

NORTHERN TERRITORY LIQUOR COMMISSION
AMENDED¹ DECISION NOTICE

MATTER: *KINGS CANYON RESORT APPLICATIONS*
[2024] NTLiqComm 4

REFERENCE: LC2023/039

APPLICANT: Discovery Holiday Parks Pty Limited

PREMISES: Kings Canyon Resort
Luritja Road
Watarrka National Park, NT 0870

LICENCE NUMBER: 80204644

LEGISLATION: Part 3 Division 4, Part 4 Division 2 and Part 4 Division 5
Liquor Act 2019.

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 10 January 2024

DATE OF DECISION: 29 January 2024

Decision

1. For the reasons set out below, in accordance with the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to:
 - a. issue a special venture authority with liquor licence 80204644 (**the licence**) held by Discovery Holidays Park Pty Limited (**the licensee**) over the Kings Canyon Resort (**the licensed premises**);
 - b. cancel the restaurant authority, lodging authority and late night authority that have previously been issued with the licence;
 - c. vary the conditions of the licence; and

¹ This Decision Notice was amended on 28 February 2024, to correct the area of the premises. Paragraph 5.a. was amended to include reference to Exhibit Six, an aerial photograph with coordinates depicting the "Bush Camp".

- d. approve material alterations to the licensed premises.
2. The following existing Special Conditions are cancelled:
 - a. The conditions under the heading “Trading Hours”;
 - b. The condition under the heading “Bona Fide Lodgers”; and
 - c. The conditions under the heading “Additional Conditions”.
3. The conditions of the licence will include those authority conditions set out in Part 4 of the *Liquor Regulations 2019* (**the Regulations**) at:
 - a. Division 1 (“Standard operating conditions”); and
 - b. Division 19 (“Special venture authority conditions”).
4. The following additional conditions are fixed:
 - a. Liquor may only be sold, supplied, served or consumed as an ancillary part of the services provided to the licensee’s customers who have booked in advance accommodation, camping facilities, meals, tours or transportation from the licensee.
 - b. Liquor may only be sold, supplied and served during the following hours:
 - i. In the Carmichael Crag restaurant, between 11:00 and 24:00;
 - ii. In the Kings Canyon Bar and Grill (formerly known as “The Thirsty Dingo”), between 11:00 and 24:00;
 - iii. At the Pool Bar, between 12:00 and 18:00;
 - iv. At the Luritja Lookout (also known as “The Sunset Viewing Area”) and the Bruce Munro Light-Tower Installation, between 05:30 and 08:30 and between 17:00 and 20:00;
 - v. At Carmichael Crag restaurant, the Kings Canyon Bar and Grill, the Luritja Lookout, the Bruce Munro Light-Tower Installation and other temporary open-air locations within the licensed premises for the purpose of pre-booked special functions, events or meals provided by the licensee, between 05:30 and 24:00; and
 - vi. In accommodation units and permanent luxury tents, by stocking a minibar or by room service, between 05:30 and 24:00.
 - c. Liquor may only be consumed during the following hours:
 - i. During the hours of operation set out at paragraph 4(b) above in the Carmichael Crag restaurant, the Kings Canyon Bar and Grill,

the Pool Bar, the Luritja Lookout, the Bruce Munro Light-Tower Installation and at temporary open-air locations; and

- ii. At any time at guest and staff accommodation units; and at any time at tents, caravans, campervans, motorhomes and barbecue and dining areas located within camping areas.
 - d. The licensee must prominently display on the premises information about the National Health and Medical Research Council Australian guidelines to reduce health risks from drinking alcohol.
 - e. The licensee must provide a substantial range of non-alcoholic and low-alcohol beverages.
5. The following material alterations are approved, with conditions:

Expansion of premises footprint

- a. The Commission approves the expansion of the footprint of the licensed premises to the three non-contiguous areas bounded in red and labelled “Campground (Full)” and “Resort” in the aerial photographs marked as Exhibit Three at the hearing of the application, and the area labelled “Bush Camp” in the aerial photograph marked as Exhibit Six.

