

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATIONS TO SUBSTITUTE PREMISES,
TRANSFER LICENCE AND VARY CONDITIONS BY
COOLALINGA TAVERN [2024] NTLiqComm 30

REFERENCE: LC2024/017

APPLICANT: OMAD (NT) Pty Ltd

CURRENT PREMISES: Alice Springs Wine Club
Dowdy Court
ALICE SPRINGS NT 0872

Licence number: 81017060

PROPOSED PREMISES: Coolalinga Village Tavern
425 Stuart Highway
COOLALINGA NT 0839

Licence number: FLL1048

LEGISLATION: Part 3 Division 8 and Part 4 Division 5 of the *Liquor Act 2019*.

HEARD BEFORE: Mr Russell Goldflam(Chairperson)

Mr Bernard Dwyer (Health Member)

Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 21 June 2024

DATE OF DECISION: 9 July 2024

Decision

1. For the reasons set out below and in accordance with ss 73, 75 and 112 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to refuse applications by OMAD (NT) Pty Ltd (**the applicant**) to:
 - a. Substitute the licensed premises at Dowdy Court Alice Springs NT 0872 (**the current premises**) to premises adjoining the Coolalinga Village Tavern, 425 Stuart Highway, Coolalinga NT 0839 (**the proposed premises**);

- b. Transfer liquor licence 81017060 (**the takeaway licence**) from N & S Hill Pty Ltd trading as the Alice Springs Wine Club (**the Alice Springs Wine Club**) to the applicant; and
- c. To vary the conditions of the takeaway licence.

Reasons

Background

2. The applicant is the owner and operator of the Coolalinga Village Tavern (**the Tavern**) and holds liquor licence FLL1048 with a public bar authority and a late night authority (**the tavern licence**). The licence nominee is Mr Damian O'Brien (**Mr O'Brien**), who is also the secretary, the sole director and the sole shareholder of the applicant company. The applicant acquired the tavern licence from the then owner of the land on which the current premises are located on 14 August 2018.¹
3. The applicant occupies the land on which the Tavern is situated pursuant to a registered commercial lease that commenced on 18 June 2018. The lease includes an option to the applicant to lease from the then landlord a currently vacant block next door to the Tavern for the purpose of constructing and operating a drive-through bottle-shop.² The applicant now proposes to take up that option, construct the bottle-shop, and operate it seven days a week.
4. By operation of reg 98A of the *Liquor Regulations 2019* (NT) (**the Regulations**) in conjunction with s84(3) and (4) of the Act, no takeaway authority may be created or issued until after 31 August 2024 (**the takeaway moratorium**).
5. Accordingly, if the applicant had applied for a new takeaway authority, that application would necessarily been refused. Instead, the applicant contracted with the Alice Springs Wine Club with a view to acquiring its existing takeaway licence, and has now applied for approval to substitute the premises of that licence, to transfer the licence to the applicant, and to vary the conditions of the licence.

The applications

6. The applicant engaged DNS Specialist Services (**DNS**) to prepare and submit these three inter-related applications. DNS, which has frequently been engaged in matters that have come before the Commission for determination, describes itself in the following terms:

Functioning as a preeminent consulting firm, DNS Specialist Services offers a comprehensive array of services thoughtfully

¹ Exhibit One, p 6

² Exhibit One, p 711

customized to cater to the unique needs of the hospitality and tourism sectors. Our extensive client base extends across all Australian states & Territories and encompasses a diverse spectrum of enterprises, including but not limited to clubs, hotels, casinos, and various hospitality establishments.

Within the realm of Australian gaming and liquor licensing, DNS Specialist Services holds a pivotal role. Year after year, we conscientiously undertake the meticulous preparation of hundreds of licensing applications and associated documents, catering to a wide-ranging assortment of venues. The active engagement of our DNS team in the intricacies of operations licensing consistently culminates in successful outcomes that accrue benefits not only to the venues we support but also to the communities they serve.³

7. Pursuant to s 72 of the Act, by application dated 11 January 2024, the applicant applied to transfer the takeaway licence from the Alice Springs Wine Club to the applicant, with Mr O'Brien as the proposed nominee.
8. Pursuant to s 110 of the Act, by application dated 11 January 2024, the applicant applied to vary the conditions of the takeaway licence. The proposed variations are set out in full at Annexure One to this decision notice.⁴ One particularly significant variation sought was to more than double the trading hours from 36 hours a week (six hours a day six days a week) to 85 hours a week (12 hours a day seven days a week plus an additional hour on Saturdays). A second particularly significant variation sought was to delete the condition restricting sales to cases of bottled wine.
9. By application dated 19 January 2024, the applicant applied to substitute the current premises of the takeaway licence in Alice Springs to the applicant's proposed premises in Coolalinga.

The grounds for the applications

10. The applicant summarised the factors it relies on in favour of allowing the applications, as follows:⁵
 - a. The proposed premises will increase convenience and provide options for local patrons independent of the Liquorland/BWS duopoly.
 - b. The applications, if allowed, would remove a takeaway liquor outlet from the Alice Springs region, a goal articulated by the Northern Territory Government.

³ Exhibit One, p 74

⁴ Exhibit One, pp 33 – 35

⁵ Exhibit One, p 77 and p 107

- c. The business development would provide both short-term and long-term employment opportunities in the local area.
 - d. The local demographic most likely to attend the venue on a regular basis are at relatively low-risk of causing alcohol-related harm because they are socio-economically advantaged, with relatively high levels of education, income and employment.
 - e. The local area is comparatively densely populated and is projected to grow at a significant rate over the coming decades, providing the potential for increased demand for facilities and services.
 - f. There are no bottle shops in the local area of the proposed premises that offer a drive through facility.
 - g. There are no bottle shops in the immediate area of the proposed premises that currently trade on a Sunday.
11. The Commission distills from the voluminous material provided by the applicant the following additional matters it relies on:
- a. The applicant is an experienced and successful licensee who has developed robust and effective harm-reduction procedures and strategies at the Tavern, which will also be implemented at the proposed bottleshop.⁶
 - b. One additional takeaway outlet would only marginally increase the density of takeaway outlets in the locality.⁷
 - c. There are no Indigenous communities in the locality of the proposed premises.⁸
 - d. The incidence of alcohol-related offending in the locality of the proposed premises is comparatively low.⁹
 - e. The applicant's community consultation survey conducted of patrons in the Tavern (151 participants) and the adjacent Coolalinga Shopping Centre (76 participants) for one week in April 2024 showed strong community support for the proposed premises.¹⁰

⁶ Exhibit One, p 56

⁷ Exhibit One, p 90

⁸ Exhibit One, p 95

⁹ Exhibit One, pp 96 – 104

¹⁰ Exhibit One, pp 110 – 121. The applicant erred on the side of comprehensiveness by providing the Commission with a 452 page report comprising every answer to every question by every individual who participated in the community consultation survey. At the hearing, counsel for the applicant made no specific reference to this material.

