

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION FOR SUBSTITUTION OF PREMISES

**LICENCE NUMBER:** 80316050

**REFERENCE:** LC2020/023

**LICENSEE:** Jumiam Pty Ltd & Thedugies Pty Ltd

**PROPOSED PREMISES:** Breezes Bar & Bistro

15 Fuhrmann Street  
MUIRHEAD NT 0810

**APPLICANT:** Jumiam Pty Ltd & Thedugies Pty Ltd

**LEGISLATION:** Sections 75 of the *Liquor Act 2019*

**HEARD BEFORE:** Ms Jodi Truman (Chairperson)  
Mr Bernard Dwyer (Health Member)  
Ms Christine Hart (Community Member)

**DATES OF HEARING:** 23 and 25 November 2020

**DATE OF DECISION:** 14 December 2020

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**Decision**

1. For the reasons set out below and in accordance with section 75(2) of the *Liquor Act 2019* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) has determined to approve the substitution of new premises for Globetrotters Lodge (previously located at 97 Mitchell Street, Darwin) in Licence number 80316050. The new premises will be located at 15 Fuhrmann Street, Muirhead and known as “Breezes Bar and Bistro”.
2. The approval is subject to the following conditions:
  - a. That within three years from the date of this Decision Notice, or such later date as the Commission may approve, the Licensee complete the proposed construction works for the proposed premises in accordance with the plans which are Attachment “L” to the Director of Liquor Licensing referral in respect of this matter.

- b. In accordance with section 60(5) of the Act, and noting that the premises are not yet constructed, liquor must not be sold under the licence until such time as the applicant has been given written approval to do so by the Commission subsequent to the applicant having provided written confirmation that it has obtained all the necessary building, planning and safety approvals, including a certificate of occupancy for the premises.
- c. The Commission delegates to any one of Members Truman, Dwyer and Hart the authority to grant the approval referred to in the paragraph above. Should such persons no longer be members of the Commission, the authority is delegated to the Director of Liquor Licensing.
- d. The conditions of the licence will be those authority conditions for a public bar and is subject to the conditions on licences and authorities (as relevant) in Part 4 of Act and the standard operating conditions on authorities and other conditions set out for a public bar authority set out in Part 4, Division 14 of the *Liquor Regulations 2019* (“the Regulations”).
- e. The previous late night authority is removed.
- f. To remove all doubt, the Trading Hours set out in the current licence are removed and replaced by those authority conditions provided for at Regulation 75, being:
  - i. 10:00 to 24:00 every day of the year except Good Friday and Christmas Day;
  - ii. On Good Friday and Christmas Day 11:00 to 21:00 if the liquor is served, sold or supplied to patrons purchasing full meals during those hours;
  - iii. On New Year’s Day 00:00 to 02:00 if the licensee gives the Director written notice of the licensee’s intention to open during those hours before 3 December of the year preceding the New Year’s Day.
- g. The following special conditions be inserted into the licence and any inconsistent conditions previously set out in the licence are removed:
  - i. Concept:

A family friendly Tavern, any changes to the concept will require the approval of the Director of Liquor Licensing.
  - ii. Dress Code:

Patrons must at all times be dressed in clean, neat and tidy apparel in keeping with the concept of a family friendly Tavern

iii. Responsible Service of Alcohol:

The Licensee shall not sell double nips, shots or permit any skolling games.

iv. Entertainment:

1. Pre-recorded and live entertainment may be provided and shall be consistent with the concept of the premises. It shall be in the nature of light, background music intended to compliment the family nature of the premises.
2. There shall be no designated dance floor on the premises.
3. No amplification shall be directed in any way outward or away from the licensed premises.
4. Entertainment in the indoor/outdoor and outdoor dining areas must not be of such volume as to cause nuisance to nearby residents and must be in keeping with the separate Noise Control special condition.
5. Live entertainment in the indoor/outdoor and outdoor dining areas must be limited to solo acoustic performers or duos and must not continue after:
  - a. 21:00 Sunday to Thursday; and
  - b. 22:00 Friday to Saturday.

v. Noise Control:

1. Noise levels emanating from any part of the premises (including but not limited to noise from entertainment) must be such as to not cause unreasonable disturbance to the businesses or ordinary comfort of the neighbouring premises and residences.
2. The Director of Liquor Licensing on her or his 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 of Liquor Licensing in her or his discretion may notify to the Licensee in writing at any time as having become in the Director of Liquor Licensing's view a reasonable requirement in the circumstances then prevailing.

vi. Beer Garden:

The Licensee shall erect a fence or appropriate screen around the “beer garden” area, of such height and type to the satisfaction of the Director of Liquor Licensing, as will prevent any observation of the “beer garden” by passing pedestrians.

## **Reasons**

### **Background**

3. On 26 February 2020, an application was lodged by Danny Nixon-Smith of DNS Specialist Services on behalf of Jumiam Pty Ltd & Thedugies Pty Ltd (“the Applicant”) in respect of a “Tavern Authority” liquor licence in relation to the premises known as Globetrotters Lodge. The application was for a substitution of the premises named in that licence in accordance with section 75 of the Act.
4. The licence in its current terms is linked to 97 Mitchell Street, Darwin in relation to premises named as “Globetrotters Lodge”. Those premises ceased trading in April 2019 due to an expiration of the lease. Correspondence was sent at that time by the Applicant to the Director of Licensing advising of their intention to seek alternate premises.
5. The application is to substitute those premises to 15 Fuhrmann Street, Muirhead; which is currently a vacant block of land where the licensee intends to build a new venue and rename the business “Breezes Bar and Bistro” (“Breezes”). As a result, the Applicant is also seeking to change the name of the premises within the licence held.
6. In support of the substitution application the Applicant relied on a number of documents that were tendered into evidence before the Commission and became Exhibit 1. In addition the Applicant tendered a number of additional documents that formed Exhibits 2 to 17 inclusive, 43, 44, 46, 47, and 49. All of this material was considered carefully by the Commission during the course of the hearing and also in determining this application.

### **Publication and Consultation**

7. Pursuant to section 57(1) of the Act, notice of the application was published in the NT News on Wednesday 4 and Saturday 7 March 2020. In addition, the Applicant was directed to display the “Green Sign” at a prominent external area of the proposed premises for a 30-day period coinciding with the notices published in the NT News. Copies of the notices in the newspaper and photographs of the green sign erected at the proposed premises were provided and a signed declaration that the public notice “Green Sign” was displayed in accordance with the direction.