Kings Canyon Bar and Grill

- b. The Commission approves the material alterations that have already been carried out to the Kings Canyon Bar and Grill as depicted at pages 111 to 115 and pages 166 to 168 of the bundle of documents marked as Exhibit One at the hearing of the application (**the Kings Canyon Bar and Grill works**), comprising:
 - i. Alteration to the entrance to the facility, with a reduction from two double doors to one double door;
 - ii. Installation of concertina doors to enclose the covered open-air area of the facility;
 - iii. Construction of two new kitchens, including a pizza kitchen; and
 - iv. Construction of a new bar.
- c. The Commission notes that this approval does not apply to or include the proposed works depicted at page 111 of Exhibit One in the area shaded blue and marked “Later stage”, or the proposed works depicted on page 167 of Exhibit One in the area shaded pale dull green and marked “NEW BAR” and “FEMALE”.
- d. Within 28 days of receipt of this decision notice the licensee must provide documentary evidence to the satisfaction of the Director of Liquor

Licensing (**the Director**) that the required planning, building, food safety, smoking safety and fire safety approvals have been issued for the Kings Canyon Bar and Grill works.

- e. In the event that the licensee does not comply with the foregoing condition, liquor must not be sold, supplied, served or consumed in the Kings Canyon Bar and Grill until the Director has given written approval for the sale, supply, service and consumption of liquor to resume on being satisfied that the licensee has supplied documentary evidence that the required planning, building, food safety, smoking safety and fire safety approvals have been issued for the Kings Canyon Bar and Grill works.

Luritja Lookout

- f. The Commission approves the material alterations that have already been carried out at the Luritja Lookout as depicted at pages 66 to 69 and page 162 of Exhibit One (**the Luritja Lookout works**), comprising:
 - i. The construction of decking and railings;
 - ii. The construction of a toilet block; and
 - iii. The installation of a bar and storage area in a modified shipping container.
- g. Within 28 days of receipt of this decision notice the licensee must provide documentary evidence to the satisfaction of the Director that the required planning, building, smoking safety and fire safety approvals have been issued for the Luritja Lookout works.
- h. In the event that the licensee does not comply with the foregoing condition, liquor must not be sold, supplied, served or consumed at the Luritja Lookout until the Director has given written approval for the sale, supply, service and consumption of liquor to resume on being satisfied that the licensee has supplied documentary evidence that the required planning, building, smoking safety and fire safety approvals have been issued for the Luritja Lookout works.

Notation

- i. The Commission notes that it considers that the other completed, partially complete or planned construction, renovation and refurbishment works detailed in Exhibit One do not constitute material alterations as described by s 95(1) of the Act, and do not require the approval of the Commission.

Reasons

Background

6. Kings Canyon in Watarrka National Park is an iconic tourist site that prior to the COVID pandemic received close to 300,000 visitors annually. It is possible to “do” Kings Canyon as a day trip, but this requires driving either three hours there and back from Yulara, or three and a half hours there and back from Alice Springs, so a more attractive option is to spend the night at the nearby Kings Canyon Resort, which is about halfway between Mparntwe/Alice Springs and the Uluru Kata Tjuta National Park.
7. During the restrictions imposed in response to the pandemic, when visitor numbers dipped below 100,000 annually, the licensee, which had acquired the licensed premises in March 2021 in a rather dilapidated and rundown state, took the opportunity to commence substantial refurbishment, renovation, refreshment and expansion of the resort. Those works are ongoing, and the licensee plans to eventually offer a broad range of integrated accommodation, dining and visitor experiences to up to 1,000 guests at a time. A distinctive feature of the redevelopment has been the installation of an immersive audio-visual array of 69 solar-powered “light-towers” by British artist Bruce Munro, who also designed the Field of Light Uluru.
8. As a part of this development project, to which the licensee has committed tens of millions of dollars, the licensee now seeks to reconfigure its existing liquor licence, with the aim of making it simpler to operate and more suited to the existing and anticipated needs of its guests and staff.

The Application

9. On 1 August 2023, the licensee’s solicitors lodged three interrelated applications with the Director:
 - a. An application for a single special venture liquor authority intended to replace the existing medley of authorities;
 - b. An application for variation of licence conditions, intended to impose a uniform set of conditions to replace the existing piecemeal assortment of conditions that apply to different facilities within the resort; and
 - c. An application for retrospective approval of material alterations that have already been carried out, as well as the consolidation of the footprint of the licensed premises to allow more flexibility in the delivery of resort liquor-related services to guests.

Consultation

10. On 30 September 2023, in accordance with s 57 of the Act, notice of the applications were published. No objections to the applications were received.

11. In accordance with s 56 of the Act, notification was given to the Department of Health and NT Police. In addition, the Director consulted with the Central Land Council and Northern Territory Fire and Rescue Services. None of these stakeholders notified the Director of any substantial concerns.

