

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: APPLICATION FOR MATERIAL ALTERATION
APPLICATION TO VARY CONDITIONS OF LICENCE

REFERENCE: LC2022/002

LIQUOR LICENCE: FLL1051

APPLICANT: Alice Springs Brewing Co Pty Ltd

PREMISES: Alice Springs Brewing Co
Lot 337 Palm Circuit
Desert Springs NT 0870

LEGISLATION: Part 4 Division 2 and Division 5 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 24 January 2022

DATE OF DECISION: 2 February 2022

DECISION

1. On 2 February 2022, the Northern Territory Liquor Commission (**the Commission**) issued the following decision notice:
 - a. The Commission approves the following material alterations:
 - i. an increase of the area of the licensed premises to one that combines the existing licensed premises with the adjoining premises of Liquor Licence number 80516781 (**Hideout – Star of Alice**), which is also held by the applicant; and
 - ii. the works set out at pages 17, 61, 62 and 63 of Exhibit One tendered at the hearing of the application, and summarised as:
 1. Removal of existing non-structural partition, cool room, display/counters and bar; and
 2. Construction of an island bar in the enlarged premises.

- b. To avoid doubt, the varied licence is issued with a producers' authority and a public bar authority in accordance with the existing authorities for Liquor Licence FLL1051. The licence is not issued with a restaurant bar authority or a late night authority.
- c. The licence will be subject to the conditions prescribed by Part 4 Divisions 1, 13 and 14 of the *Liquor Regulations 2019*.
- d. Subject to the restricted trading hours on certain days prescribed by Regulation 75 of the *Liquor Regulations 2019*, the trading hours of the licence will be every day, from 11:30 to 24:00.
- e. The Special Condition headed "Maximum Patron Numbers" is omitted and substituted by the following Special Condition under the heading "Maximum Patron Numbers":

The number of patrons permitted on the premises during trading hours shall not exceed such number permitted in accordance with section 91 of the *Liquor Act 2019*.

- f. The Special Condition headed "Seating" is omitted.
- g. The Special Condition headed "Noise Condition" is omitted and substituted by the following Special Condition under the heading "Noise Condition":
 - i. Each Monday, Tuesday, Wednesday, Thursday and Sunday (unless any of these days is on the day before a Public Holiday), after 22:00 no music is permitted other than pre-recorded ambient background music that:
 - 1. is emitted by a speaker or speakers located inside the building; and;
 - 2. is not so loud as to impede normal conversation or encourage patrons to dance.
 - ii. Each Friday, Saturday and the day before a Public Holiday, no music is permitted after 23:00 other than music emitted by a performer, speaker or speakers located inside the building.
 - iii. The Licensee shall have in place appropriate signage reminding patrons, when departing the premises, to do so in an orderly and respectful manner so as to not disturb the peace and quiet of the residential neighbourhood.

- iv. The licensee shall maintain on its website or Facebook page an email address to which noise complaints can be addressed, and which will be monitored daily by the licensee.
- v. The licensee shall maintain a Noise Complaint Register of all noise complaints received by the licensee on social media, by email, by post, by telephone or in person.
- vi. The Noise Complaint Register shall:
 - 1. be compiled and maintained in a bound hardcover book;
 - 2. include notes of any action taken by the licensee to respond to a complaint, including all communications with the complainant regarding the complaint; and
 - 3. be produced to a Licensing Inspector upon request.
- vii. The Director of Liquor Licensing (**the Director**) on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such sound attenuation and noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director's view a reasonable requirement in the circumstances then prevailing.
- h. Trade is not to commence under the varied conditions until:
 - i. The Director has received and accepted the licensee's surrender of the Star of Alice – Hideout liquor licence;
 - ii. The licensee has informed the Director in writing that it has exercised due diligence and conducted inquiries with the relevant regulatory authorities to ascertain what permits or approvals in relation to safety, planning and construction are required in order to carry out the material alterations approved in this decision;
 - iii. The licensee has confirmed to the Director in writing that it has documentary proof that it holds all necessary regulatory authorities and permits, and will provide such proofs to the Director on request; and
 - iv. The licensee has provided the Director with evidence that Northern Territory Fire and Emergency Service has inspected the premises and certified the maximum number of patrons permitted under the *Fire and Emergency Act 1996*.