12. Notably, the applicant elected not to include an estimate of projected liquor sales or a business plan in the material it provided in support of the applications.

Consultation

13. Notices of the applications were published in the NT News on 17 February 2024, and by a green sign at the site of the proposed premises.
14. As required by the Act, the Director of Liquor Licensing (**the Director**) sent notification of the applications to the Department of Health, NT Police and Litchfield Council. The Director also notified the Northern Territory Fire and Rescue Service of the applications.
15. Litchfield Council did not object to the applications, but provided detailed comments about traffic management, parking, loading bays, kerbing, drainage, landscaping, works permits and compliance with the NT Planning Scheme.¹¹ These are matters that the Development Consent Authority might well need to consider one day. However, for current purposes it would have been of greater assistance to the Commission had the Litchfield Council addressed the public interest and community impact issues set out in the *Liquor Act*.
16. The Department of Health did not object to the applications, and NT Fire and Emergency Services provided no response. NT Police objected to the applications.

The objection

17. The objection by NT Police (**the objection**) was supported by an affidavit sworn on 7 March 2024 by Superintendent Daniel Shean,¹² and an affidavit affirmed on 17 June 2024 by Superintendent Meghan Funnell,¹³ who have served with the NT Police for 27 and 29 years respectively.
18. The objection focussed on the following matters:
 - a. Anti-social behaviour and alcohol-related harm seriously affect the whole of the NT.
 - b. Take-away alcohol points are particularly associated with alcohol-related pedestrian accidents and fatalities. The proposed premises are located on the Stuart Highway, where traffic travels at high speed, putting intoxicated pedestrians at high risk.
 - c. There is a high risk that customers of the proposed premises will use “either hire car or unregulated carriers” to acquire alcohol from the

¹¹ Exhibit One, p 736

¹² Exhibit One, pp 739 - 742

¹³ Exhibit Three

premises, leading to “en masse acquisition and consumption of alcohol in public areas”.

- d. There are already three nearby takeaway alcohol outlets. An additional outlet will “increase the concentration of individuals consuming alcohol” at Coolalinga.
 - e. The proposed extension of hours of trade will lead to more consumption of alcohol and increased levels of alcohol-related harm.
 - f. There will be an increased burden on police to patrol and protect the vicinity of the venue.
 - g. Police data show that there have been “a large number of alcohol-related motor vehicle accidents and disturbances in the Virginia and Coolalinga area” in the period from 2014 to 2023.
 - h. Police data show that “alcohol plays a significant role in the social, traffic and domestic disturbances” in the Coolalinga, Freds Pass, Girraween, McMinns Lagoon and Virginia districts.
19. The written submissions filed by counsel for the police summarised the objection as follows:

Police submit that the Commission can be satisfied that the transfer, substitution and variation will potentially increase the number of people in the Coolalinga area during the proposed trading hours, increase those patron’s level of intoxication, and likely to lead to an increase in antisocial and violent behaviour.

The applicant’s response to the objection

20. On 3 May 2024 the applicant’s solicitors provided a detailed response to Superintendent Shean’s affidavit. On 20 June 2024 the applicant’s solicitors provided further material, in response to Superintendent Funnell’s affidavit. Much of the material in response merely repeated in substance what had previously been raised by the applicant. The Commission summarises the fresh issues raised by the applicant in its response as follows:¹⁴
- a. The proposed bottle-shop will provide a broader range of premium craft and boutique products than is currently available in Coolalinga.
 - b. Coolalinga is the last main shopping area south of Darwin for people heading south on camping or fishing trips.

¹⁴ Exhibit One, pp 842 – 851. The applicant erred on the side of comprehensiveness by providing the Commission with 595 pages of census data purportedly in support of its response to the objection. At the hearing, counsel for the applicant made no specific reference to this material.

- c. Coolalinga, despite already having three takeaway liquor outlets, is not a current “hot spot” for crime, anti-social behaviour or alcohol-related harm. One more takeaway outlet is unlikely to change that.
 - d. Coolalinga is not easily accessible to high-risk drinkers without stable accommodation.
 - e. Not only are there no nearby Indigenous communities, but there are no public or community housing estates, and no short-term accommodation or residential rehabilitation facilities within convenient walking distance of the proposed premises.
 - f. Unlike many other relatively well-off localities in the greater Darwin area, Coolalinga does not contain pockets of obviously vulnerable populations.
 - g. There are communities that include members who are at high risk of alcohol-related harm resident within driving range of Coolalinga, but they are likely to continue to patronise the 13 existing takeaway outlets open to the public that are closer to those communities. Three of these outlets are drive-through, and three of these outlets trade on Sundays.
 - h. The public interest is served by supporting a local business, which will invest back into the local community and sponsor community sport.
21. On 12 May 2024 the applicant provided a statutory declaration declared by Mr O’Brien. The declaration did not raise fresh issues. However, it did provide evidence based on the personal experience of the applicant’s proposed licence nominee in support of the applicant’s contentions. Attached to the statutory declaration were fifteen letters of support for the applications from local businesses and residents.

The licensee’s record of compliance

22. Since 2020, the applicant has been the subject of various complaints and, on one occasion, disciplinary action imposed by the Commission arising from its operation of the Tavern. The Commission considers these matters to be of only marginal significance in considering the current applications.

The referral

23. On 23 May 2024 a delegate of the Director referred the applications to the Commission to be determined by way of a public hearing. The Director has delegated power to determine an application for the transfer of a licence, but having regard to the inter-related nature of the three applications, the delegate determined not to exercise that power. The Commission considers that in the circumstances it was entirely appropriate to refer all three applications to the Commission. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 21 June 2024.

24. The Director provided the Commission with the referral (**the brief**), which included the following documents:
- a. Liquor licence FLL1048 (Coolalinga Village Tavern)
 - b. Liquor licence 81017060 (Alice Springs Wine Club)
 - c. Application for transfer of licence
 - d. Application for substitution of premises
 - e. Application for variation of licence conditions
 - f. Affidavit and Declaration of Associates pursuant to section 54 of the Act
 - g. ASIC company extract for applicant
 - h. Sketch plan of proposed premises
 - i. Public Interest Criteria
 - j. Community Impact analysis
 - k. Asset sale agreement between Alice Springs Wine Club and OMAD
 - l. Lease of Coolalinga premises to OMAD
 - m. Accountant's certification of applicant's financial stability
 - n. Correspondence with stakeholders
 - o. Objection by NT Police
 - p. Applicant's response to objection
 - q. Statutory declaration of Damien O'Brien declared 11 May 2024
 - r. Fifteen letters of support for the applications from local residents and businesses
 - s. Applicant's compliance history
 - t. Letter from current landlord in support of applications

The hearing

25. Pursuant to s 23 of the Act the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. The Commission conducted part of the hearing in private to protect commercial-in-confidence

information. For the same reason, the Commission has redacted commercial-in-confidence information from the publicly available version of this decision notice.