8. The Commission was informed that this application attracted large media interest which apparently generated a high level of public awareness of the application. Three (3) full-page colour advertisements were in fact published in the NT News on 18, 20 and 26 March 2020 seeking objections to the application.
9. In total 188 written objections from 256 objectors were received from the public. This number far exceeds any previously experienced by the Commission. Each of the objections were provided to the Applicant and the Applicant was granted an extension of time (as requested by the Applicant) to consider and respond to those objections.
10. In accordance with section 56 of the Act, the Director of Liquor Licensing (“the Director”) informed the following of the application:
  - CEO of Department of Health (“the DOH”);
  - Commissioner Northern Territory Police (“NT Police”);
  - CEO of the City of Darwin (“DCC”).
11. Notice was also given by the Director to the NT Fire & Rescue Service (“NTFRS”) and to the Development Consent Authority (“DCA”).
12. The DOH advised via email dated 3 March 2020 that it is:

“... not able to support this application for the following reasons:

The substituted premises at Muirhead appears to be significantly changed (s75(2)(a) Liquor Act 2019) from that of a small late night venue catering predominantly to overseas backpackers to that of an open alfresco area catering to suburban families.

Health is not able to support the current trading hours of the existing licence in a residential suburb.

Health maintains its policy that suburban licensed premises should close during weekdays at 23:59 hours, allowing for additional trading hours only over the weekend.

Health suggests the application would be better suited to a new application to better reflect the categories of licence and trading hours identified under the new Liquor Act”.

13. When clarification was sought as to whether the DOH was “objecting” to the application, the DOH advised:

“Response to be considered as a formal Health comment on the application.

Health is of the view that it does not formally object to applications, rather it relies on the Liquor Commission to consider all information before it”.

14. The NT Police replied via email dated 5 March 2020 advising it had no objection.
15. The DCC replied via email dated 31 July 2020 advising that the application had been provided to “Elected Members for their review, with the result being I have received no comments with regard to the application”. The Commission notes that pursuant to section 61(7)(c) of the Act, the Commission “must proceed as if” the Council “has no objection to the application”.
16. The NTFRS responded that they  

“... (support/have no objections to) this application with the following conditions:

  - Building works to go through the building approval process as per the *Building Act* (NT).
  - On completion of building works (occupancy permit issued) NTFRS will inspect to ensure compliance with *NT Fire and Emergency Act* and *Regulations* (Licensed areas will also be assessed for maximum patron numbers at this time).”
17. The DCA responded stating; “planning consent had not been sought to date”. That remained the case as at the hearing dates.
18. On 12 May 2020, the application was referred to the Commission by the Director to fix a time and place for the hearing of the application. As part of that referral, the Director included the response received from the solicitors for the Applicant, namely De Silva Hebron to the objections that had been lodged.
19. The Commission did not consider that response sufficient for the purposes of section 62 of the Act and as a result, further details were sought from the Applicant’s solicitors on 20 May 2020.
20. As a result, on 4 June 2020 the solicitors for the Applicant provided a further response. Following receipt; the Commission, via its counsel assisting, Mr Lachlan Peattie, wrote to a number of the objectors identifying section 61(4) of the Act and seeking clarification as to how each of the objectors fell within that section. It was necessary for this to be clarified so as to assess how many potential valid objections there were in order to determine how many days were needed to hear the matter and ultimately identify an appropriate location for any subsequent hearing that complied with COVID19 social distancing requirements.
21. A number of the initial objectors did not respond to that correspondence and as a result of not identifying how they fell within section 61 of the Act, those objectors were not considered to be valid and were not considered further.
22. On 10 July 2020, Russell Reid, President Clubs NT Incorporated (“Clubs NT”) sought leave to appear at the hearing pursuant to section 22 of the Act.

## Directions Hearing

23. Following receipt of the referral and after liaising with all counsel, the Commission listed the matter for a Directions Hearing on 24 August 2020. Mr Miles Crawley SC appeared on behalf of the Applicant. Mr Lachlan Peattie appeared as counsel to assist the Commission and Mr Tom Anderson sought leave to appear on behalf of Clubs NT. Mr Anderson argued that Clubs NT was uniquely positioned to offer the Commission assistance on the issue of public interest and community impact tests concerning asserted flow on effects for local community and sporting groups, and cultural, recreational, employment and social amenities.
24. The Commission determined, in line with earlier rulings, that section 22(1)(c) of the Act clearly envisaged the granting of leave to appear to a body such as Clubs NT. Accordingly leave was granted to Clubs NT to appear and make submissions in relation to the public interest and community impact tests.
25. Due to the size of the application and the material filed, further time was granted to enable Clubs NT to consider the material and also to enable the Applicant to consider the objectors identified as considered (then tentatively) by the Commission to fall within section 61 of the Act. The Commission also at that time indicated its tentative view that the “neighbourhood” to be considered under section 61 of the Act included the suburbs of Muirhead, Lee Point, Lyons, Wanguri, Tiwi and Leanyer and any objectors outside those suburbs did not fall within a proper construction of the word “neighbourhood” under section 61 and therefore should not be considered. The matter was listed for a further directions hearing to 8 September 2020 with the consent of all the parties.
26. At the request of the solicitors for the Applicant, the date for the Directions Hearing was relisted for 9 September 2020. At that time the parties indicated that they did not take objection to the approach suggested by Counsel Assisting that the “neighbourhood” to be considered include those suburbs previously identified, namely Muirhead, Lee Point, Lyons, Wanguri, Tiwi and Leanyer. This took into consideration that such suburbs shared common community facilities and were part of an area that “may” have their amenity affected by the proposed premises. It is noted that such suburbs also fell generally within a radius of approximately 2kms from the proposed premises and this accorded with earlier rulings by the Commission as to “neighbourhood”.
27. As a result of no objection being taken to this approach, on 9 September 2020 the Commission determined that the following persons or bodies had lodged valid objections in accordance with section 61 of the Act:

No.	Objection no.	Name	Basis of validity
1.	3	Claudia Lucero Acevedo	Resident of Lyons
2.	13	Brian SHEILS	Resident of Wanguri
3.	15	Karen BYRNE	Resident of Wanguri
4.	17	Dr Vishal Kohli	Resident of Muirhead