- i. The Commission approves the carrying on of business under the current licence conditions until the commencement of work to undertake the material alterations.
 - j. After the commencement of the work to undertake the material alterations, no business is to be conducted on or in the licensed premises other than in accordance with a plan including a calendar of works that has been provided to and approved in writing by the Director.
 - k. All works must be completed within 12 months of the date of this decision unless otherwise approved in writing by the Director.
 - l. The Commission determines to extend time for the making of this decision to 2 February 2022.
2. The Commission indicated that it would publish reasons for its decision to issue a liquor licence. These are those reasons.

Background

3. On 30 October 2018 the Commission issued a decision notice approving the issue of liquor licence FLL1051 to a then newly established micro-brewery, Alice Springs Brewing Co Pty Ltd (**the licensee**), authorising the sale of beer produced on the premises by the licensee. Subsequently, following the commencement of the *Liquor Act* 2019 (NT) (**the Act**), the licensee was issued with a producers authority and a public bar authority.
4. The premises had formerly been part of an established licensed venue, the Star of Alice Function Centre (**Star of Alice**), located in a semi-rural precinct zoned "Tourist Commercial" about 5 kilometres from the Alice Springs CBD. At the same time that the Commission approved the issue of a liquor licence to the licensee, it approved a material alteration to the then licensee of the Star of Alice to excise the licensee's premises from the Star of Alice footprint.
5. When approving the new licence, the Commission fixed the following two conditions that were (and remain) conditions of the pre-existing Star of Alice licence:
 - a. No loud amplified music or entertainment such as rock bands is permitted.
 - b. The licensee shall not permit or suffer the emanation of noise from the area of the premises of such a nature as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises.

6. In its 2018 reasons for decision, the Commission explained that it imposed these conditions because it considered that there was substance to concerns about noise pollution raised by a local resident and a local action group who had objected to the 2018 application.
7. The licensee's new business was successful, and in 2020, the licensee expanded its business by assuming control of the whole of the premises of the Star of Alice. On 28 August 2020, the Director transferred the Star of Alice liquor licence number 80516781 to the licensee.

The Applications

8. On 28 October 2021, the licensee applied for a material alteration and a variation of licence conditions, the intended combined effect of which would be that the two adjoining premises, which are currently separated by an internal wall, would be converted into a single venue. The licensee proposes to remove the partition wall and install a new bar extending from the current Alice Springs Brewing Co premises into the current Star of Alice premises.
9. The applications were submitted on the basis that if granted, the licensee would surrender the Star of Alice licence 80516781, and the Alice Springs Brewing Co footprint would be expanded to cover the combined area of the two premises. In effect, the licensee was seeking to restore the arrangements in place before 2018, when a single liquor licence had covered the entire area.
10. The licensee applied to remove the condition that no loud amplified music or entertainment such as rock bands be permitted, a condition requiring that there be sufficient seating for all patrons on the premises, and a condition regarding the maximum number of patrons permitted on the premises.
11. The applicant also sought new trading hours from 11:30 to 23:59 every day across the expanded premises. On the one hand, this is more restrictive than the currently permitted Star of Alice trading window, which includes a late night authority allowing trade to continue until 02:00. On the other hand, it is less restrictive than the currently permitted Alice Springs Brewing Co trading window, which allows trade until 23:59 on Fridays, Saturdays, Sundays and Public Holidays, but requires the premises to close at 23:00 on the remaining days of the week.
12. The licensee seeks to replace the existing Star of Alice conditions with those of the Alice Springs Brewing Co conditions. Consequently, in effect, the licensee seeks to have the following existing conditions applicable to the Star of Alice licence deleted:
 - a. The conditions prescribed by Part 4 Division 16 of the *Liquor Regulations* 2019 (**the Regulations**) for restaurant bar authorities;

- b. The conditions prescribed by Part 4 Division 10 of the Regulations for late night authorities.
- c. The condition that the premises shall at all times have the appearance and shall trade predominantly as a restaurant.
- d. Consumption of liquor without a meal will not be advertised or promoted.
- e. Premises shall close no later than one and a half hours after the kitchen closes.
- f. The word “bar” shall not be used in advertising or signage.
- g. The provision of live entertainment is to remain secondary to the primary function of the premises as a restaurant/function rooms.