The licensee's record of compliance

12. The licensee holds 34 liquor licences across Australia, including six in the Northern Territory: two caravan parks in Darwin and Alice Springs, the Glen Helen outback lodge (which is currently closed for infrastructure upgrade), two military accommodation facilities in the Top End and the Kings Canyon Resort.
13. The licensee has not previously been the subject of disciplinary action by the Director, although, as will be discussed below, it appears that the licensee may have contravened the Act by carrying out its development plans at the Kings Canyon Resort before applying for approval for the material alterations involved.

The referral

14. On 4 December 2023, a delegate of the Director referred these applications to the Commission to be determined by way of a public hearing, which proceeded at the first available date convenient to the parties, 10 January 2024.
15. The Director provided documents to the Commission with the referral (**the brief**), including:
 - a. Applications for a liquor authority, variation of licence conditions, and approval of material alterations
 - b. Master Plan for the development of the Kings Canyon Resort
 - c. Business Plan
 - d. Site plans for Bruce Munro Light-Tower Installation
 - e. Maps of the area
 - f. Architectural drawings and renderings for Kings Canyon Bar and Grill, "container bar" and decking at Luritja Lookout, and accommodation units
 - g. Certification of works already completed at Kings Canyon Bar and Grill
 - h. Plan of proposed licensed area footprint
 - i. Sample food and beverage menus
 - j. ASIC company extract for licensee
 - k. Financial data for the premises, including construction costs
 - l. Letter confirming licensee's entitlement to occupy the premises
 - m. Affidavit and Declaration of Associates pursuant to s 54 of the Act
 - n. Public Interest and Community Impact Assessment summary pursuant to ss 49 to 52 of the Act
 - o. Correspondence with stakeholders

The hearing

16. On 10 January 2024, the application proceeded as a public hearing in Darwin and, by videolink, to Alice Springs. Dr Ford of counsel instructed by Mr Andrew Giles appeared on behalf of the applicant. Mr Wood appeared for the Director.

The Commission thanks them for their attendance and considerable assistance in this relatively complicated matter.

17. The brief was tendered and admitted into evidence without objection.
18. In addition and also without objection the Commission admitted into evidence the following documents:
 - G'Day Group corporate structure.
 - Detailed plan of proposed licensed premises footprint
 - Photographs of the Bruce Munro Light-Tower installation at sunrise
 - Photographs of Watarrka Health Centre
19. The applicant called two witnesses to give evidence: Mr Ryan White (G'Day Group legal manager), who appeared in person; and Mr Bradley Kerkman (G'Day Group Senior Regional Operations Manager), by telephone from Adelaide.

ASSESSMENT OF THE APPLICATIONS

Public notice and consultation

20. The Commission is satisfied that the licensee complied with its obligations to give public notice of the applications in accordance with s 57 (with respect to the application for a new authority), s 111 (with respect to the application to vary licence conditions) and s 96 (with respect to the application to approve the material alterations) of the Act.
21. The Commission is also satisfied that the Director complied for the most part with his obligations under ss 56, 111 and 96 to consult with stakeholders. However, the Director did not comply with ss 56(4)(c) and 111(3)(c), which required the Director to notify the local council – in this case, the MacDonnell Regional Council – of the applications. At the hearing Mr Wood suggested to the Commission that this non-compliance may be explicable by the fact that previously, when the Director had attempted to consult with the MacDonnell Regional Council about liquor licence applications in its area, instead of providing a substantive response the local council had referred the Director to the Central Land Council, which represents the interests of traditional owners in the region. As noted above, the Director did consult with the Central Land Council. However, regrettably (as will be discussed below) the Central Land Council did not respond.
22. The Commission reminds the Director that these statutory provisions are expressed in mandatory terms, and the Commission expects the Director to comply with them in future. This does not of course prevent the Director from consulting the relevant Land Council in appropriate matters, and indeed the Commission encourages this practice.

23. In *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; 194 CLR 355, the plurality stated:²

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.

24. Applying this approach, the Commission considers that in the circumstances of this matter the non-compliance by the Director with ss 56(4)(c) and 111(3)(c) is not such as to deprive the Commission of its jurisdiction to hear and determine this application. In the circumstances, the Commission considers that this departure from the statutory procedure does not justify delaying the determination of these applications.