26. On 21 June 2024 the application proceeded as a public hearing. Ms Keper of counsel, instructed by Mr Tsoukalis, appeared on behalf of the applicant, accompanied by Mr O'Brien. Ms Ganzer appeared on behalf of the Director. Mr Kudrow of counsel, instructed by Mr Palla, appeared for the NT Police, accompanied by Superintendent Funnell. Although no witnesses were formally called, both Mr O'Brien and Superintendent Funnell assisted the Commission by answering questions that arose during the hearing. The Commission thanks them all for their attendance and assistance.
27. The brief, comprising 1526 pages, was tendered and admitted into evidence without objection, and marked Exhibit One. Prior to the hearing, the Commission had determined to redact some parts of the version of the brief provided to NT Police in order to protect commercial-in-confidence information. The redacted version of the brief was also admitted into evidence.
28. In addition and also without objection the Commission admitted the following documents into evidence:
 - a. Affidavit of Meghan Funnell affirmed 17 June 2024
 - b. Document titled "Additional Documents – Response to affidavit of Meghan Funnell" dated 17 June 2024
 - c. Coolalinga Tavern extension estimate of costs

Assessment of the application to transfer the licence

29. A person who applies for the transfer of a licence must comply with various requirements set out in s 72 of the Act namely:
 - a. The transfer application must be in the approved form and manner.
 - b. The applicant must supply an affidavit under s 54 disclosing persons of influence and potential beneficiaries.
 - c. A body corporate applicant must be a registered corporation.
 - d. The applicant must designate a proposed licence nominee.
30. The Commission finds that the applicant has complied with all of these requirements, and furthermore, in accordance with s 73(1A), is satisfied that the proposed transferee is a fit and proper person.
31. Accordingly, for the purpose of determining the application to substitute premises, the Commission proceeds on the basis that the applicant is eligible

to be considered as the licensee of the takeaway licence. (However, for reasons that will be discussed below, it does not follow that the Commission approves the application to transfer the licence.)

Assessment of the application to substitute premises

32. It is convenient to now turn to the application to substitute premises.
33. Section 75 of the Act (“Substitution of premises”) provides:
- (1) If a licensee wishes to substitute other premises for the licensed premises, the licensee must apply for a new licence for those new premises.
 - (2) Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that the substitution satisfies the public interest and community impact requirements.
 - (2A) To avoid doubt, the Commission may, under subsection (2):
 - (a) impose conditions on the substitution; and
 - (b) substitute premises that are not yet constructed or are still under construction.
 - (3) An application to substitute premises is to be made in the same manner as an application to vary conditions of the licence under Part 4, Division 5.
34. In accordance with s 75(3), the application was lodged in the form approved by the Director for an application to vary conditions of a licence.
35. On 12 January 2024, in a letter to the Director, DNS stated, on behalf of the applicant:

We also request that if the application is accepted, that [the Tavern] be able to trade the Takeaway Authority out of the existing venue while the new adjoining building is completed. Once the new area is nearing completion, the applicant will submit a material alteration for the Takeaway Authority to trade in the new area.¹⁵

36. By contrast, in its revised Community Impact Analysis dated 1 May 2024, DNS made the following submission on behalf of the applicant:

Proposed trading hours are based on the premise that, if successful, whilst the venue will have two licences, they will each

¹⁵ Exhibit One, p 19

relate to a separate trading area. One dealing with the public bar and on-premises consumption and the other dealing with takeaway sales for off premises consumption operated by the same licensee.¹⁶

37. At the hearing, the applicant confirmed that it is seeking to trade with two separate licences over two separate adjoining premises. In the view of the Commission, this was the correct approach. The Commission doubts that two liquor licences can lawfully apply over the same premises, as initially proposed by the applicant.
38. The Commission deals with the application pursuant to s 75(2), on the basis that the applicant has, in effect, applied for the Commission not to issue a new licence, but to amend the existing takeaway licence by substituting the existing premises in Alice Springs with the proposed premises in Coolalinga.

Substitute premises need not be “like-for-like”

39. The scope of the power to substitute premises has been the subject of significant controversy. The 2017 Final Report of the *Alcohol Policies and Legislation Review (the Riley Review)* stated, at p 56:¹⁷

Throughout the review concerns were raised regarding the application of the substitution provisions. Although the intent of the substitution provisions is to enable a business to continue trading where it wishes to move its operations to new premises, the intention of this section has been abused and used to ‘re-purpose’ licences for uses that were not originally intended when they were issued.

Substitution should not be available to remove the need to apply for a new licence or to circumvent moratoriums that may be in place from time to time.

Any application to substitute a licence to alternative premises should be treated as a new application under the Liquor Act, unless the Commission determines a particular application relates to a substitution of similar premises in close proximity to the premises identified in the licence, there is no significant change in the nature of the business and no other concerns are raised.

¹⁶ Exhibit One, p 82

¹⁷ Accessed at https://industry.nt.gov.au/_data/assets/pdf_file/0005/453497/alcohol-policies-and-legislation-review-final-report.pdf

40. Accordingly, the Riley Review made the following recommendations:

2.5.24

The Liquor Act be amended to require applications for the substitution of premises to be treated as a new application under the Act and be subject to the same requirements including consideration of the public interest and community impact test.

2.5.25

The licensing authority have the discretion to authorise a substitution without the new application process being undertaken where the premises to be substituted is in close proximity to the premises identified in the licence; there is no significant change in the nature of the business; and no other concerns arise.

41. The government initially adopted these recommendations, and the legislature gave effect to them by enactment. As originally enacted in 2019, s 97(2) of the Act provided:

Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that:

- (a) no significant change in the operation of the business will occur as a result of the substitution; and
- (b) the substitution satisfies the public interest and community impact requirements.

42. By this time, the takeaway moratorium had already come into force, having commenced on 28 February 2018 for a period of five years, as a result of the enactment of the *Liquor Legislation Amendment (Licensing) Act 2018*. On 1 October 2019, the *Liquor Act 2019* commenced, extending the moratorium until 31 August 2023, and establishing a mechanism for further extension by regulation. On 28 July 2023, the *Liquor Further Amendment Regulations 2023* extended the moratorium to 31 August 2024.

43. It was against this backdrop that in July 2018 Woolworths Group Ltd, the then licensee of a BWS takeaway outlet in a Darwin suburb, made an application to substitute those premises with a proposed much larger Dan Murphys outlet in another Darwin suburb, pursuant to s 46A of the *Liquor Act 1978* (NT).