Consultation

- 13. In accordance with sections 96 and 111 of the Act, notification was given to Department of Health (**DOH**), NT Police and the Alice Springs Town Council, as well as the Northern Territory Fire and Rescue Service (**NTFRS**). None of these agencies raised any concerns or objections to the applications.
- 14. Also required by sections 96 and 111 of the Act, notices of the application were published in the Alice Springs News on-line on 5 and 9 November 2021, on the Department of Industry, Tourism and Trade website, and at the premises. Notice was given that any objections be lodged by 9 December 2021.

The objectors

- 15. Seven objections were received from persons residing in the neighbourhood of the licensed premises. The predominant issue raised by the objectors was a concern about an increase in noise from the premises, which the Commission considers raises a permissible ground pursuant to section 61(2)(a) of the Act, namely that the proposed alterations and variation of conditions would adversely affect the amenity of the neighbourhood of the licensed premises.
- 16. The Director provided the licensee with the objections, and the licensee lodged written responses to each objection.

The licensee’s record of compliance

- 17. Mr Kyle Pearson is the nominee for licence FLL1051 (the Alice Springs Brewing Co licence), licence 80516781 (the Star of Alice licence) and in addition, licence 80818730 (Monte’s Lounge), a popular restaurant bar in the Alice Springs CBD. The Director informed the Commission that there have been no complaints, investigations or non-compliance issues in relation to any of these licences since coming under Mr Pearson’s management.

The referral

18. On 7 January 2022, the Director referred this application to the Commission to be determined by way of a public hearing. On 12 January 2022 the Commission notified the licensee and the objectors that the matter would be listed for a public hearing on 24 January 2022. Having regard to COVID restrictions parties were invited to elect whether to attend the hearing in person or by online facilities.
19. The Director provided the following documents to the Commission with the referral (**the brief**):
 - a. Affidavit and Declaration of Associates pursuant to section 54 of the Act;
 - b. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
 - c. Licensee's statement that the proposed alterations will be lawful;
 - d. Site photographs, plan and works plans;
 - e. Lease agreement;
 - f. Correspondence with stakeholders and objectors.

The hearing

20. On 24 January 2022, the application proceeded as a public hearing. Mr Pearson appeared on behalf of the applicant. Mr Wood appeared for the Director. The Commission thanks them for their attendance and assistance. None of the objectors appeared at the hearing, either in person or by online facilities, although the Commission had invited each of them to do so.
21. At the commencement of the hearing Commissioner Goldflam declared that he was a social acquaintance of one of the objectors, that he had notified the licensee of this prior to the hearing, and that the licensee had indicated that no application would be made for Commissioner Goldflam to withdraw from hearing the matter. On behalf of the licensee, Mr Pearson confirmed that no such application would be made, and the hearing proceeded.
22. The brief was tendered and admitted into evidence without objection. No other evidence was received at the hearing.

Assessment of the applications

23. The application for a material alteration and the application for variation of licence conditions were made together, and the Commission considered and determined them together. As required by section 97(1) read in conjunction with section 112(1) of the Act, the Commission has considered:
 - a. The affidavit required by section 54;
 - b. The objections to the applications;
 - c. The applicant's response to the objections; and
 - d. The public interest and community impact requirements

The applicant's associates

24. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if an application to vary licence conditions is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of section 54.

Public notice and consultation

25. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with the Act.

The objections and the licensee's responses

26. The licensee conceded that each of the objectors was a person qualified to make an objection, and that each of the objections was made on a permissible ground, and the Commission so finds.