The application for a special venture authority

25. Although the premises are already subject to a liquor licence, the provisions in Part 3 Division 4 of the Act in relation to applications for a new liquor licence are also applicable to an application for a new authority. Accordingly, pursuant to s 59(3) of the Act, the Commission has been required to consider:

- a. the applicant's affidavit in relation to persons of influence, potential beneficiaries and associates;
- b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
- c. the financial stability and business reputation of the body corporate;
- d. the general reputation and character of the secretary and executive officers of the body corporate;
- e. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;

² At [91], per McHugh, Gummow, Kirby and Hayne JJ

26. Having regard to:

- a. the fact that the licensee already holds several liquor licences in the Northern Territory;
- b. the relatively limited scope of this application, which the Commission accepts is unlikely to substantially affect the manner in which liquor is supplied or consumed at the licensed premises; and
- c. the copious material provided by the licensee in support of the application;

for the purpose of this application the Commission is readily and comfortably satisfied that the licensee, the licence nominee and the licensed premises are all suitable, fit and proper.

27. The more challenging task for the licensee, the Director and the Commission in relation to this application has been to identify which authority or combination of authorities provides the “best fit” for the proposed operation of the licence, within the statutory framework established by the Act and the Regulations.

28. The licence is currently issued with restaurant, BYO, lodging and late night authorities.

29. The licensee wishes to surrender the restaurant authority. The Commission accepts that maintaining the restaurant authority would be contrary to the licensee’s interest for the following reasons:

- a. The conditions prescribed by Part 4 Division 15 of the Regulations are in some respects inconsistent with the service model the licensee seeks to implement. For example, the licensee wants its guests to be able to have an alcoholic drink at the bar of the Kings Canyon Bar and Grill without a meal.
- b. Some of the amenities and facilities currently provided by the licensee are inconsistent with the regulatory framework that prescribes restaurant authorities. For example, reg 80(2) prohibits the use of the word “Bar” to identify, advertise or market the licensed premises. Nevertheless, one of the restaurants on the premises is now titled the “Kings Canyon Bar and Grill”. Another amenity on the premises is identified as “The Pool Bar”. Although the Commission heard evidence that The Pool Bar is not currently in operation, the licensee presumably wishes to be at liberty to re-open it at some stage.
- c. For the benefit of both staff and guests, the licensee wishes to maintain a single, uniform set of licence conditions across the entire premises.
- d. The prescribed hours of trading for restaurants would pose an unreasonable fetter on the licensee’s proposed service model.

30. On 19 November 2021, when the *Liquor Legislation Amendment Act 2021* came into force, BYO authorities were disestablished, and accordingly, the BYO authority that appears in the current licence has no legal effect.

31. A licence with a lodging authority is subject to reg 65(1) of the Regulations, which prescribes the following condition:

Liquor may be served, sold or supplied to a guest staying at the licensee's accommodations **only** by way of the following methods [emphasis added]:

- (a) a minibar stocked with liquor in the guest's room or unit;
- (b) room service of liquor delivered to the guest's room or unit

Note for subregulation (1)

A licensee who holds a restaurant authority or small bar authority may sell and serve liquor in the restaurant or bar.

In the view of the Commission, if the licensee, as it proposes, is to operate without a restaurant authority, the restriction expressly stated in this condition would be highly inconvenient for the licensee.

32. The late night authority permits the licensee to continue to trade until 02:00, but the current licence conditions are configured so that this authority is only engaged in the Kings Canyon Bar and Grill after midnight on Tuesday and Friday nights. In any event, the licensee wishes to have its liquor service closing time across the resort restricted to midnight, and has offered to surrender the late night authority.

33. In place of the existing mix of authorities, the licensee proposes a special venture authority, which s 47(1)(i) of the Act describes as an authority "which authorises the licensee to sell liquor to patrons as an ancillary part of services provided to the patrons by the licensee". Licences with a special venture authority are subject to the conditions prescribed by regs 92 and 93 of the Regulations.

34. Regulation 92 limits the hours of operation of a special venture authority licence to between 05:30 and 24:00. That period would enable the licensee to provide sunrise tours and activities at the Luritja Lookout and the nearby Bruce Munro Light-Tower Installation, or special functions such as a wedding breakfast to be complemented by the supply of a glass of champagne to guests.

35. Regulation 93 requires that liquor "not be sold, served or supplied to anyone other than customers of the licensee's services who have booked those services in advance". The effect of this condition is that visitors who have not booked accommodation at the resort or who have not booked a meal or tour in advance would not be permitted, for example, to buy a beer at the Kings Canyon Bar and Grill. The licensee wants a special venture authority, but does

not wish its business to be fettered in this way. However, the Commission doubts that it has the power to fix conditions inconsistent with those prescribed by the Regulations, and considers that as a matter of principle, it should not do so. It is for this reason that the Commission has determined to fix the condition, including the words “booked in advance” set out at paragraph 4.a) above.