44. On 20 September 2019 the Commission refused that application. Woolworths Group Ltd applied to the Northern Territory Civil and Administrative Tribunal (**NTCAT**) to review the Commission's decision. In

the NTCAT decision delivered on 29 December 2019, President Bruxner stated:¹⁸

[W]ere it not for [the takeaway moratorium], it would have been open to the Liquor Commission, upon an application under section 26(2), to issue a new liquor licence in respect of a yet to be constructed Dan Murphy's outlet.

...

Whenever, in ordinary discourse, people speak of substituting or replacing something, attention necessarily turns to what it is that is being substituted or replaced. Almost invariably there will be a relationship of some type between the thing being replaced and the thing replacing it. What is necessary in order for the 'new' thing properly to be viewed as a substitute or replacement for the 'old' thing will depend on all the circumstances. If, for example, what is being substituted or replaced is a family pet, there will likely be a range of animals that potentially qualify, as well as others that obviously do not. If what is being replaced is a pet dog, then a goldfish or even a cat is unlikely to be regarded as a substitute. Indeed, the circumstances may make it clear that the replacement dog needs to have certain characteristics (size, demeanour, breed etc.)

...

In some circumstances, the considerations may be finely balanced; however, there will also be cases where it is clear whether or not proposed substituted premises are substantially similar to the premises being replaced. The Dan Murphy's substitution application plainly involves a proposal to substitute premises of a size and character that bear no comparison to the Stuart Park premises at which the BWS liquor store was operated.

...

If section 46A is able to operate in a way that could lead to the replacement of a modest BWS takeaway liquor store with an outlet of the size and scale of the proposed Dan Murphy's outlet, then the moratorium is rendered essentially toothless.

45. When the Legislative Assembly resumed sitting in February 2020 after the 2019/2020 Christmas break, the government introduced an amendment to the Act deleting the requirement in s 75 that a substitution only be allowed if there is "no significant change in the operation of the business will occur

¹⁸ *Woolworths Group Limited v Northern Territory Liquor Commission, Foundation for Alcohol Research and Education Ltd & Ors* [2019] NTCAT 37 at [147], [160], 165], [167]

as a result of the substitution". Accordingly, on 24 March 2020, s 97(2) came into force in its current form.

46. The Commission has given careful consideration to the effect of this amendment (**the s 75 amendment**). The Commission considers that the meaning of the text of s 75(2) when read in conjunction with s 84, and taking into account the objects underlying the Act (which are themselves mixed) is unclear.
47. Section 62A of the *Interpretation Act 1978* (NT) provides that a construction that promotes the underlying purpose of an Act is to be preferred over one that does not. Section 62B of that Act provides that regard may be had to extrinsic material to determine the meaning of an ambiguous or obscure provision.
48. The Commission has had regard to the official record of debates in the Legislative Assembly that were conducted in relation to the s 75 amendment.
49. On 13 February 2020, the Minister for Alcohol Policy introduced the Bill to amend s 75 in the following terms:

The objects of this bill are to amend the *Liquor Act 2019*, to:

- clarify that for applications for substitution of premises under the act, such applications may be granted even though the proposed premises are yet to be constructed or are still under construction
- remove the current requirement that substitution can only be made where there is no significant change in the operation of the business, which has been commonly referred to as a like-for-like requirement
- clarify that the Liquor Commission may impose conditions when approving applications for substitution of premises.

Members of this House will be familiar with Woolworths' efforts to bring Dan Murphy's to Darwin. In December last year, NTCAT declined the Woolworths and Dan Murphy's application for substitution of premises. This NTCAT decision highlighted the technical issues with the substitution of premises provisions of the *Liquor Act 2019*. These technical issues do not align with the policy intent we had in place.

50. On 24 March 2020, in the parliamentary debate on the Bill, the Minister stated:¹⁹

The bill provides certainty for business development and allows a business to grow into a new premises while retaining their existing liquor licence.

...

The government accepted the recommendation regarding the like-for-like requirement of the Riley review and implemented it in the Liquor Act; however, upon further consideration, it became clear that the like-for-like requirement is restricting potential business growth in light of the moratorium on new takeaway licences.

By removing the like-for-like requirement, it will allow businesses to grow in a reasonable and responsible way. All substitution of premises applications must still satisfy the public interest test and have a community impact test – the same test that new liquor licences have. This is considered a safeguard that finds the balance for a business to be able to move premises.

...

The government's policy was to have a moratorium on takeaway licences. We acknowledge that there were a lot of them in the Northern Territory, so we wanted to see the existing licences reallocated to greenfield sites and for people to be able to move them around.

Once the new Act was put in place, it became apparent that was not possible, and therefore the *Liquor Act 2019* was not meeting the intention of government policy.

51. In the view of the Commission, the purpose of the legislature in enacting the s 75 amendment was to maintain the moratorium on the establishment of new takeaway authorities, but to enable them to be “moved around” the Territory to accommodate changing market conditions and to encourage enterprise.
52. The s 75 amendment is inconsistent with the Riley report recommendation 2.5.25, and constitutes a rejection of the rationale underlying that recommendation, that a restriction of the substitution power was required in order to prevent abuse by ‘re-purposing’ licences for uses that were not originally intended when they were issued. Similarly, the s 75 amendment constitutes a rejection of the NTCAT view that absent such a restriction the takeaway moratorium was at risk of being rendered “essentially toothless”.

¹⁹ Legislative Assembly of the Northern Territory *Hansard Debates and Questions* 24 March 2020, 8271 – 8273

53. The Alice Springs Wine Club delivers cases of wine ordered by customers online. Its premises are a shed not open to the public, where the liquor it stocks is securely stored. It is not a bottleshop. Its trade is a small fraction of the amount the applicant would supply if its applications were allowed. Clearly, this application seeks to re-purpose a licence for a use that was not intended when it was issued. However, in accordance with the Commission's concluded view as to the correct construction of s 75 and s 84 of the Act, the Commission considers that these matters are not relevant considerations for the purpose of determining this application. In accordance with s 75(2) the sole test to be applied by the Commission is whether it is satisfied that the substitution satisfies the public interest and community impact requirements.

The public interest and community impact requirements

54. 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 ten objectives set out in section 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

55. This first-listed objective is of particular significance, as it picks up the first limb of the primary purpose of the Act set out at s 3(1), "to minimise the harm associated with the consumption of liquor".
56. In support of the application the applicant defined the catchment area for the proposed premises as the "Local Community Area" (**LAC**) comprising each "Statistical Area 2" (**SA2**) that lies within a 5 km radius of Coolalinga, namely the districts of Howard Springs, Palmerston South and Virginia (**the Coolalinga LAC**). Parts of each of these districts are further than 5 km from Coolalinga. Another SA2, Humpty Doo, lies partly within the 5 km radius, but most of its residents live outside the radius, so the applicant did not include the Humpty Doo SA2 in its analysis of the population of the catchment area for the proposed premises.²⁰
57. The applicant submits that people who are relatively well-educated and well-off are at lower risk of suffering alcohol-related harm or ill-health than members of less socio-economically advantaged communities.
58. The applicant further submits that people who live within the Coolalinga LAC are socio-economically advantaged, in comparison to the average Territorian. Having examined the evidence produced the applicant in support of this submission, the Commission is not satisfied that Coolalinga LAC residents enjoy such significant socio-economic advantages as to justify a finding that they are of a lower risk of suffering alcohol-related harm or ill-health than Territorians at large.