27. The objections and the licensee's responses are summarised as follows:

- a. Mr Glenn Mach is a resident of the G'Day Mate caravan park, which is immediately adjacent to the existing Alice Springs Brewing Co premises. Mr Mach, a patron of the licensee, expressed concern about late night amplified music, and suggested that loud music cease at 22:00, to "respect the neighbours".
- b. Mr Brendan Heenan lives in the neighbourhood, and is the landlord of both the licensee and the operators of the Windmill Caravan Park, which is situated on the same parcel of land, Lot 337, Palm Circuit, as the Star of Alice and the Alice Springs Brewing Co premises. Mr Heenan is a former proprietor of a third nearby caravan park, and noted that during the tourist season up to 1,000 people reside close to the premises. Mr Heenan expressed concern about the prospect of loud rock music being played outdoors at the premises, and suggested that a noise control system be installed. Mr Heenan stated that on occasion he had previously had to call the Alice Springs Brewing Co to turn down the volume. Mr Pearson acknowledged in his response that some residents of the Windmill caravan park were annoyed by noise from the residents, and was open to the idea of installing a noise control system.
- c. Ms Mandy Webb, a nearby resident, objected to the increase of trading hours, because of the noise from loud music and movement of patrons until midnight. Mr Pearson responded that trading hours would be reduced, not increased, and that it was not expected that there would be many more patrons.

- d. Ms Fiona Stewart, a Windmill Caravan Park resident, authored an objection co-signed by seven other park residents. Ms Stewart noted that some residents of the park live in caravans as close as 30 metres from the licensed premises, separated from the premises only by a tin fence. Ms Stewart stated that there had been numerous occasions on which loud amplified music had been played from the premises until around midnight, causing significant disturbance to Windmill residents. Ms Stewart stated that Mr Pearson had rebuffed residents' complaints about noise, and that on occasion residents had made noise complaints to police after their requests to the licensee to turn down the volume had been ignored. Ms Stewart also raised the issue of patrons leaving the premises late at night in a disorderly and noisy manner, and the noise caused by staff putting rubbish in bins located at the rear of the premises a short distance from residents' caravans. Ms Stewart noted that Windmill Caravan Park residents are permanent residents, and that some have lived there for over three years. Mr Pearson acknowledged that there had been complaints about noise on some occasions, as a result of "third party music providers", but that on those occasions immediate steps had been taken to rectify these issues.
- e. The owners of the G'Day Mate Caravan Park, Bill and Linda Wilcox, expressed concern at the prospect of amplified music until midnight, but also stated that the current "slightly amplified music they play now is fine and they finish at a reasonable time". Mr Pearson responded that his intention was not to make any changes to current business practices.
- f. Ms Helen Lambert, who has lived about 70 metres from the premises for 2.5 years, stated that she has made numerous calls to the licensee complaining about the noise of "music and revelry", but that the licensee does not answer the phone. Ms Lambert stated that there were regular Friday and Saturday night functions with amplified live or recorded music that was disruptive and disturbing. Ms Lambert also raised the issue of traffic noise caused by patrons leaving the premises late at night. Ms Lambert observed that "this is a residential area". Mr Pearson responded, stating that he had not received any messages from Ms Lambert on the licensee's voicemail system.
- g. Ms Penny Byrne and Mr Geoff Mark are G'Day Mate Caravan Park residents, one of whom is a nurse who works shifts. They raised a concern for the health of shift workers subject to sleep disturbance as a result of late night excessive noise. Mr Pearson responded that he did not expect that the proposed alterations would lead to an increase in noise levels.