5.		Mrs Laura Kohli	as above
6.	20	Jane STEELE	Resident of Lyons
7.	22	Tobi MARTINS	Resident of Muirhead
8.	23	Dr Raelene Martins	Resident of Muirhead
9.	25	Andrew WILLS	Resident of Muirhead
10.	30	Colin STOKES	Resident of Tiwi
11.	32	Frances & Geoffrey Sharples	Resident of Wanguri
12.	36	Peter SOUTH	Resident of Lyons
13.	37	Brian KUHL	Resident of Leanyer
14.	40	Kirsty NEWBERY	Resident of Lee Point
15.	41	Martin WIBERG	Resident of Nakara
16.	43	Jan RICHARDSON	Resident of Muirhead
17.	45	Kaara TWEEDIE	Resident of Tiwi
18.	46	Clair PARKINSON	Resident of Leanyer
19.	47	David RAY	Landowner in Lyons
20.	50	George KOULAKIS	Resident of Lyons
21.	53	Kym Chilton	Resident of Lyons
22.	54	Terry SIRIANNI	Resident of Lyons
23.	59	Michelle HOWARD	Resident of Lyons
24.	63	Peter J LINTON	Resident of Lyons
25.	65	David BLAIR	Resident of Muirhead
26.	66	Vivian BYWATER	Resident of Tiwi
27.	67	Garry ROSS (President of Tracy Village)	Community organisation
28.	69	Phil ROBERTS	Resident of Tiwi
29.	74	Jason Schmidt	Resident of Muirhead
30.	77	Kenneth MARSHALL	Resident of Tiwi
31.	84	Dr Marion Davey	Resident of Leanyer
32.	86	Sujab Mohamed Ismail	Resident of Muirhead
33.	88	Wajiha SUFYAN	Resident of Muirhead
34.	89	Franklin JACOB	Resident of Muirhead
35.	90	Kalinga KERATH	Resident of Muirhead
36.	91	Muhammad Nadeem Afzal	Resident of Muirhead
37.	92	Dr Ajith Mahavithana	Resident of Muirhead
38.	95	Ankita & Rituraj Verma	Resident of Muirhead
39.	96	Angela KENNEDY	Resident of Muirhead
40.	98	Judy DENT	Resident of Tiwi
41.	99	Graham ROBINSON (Darwin Baseball League)	Community organisation
42.	101	Dr Renato Penalzoza	Resident of Muirhead
43.	103	Demi CUBILLO	Resident of Muirhead
44.	105	Evelyn LEWIS	Resident of Leanyer
45.	106	Lyn Hutton (NT Bromeliad Society)	Community organisation
46.	107	Supaporn HO	Resident of Lyons
47.	108	Michaela WALDMANN	Resident of Muirhead

48.	110	Anthony & Debra Rossiter	Resident of Wanguri
49.	115	Maria TEO	Resident of Muirhead
50.	119	Jason DYER	Resident of Wanguri
51.	120	Maricar ALCEPU	Resident of Wanguri
52.	121	T. Anderson	Resident of Muirhead
53.	122	Erine KOLOKASIS	Resident of Tiwi
54.	130	Wise SEKITAGO	Resident of Lyons
55.	136	Sean RUSSELL	Resident of Wanguri
56.	144	John MENDOZA	Resident of Muirhead
57.	146	Jason RADOVIC	Resident of Tiwi
58.	152	Cassandra CAROLIN	Resident of Leanyer
59.	154	Monica MU	Resident of Muirhead
60.	155	Alastair BLACK	Resident of Leanyer
61.	156	Marion DAVEY	Resident of Leanyer
62.	162	Greg WORDEN	Resident of Wanguri
63.	163	Wayne MCMULLAN	Resident of Lee Point
64.	164	Kirsty NEWBERY	Resident of Lee Point
65.	165	Lyn AINSLIE	Resident of Tiwi
66.	171	David MUTASN	Resident of Muirhead
67.	173	Geoffrey BOEHM	Resident of Tiwi
68.	179	Russell REID	Resident of Lyons

28. Having been able to identify the number of valid objectors, the Commission then listed the application for a hearing taking into account the availability of all persons; including the applicant and their counsel. The Commission set down a hearing for 4 days commencing on 23 November 2020 together with a schedule (as agreed between the parties) for the filing of all relevant material and submissions.

## The Hearing

29. At the hearing, Mr Lachlan Peattie appeared as Counsel Assisting the Commission. Mr Miles Crawley appeared for the Applicant. Mr Tom Anderson appeared for Clubs NT. The Commission is appreciative of the efforts of all those who appeared in this matter and particularly the efforts made in dealing with the evidence in a comprehensive but concise manner. Although listed for 4 days, the matter was in fact completed earlier due to the efforts of all parties involved.
30. In addition to the formal appearances, each of the objectors identified above were invited to attend the hearing and to provide any further evidence to the Commission. Only one of the objectors took up that opportunity and that was Dr Vishal Kohli. Dr Kohli was in fact required for cross examination by the Applicant and made himself available at the hearing for that purpose. The Commission thanks Dr Kohli for the evidence he provided to the Commission and for his assistance.

## The Evidence for the Applicant

31. Before considering the evidence it is important to note that this was an application brought under section 75(1) for substitution. During the course of the hearing, it was confirmed on behalf of the Applicant that the licensee was seeking that the Commission in fact “amend” the licence pursuant to its discretion under section 75(2) to substitute other premises.
32. The Commission considers this to be an important point of difference in this matter as it means the Commission is not being asked to “issue” a new licence and is therefore not required to undertake the same examination as it would for “issuing” a “new” licence. This means there is no requirement for the Commission to consider whether the Applicant is a fit and proper person as it would be required to do for a new application. The Commission also notes however that this makes little practical difference in this application as all parties agreed that the applicant was a fit and proper person.
33. Both Mr Coleman and Mr Dugan gave evidence as Directors of the Applicant who holds the licence. Both witnesses are well known to the Commission and well known in the hospitality industry. There is no question raised in this application about their abilities to comply with all requirements of their licence. The Commission agrees with the submission made by Mr Peattie that the objectives of sections 49(2)(b), (d), (f), (g), (h) and (i) are not in issue in this application and notes that no other party suggested this was incorrect.
34. It is clear from the evidence relied upon by the Applicant that the Breezes is proposed to be a “family friendly concept” establishment modelled largely on the “Bell Bar & Bistro” in Bellamack that both Mr Coleman and Mr Dugan were previously involved. It was stated many times in the evidence that this was intended to be a “family friendly” venue and to “cater to families”.
35. Mr Dugan’s evidence noted that he would:

“... be involved with all aspects of the overall development and with the new family friendly Bell Bar & Bistro styled venue for Muirhead/Lyons”<sup>1</sup>.
36. Further, that both he and Mr Coleman believed:

“... the family friendly concept is the way forward for Muirhead, a similarly new development to Bellamack”<sup>2</sup>.
37. Mr Coleman also stated that what had been embarked upon was:

“... designing and building a relatively new concept in the Top End: a modern, family-focused Bar & Bistro”<sup>3</sup>.

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<sup>1</sup> Exhibit 3, para 8

<sup>2</sup> Ibid, para 17

<sup>3</sup> Exhibit 2, para 40

38. During the course of his evidence he stated that the proposed premises:

“... would not be a typical Mitchell Street bar”.

39. Reference was made throughout the evidence to “targeting” the “family market”, having “attraction to young families” with an “entertainment offering for children” by way of a “dedicated, air-conditioned enclosed playroom”. Both men referred to the concept “catering to family groups” and to the provision of “diverse menu offerings” and “nutritional kids meals” and “healthy options” for children. The Community Impact Analysis prepared by DNS and filed on behalf of the Applicant also outlined that<sup>4</sup>:

The proposed Breezes Family Bistro will offer the usual Licenced staples offered at Globies such as TAB, Keno & Gaming. The venue is further proposed to cater families with children, with the concept being closely based on The Bell Bar & Bistro venue. This award-winning family orientated venue opened in 2017 in the emerging Palmerston suburb of Bellamack. Despite initial community concerns the operators quickly delivered what we set out to achieve, that is to become a place within the community for families to gather, socialise and enjoy a high-quality food & beverage experience. The emphasis on a ‘quality over quantity’ approach meant an extensive menu, all day dining options and a selection of 20 tap beers, focused on craft.