36. At first blush, it may appear that a special venture authority is not particularly suited to premises that include restaurants, bars and lodgings. However, the Commission accepts the licensee’s submission that out of the 22 different authorities established by s 47 of the Act, this particular authority is the best available fit for these licensed premises. There is, moreover some precedent for issuing this authority to a licensee of this type. In 2020 the Commission issued a special venture authority to Bullo River Station.³ Special venture authorities have also been issued to various hunting, fishing and safari lodges, such as the Finnis River Lodge. All of these facilities are considerably smaller in size than the Kings Canyon Resort, and offer a correspondingly narrower range of accommodation and dining options. However, like the licensee, they are all self-contained tourist facilities in remote locations offering an integrated experience to guests within which the service of liquor is incidental rather than fundamental. The Bullo River Station and Finnis River Lodge licences were also issued with lodging authorities. For the reasons set out above, the Commission does not consider that it is necessary or appropriate to do so in the present case.
37. The foregoing discussion has focussed on the interests of the licensee and its guests. However, that is not the focus of Part 3 Division 4 of the Act. Section 49 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.
38. In this case, however, subject to one issue that will be discussed below, the Commission considers that the interest of the licensee and its guests is strongly convergent with the public interest. The strength of the economy of Central Australia is dependent to a significant extent on the strength of its tourism industry, and the strength of the Central Australian tourism industry is in turn dependent to a significant extent on the facilities and services available to attract tourists to visit, and to prolong their visit, to the region’s key tourist destinations. Kings Canyon is one such destination, and the licensee’s very substantial investment in the licensed premises over the last three years, as well as its commitment to make a further very substantial investment in the property in the years to come, are strongly consistent with the priority objectives of the Northern Territory Government’s Tourism Industry Strategy 2030, the first

³ See Northern Territory Liquor Commission, *Application for a Licence* (LC2020/025) (14 July 2020), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0011/914654/Decision-Notice-Strawberry-Hill-Holdings-Bullo-River-Station.pdf

of which is to “grow investment in the Northern Territory’s remarkable assets, products, and regions”.⁴

39. The Commission has considered, as it is required to do, each of the ten public interest objectives set out at s 49(2) of the Act. The Commission is satisfied that the applicant will manage and operate the licensed premises in a manner that will advance each of these objectives, and in particular the objective of “increasing cultural, recreational, employment or tourism benefits for the local community area”.
40. When assessing community impact, the Commission must consider each of the ten matters set out at section 49(3) of the Act. Two significant factors combine to enable the Commission to be comfortably satisfied that the issue of the authority will not have a significant adverse impact on the community.
41. Firstly, the licensed premises are in a remote outback location. The closest substantial community is Areyonga, about two hours away by road. Three nearby homeland communities, Ulpanyali, Lilla and Wanmarra, which are respectively five minutes, 10 minutes and 30 minutes’ drive from the licensed premises, each has only up to a handful of residents.
42. Secondly, the condition set out at paragraph 4.a) above will effectively limit the supply of liquor to guests of the resort.
43. The Commission has given careful consideration to the matter set out at s 49(2)(d), “the people or community who would be affected”. The licensed premises are on Luritja and Pertame country. In addition to Areyonga, other substantial Aboriginal communities within three hours drive of the licensed premises include Ntaria/Hermannsburg, Kunparrka/Haasts Bluff, Amunturangu/Mount Liebig, Papunya, Imanpa and Mutitjulu.
44. For decades, residents, particularly women, from these communities have advocated to keep grog out of their homelands. Their efforts have resulted in restrictions on the sale of liquor to local Aboriginal people being imposed as a condition (either expressly, or indirectly) on all of the licensed premises nearest to the Kings Canyon Resort, at Kings Creek Station (40 km to the southeast), Curtin Springs (220 km by road to the south) Glen Helen Lodge (225 km by road to the northeast), Erldunda (225 km by road to the southeast) and Yulara (300 km by road to the southwest). The Commission has previously found that in accordance with s 57 of the *Anti-Discrimination Act* 1992 (NT) these racially discriminatory restrictions are lawful “special measures” (**special measure conditions**).⁵

⁴ Accessed at

<https://www.tourismnt.com.au/system/files/uploads/files/2024/T2030%20Annual%20Report%20Card%202023%20final.pdf>

⁵ See, for example, Northern Territory Liquor Commission, *Application for variation of conditions* LC2020/003, 22 June 2020 accessed at [Decision Notice - Glen Helen Lodge Nominees Pty Ltd \(Glen Helen Outback Resort Lodge\) \(nt.gov.au\)](#) at [15] ff.