²⁰ Exhibit One, p 91

59. In the field of education, 40.4% of Coolalinga LAC residents have a Certificate level qualification, compared to 29.9% of the Northern Territory population. However, a higher proportion of Territorians hold advanced education qualifications than residents of the Coolalinga LAC.²¹ In the area of employment, a lower proportion of Coolalinga LAC residents are employed as managers, professionals, technicians and trades workers than Territorians generally, while a higher proportion are employed in the “clerical, sales and service” category. 68% of Coolalinga LAC households have a weekly income of greater than \$1,750, compared to 58% of NT households.
60. In summary, the Commission accepts that although Coolalinga LCA residents are marginally better off than the average Territorian, the Commission is not satisfied that as a consequence they are at significantly lower risk of suffering alcohol-related harm or ill-health than other Territorians. Furthermore, on the evidence the Commission has received, it is not satisfied that Coolalinga LCA residents consume significantly lower levels of alcohol than most other Territorians.
61. Accordingly, the Commission considers that people in the Coolalinga LAC are subject to much the same risks and costs of alcohol consumption as people generally in the Northern Territory.
62. The Commission accepts the submission of the objector that the Northern Territory has “one of the highest total economic and social costs due to alcohol consumption”. It is worth repeating what the Commission has previously said on this key issue:²²

In October 2017, the [Riley Review] released its report. The recommendations from that report have provided a blue print for the rewrite of the *Liquor Act* and informed a range of other policy decisions aimed at reducing the devastating consequences of alcohol misuse in the Northern Territory. In the Foreword to that report, it was noted:

“There can be no doubt the people of the Northern Territory of Australia have a problem with alcohol. Whilst it can be readily accepted that many people in the Northern Territory do not drink alcohol at all and most of those who do drink alcohol do so responsibly, the fact remains that we have a strong, entrenched and harmful drinking culture. We have a problem that must be addressed. Regrettably, we hold an unenviable list of firsts. We have the highest per capita consumption of

²¹ Exhibit One, p 126

²² Northern Territory Liquor Commission, *Application for substitution of premises and application for variation of conditions of licence* (LC2019/038 and LC2020/007), 3 July 2020, at [107] (**Oasis Liquorland**)

alcohol in Australia. It is amongst the highest in the world. We also have the highest rate of risky alcohol consumption in Australia with 44 per cent of people drinking at a level that puts them at risk of injury or other harms at 'least once in the past month', compared with 26 per cent of people nationally. We have the highest death rate due to alcohol of any Australian jurisdiction. We have the country's highest rates of hospitalisations related to alcohol misuse. Forty percent of all road fatalities in the Northern Territory involve an illegal blood alcohol concentration compared with less than 30 per cent in other jurisdictions. Unfortunately, the list goes on. It is well recognised that the impact of alcohol misuse is not just upon the individual, it extends to their family, friends and acquaintances and to the whole of the community in which that person resides.

63. Annexed to Superintendent Shean's affidavit and received into evidence was a 2019 report published by the Menzies School of Health Research and The University of Adelaide by Smith, Whetton and d'Abbs titled "The social and economic costs and harms of alcohol consumption in the Northern Territory". The report estimated that the total social cost of alcohol in 2015/16 in the NT was \$1.387 billion, which equates to an impact of over \$7,500 annually per adult.
64. When the report was published, per capita alcohol consumption in the NT was declining. From 2010 to 2019, it decreased from 13.4 to 10.7 litres of pure alcohol per person per year.²³ During the COVID pandemic consumption in the NT increased sharply to 12.3 litres in 2021, before declining to 11.5 litres in 2022. The Commission calculates that consumption based on wholesale supply declined by 6% in 2023 from the previous year,²⁴ and accordingly it is likely that per capita consumption also fell in that year.
65. The Commission accepts that there is a high correlation between alcohol consumption levels and alcohol-related harm. On the one hand, the apparent resumption of a downward trend in consumption indicates that there is a downward trend in alcohol-related harm, which is a cause for guarded optimism. On the other hand, the Commission has received no evidence that the social and personal costs and harms of alcohol consumption have substantially declined since 2015, which is a cause for continuing caution.
66. The Commission considers that it would not advance the objective of minimising alcohol-related harm or ill-health to people in the Coolalinga LAC or other potential patrons of the proposed premises by increasing the availability of liquor to that group of people. It should be emphasised,

²³ Northern Territory Government, *Alcohol Policy ion the Northern Territory: Consumption*, at <https://alcoholpolicy.nt.gov.au/data-and-evaluation/consumption>

²⁴ Wholesale Alcohol Supply records for 2023, accessed at <https://data.nt.gov.au/dataset/?q=alcohol>

however, that this finding is not determinative of the public interest test, which is multi-factorial. The Commission's task in applying the facts it finds to s 49(2) of the Act is to weigh up each of the ten public interest objectives (and any other matters it considers relevant) and then decide whether or not it is satisfied that the granting of the application would be in the public interest.

67. During the hearing, in response to a question from the Commission, Mr O'Brien disclosed the projected turnover of the proposed premises,²⁵ which he stated would be principally derived from the sale of beer. By the Commission's calculations, the applicant expects to supply between 10,000 and 15,000 standard drinks a day. The Commission readily accepts that this does not mean that the amount of liquor consumed by the applicant's customers will increase by 10,000 to 15,000 standard drinks a day: much of it would have been purchased from one of the applicant's competitors if it hadn't been bought from the applicant. However, the Commission is comfortably satisfied that the opening of a new bottleshop in the district, offering the convenience of drive-through trade seven days a week, as well as the attraction of a larger range of product lines, will do more than deprive other outlets of some of their trade – it will in all likelihood result in a significant increase in the amount of takeaway liquor sold in the district.
68. The Commission accepts the applicant's evidence that the total adult population of the Coolalinga LAC, as reported by the 2021 census, was 11,221.²⁶ On the basis of the applicant's evidence, the Commission finds that annual population growth in the Coolalinga LAC is in the order of 2%.²⁷
69. However, the Commission does not accept that the Coolalinga LAC as defined by the applicant accurately corresponds to the area in which the likely patrons of the proposed premises reside. 4,367 of the adult residents of the Coolalinga LAC live in the Palmerston South SA2, which includes the densely residential suburb of Zuccoli. Residents of that suburb have convenient access to several takeaway liquor outlets, including the Zuccoli IGA Cellarbrations, which the applicant appears to have inadvertently omitted from the list it provided of takeaway outlets in the area. In the view of the Commission, Zuccoli residents would be unlikely to drive 8 km to Coolalinga to purchase their takeaway liquor, even on Sundays. On Sundays, the BWS in Palmerston Drive is about 2 km closer by road.
70. In relation to Howard Springs SA2 adult residents (who the applicant states number 4,351²⁸), the applicant states that "there is a stretch of road and underdeveloped land which acts as a natural barrier, 'encouraging' northern residents to attend the Howard Springs Tavern and Cellarbrations Howard

