

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTERS: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE: LC2019/054

LICENCE NUMBER: 81404283

LICENSEE: Dinah Beach Cruising Yacht Association Inc.

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

APPLICANT: Dinah Beach Cruising Yacht Association Inc.

NOMINEE: Ms Wendy McCallum

OBJECTOR/S: Nil

LEGISLATION: Section 119 of the *Liquor Act 1978*.

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 21 May 2019

DATE OF DECISION: 21 May 2019

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act 1978* (the Act), the Commission has determined to approve the temporary material alteration to the liquor licence of Dinah Beach Cruising Yacht Association Incorporated (the Licensee) for the premises known as Dinah Beach Cruising Yacht Club in the terms sought by the Licensee. Being, to extend the liquor licensed area to extend to adjacent land within the club as depicted in and referred to as Attachment G in the Hearing Brief for the "Annual Viking Funeral Event" on Saturday, 20 July 2019.

Reasons

Background

2. The Licensee currently holds a “Club” liquor licence for the premises known as Dinah Beach Cruising Yacht Club.
3. The nominee under the liquor licence is Ms Wendy McCallum.
4. On or around 26 February 2019 Ms McCallum made application on behalf of the Licensee under section 119(2) of the Act to make a material alteration to the premises to extend the licensed footprint for its annual Viking Funeral event, to be held on 20 July 2019.
5. The term “material alteration” is defined under section 4 of the Act as follows:

“material alteration means an alteration to licensed premises which:

 - (a) increases or decreases the area used for the sale of liquor or the sale and consumption of liquor; or
 - (b) involves structural alteration; or
 - (c) alters access to or egress from the premises; or
 - (d) alters the external appearance or facilities”.
6. The substance of the application is to extend the existing liquor licensed area to provide for an additional “chill out area” with hay bales for seating together with the dock side area on both sides of the mooring basin. All other conditions of the liquor licence will apply to this new area.
7. The Viking Funeral is an annual club event spanning back to the 1980’s held as tribute to the sailors passed away and boats decommissioned over the past year through the symbolic burning of a replica Viking vessel, secured in the water channel.

Advertising and Objections

8. The Commission was advised that the Licensee was not required by the Director-General to advertise the application for a material alteration of licence because of the event’s temporary nature being only 1 night.
9. The City of Darwin Council, Department of Health, Northern Territory Police and Northern Territory Fire and Rescue Service were asked to comment on the applications and no adverse comments were received.
10. The Commission was advised that records held by Licensing NT indicated that there was no adverse compliance history in relation to similar events conducted by the Licensee.

Public Hearing

11. Pursuant to section 50 of the Act, the Director-General of Licensing (“the Director-General”) must refer *inter alia* applications under sections 119 of the Act to the Commission. Therefore this application must be heard and determined by this Commission.
12. The public hearing commenced at 11:02am on 21 May 2019. Ms McCallum attended on behalf of the Licensee. Mr Jeff Verinder appeared on behalf of the Director-General. The Commission thanks them for their assistance.

Assessment of the Application

13. There were no objections to this application. Despite there being no objections made to the application lodged by the Licensee, the Act clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, section 6B of the *Liquor Act* makes clear that it is the Licensee who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
14. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;

- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the *Local Government Act*; and
 - ii. provisions of or under the *Planning Act*;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

15. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

16. On 6 March 2018, pursuant to section 6A of the *Liquor Act 1978*, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the *Liquor Act*”.

17. Those matters are identified as follows:

Criteria	Matters to be considered
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.	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include – <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and

	<p>those Aboriginal people that might be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <hr/> <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. <hr/> <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</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</p>

of licensed premises within the community area.	developed to address these potential issues.
Volume	<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>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<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?

18. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Licensee must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear 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”.

19. With respect to this application, the Commission considers it relevant that this is not an application for a new licence. This is an application to temporarily increase the licensed footprint of the licensed premises, thus increasing the area upon which liquor will be sold and consumed. As a result, some of the matters that would be highly relevant to an application with respect to a new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a material alteration
20. Ms McCallum provided a sworn affidavit in accordance with section 26A of the Act and a Public Interest Criteria Statement pursuant to section 6(2) of the Act and spoke in support of the Application.
21. Ms McCallum confirmed that the Licensee has held this annual event over many years and it has proved a popular means by which to showcase the club’s activities and raise funds. She confirmed that an extension of the licensed area was permitted for last year’s event without any adverse consequences.
22. The Director-General representative did not raise any concerns with the Commission regarding this Licensee’s management of this event in previous years.
23. Based on the information presented, this Commission is, on balance, satisfied that the approval of the material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined decided to approve the material alteration to the licensee’s licensed premises as sought and as outlined at the start of this Decision Notice

Notice of Rights:

24. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
25. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
26. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.



RICHARD COATES
Presiding Member
Chairperson
24 May 2019