45. Most recently, in response to a licensee request prompted by local community concerns, the Commission added special measure conditions to the licences at Kings Creek Station and Erldunda.⁶ As mentioned above, the licensee holds the licence over Glen Helen Lodge, which is one of those subject to a special measure condition. The licensee assured the Commission that it does not intend to seek to have the special measure condition removed when it re-opens that facility. However, the licensee does not support the imposition of a special measure condition at the Kings Canyon Resort.
46. In 2020 the Commission refused an application by the former licensee of the Glen Helen Lodge to remove its special measure condition. The circumstances in that case may be distinguished from those in the present case. The Glen Helen Lodge special measure condition had been in existence since at least 1999. By contrast, as far as the Commission is aware, no such condition has ever been imposed on the Kings Canyon Resort licence, and there has never been an application that such a condition be imposed. None of the parties to this application proposed that a special measure condition be imposed. Neither did any of the stakeholders who were consulted. The Commission does not discount the real possibility that if residents of the communities listed at paragraph 43 above had been consulted, a significant number of them would have supported the imposition of a special venture condition. On the other hand, the Commission accepts the evidence of Mr Kerkman, who, together with his team, have developed a positive relationship with residents of the small homeland communities in the immediate vicinity of the licensed premises. Mr Kerkman's evidence was that, as guests from time to time of the Resort management, those local residents would be unlikely to support the imposition of a condition that would preclude them from being able to consume liquor with their hosts.
47. The Commission places limited weight on these speculative observations. The Commission places greater weight on the evidence of the licensee, which the Commission accepts, that since the imposition of the special measure conditions at Kings Creek Station and Erldunda in 2022, and indeed since the licensee acquired the Resort in 2021, there have been no alcohol-related incidents of concern involving members of bush communities who have resorted to purchasing liquor at the Kings Canyon Resort, the only licensed premises in the region where there are no special measure conditions.
48. On balance, on the limited evidence it has received, the Commission is satisfied that, having regard to "the people or community who would be affected", issuing a special venture authority without imposing special measure conditions will not have a significant adverse impact on the community.
49. For the foregoing reasons, the Commission has determined to grant the application to issue a new authority.

⁶ Northern Territory Liquor Commission, *Variation of Licence Conditions*, 12 August 2022, accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0006/1127436/decision-notice-dated-12-august-2022.pdf

50. As discussed at paragraphs 28 to 32 above, the applicant does not wish to retain the existing authorities attached to the licence, and likewise, the Commission considers that they should not be retained. Although the Act confers on the Commission the power to determine whether to issue or to refuse to issue an authority, it does not expressly confer on the Commission the power to cancel an existing authority. In this matter, the Commission considers that termination of the existing authorities is incidental to or arises directly from the issue of the new special venture authority. In the view of the Commission, in order to carry out the function imposed on it by the Act of determining this application, it is necessary or convenient for the proper performance of that function for the Commission to cancel the existing authorities, and the exercise of the power to cancel the existing authorities is supported by s 6(1), s 6(2) and/or s6(3) of the *Liquor Commission Act 2018*, which provides:

- (1) The Commission has the functions imposed on it under this Act or the *Liquor Act 2019*, and must do any other thing that is necessary or convenient to be done for the proper performance of those functions.
- (2) Without limiting subsection (1), the Commission's functions include making decisions on all matters referred to it under the *Liquor Act 2019*.
- (3) 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.

51. Accordingly, the Commission has determined to cancel the restaurant authority, lodging authority and late night authority that have previously been issued with the licence.

Application to vary licence conditions

52. The Commission has determined to cancel the existing conditions set out at paragraph 2 above, and to fix the additional conditions set out at paragraph 4 above. To a significant extent, the Commission's reasons for varying the licence conditions are embodied in the reasons set out above for determining to cancel the existing authorities and issue a special venture authority. There are also additional reasons, as follows.

53. The existing conditions the Commission has determined to cancel are in effect all superseded by the new conditions the Commission has determined to impose.

54. The condition set out at paragraph 4.a) is consistent with reg 93(1) of the Regulations, but drafted so as to put beyond doubt that passers-by who stop at the Kings Canyon Resort and purchase only fuel or other products from the petrol station will not be permitted to obtain liquor from the licensee. Section 43(2)(d) of the Act provides that no licence is required for the sale, supply or

service of liquor served by the licensee to its employees and their families and guests, and in such cases the condition at paragraph 4.a) will not apply.

55. The Commission has decided to impose conditions limiting the operating hours of the various facilities within the licensed premises from which liquor may be supplied, substantially in accordance with their currently permitted operating hours, but also allowing for the service of alcohol outside those hours for special functions and events.