²⁵ [REDACTED]

²⁶ Exhibit One, p 122

²⁷ Exhibit One, p 123

²⁸ This may be incorrect. According to the Australian Bureau of Statistics (**ABS**) 2021 census, the population of Howard Springs is 3,153: <https://www.abs.gov.au/census/find-census-data/quickstats/2021/SAL70129>

Spring stores and Southern residents to attend either Coolalinga Village Tavern or the surrounding bottle shops”.²⁹

71. According to the ABS, the population of the rural area of Virginia SA2 is 1,811,³⁰ although the applicant asserts that its adult population is 2,503.³¹ A substantial proportion of Virginia households are closer to Humpty Doo than to Coolalinga. According to the applicant, Humpty Doo “residents have many options for takeaway facilities (4) in their own local community areas”.³²
72. In the view of the Commission, the only residents of the Coolalinga LAC that it is realistic to expect will typically choose to patronise the proposed premises are the residents of the suburb of Coolalinga itself, which, based on the 2021 census, the Commission estimates has an adult population of 420.³³
73. There are already three takeaway outlets within a short walking distance of the suburban community of Coolalinga, which is on the north side of the Stuart Highway: Liquorland Coolalinga, adjacent to Coles, on the same side of the highway; BWS Coolalinga, on the south side of the highway adjacent to Woolworths; and United Service Station, also on the south side of the highway.
74. In the view of the Commission, given the applicant’s projected turnover, either it will supply a community of less than 500 with in the order of 20 standard drinks a day per person, or it its trade will predominantly serve the demand for alcohol from people driving south from Darwin along the Stuart Highway. The Commission accepts, as the applicant submitted in its response to the objection, that this market sector includes people embarking on camping or fishing trips. As the applicant pointed out, Coolalinga is the last suburban shopping centre encountered by persons leaving Darwin and heading south on the Stuart Highway.
75. The Commission is also of the view, however, that this market sector also includes members of remote communities who are returning home from a visit to Darwin.
76. In the course of the hearing, Ms Ganzer, on behalf of the Director, submitted that secondary supply to bush communities from liquor outlets along the Stuart Highway is a significant problem. The Commission accepts that submission. In November 2023 the Commission heard unchallenged evidence from numerous Wadeye residents that grog running to Wadeye

²⁹ Exhibit One, p 87

³⁰ <https://www.abs.gov.au/census/find-census-data/quickstats/2021/SAL70274>

³¹ Exhibit One, p 122

³² Exhibit One, p 91

³³ <https://www.abs.gov.au/census/find-census-data/quickstats/2021/SAL70062>

from Darwin along the Port Keats Road is prevalent.³⁴ It is notorious that grog-running, which is harmful, dangerous and of course unlawful, is prevalent in many parts of the Northern Territory, including to communities in the Daly River region to the southwest of Coolalinga, and to communities in Arnhem Land to the east of Coolalinga.

77. Unlike the takeaway liquor outlets at Palmerston, Humpty Doo and Adelaide River along this section of the Stuart Highway, there is no regular police presence near the proposed premises. Superintendent Funnell informed the Commission at the hearing that Coolalinga is primarily serviced by the Humpty Doo police station, as part of the patrols it conducts over a large area extending as far as Manton Dam to the south and Belyuen to the west. The Palmerston and Humpty Doo police stations are both about ten minutes drive from Coolalinga. It is readily foreseeable that in these circumstances grog-runners would regard a bottleshop at Coolalinga as being a particularly attractive venue.
78. In the view of the Commission, an additional drive-through takeaway outlet trading seven days a week on the side of the Stuart Highway used by vehicles outbound from Darwin would not advance the objective of minimising the harm or ill-health caused to people who unlawfully supply, obtain, possess or consume alcohol in interim alcohol protected areas and general restricted areas. On the contrary.
79. Finally, in relation to this public interest objective, the Commission refers to the applicant's submission that removing a takeaway liquor outlet from the Alice Springs region would advance a goal articulated by the Northern Territory Government. It is the case that the Northern Territory Government has publicly encouraged liquor licensees with a grocery store authority, including outlets in Alice Springs, to sell back their licences to the government. It is also the case that the Northern Territory Government has taken various significant initiatives across the Territory, particularly in Alice Springs, to reduce access to takeaway alcohol. Removal of takeaway outlets is not an end in itself, but a means to achieving the underlying objective of reducing alcohol-related harm and ill-health. Alice Springs has been a particular focus of Northern Territory and Federal Government interventions in recent years in no small part because of the very high levels of alcohol-related harm and ill-health in Central Australia.
80. However, the Commission considers that the applicant's submission that "[m]oving a take away licence from Alice Springs to Darwin is likely to bring community benefits with reduced alcohol sales in Alice Springs"³⁵ is unhelpful to the applicant's case. On the data supplied by the applicant,³⁶ the Commission calculates that the quantity of liquor sold by the Alice Springs

³⁴ Northern Territory Liquor Commission, *Notice of Proposed Variation of Licence Conditions (Peppimenarti and Daly River)* (LC:OMV:2023-001) at [25]

³⁵ Exhibit One, p 850

³⁶ Exhibit One, pp 850 – 851

Wine Club was about one two hundredth (ie half of one per cent) of the liquor sold in Alice Springs in 2023. It is fanciful to suggest that closing down this outlet will have any real impact on alcohol consumption levels and alcohol-related harm in Central Australia. If the Alice Springs Wine Club closes down, it is highly likely that its members will simply join another wine club that accepts orders on-line and delivers to the door.

81. The applicant proposes to substitute this outlet with one supplying approximately the same volume of pure alcohol in each ten day period (1,500 litres) as the Alice Springs does in a year (1,614 litres). Even allowing for the fact that much of this trade will not be “extra” liquor, but trade taken from the applicant’s commercial competitors, the Commission considers that there will be an increase in supply, which will in turn impede attainment of the objective of minimising the harm or ill-health caused to people by the consumption of liquor.
82. Measured by this objective alone, the Commission would find that the granting of the application would not be in the public interest. However, the Commission must also consider the remaining nine public interest objectives set out at s 49(2) of the Act. It now does so.