Consideration of the objections

28. None of the objectors elected to attend the hearing, give evidence, be subject to cross-examination by Mr Pearson, or to cross-examine Mr Pearson themselves. The Director informed the Commission that not only had no complaints against the licensee come to the attention of Licensing NT, but that, according to NT Police, no noise complaints against the licensee had been received by police either.
29. The Commission notes that there are some significant inconsistencies between the statements of the various objectors. On the one hand, several objectors assert that they have been seriously and frequently disturbed by excessive noise emanating from the premises. On the other hand, several objectors make no such complaint, and only express concern about potential increase in noise disturbance.
30. In these circumstances, where there is a direct conflict between assertions made by objectors and the responses given by Mr Pearson, the Commission regards the statements of the objectors with caution.
31. Nevertheless, the Commission considers that, given the close proximity of the premises to neighbouring residents, and the nature of the licensee's operations, the concerns raised by the objectors are genuine and substantial.
32. The Commission has previously considered the principles applicable to the adjudication of noise disputes.¹

To constitute a nuisance, the interference with the plaintiff's use or enjoyment must be both substantial and unreasonable...

The test of unreasonableness is objective. The reasonableness enquiry involves a balancing exercise between the defendant's right to use his or her land freely, and the right of the plaintiff to enjoy his or her land without interference. The reasonableness requirement thus reflects the need for give and take between neighbours living within a community...

Among the factors relevant to whether interference is unreasonable are the nature and extent of the harm or interference, the social or public interest value in the defendant's activity, any hypersensitivity of the user or of the use of the plaintiff's land, the nature of established uses in and character of the locality, whether all reasonable precautions were taken to minimise any interference, and the type of damage suffered...

¹ *Ammon v Colonial Leisure Group Pty Ltd* [2019] WASCA 158, [119] to [121] (citations omitted), cited in Northern Territory Liquor Commission, *Disciplinary Action Pursuant to Liquor Act 2019* LC2020/042, (PINT Club Incorporated), 19 January 2021 at [22]

33. In the circumstances of this case, the Commission considers that a factor of particular significance is “the nature of established uses in and character of the locality”. Although, as Ms Lambert noted, the premises are in a residential area, it is a residential area of a particular character, located in a Tourist Commercial Zone, which is described in the Northern Territory Planning Scheme in the following terms:

Zone TC – Tourist Commercial

Zone Purpose Facilitate commercial and residential development that caters for the needs of visitors, supports tourism activities, and is of a scale and character compatible with surrounding development.

Zone Outcomes

1. A mix of uses focused on providing services to tourism comprising:

(a) **bar-small, bar-public, food premises, hotel/motel, serviced apartments, shop, rooming accommodation, caravan park, resort complexes and short-term accommodation;**

(b) entertainment and personal services for guests, residents and visitors, including **leisure and recreation** facilities; and

(c) a mix of other business activities including **club, passenger terminal, exhibition centre and leisure and recreation.**

34. The use of the premises as a function centre that hosts events incorporating amplified music was established several years before the current licensee commenced its business, and several years before at least some of the objectors moved to the neighbourhood.

35. As noted by the Commission when approving the issue of the licence in 2018, when the Development Consent Authority granted consent to the licensee to develop a micro-brewery at the premises, it stated:

The proposed change of use may be expected to contribute to the revitalisation of the surrounding tourism precinct, and diversity of restaurant and bar venues available to local residents and visitors.

36. The Commission does not accept the licensee’s claim that the variations sought will result in a reduction in the current hours of operation. Although it is the case that the licensee will surrender the late night authority currently attached to the Star of Alice licence, at least until that licence was transferred to the licensee, the venue only rarely traded until 02:00: “twice a year, if that” according to the previous licensee, as the Commission noted in its 2018 decision.

37. The Commission considers that it is considerably more likely that the approval to extend trading hours to midnight every night of the week will result in later trading, more often.

38. Similarly, the Commission does not accept the licensee's claim that there will be no significant change in the number of patrons who attend the premises. The Commission infers that the licensee would not go to the considerable expense of undertaking the material alterations unless it anticipated that this would lead to an increase in business.

39. In applying the public interest and community impact tests, as it is required to do, the Commission has taken all of the foregoing circumstances into account.