As well as providing the usual food, beverage and entertainment services, the venue will offer an experience for families and kids with a fully enclosed and air-conditioned kids playroom, complete with two level custom made climbing frame and slide. This proved a massive hit and will be expanded upon for this latest project, with an area designated 3 times the size as the Bell Bar model. The new venue layout will also take from the Bell Bar model, focusing on family dining/kids play to the southern end with the bar, TAB & smoking area to the northern end.

40. It was therefore apparent from the evidence that although what was being proposed was to substitute a licence that had previously been related to a premises that was a late night venue in Darwin city’s most popular night time entertainment strip; the Breezes proposed venue in the northern suburbs was going to be very different and have a clear focus on families.

41. One of the matters highlighted in the application was that the proposal would result in the transfer of the licence<sup>5</sup>:

“... from a high-risk entertainment venue in the Darwin CBD which possesses a high density of licensed premises, to a more relaxed, family orientated operation in an area with significantly less density of licensed venues. The granting of the application will therefore transfer the licence to a lower risk area, while assisting to reduce alcohol related harms in the Darwin CBD, in particular those related to alcohol fuelled violence which are directly correlated to high liquor density levels”.

42. In terms of the evidence before the Commission, there was significant evidence provided by the Applicant that the proposed premises were part of a **total** \$25 million development at Muirhead (“the total development”).

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<sup>4</sup> Exhibit 1, p.98 @ p.110

<sup>5</sup> Ibid, @ p.106

43. Other parts of the total development are proposed to include studio apartments, retail commercial space which was proposed to include an IGA grocery store (about which there was apparently “interest”) and a child care centre development (about which there had been a formal expression of interest). Both witnesses however made clear that if they were unsuccessful with their application for substitution of the liquor licence and the subsequent substitution of the gambling machine licence, then the total development would not go ahead as it simply “did not stack up” without the liquor and gambling licences as the proposed Breezes premises would effectively “subsidise the childcare and commercial precinct”.
44. Whilst the Commission acknowledges that the total development proposed is impressive, the Commission has determined that it is only permitted under the Act to consider issues surrounding the question of whether the substitution of the liquor licence is in the public interest and **not** any potential broader economic and social consequences that may occur by virtue of the total development. This finding is consistent with what was said by the WA Court of Appeal in *Australian Leisure and Hospitality Group Ltd v Commissioner of Police*<sup>6</sup>.
45. Of course the Commission recognises that whilst what the Applicant is proposing under the total development may be tempting to residents in the local area (particularly a proposed child care centre) and that economic advantages in terms of construction would also be tempting for wider residents in the hope of improvement in the local economy, those *potential* benefits are simply not a relevant matter to the Commission in the exercise of its discretion under section 75(2) of the Act. It should also be recognised that just because the Commission grants a substitution of premises on this licence does not guarantee that the Applicant will proceed with the other aspects of its total development proposal.
46. Nevertheless, even if the focus is solely on the development of the proposed premises this remains a significant proposal. Mr Coleman gave evidence that the proposed premises themselves represented approximately \$14 million of the concept and would be Stage 1 of the project and the cornerstone of the entire development. Exhibit 6 set out the estimated development costs being \$6.9 million for subdivision works and \$7.1 million for the Breezes premises. Mr Dugan gave evidence that he anticipated:
- “... 30 FTE’s will be required for ongoing operations, but the actual numbers of staff are likely to be around 40, allowing for parttime or casual employment arrangements”<sup>7</sup>.
47. During the course of his evidence, Mr Coleman stated that he expected there would also be contracted employees for cleaning (approximately 3 to 5), security (approximately 3) and entertainment (approximately 3 to 5). Therefore at least 9 to 13 further contracted employees.

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<sup>6</sup> [2020] WASCA 157

<sup>7</sup> Exhibit 6, para 30

48. This evidence should also be considered in light of what the Commission was told on behalf of the Applicant that there were only 4 FTE's at Globetrotters before its lease came to an end.
49. The other significant evidence relied upon by the Applicant in this matter was in relation to several reports filed by DNS Specialist Services and KPMG and the Commission will turn to these reports later in these reasons.

## The Objectors

50. As earlier noted, there were 68 objectors that fell within section 61 of the Act together with Clubs NT who were granted leave to appear. Mr Peattie described this application having "been met with staunch community opposition" and that this came from:

"... essentially two camps. The first are residents, concerned about the effect the proposal will have on the amenity of the neighbourhood. The second are people affiliated with two nearby competitors, who are concerned about the capacity of those competitors to provide ongoing benefits to the community".

The Commission could not agree more with such a description.

51. In relation to the objectors, the Commission finds that the following issues were raised to be considered carefully by the Commission:
  - a. The impact of the proposal on the amenity of the surrounding neighbourhood, including from noise, antisocial behaviour, traffic and planning issues.
  - b. The effect of the proposal on density, both in terms of the ratio of licensed premises and the volume of sales in the community.
  - c. The financial impact of the proposed premises on the clubs in the area, in particular Casuarina Club ("Cas Club") and Tracey Village Sports and Social Club ("TVSSC"), with the flow on effect on local community groups and sporting clubs that those licensed clubs provide assistance to;
  - d. The introduction of further gaming machines.
52. The wording of the objections centred around:
  - a. "destruction" of the quiet amenity of the neighbourhood<sup>8</sup>;
  - b. Introduction of "a very high element of anti-social behaviour"<sup>9</sup>;

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<sup>8</sup> Numerous objections utilising a pre-prepared letter

<sup>9</sup> Ibid

- c. “degrade the social fabric of our already existing local community”<sup>10</sup>;
- d. “noise associated with day to day trade of a Tavern”<sup>11</sup>;
- e. Impact upon the Cas Club and TVSSC and “the future of the sporting groups that rely” on their support and their “numerous charity and fundraising activities” and the threat to jobs<sup>12</sup>;
- f. Impact to the nearby park where children play<sup>13</sup>;
- g. Impact to the “serenity of the area, particularly in the evenings”<sup>14</sup>;
- h. “adverse affect” to the “surrounding quietness and increase traffic, noise and crime in the area”<sup>15</sup>;
- i. “detrimental effect to the health of the local community which would be at risk from even more access to alcohol ...”<sup>16</sup>;
- j. Placement “of our community under more health and financial stress”<sup>17</sup>;
- k. “negative educational message to our youth, indicating that commerce towards ... alcohol consumption is of more value than spaces for learning, sport and recreation”<sup>18</sup>;

53. The Commission considered very carefully all of the issues raised in the objections. The Commission is grateful to the objectors who live and work in the neighbourhood for the information they provided to the Commission to assist the Commission in determining this application. It is not an easy task and the work of the Commission is assisted by hearing from persons living in the neighbourhood.

