footprint of the existing licenced premises during the course of the works being conducted to alter the premises.
5. However, no such business may be conducted on the altered licensed premises except in accordance with arrangements for which the Director of Liquor Licensing (**the Director**) has given the applicant written approval, following the provision of documentary evidence to the satisfaction of the Director that the applicant has obtained the necessary fire safety and building approvals, including a certificate of occupancy, in respect of the altered premises.

Reasons

Background

6. The Godinymayin Yijard Rivers Arts and Cultural Centre promotes itself as “the flagship project for artistic and cultural development in the Katherine Region... showcasing performance projects, local exhibitions and increased access for local communities to national touring product”.¹ The Centre also has a café and shop.
7. The applicant, a company limited by guarantee with members and directors drawn from the Northern Land Council, the Northern Territory Government and the Katherine Town Council, manages the Godinymayin Yijard Rivers Arts and Cultural Centre.
8. Stage One of the Centre was completed in 2012, and works are currently underway for Stage Two, incorporating the construction of an outdoor amphitheatre and stage, and the enlargement of its food and beverage service areas and facilities.

The Application

9. On 20 June 2023, the applicant lodged an application for a material alteration.

Consultation

10. As required by the Director pursuant to s 96 of the Act, on 10 August 2023 notice of the application was published in the Katherine Times, and on a sign displayed at the premises.
11. Also in accordance with s 96 of the Act, notification of the application was given to the Department of Health, NT Police and the Katherine Town Council, as well as the Northern Territory Fire and Rescue Service.

¹ Accessed at <https://gyracc.org.au/about/>

12. The application elicited no objections, and the consulted stakeholders were supportive of the material alteration, subject to compliance by the applicant with prescribed building and fire safety certification, and a reminder by police to ensure that liquor kept on the premises is securely stored. The Commission notes that reg 19(2) of the *Liquor Regulations 2019* (NT) requires all liquor licensees to store liquor securely to prevent access by the public when the licensed premises are closed.

The licensee's record of compliance

13. The Director informed the Commission that since being granted a liquor licence over the licensed premises in 2017, the applicant has operated in compliance with the Act and the conditions of its licence.

The referral

14. On 11 September 2023, the Director referred the application to the Commission to be determined by way of a hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 20 September 2023.

15. The Director provided the following documents to the Commission with the referral (**the brief**):

- a. Application for material alteration
- b. Liquor licence FLL1010
- c. Building Permit
- d. Building Fire Safety Report
- e. Public Interest and Community Impact Assessment
- f. Site plan
- g. Probity documents for licence nominee
- h. Correspondence with stakeholders

The hearing

16. On 20 September 2023, the application proceeded as a public hearing. Ms Patricia Aspey, a nominee of the licence and the administration manager of the applicant, appeared on behalf of the applicant, and Ms Amber Sayers-Hunt appeared for the Director. The Commission thanks them both for their attendance and assistance.

17. The brief was tendered and admitted into evidence without objection.

18. At the conclusion of the hearing, the Commission stated that it had determined to approve the material alteration, and would publish its reasons in due course, which it now does.

ASSESSMENT OF THE APPLICATION

19. The Commission finds that the proposed alterations are “material alterations” to the licensed premises as defined by s 95 of the Act, because they will result in both a significant increase in the area of the premises used for the sale, supply, service and consumption of liquor, and a significant change to the external appearance of the premises.
20. As such, the alterations must not be made without the approval of the Commission. Although the alterations are already well advanced, with an anticipated completion date in December 2023, the Commission readily accepts that the dominant purpose of the alterations is not to sell liquor, but to provide more facilities for the staging of cultural performances and events.
21. Although the licence authorises the sale of liquor from 11:00 hours to 23:59 hours every day, the Commission accepts the applicant’s evidence² that in practice, alcohol is only served on the licensed premises at pre-programmed events comprising live performances, exhibition openings, venue hires and private events, and is not available for “walk-in” visitors to the gallery to purchase. This supports the Commission’s view that the effect, if any, of the alterations on the sale and consumption of liquor on the licensed premises is likely to be minor and incidental.
22. In these circumstances, despite s 98 of the Act, which prohibits the making of a material alteration without the prior approval of the Commission, the Commission makes no criticism of the applicant for commencing the alterations before applying to the Commission for approval.
23. The Commission is satisfied that the alteration of the licensed premises will not result in a contravention of or non-compliance with the laws described at s 95(2) of the Act.
24. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with s 96 of the Act.
25. The Commission notes that although the alteration will more than triple the footprint of the licensed premises, there will be no significant increase in the size of the only bar on the premises from which liquor will be served. The bar will be located centrally within the premises, enabling it to be used to serve patrons who are attending functions, events and performances in the nearby galleries, the existing function room, or the outdoor amphitheatre currently under construction.
26. The alterations also involve the construction of a new storeroom, loading dock and ablution block outside the footprint of the expanded licensed premises.

² Exhibit One, p 56

27. Section 97(1) of the Act requires the Commission to consider whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

Whether issuing the licence is in the public interest

28. 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 s 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.

29. Having considered each of these objectives, and having particular regard to the limited use by the applicant of the liquor licence as set out above at paragraph 21, as well as the increased cultural, recreational and tourism benefits the alterations will bring to the local community area, the Commission is satisfied that it is in the public interest to issue the licence.

Whether the issue of the licence will have a significant adverse impact on the community

30. 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 following matters set out at s 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 s 50;
- (j) any other matter prescribed by regulation.

31. The Commission notes there are no such “other” matters prescribed by regulation, and is of the view that there are no current s 50 guidelines in force.

32. Having considered these matters, the Commission is of the view that the proposed material alterations are likely to have a significant beneficial impact on the community.

The objects of the Act

33. Section 3(4) of the Act provides that in performing its function to decide whether to approve the material alteration, the Commission must have regard to the primary and secondary purposes of the Act.

34. The Commission considers that the approval of this application is consistent with the purposes of the Act.

35. 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

36. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal. Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

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



Russell Goldflam
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
12 October 2023

On behalf of Commissioners Goldflam, Dwyer and Taylor