(b) Ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner

83. The Commission is satisfied that the applicant has the experience and competence required to meet this objective. The applicant has operated the Coolalinga Village Tavern next door to the proposed premises in a generally responsible manner, notwithstanding the matters adverted to at paragraph 22 above. Liquor will of course be sold but not consumed in or on these proposed takeaway premises.

(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

84. Based on the applicant’s turnover estimate, and on the assumption (based on previous matters the Commission has conducted) that the average amount spent in a bottle-shop transaction is between \$50 and \$100, the Commission expects that on average during the proposed trading hours there would be a sale every two minutes. There would of course be slow trading periods and other times when the store would be relatively crowded. The applicant would have the advantage of its Tavern next door, whose staff could be called on to back up bottleshop staff and its security officers in the event if required.
85. The Commission is satisfied that the applicant would meet this objective.

(d) Protecting the safety, health and welfare of people who use licensed premises

86. As with the previous two objectives, the applicant's demonstrated capacity to manage the Tavern stand it in good stead when it comes to operating a bottleshop that would protect the safety, health and welfare of patrons. The Commission does however entertain a concern with respect to the real risk adverted to above that the venue would become an outlet of choice for grog-runners.
87. The Commission also has concern about the increased risk of injury to pedestrians associated with the operation of a drive-through bottleshop on the Stuart Highway, a matter raised by the objector.

(e) Increasing cultural, recreational, employment or tourism benefits for the local community area

88. Coolalinga already has three takeaway liquor outlets. The Commission accepts the applicant's assurance that it would provide an increased range of premium beverages, which would be of some recreational benefit to the local community. However, the applicant also frankly conceded that its main product line would be beer, and that the most popular beer it currently sells is a Carlton and United Breweries product, which the Commission confidently expects is already available at other nearby outlets.
89. The Commission accepts that patrons of the Coolalinga shopping centre and Tavern who were polled by DNS overwhelmingly supported the establishment of another bottleshop at Coolalinga. However, the weight the Commission gives to this evidence is reduced having regard to s 50(3) of the Act, as discussed below.
90. The Commission considers that the tourism industry will obtain some marginal benefit from the establishment of an additional bottleshop on the Stuart Highway. The applicant relies particularly on the benefit of it being open on Sundays, adjacent to the outbound lane of the highway. However, Sunday is a day when, generally speaking, Darwin residents are returning from their fishing and camping trips, inbound. More importantly, as discussed below, the Regulations would in any event prohibit this particular licence from trading on a Sunday.
91. The proposed venture would create employment, both for the construction of the premises, a multi-million dollar project, and then for its staffing, with, according to Mr O'Brien, three additional effective full-time positions. This would, the Commission finds, be of real benefit to the local community area.

(f) Promoting compliance with this Act and other relevant laws of the Territory

92. The Commission does not consider that the establishment of the proposed premises will either significantly advance or impede this objective.

(g) Ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business

93. The applicant has provided evidence that satisfies the Commission that it would provide appropriate training to its staff.

(h) Preventing the giving of credit in sales of liquor to people

94. The Commission has no concern that the applicant would trade in breach of s 100 of the Act, which prohibits the giving of credit in sales of liquor.

(i) Preventing practices that encourage irresponsible drinking

95. The selling of packaged liquor for consumption off the premises is inherently a very high risk mode of supply, as reflected in Schedule Two of the Regulations ("Risk classification for authorities"), which classifies this authority at the highest level. The imposition and extension of the takeaway moratorium is also a clear indication that takeaway trading is regarded by the Northern Territory Government as high risk. This is because, whereas drinkers on premises are monitored by bar staff, security officers, CCTV and other patrons, takeaway customers can drink at a location of their choosing without being subject to surveillance or control.

96. In relation to this objective, the applicant makes the following submission:³⁷

The applicant will provide patrons with the ability to purchase low strength alcohol options and non-alcoholic beverages at the bottle shop. Furthermore, the bottle shop will conform to, and is committed to the Northern Territory Code of Practice for the Responsible Promotion of Alcohol. The licensee will not engage in any promotional activities that encourage the rapid or excessive consumption of alcohol or are likely to promote the irresponsible service or supply of alcohol.

97. Compliance with applicable Codes of Practice is in any event a requirement for all licensees. The availability of low strength alcohol options and non-alcoholic beverages is, in this day and age, standard practice.
98. The Commission does not criticise the applicant for not proposing further measures to address this public interest objective, because trading with a takeaway authority, by its nature, allows a licensee only very limited opportunity to intervene to discourage irresponsible drinking.
99. One course the applicant could have taken, but chose not to, would have been not to seek to trade on Sundays. Even if the Commission were minded to approve the application, reg 95(2) of the Regulations bars the Commission from authorising trade with this licence on Sundays. This may have been overlooked by the applicant.

³⁷ Exhibit One, p. 64

100. The Commission is not satisfied that if the application were allowed this public interest objective would be advanced.

(j) Reducing or limiting increases in anti-social behaviour

101. NT Police submit that the establishment of a large bottleshop at Coolalinga would likely lead to an increase in anti-social behaviour in the vicinity of the premises. In *Oasis Liquorland*, another takeaway authority substitution case, this issue was also raised, and the Commission found, at [156]:

Having regard to its long history of anti-social behaviour associated with the operation of its BWS liquor outlet... restoring a licence to the Oasis Shopping Village would result in once again becoming a hot-spot for anti-social behaviour.

Although police have provided the Commission with data recording alcohol-related disturbances and anti-social behaviour at Coolalinga over recent years, the Commission considers that Coolalinga has not been an anti-social “hot-spot”, and that the factual circumstances that supported the above finding in *Oasis Liquorland* are not present in the current case. The Commission is not satisfied that the establishment of a bottleshop at Coolalinga would reduce or limit increases in anti-social behaviour in the vicinity of the premises, but neither is it satisfied that it would lead to increases in anti-social behaviour at that location.

102. That said, and considering this objective from a broader perspective, the Commission has concerns that the significant increase in supply of takeaway alcohol that would occur if these premises were established would lead, down the track, to increases in anti-social behaviour at the locations, whether near Coolalinga or further afield, where that alcohol is consumed.

103. In addition to the ten public interest objectives, the Commission is also required to have regard to two related provisions of the Act. Firstly, s 51(1) expressly places the onus on an applicant to satisfy the Commission that issuing a licence (or in this case, substituting premises) is in the public interest. Secondly, s 50(3) provides:

The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community.

104. Having carefully considered all these matters, and having engaged in the balancing exercise required in order to perform its function under s 75(2) of the Act, the Commission has concluded that the applicant has not discharged its onus to satisfy the Commission that approving the application to substitute licensed premises is in the public interest.