54. The Commission will refer to the issues raised in these objections further in these reasons, however it is important to clarify a preliminary issue relating to gaming machines and their relevance to this application. Despite the comment made by the authors of the *Alcohol Policies and Legislation Review* (“the Riley Review”) noting “the relationship between liquor licences and gaming machine licences” and “recommending the Commission also be the designated licensing authority under the *Gaming Machine Act*”<sup>19</sup>, the Liquor Commission is **not** empowered to make decisions concerning gaming machines. That power rests with the Director of Gaming Machines.

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<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Objection no.25 and others

<sup>14</sup> Objection no.40 and others

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid and others

<sup>18</sup> Ibid and others

<sup>19</sup> Riley Review, p.38

55. Whilst it is clear that the Applicant intends to operate the twenty (20) gaming machines it is presently authorised to operate at the Breezes (and in fact has clearly stated it will **not** continue with the proposed premises unless it is successful in its application to transfer its gaming machine licence), the impact or effect of those gaming machines at the proposed licensed premises is not relevant to whether the Commission should approve the substitution of the **liquor** licence.
56. The matters that this Commission must take into account in terms of consideration of the public interest and community impact test is concerned with liquor, not gaming machines. As has been stated previously by the Commission;<sup>20</sup> this may be “rather disconcertingly artificial” however it is the process established by the legislature and it is the process that must be followed by this Commission. As a result, the Director of Gaming Machines is the one to determine gaming machines licence substitution applications and the Liquor Commission has no direct role to play in their assessment or determination<sup>21</sup>. Their impact therefore on the community does not fall to this Commission to be considered and the issues raised in the objections concerning the impact of gambling are not for consideration by the Commission under our Act<sup>22</sup>.

## Legislative Regime

57. In accordance with section 75(1) of the Act, if a licensee wishes to substitute other premises for the licensed premises, the licensee “must apply for a new licence for those premises”. That section does however go on to provide as follows:

### **Section 75 Substitution of 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.*

58. As noted earlier, the Applicant has sought that the Commission amend the licence to substitute other premises and therefore exercise its discretion under section 75(2) of the Act.

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<sup>20</sup> See Northern Territory Liquor Commission Decision Notice – Application for Substitution of Premises – Darwin Turf Club Incorporated 27 August 2019 @ para 16

<sup>21</sup> Ibid, para 14

<sup>22</sup> See Northern Territory Liquor Commission Decision Notice – Application for Variation of Conditions of Licence – Hibiscus Tavern Pty Ltd 26 November 2019 @ para 41 & 42

59. As is set out under section 75(2), in order to amend a licence to substitute other premises the Commission must be satisfied that the substitution satisfies the public interest and community impact requirements. Section 49 of the Act addresses public interest and community impact, in particular section 49(2) lists the objectives the Commission must consider in determining the question of public interest and section 49(3) lists the matters the Commission must consider in determining whether there would be a significant adverse impact on the community.
60. Further, when considering this application (and therefore exercising its power or performing its function under the Act), the Commission must have regard to the primary and secondary purposes of the Act set out in section 3 and exercise its power in a way consistent with those purposes. At all times, section 51 makes it clear that the onus is upon the Applicant to satisfy the Commission that issuing the licence or authority “is in the public interest” and further that issuing the licence “will not have a significant adverse impact on the community”.
61. In relation to the question of “significant adverse impact”, the Commission notes this term is not defined in the Act. The Commission has considered the previous discussion in an earlier ruling on the meaning of this term<sup>23</sup> and in accordance with that earlier ruling the Commission will proceed on the basis that the term “significant adverse impact” means an adverse impact that is important or of consequence but not necessarily substantial.

## **Task to be undertaken**

62. Consistent with the approach taken in earlier proceedings, it is important to note that whilst there are a number of matters which must be considered under the Act, the Commission has absolute discretion as to how it determines whether the public interest and community impact requirements have been satisfied<sup>24</sup>. That does not mean however that such discretion is arbitrary or unlimited<sup>25</sup> and there should be a structure approach taken<sup>26</sup>.
63. Whilst the Commission has referred to the approach in the *Dan Murphy’s* substitution application, the Commission also acknowledges that there are obviously significant differences between the two (2) applications. We are not dealing with a take away licence and therefore any reference to “the present condition of the market for takeaway liquor” is irrelevant, however there should be consideration given by the Commission to the present condition of the market in the relevant community and any identifiable trends.

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<sup>23</sup> See Northern Territory Liquor Commission Decision Notice – Application for Substitution of Premises and Application for Variation of Conditions of Licence – Liquorland (Australia) Pty Ltd (“Palmerston Liquorland Decision Notice”) @ para 103

<sup>24</sup> Northern Territory Liquor Commission Decision Notice – Application for Substitution of Premises and Application for Permanent Variation of Conditions of Licence –Woolworths Group Pty Ltd (“Dan Murphy’s Decision Notice”) @ para 57

<sup>25</sup> Ibid

<sup>26</sup> Ibid, para 58 and 59

64. Likewise however, just like in the *Dan Murphy's* application where the proposal by the applicant was to move the licence from its poorest performing outlet to create the Northern Territory's largest packaged liquor outlet on a greenfield site, in this case the Applicant is proposing to move its licence from premises that no longer operate (and has not done so for some time) to a greenfield site only this time it is surrounded by occupied residences. Likewise therefore the Commission in this case is being required, in effect, to make a prediction on the basis of the available evidence whether the introduction of a new premises of the nature proposed with a liquor licence would have a significant adverse impact on the local community.

## **Assessment of the application**

### **Purposes of the Act**

65. As previously noted, section 3 of the Act refers to the primary purpose and the secondary purposes of the Act:

### **3 Purposes**

- (1) *The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.*
- (2) *The secondary purposes of this Act are:*
  - (a) *to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor; and*
  - (b) *to regulate the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory; and*
  - (c) *to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and*
  - (d) *to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.*
- (3) *To achieve its purposes this Act:*
  - (a) *regulates the sale, supply, service, promotion and consumption of liquor; and*
  - (b) *prohibits certain products and activities in relation to the sale, supply, service, promotion and consumption of liquor; and*
  - (c) *provides for the appointment of persons to administer and enforce compliance with this Act; and*

(d) *establishes offences and processes to enforce compliance with this Act.*

(4) *A person exercising a power or performing a function under this Act must have regard to the primary and secondary purposes of this Act and must exercise the power and perform the function in a way consistent with those purposes.*

66. The Commission is required to consider how the objectives under section 49(2) will be advanced when determining whether the Applicant has satisfied the Commission that granting the substitution is in the public interest. Further the Commission must consider the matters listed in section 49(3) in determining whether the substitution will have a significant adverse impact on the community.
67. Regulation 123 of the Regulations also 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 2019 Act are taken to be community impact assessment guidelines issued under section 50. The guidelines are as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
<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"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <hr/> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> </ul>

	<ul style="list-style-type: none"> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <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"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> </ul>

	<ul style="list-style-type: none"> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>
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68. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the 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”.

69. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. It is therefore clear that 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.

70. It is also important to keep in mind that section 50(3) of the Act provides clearly that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

71. In relation to the objectives under section 49(2); the Commission accepts the submission made on behalf of the Applicant that the phrase within that subsection of “how it would be advanced” does not require the Commission to find that the application would “create” the relevant objectives, but instead how they would be “advanced”.

72. As noted earlier, there was no suggestion before the Commission that it could not be satisfied that the application supports the advancement of the following section 49(2) objectives, namely section 49(2)(b), (d), (f), (g), (h), and (i). The Commission is satisfied as to those matters and will therefore say nothing further on those objectives.

73. The Commission has also considered the evidence and accepts that section 49(2)(c) of safeguarding public order and safety is an objective that would be advanced by the Applicant.

74. That then leaves for consideration the criteria under section 49(2)(a), (e), (j) and the matters under section 49(3).

**Section 49(2)(a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor**

75. As earlier noted, this is not a substitution involving a take away authority. The consumption of liquor therefore will occur in or on the proposed premises. There is positive evidence before the Commission that the Applicant has been able, under this licence and in relation to other premises, to successfully advance the objective that the harm or ill health caused by the consumption of liquor is minimised.

76. The Commission recognises that it may be argued that there is harm caused purely by the consumption of liquor and therefore it may be argued that allowing a new premises in a suburban area where there is none presently does not “advance” the minimising of such harm. However, it is important to keep in mind at all times the purpose of the Act and particularly the primary purpose under section 3(1) which states as follows:

*The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.*

77. It is clear therefore that it is not the purpose of the Act, nor of the Commission, to refuse any and all licence simply because consuming liquor causes harm or ill health, but to in fact recognise there is a public interest in the consumption (inter alia) of liquor and to provide for this in a way that minimises the harm associated with its consumption.

78. The Commission therefore recognises that there is an existing degree of harm in the community from the consumption of liquor, however due to the nature of the proposed premises, the manner in which the Applicant intends to operate the proposed premises **and** the primary market intended to be the focus of the proposed premises, the Commission finds that this objective of minimising that harm or ill health will be advanced by the Applicant.

**Section 49(2)(e) increasing cultural, recreational, employment or tourism benefits for the local community area**

79. As earlier noted, in considering the local community area, the Commission has taken into account a number of suburbs which loosely correlates with a distance of approximately 2 kms. The Commission notes there has been no objection by any of the parties to consideration of this area.

80. The suburb where the premises are proposed to be located, namely Muirhead, is one that was established only in 2008 and subdivided in 2011. Since that time it has seen significant growth. Its population is primarily made up of families and defence personnel with Defence Housing Authority (“DHA”) owing approximately 24% of the structures in the area. Further to the current development, DHA has in fact lodged a master plan for Lee Point which is proposed to establish a residential, tourism, community and commercial precinct. It is apparent that there are big plans for the future development of the area.

81. In relation to the proposed premises, there is no suggestion that this will increase “cultural” benefits, however there is reliance on recreational, employment and/or tourism benefits. With respect to the issue of tourism, the Commission is not persuaded that there will be any real advancement of the objective of an increase in tourism benefits by virtue of the proposed premises. It is accepted that there are big plans and there is a local caravan facility in the area at the present time, however the Commission does not consider there to be strong evidence at this time about the advancement of tourism by these premises.
82. Whilst the Commission notes that the Addendum to the Community Benefits Statement by KPMG<sup>27</sup> refers to the “Lee Point Village Resort” (which “includes a 400+ space caravan park, cabins and camping site”) it then refers to “the nearby Club Tropical Resort Darwin”<sup>28</sup>. The difficulty with these references is the location for each is the exact same address and therefore the Commission does not consider these to be two separate “tourism” hubs. Reference also to the “Casuarina Coastal Reserve” in the context of “tourism” does not persuade the Commission (the panel of which are all long term local residents) and who know the area well.
83. It is however a different scenario when it comes to recreational and employment benefits. It is clear that the Applicant is proposing premises that will increase the recreational benefits for the local community area and potentially wider afield. The proposed premises are impressive and clearly are geared to cater to a market of “families” in the local community area.
84. Likewise, as earlier noted, there will be an increase in employment from the proposed premises with 30 FTE’s required for ongoing operations and a likely number of staff of approximately 40, allowing for parttime or casual employment arrangements. Adding to this will be contractual employees for cleaning, security and entertainment of between 9 and 13.
85. Although a significant portion of the Community Benefits Statement prepared by KPMG<sup>29</sup> referred to the benefits of the total development, there was specific reference to the benefits offered by the Breezes premises as follows (ignoring those references to gaming)<sup>30</sup>:
- “The bistro will also serve the community’s recreation needs and enhance social engagement”.
86. The Commission accepts however the submission made on behalf of Clubs NT that when considering the alleged advancement of these benefits, consideration must also be given to the potential losses that may occur by virtue of the proposed premises. What is referred to here by Clubs NT is potential losses, to Cas Club and TVSSC in particular, with their current members choosing to use the proposed premises rather than the clubs, resulting in losses in the number of employees required at those clubs and potentially the loss of the clubs themselves because of a decline in the market caused by the proposed premises.