The public interest

40. To determine whether the approval of the alterations and variations is in the public interest, the Commission is required to consider how, if implemented, they would advance the following 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;
- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) preventing the giving of credit in sales of liquor to people;
- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

41. The Commission anticipates that the alterations and variations will increase cultural, recreational, employment and tourism benefits for the local community. The Commission is concerned that granting the applications will elevate the risk that the licensee will fail to comply with section 93 of the Act (“Undue and unreasonable noise”), but considers that this risk can be adequately managed and mitigated by fixing the noise condition set out at paragraph 1.g) above (**the Noise Condition**). The Commission does not consider that approval of the applications would have a significant effect on any of the other designated public interest objectives.

42. The Commission is satisfied that it is in the public interest to issue the licence.

Significant adverse impact on the community

43. To determine whether it is satisfied that the approval of the alterations and variations 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;
- (j) any other matter prescribed by regulation.

44. The Commission notes there are no such “other” matters prescribed by regulation.

45. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.

46. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50.

47. Those matters are identified as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any 'at-risk' groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to.

	<p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

48. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state however that:

...the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits.

49. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

50. In this case, the Commission considers that the risk of undue annoyance, disturbance and inconvenience to persons who reside in the vicinity of the licensed premises is of particular importance. As stated above, the Commission has reached the view that this risk can be adequately mitigated and managed by imposing the Noise Condition.

51. The Commission may not have come to this conclusion had the premises been situated in, for example, a High Density Residential Zone. In assessing whether annoyance, disturbance and inconvenience to residents in the vicinity is “undue”, the Commission has had regard to the fact that most of the affected persons have chosen to take up residence in the vicinity of an established entertainment venue located in a precinct zoned primarily for tourism and entertainment uses.

52. While the Commission accepts approval of the applications will give rise to a risk that residents in the vicinity will be annoyed, disturbed and inconvenienced, the Commission also accepts that approval is likely to have a positive effect on recreation, employment and tourism. Having weighed these competing considerations, as well as the other matters which it is required to consider, the Commission is satisfied that approval of the alterations and variations will not have a significantly adverse impact on the community.

The Noise Condition

53. The Commission considers that the existing noise condition is unfit for purpose. The reference to “loud music... such as rock bands” is unsatisfactorily vague. The “unreasonable disturbance” condition is unnecessary because it does no more than effectively replicate section 93 of the Act, which provides:

A licensee must not cause or permit its employees or patrons to cause undue and unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.²

² Section 82(1) of the Act provides that a provision such as section 93 is taken to be a condition of the licence.

54. The Commission notes that the conditions of the current licence were fixed by the Commission under the *Liquor Act 1978* (NT), which did not contain a provision similar to section 93 of the current Act.
55. In formulating the Noise Condition, the Commission has been guided by the *Northern Territory Noise Management Framework Guideline* (Version 0.1, September 2018) issued by Northern Territory Environment Protection Authority³ (**the Guideline**).
56. Section 3.1 of the Guideline (“Neighbourhood Noise”) recommends that musical instruments and electrically amplified sound equipment should be prohibited from producing noise that can be heard in a habitable room in a neighbour’s residence after midnight on a Friday, Saturday or the day immediately before a public holiday, or after 22:00 on any other day. The Commission has, with some modifications, adopted this approach in formulating the Noise Condition.
57. The Noise Condition permits the playing of music between 22:00 and 24:00 on the evening before a working day, but only if that music is played from inside the premises, and is not so loud as to impede normal conversation, a standard that is commonly utilised by the Guideline.
58. On the evening before a Saturday, Sunday or public holiday, the Noise Condition permits the playing of music after 23:00, but only if that music is played from inside the premises.
59. The Commission considers that in all the circumstances, these measures strike an appropriate balance between the licensee’s right to conduct its legitimate business, and the right of residents in the neighbourhood to have quiet enjoyment of their homes.
60. The Commission has endeavoured to address the increased risk of disturbance to neighbours caused by noisy or disorderly patrons leaving the premises by fixing a condition that the licensee place appropriate signage reminding patrons not to disturb the peace and quiet of the neighbourhood when leaving. In addition, section 93 of the Act imposes a responsibility on the licensee not to permit patrons to cause undue and unreasonable noise.
61. The Commission does not need to determine the contested allegations by some objectors that the licensee has ignored past noise complaints, and makes no such finding. However, to facilitate the resolution of any future noise disputes, the Commission has determined to fix a condition expressly requiring the licensee to establish and maintain a complaints register. Part 7 Division 3 of the Act (“Complaints against licensees”) provides that a person can make a complaint to the Director on a number of grounds, including that the licensee contravened a condition of the licence, and that the licensed premises were