56. Regulation 92 of the Regulations provides:

The hours of operation for a special venture authority are from 05:30 to 24:00 any day that the services, to which the liquor is ancillary, are provided by the licensee.

57. The applicant provides services other than the supply of liquor all year round, and accordingly this special venture authority will authorise the licensee to operate its liquor licence every day of the year.

58. The expression “hours of operation” is not defined in the Regulations or the Act. Section 47(1)(i) of the Act specifies that a special venture authority authorises a licensee “to sell” liquor. The special venture authority conditions prescribed by Part 4 Division 19 expressly regulate in various ways the sale, service, supply, purchase and storage of liquor. They do not however expressly regulate the consumption of liquor. The Commission readily accepts that “hours of operation” for some other authorities, such as a public bar authority or a restaurant authority, limits both the period within which liquor may be sold, supplied and served, and the period within which it may be consumed on the premises. It would be inconsistent with the purposes of the Act and the Regulations not to construe “hours of operation” in this way: otherwise, licensees could supply patrons with, for example, a bottle of scotch at one minute before closing time, and allow them to continue to drink its contents on the premises until sunrise.

59. However, different considerations apply to some other authorities, such as a takeaway authority and a grocery store authority, which obviously could not and do not limit the period during which liquor sold to a customer may be lawfully consumed. The applicant will be conducting its business with a special venture authority. A significant number of the applicant’s guests will bring their own liquor onto the premises, for consumption in the privacy of their room, cabin, tent, caravan, campervan or motorhome. Alternatively, they may purchase liquor on the premises and take it back to drink at their accommodation. The applicant offers room service and a minibar service to guests who purchase premium accommodation. In the view of the Commission, to construe “hours of operation” for a special venture authority as meaning that the hours during which patrons are permitted to consume liquor are restricted, would lead to anomalous and absurd consequences that were not intended either by the legislature when enacting the Act or by the executive when issuing the Regulations.

60. The Commission finds that the Regulations prohibit a licensee operating with a special venture authority from selling, supplying or serving liquor between 00:01 and 05:29, but that they do not prohibit patrons from consuming liquor during that period.
61. Accordingly, it may not be necessary to fix a condition to regulate the times liquor may be consumed by patrons. However, to avoid any doubt and to provide clarity, the Commission has fixed the condition set out at paragraph 4.c4.c.ii) above.
62. On the other hand, having determined to limit the periods within which liquor may be sold and supplied at the various food and beverage venues within the premises, the Commission considers that it is necessary to also fix a condition that limits consumption at those venues to those same periods, and a condition to that effect is set out at paragraph 4.c.i) above.

Application to approve material alterations

63. The current licensed premises are an inconveniently restrictive patchwork of seven separate areas. The Commission accepts the licensee's unopposed submission that the footprint of the licensed premises should be redrawn so as to include outdoor areas within the confines of the resort, which will provide the licensee with greater flexibility to expand the range of dining, entertaining and social options on offer to guests. Although the new footprint will be nearly twice as large as the existing footprint, the area within its perimeter is no greater than the size of the land within which the various components of the existing licensed area are contained. The Commission readily approves this material alteration.
64. The licensee also seeks approval for refurbishment, renovation and construction works it has undertaken or plans to undertake at the licensed premises. Some of the works carried out by the licensee, such as the construction of new bars in the Kings Canyon Bar and Grill and at the Luritja Lookout, were obviously material alterations. Whether or not some of the other works carried out were material alterations is less clear. For example, the works undertaken at the Kings Canyon Bar and Grill included the replacement and relocation of customer bathrooms and toilets, and the works at the Luritja Lookout included the construction of a new toilet block.
65. Material alterations requiring the Commission's prior approval are described by s 95(1) of the Act as follows:
- (a) a significant increase in the area of the premises used for the sale, supply, service or consumption of liquor;
 - (c)⁷ a change to an entrance to or an exit from the premises;
 - (d) a significant change to the external appearance of the premises;

⁷ Section 95(1)(b) has been repealed, as discussed below

- (e) a significant change to the premises' facilities related to the sale, supply, service or consumption of liquor.

66. The Commission considers that the meaning of the text of s 95(1)(e) is not altogether clear. Section 62B of the *Interpretation Act 1978* provides that reference may be had to extrinsic material to assist with the confirmation of the meaning of an ambiguous or obscure statutory provision. Accordingly, the Commission has turned to the Explanatory Memorandum to the *Liquor Legislation Amendment Act 2021*, s 22 of which repealed s 95(1)(b) of the Act. The Memorandum states:

Not all structural alterations impact on the sale, supply and service of liquor, for example expansion of bathroom areas. Approval should only be required where structural alterations are likely to increase the supply of alcohol, for example installation of a new bar area. Section 95(1)(b) of the Act, which refers to structural alterations to any part of the premises where liquor is sold, supplied, served or consumed, is omitted.