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<sup>27</sup> Exhibit 15

<sup>28</sup> Ibid, p.3

<sup>29</sup> Exhibit 11

<sup>30</sup> Ibid @ p.23

87. There is no doubt on the evidence that allowing the substitution application will introduce competition into the market and more likely than not reduce the profitability of the Cas Club and TVSSC. The Commission however accepts the submission by Mr Peattie that the evidence is less clear about whether one or both of the establishments would be caused to “shut down”.
88. In terms of TVSSC, Ms Robyn Kelleher gave evidence that they had 28 FTE’s employed at the club. She stated that their membership had been consistent for the last “2 to 3 years” and that it “goes up to about 4,000”. She confirmed that the Administrator had made certain recommendations including a decrease in staff and she stated that TVSSC had “given it a fair try” but in terms of meeting those recommendations “to a certain extent it was just not possible”.
89. Unfortunately Ms Kelleher was unable during the course of her evidence to give any real insight as to why that was the case or what TVSSC was actually doing to address these issues. In addition she was unable to identify why she was concerned that the loyal members of TVSSC would attend at the proposed premises and not return.
90. Whilst the Commission accepts that there are very real concerns about the financial viability of the TVSSC and its ability to be successful in the long term, the Commission agrees with the submissions made by Mr Crawley SC that these concerns exist with or without the substitution being granted. There is, on the evidence, a real question over the future of TVSSC. It has had a “consistent poor financial performance over the last ten financial years to 30 June 2020”<sup>31</sup>. Further<sup>32</sup>:
- “... the 2019 report noted a Material uncertainty regarding Going concern of the Club relating to the liabilities of the club exceeding its assets. ... the question remains as to whether its management will have the ability to continue to service the level of debt still held ...”
91. It is clear that whilst the TVSSC has been able to get itself out of Administration “its financial position is still relatively weak”<sup>33</sup>. A number of times during the course of the hearing it was noted that in fact the TVSSC was in a “weaker” position to that of the Palmerston Sports Club Incorporated, which was raised as an example of what was likely to occur to TVSSC if the substitution was granted.
92. In relation to this point, the Commission finds that in fact the evidence about the circumstances of the Palmerston Sports Club Incorporated goes to support the finding that closure of the TVSSC is a very real risk which could occur at any time with or without the substitution of the proposed premises being granted. This is a risk that the TVSSC are going to have to address with or without an establishment like Breezes being permitted.

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<sup>31</sup> Exhibit 14, p.5

<sup>32</sup> Ibid

<sup>33</sup> Ibid

93. The Commission however agrees with previous findings that the evidence of competitors as to the impact of a potential premises on their business can be considered if it falls within the provisions of the public interest and community impact<sup>34</sup>.
94. In this case, there is an issue that arises in terms of advancing the objective of increasing recreation or employment for the local community area. The Commission will firstly consider the issue of employment.
95. The Commission accepts there would be employment created during the construction phase of the premises. This includes the subdivision work as well as construction of the proposed premises themselves. Exhibit 6<sup>35</sup> estimated 161 EFE's from the construction phase, however this number related to the **total** development, not just Breezes. The Commission considers it reasonable that given the cost of construction for the subdivision work and the proposed premises represents approximately 53% of the total cost, it would not be unreasonable to find that there would be an estimated 80 construction jobs created during the building of the proposed premises. Those jobs would obviously however come to an end at the completion of the project.
96. Clubs NT has suggested that the Commission should find that there would in fact be "no real advancement of employment" caused by the substitution if it is the case that TVSSC closes. The Commission does not accept this submission. Whilst the Commission agrees that perhaps the advancement of the objective of increasing employment is not as great as the Applicant would suggest, the evidence establishes there would be the creation of construction jobs and that the proposed premises would employ 30 FTE's required for ongoing operations and a likely number of staff of approximately 40, allowing for parttime or casual employment arrangements. Adding to this will be contractual employees for cleaning, security and entertainment of between 9 and 13. Even with the **possible** closure of TVSSC and its loss of employees (being 28 FTE's), there is still an advancement of the employment objective.
97. What must also be kept in mind is that these losses are, as submitted by Mr Peattie, somewhat speculative and contingent. True it is that the onus rests on the Applicant and not the objectors (including Clubs NT) that does not mean that the Commission simply finds there is a risk and that determines the matter. As stated during the course of the hearing there remain options available to both clubs to attempt to make themselves more competitive and it is not, and should not be, the role of the Commission to prevent competition and/or choice.
98. Again, in accordance with the purposes of the Act, when exercising a power or performing a function under the Act, the Commission is required to exercise its power or perform its function in a way that:

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<sup>34</sup> Dan Murphy's Decision Notice, para 75, 313 - 316

<sup>35</sup> Zest correspondence dated 18 September 2020

- a. "... contributes to the responsible development of the liquor industry"<sup>36</sup>; and
- b. "... stimulates the ... hospitality industries"<sup>37</sup>.

99. The Commission therefore finds that the substitution would advance the objective of increasing employment benefits for the local community area.
100. The issue surrounding the advancement of increasing recreational benefits for the local community area is also relevant. As noted earlier it is accepted that the proposed premises will offer an increase in recreational choice for the local community area and potentially wider afield. The proposed premises are impressive and clearly are geared to cater to a market of "families" in the local community area.
101. There also exists however the evidence that both Cas Club and TVSSC provide a significant service to a number of sporting and social clubs. Sixteen statements were filed on behalf of the various clubs that had received support from Cas Club and TVSSC<sup>38</sup>. There is no doubt that each of these sporting and social clubs have enjoyed significant support over the years from Cas Club and TVSSC. There is no doubt that each of these sporting and social clubs are very concerned about the impact of the proposed premises.
102. Whilst some have suggested they "would not exist" without such support they then refer to struggling to "find a new home". The Commission finds therefore that it is not clear that these sporting and social clubs would necessarily come to an end as a result of the substitution of the premises. Again, it must also be kept in mind that the concerns expressed by these sporting and social clubs is a concern that they would have with, or without, the substitution occurring by virtue of the difficult financial circumstances that TVSSC is in.
103. The Commission also agrees with the sentiment expressed in a number of the statements filed by these sporting and social clubs that it would indeed be "a great loss to the community" if TVSSC closed down. However that is not the role of this Commission and it is also not something that the Commission can guarantee would not occur due to the still relatively weak financial position of TVSSC.
104. Whilst the Commission does not wish to see a long term club like TVSSC close, nor any other club for that matter, it is not the role of the Commission to protect establishments from new entrants into the market. It is also not a guarantee that TVSSC would close because of the proposed premises nor it is guaranteed that it would *not* close if the substitution of the proposed premises were not permitted. The impact therefore on these sporting and social clubs and the question of the advancement of the objective of increased recreational benefits for the local community area is one that is unclear and finely balanced.

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<sup>36</sup> Section 3(2)(b)

<sup>37</sup> Section 3(2)(d)

<sup>38</sup> See exhibits 20, 25 to 32, 35 to 41

### **Section 49(2)(j) reducing or limiting increases in anti-social behaviour**

105. Part of a number of the objections related to concerns about anti-social behaviour. In relation to this issue, it is submitted on behalf of the Applicant that it is highly relevant that the police have not lodged an objection in relation to this application and further that they have not raised concerns about an increase in anti-social behaviour which would impact on their finite resources in having to address any increase.
106. The Commission accepts that the police are the front line in responding to and deterring anti-social behaviour and alcohol related offending. As has been stated in previous decisions, the ability of police to alleviate the consequences of alcohol related anti-social behaviour is impacted not only by the overall numbers of people involved but also by the number of different “hot spot” locations where these incidents are occurring<sup>39</sup>.
107. The Commission accepts it is therefore significant that police have therefore stated that they have “no objections”<sup>40</sup>.
108. The response of police however is not the only consideration. It is clear there is a real concern from the objectors about this issue. It is also clear however that the Applicant has put in place a number of measures in its design that would attempt to address this issue and make the proposed premises less of a target due to the security measures proposed. It is also clear that the Applicant intends to continue to work with police in relation to security measures as the development progresses. The Commission also considers it highly relevant that the Applicant has been able to operate other premises where anti-social behaviour has not been identified as a significant issue. Finally, it is also relevant that this is not a take-away and therefore the kinds of anti-social behaviour that ordinarily occurs with those types of premises does not arise here.
109. In all of the circumstances the Commission is satisfied that the Applicant’s proposed substitution of these premises will advance the objective of reducing or limiting increases in anti-social behaviour.
110. The Commission now turns to consideration of the matters under section 49(3) and the community impact.