³ Northern Territory Environment Protection Authority, *Northern Territory Noise Management Framework Guideline* (Version 0.1, September 2018), p. 42

used in a way that caused annoyance or disturbance to persons residing in the vicinity of the premises. The Commission accepts the information of the Director that to date no such complaints have been received.

62. The Commission has given careful consideration to the proposal by one objector that a noise control system be installed, and commends the licensee for responding as follows:

In relation to the orders around noise we put forward that we the licensee will install a noise monitoring and suppression device as attached in the outdoor performance area, which will be set at a level agreed by the Director or their representative.⁴

63. Nevertheless, the Commission has determined not to fix a condition of the licence that a noise control system be installed. In the Commission's experience, there can be considerably complexity, controversy and cost involved in calculating the sound level at which music gets automatically cut off by such a system, and in resolving disputes that arise following complaints that designated sound levels have been exceeded.⁵ Chapter 3.4 of the Guideline ("Entertainment Venue Noise") is complex and technical and, in the view of the Commission, impracticable to implement in the circumstances of the current application. For example, implementation of the Guideline's recommended project specific assigned noise levels for indoor and outdoor entertainment venue requires an assessment of the level of background noise in the neighbourhood at various times, which in itself can be a complicated task requiring sophisticated equipment and expertise.

64. Instead, as it has done on a number of previous occasions, the Commission has fixed a condition that allows the Director on their own initiative to implement further noise control measures. After the licensee has commenced to operate under the new conditions, if local residents make noise complaints to Licensing NT, it will be open to the Director to, for example, require the licensee to install and maintain the Sentry Music Noise Controller.

65. Prior to issuing its decision notice, the Commission circulated a draft of its contents to the licensee and the Director, and invited them to provide their comments. Both the licensee and the Director indicated that they were generally in agreement with the terms of the proposed noise condition.

⁴ Licensee's written submission, 29 January 2022. The attachment referred to was a brochure for a "Sentry Music Noise Controller".

⁵ See, for example, Northern Territory Liquor Commission, *Disciplinary action pursuant to the Liquor Act 1978* PINT Club Incorporated, LC2019/059 & LC2019/121 (17 March 2020)

Commencement of operation

66. In accordance with section 97(5) of the Act, the Commission has fixed pre-conditions on the resumption of trade following completion of the works that will be undertaken by the licensee to effect the material alterations.

67. Section 112(4) of the Act provides that a variation of conditions takes effect on a date specified by the Commission in the decision notice. In this instance, it was not possible for the Commission to specify a date for the variation of conditions to take effect, because that will depend on when the licensee surrenders the existing Star of Alice licence, and when the associated material alterations are completed. To avoid doubt, the Commission notes that in its decision notice, it intended that the variations to conditions would take effect on the date when the pre-conditions set out at paragraph 1.h) above have all been satisfied.

Extension of time

68. In contrast to the time limit that applies to decisions by the Commission whether to issue a licence or an authority, it is not required to determine an application to approve material alterations or vary licence conditions within a specified time.

69. Accordingly, the Commission's decision to extend time for the making of its decision in this matter was not only unnecessary, but, it would appear, made without power.

The objects of the Act

70. Finally, section 3(4) of the Act provides that in performing its function to decide whether to grant the applications, the Commission must have regard to the primary and secondary purposes of the Act.

71. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that its decision is consistent with the purposes of the Act.

72. For these reasons, the Commission has determined that the applications should be granted, the material alterations be approved and the conditions of the licence be varied as set out in the Decision Notice.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
11 February 2022

On behalf of Commissioners Goldflam, Dwyer and McFarland