67. In the view of the Commission, the relocation of bathrooms and toilets in the Kings Canyon Bar and Grill was not likely to increase the supply of alcohol, but the construction of a toilet block at the Luritja Lookout (where previously, there had been no toilets) was likely to increase the supply of alcohol.

68. The Commission finds that the works undertaken by the licensee set out at paragraphs 5.b) and 5.f) above are material alterations requiring Commission approval. The Commission finds that the remainder of the works that the licensee has informed the Commission it has carried out or plans to carry out (notably, the refurbishment and construction of accommodation units) are not material alterations requiring Commission approval.

69. The licensee presented the Commission with a *fait accompli* in relation to the material alterations of the Kings Canyon Bar and Grill and the Luritja Lookout that were undertaken and completed without the prior written approval of the Commission, contrary to s 95(1) of the Act. In these circumstances, the Commission is in effect faced with a binary choice: either approve the alterations, or require them to be dismantled.

70. Section 98 of the Act establishes a contravention of s 95(1) as an offence, with a maximum penalty of 100 penalty units. A penalty unit is currently \$176. The maximum monetary penalty the Commission is authorised to impose in the event that it takes disciplinary action in relation to a complaint that has been referred to it is 200 penalty units. The Commission is satisfied that the cost of undoing and then re-doing these works in each of these two areas would be far in excess of the applicable maximum monetary penalties that could be imposed for the associated contraventions of the Act. It follows that a requirement that these works be dismantled would in effect impose a penalty on the licensee far in excess of the maximum penalty for misconduct of this nature that parliament has fixed. The Commission declines to go down that path.

71. Instead, the Commission has taken two other steps. Firstly, it has fixed the conditions set out at paragraphs 5.d), 5.e), 5.g) and 5.h) above, to ensure that certification of the works is satisfactory. Secondly, pursuant to s 158(1)(a) of the Act, following the hearing the chairman of the Commission requested the Director to conduct an investigation into whether a complaint should be made against the licensee for contravening s 95(1) or s 98 of the Act.
72. The Commission notes that in his oral evidence given at the hearing, Mr White provided to the Commission an explanation for not seeking prior approval for the material alterations at the Kings Canyon Bar and Grill. Those works were completed in about March 2022, shortly following which Mr Giles brought to the attention of Mr White that material alterations require the prior approval of the Commission. Mr White also gave evidence that it was unclear to the licensee whether some of the works undertaken after that date constituted material alterations or not. The Commission accepts Mr White's evidence (which was confirmed by Mr Wood) that in late 2022 or early 2023 he informed the office of the Director that works had been undertaken, were underway or were planned that might constitute material alterations.
73. The Commission notes with particular concern that some nine months after the licensee's legal manager had been alerted to this issue, the licensee, without seeking the prior approval from the Commission, proceeded to make what the Commission considers was obviously a material alteration, namely the installation of the "container bar" to replace an old caravan that had been used as a bar at the Luritja Lookout.

The objects of the Act

74. Section 3(4) of the Act provides that in performing its function to decide whether to grant these applications, the Commission must have regard to the primary and secondary purposes of the Act.
75. The Commission considers that the decision it has made is consistent with the purposes of the Act.

Extension of time

76. Section 60(2)(b) of the Act provides that the Commission must make a decision whether to issue the licence and authority within 28 days of the expiry of the 14 day period allowed for an objection to be lodged with the Director after public notification of the application. In this case, the objection period expired on 14 October 2023. However, the Commission was unable to make a decision within 28 days of that date because the Director did not refer the application to the Commission until 4 December 2023. The Commission scheduled the application for hearing at the first reasonably available opportunity.
77. On 18 January 2024 the Commission issued to the parties a draft of its proposed decision, together with an invitation to the parties to provide submissions in response by 25 January 2024. Although this step added to the time taken to dispose of this matter, the Commission considers that given the

complexity of the decision, and the importance of providing the parties with an opportunity to be heard, it was an appropriate course. The Commission received the applicant's submissions in response at 16:30 on 25 January 2024.

78. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision until the date of this decision notice.

NOTICE OF RIGHTS

79. Section 31(1) read with ss 60(3), 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.

80. 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
29 January 2024

On behalf of Commissioners Goldflam, Dwyer and Fong Lim