105. 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 matters set out at section 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 section 50;³⁸
 - (j) any other matter prescribed by regulation.³⁹
106. Having regard to the Commission's finding at paragraph 104 above, it is not necessary for the Commission to make findings in relation to the community impact test: in order to be successful in its application, the applicant needs to pass both the public interest test and the community impact test. Nevertheless, the Commission makes some brief observations about the community impact matters.
107. In relation to matter at s 49(3)(a), the Commission does not consider that the establishment of the proposed premises would likely cause undue offence, annoyance, disturbance or inconvenience to Coolalinga locals.
108. The Commission has already discussed and made findings in relation to the matters at s 49(3)(b), (c), (d), (e), (g) and (h).
109. In relation to the matter at s 49(3)(f), the Commission did not receive any evidence or submissions, and makes no findings.

³⁸ In the view of the Commission, no such guidelines are currently in effect.

³⁹ No such matters have been prescribed.

110. For the reasons set out above, the Commission refuses the application to substitute premises.
111. As the applications to transfer the licence and vary licence conditions are both contingent on the approval of the application to substitute premises, the Commission also refuses those applications.

The objects of the Act

112. Section 3(4) of the Act provides that in performing its functions to decide whether to grant the applications, the Commission must have regard to the primary and secondary purposes of the Act.
113. In considering this matter, the Commission has steadily born in mind the purposes of the Act, which as the Commission has noted above, are “mixed”, and like the function of assessing an application by applying the public interest and community impact tests, involves a balancing exercise. The Commission considers that its decision is consistent with the purposes of the Act.

NOTICE OF RIGHTS

114. Section 31(1) of the Act provides 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.
115. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the applicant, the Director and NT Police.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
9 July 2024

On behalf of Commissioners Goldflam, Dwyer and Fong Lim

ANNEXURE ONE: PROPOSED VARIATION OF LICENCE CONDITIONS

1.1 – Current Conditions / Proposed Changes	
Current Condition	Proposed Change
<p>Liquor shall be delivered from the premises during the following hours:</p> <p>(i) Monday to Saturday inclusive and Public Holidays between the hours of 14:00 and 20:00; and</p> <p>(ii) Good Friday, Christmas Day and Sunday excepted.</p>	<p>Liquor shall be sold for off-premise consumption from the premises during the following hours:</p> <p>(I) Monday to Friday between the hours of 10:00 and 22:00;</p> <p>(II) Saturday and Public Holidays between the hours of 09:00 and 22:00</p> <p>(III) Sunday between the hours of 10:00 and 22:00 and</p> <p>(IV) No trading on Good Friday or Christmas Day.</p>
<p>Address for the Service of Notices:-</p> <p>The Licensee must provide to the Director of Liquor Licensing a current address for the service of notices issued under the Liquor Act together with an emergency contact phone number. In the event of a change of address for the service of notices or a change in the emergency contact phone number, the Licensee must inform the Director of Liquor Licensing, in writing, of the new address and/or new emergency phone contact number within fourteen days of the change of address or phone number. For the purpose of this condition, an address for the service of notices may be a private mailing address, a post office box address or an email address.</p>	<p>No longer required</p>
<p>Liquor Products shall not be Supplied to Restricted Areas:-</p> <p>Where the Off Premises delivery of a liquor product is to a person in a restricted area or to a person who holds a restricted area permit, the delivery personnel shall confirm that the permit conditions. Off premise deliveries of liquor products are not made to residential dwellings that display a "Restricted Premises" sign.</p>	<p>No longer required</p>
<p>Use of ID Technology</p>	<p>No longer required</p>

1.1 – Current Conditions / Proposed Changes	
Current Condition	Proposed Change
Where the Licensee is operating from a location that requires appropriate identification to be scanned for all takeaway sales, the Licensee shall ensure that all Off Premises deliveries of liquor products are only to be handed over to the identified person.	
<p>Inspection of Records:-</p> <p>The Director of Licensing shall be privy to all records of the Licensee that relates to the sale liquor, including all delivery receipts. The Licensee shall allow inspection of any and all such records upon request by an Inspector of Licensed Premises or by any other person authorized or delegated by the Director of Liquor Licensing for the purpose. Such Inspector or other authorised or delegated person may temporarily remove any such documents from the possession of the Licensee for the purpose of making such copies as thought fit. The Licensee shall not hinder, impede or fail to co-operate with any such officer or person in the performance of a task in pursuance of this condition.</p>	No longer required
<p>Issues Arising - Online Operations:-</p> <p>In the event that issues may arise in relation to any aspect of the Licensee's online operation which the Director of Liquor Licensing had not envisaged or appreciated at the time of its approval of the application, the Director of Liquor Licensing may from time to time issue written directions to the Licensee in aid of resolving any such directions according to their terms, provided always that except only in the Director of Liquor Licensing's perception of an emergency no such directions shall be issued without prior consultation with the Licensee.</p>	No longer required
<p>Hours of Delivery:-</p> <p>Hours of deliveries are to be confined to between 14:00 and 20:00, Monday to Saturday. No trading Sundays, Good Friday and Christmas Day.</p> <p>Delivery of liquor will not be made within 24 hours of the order being placed</p>	No longer required
<p>Age of Person:-</p> <p>All persons involved in dispatching and delivery of orders be at least eighteen (18) years of age</p>	No longer required

1.1 – Current Conditions / Proposed Changes

Current Condition	Proposed Change
<p>Restricted Areas:- No deliveries to persons within a restricted area.</p>	<p>No longer required</p>
<p>Purchasing:- Purchases shall be ordered via a website, facsimile or postal order. Purchases may also be ordered by patrons attending a wine tasting event hosted by the Alice Springs Wine Club.</p>	<p>No longer required</p>
<p>Sales of Wine:- Sales are confined to bottled wine, with a minimum purchase of twelve bottles per order. A minimum of three (3) bottles of wine may be sold to patrons who attend and order from a wine tasting event arranged under this liquor licence with formal notification provided to the Director of Liquor Licensing prior to that event.</p>	<p>No longer required</p>
<p>Collector's Sets/Special Edition Wines:- Upon receipt of written authorisation from the Director of Liquor Licensing, bottles of "Collector's Sets/Special Edition Wines" may be sold in quantities of less than twelve (12) bottles per order.</p>	<p>No longer required</p>
<p>Liquor Tasting</p>	<p>Liquor tasting is permitted at any time during trading hours provided seven days prior notice is given to the Director of Liquor Licensing.</p>
<p>CCTV Condition</p>	<p>The Licensee must install, maintain and operate a camera surveillance system in compliance with any requirements and guidelines prescribed by the Director or any Code of Practice issued by the Commission, including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchase, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The Licensee must retain all data captured by the camera surveillance system for not less than 14 days.</p>

Source: DNS55