### **Section 49(3)(a) the risk of undue offence, annoyance, disturbances 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**

111. This issue is clearly raised as a concern of those persons who reside or work in the vicinity of the proposed premises. Their concerns appear to be primarily on the issues of the impact of undue offence, annoyance, disturbance or inconvenience that may be caused by noise, traffic and annoyance by those persons attending the premises.

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<sup>39</sup> Liquorland Palmerston @ para 96

<sup>40</sup> Exhibit 1, p.212

112. In terms of noise and annoyance from persons attending the premises, the Commission considers this can be addressed by virtue of limitations to the trading hours of the licensed premises and the entertainment that can be offered and the hours of such entertainment. Mr Dugan also gave evidence as to the policy, procedure and training he puts in place concerning noise when the premises are operating. The Commission also considers the nature of the premises being focused on family friendly and meals, rather than simply a bar also addresses this issue.
113. In terms of traffic, the Commission notes the carparking proposed for the premises and also notes there appears to be no evidence to suggest this will be a significant issue caused by the proposed premises. This will also be a matter closely considered by the planning authorities who are responsible for ensuring these issues are properly addressed.
114. In terms of persons travelling to or from a place of public worship, a hospital or a school, the Commission notes the evidence of those educational and recreational facilities in the area<sup>41</sup>. All of the identified facilities except for the Muirhead Water Play Park are over 2kms away from the proposed facilities. The Commission accepts therefore that the impact on the majority of the sites will be negligible. In terms of the Muirhead Water Play Park this will also be divided from the premises by a carpark.

#### **Section 49(3)(b) the geographic area that would be affected**

115. The Commission has already addressed the issue of the geographic area.

#### **Section 49(3)(c) the risk of harm from the excessive or inappropriate consumption of liquor**

116. The Riley Review that provided the blueprint for the *Liquor Act 2019* outlined very clearly the level of harm caused by the excessive or inappropriate consumption of liquor. As has also been noted in previous decisions by the Commission there have also been numerous reports that have identified the social and economic costs of alcohol consumption in the Northern Territory<sup>42</sup>.
117. As noted earlier, Dr Vishal Kohli (one of the objectors) gave evidence before the Commission. He provided detailed, articulate and also heartfelt evidence about the potential impact of the premises. He gave details of the impact of the excessive or inappropriate consumption of liquor that he has witnessed as a result of his employment.

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<sup>41</sup> Exhibit 1, p149-150

<sup>42</sup> Dan Murphy's para 328

118. The location of the proposed premises is however an area that is relatively advantaged to the Darwin LGA benchmark with Lyons in particular being most advantaged<sup>43</sup>. There is evidence that the local area has a “more learned demographic<sup>44</sup> and it is accepted that the research shows that groups with higher socioeconomic status experience lower levels of alcohol-related harm than less affluence groups and experience lower levels of hazardous consumption on drinking occasions<sup>45</sup>.
119. This evidence, combined with the evidence of the Applicant’s experience in operating well run and respected establishments lends force to the Commission finding that although there is a risk of harm from the excessive or inappropriate consumption of liquor, the risk in this case of the substitution is not significant.

**Section 49(3)(d) the people or community that would be affected**

120. The Commission has already addressed this issue earlier in these reasons.

**Section 49(3)(e) the effect on culture, recreation, employment and tourism**

121. The Commission has already addressed this issue under section 49(2)(e).

**Section 49(3)(f) the effect on social amenities and public health**

122. This has to some extent been addressed earlier in these reasons, however the Commission does find that it is clear that the Applicant through its licensee, management and staff will put in place measures to address an impact on the area and although the Commission acknowledges there will be an effect, the Commission does not consider it will be a significant adverse impact on the community.

**Section 49(3)(g) the ratio of existing liquor licences and authorities in the community to the population of the community; AND**

**Section 49(3)(h) the effect of the volume of liquor sales on the community**

123. In accordance with earlier rulings, it is the Commission’s view that the concept of “density” which was previously referred to in the 1978 *Liquor Act*, remains a matter to be taken into account by the Commission when considering a combination of the factor of “ratio” and the factor of “the effect of the volume of liquor sales on the community”<sup>46</sup>.

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<sup>43</sup> Exhibit 7, p.12

<sup>44</sup> Exhibit 1, p.124

<sup>45</sup> Ibid

<sup>46</sup> Liquorland Palmerston para 72

124. Of course the addition of the proposed premises to the northern suburbs will result in an increase in the number of licensed premises in that area. However this increase needs to be considered in light of the fact that the next closest licensed premises is just over 2 kms away<sup>47</sup> and is not of the nature of the licence being substituted here. The proposed substitution will also result in the reduction in density of Darwin's most popular entertainment strip of Mitchell Street, although it is recognised that the premises have not been operating for some time now.

### **Ratio**

125. There are a number of licensed venues already in the area<sup>48</sup>, however the Commission finds that the density of those numbers is relatively low. In this regard the Commission relies upon the uncontroverted evidence that there are:

- a. 0.4 licences per 1,000 adults in a 5km radius of the proposed premises compared to 5.8 licences per 1,000 adults in the Darwin area<sup>49</sup>; and
- b. 2,926 persons per licence in the area of the proposed premises compared to 196 persons per licence in the Darwin city where the premises were previously operating<sup>50</sup>.

126. In this case the Commission is not dealing with the kind of packaged outlet that has been the subject of discussion in a number of other decisions, nor does it involve a takeaway which so often leads to negative impacts on the population.

### **Volume**

127. As these are yet to be built premises not involving a take away, there is limited evidence as to volume, however the Commission notes the estimate provided as to operational income from drinks<sup>51</sup>. This has also however been considered in light of the estimates as to sales in food that will accompany such sales at the proposed venue.

128. As a result, the Commission finds that the effect on ratio and volume as a result of the substitution of these premises would not have a significant adverse impact on the community.

### **The Community Impact Assessment Guidelines**

129. The Commission has already had regard to most of the matters outlined in the Guidelines whilst considering the factors we are required to consider under section 49(3). In relation to the requirement that we consider the potential harm to people who might be utilising nearby community facilities such as hospitals, schools and

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<sup>47</sup> TVSSC

<sup>48</sup> Exhibit 7, p.13

<sup>49</sup> Exhibit 1, p.154

<sup>50</sup> Exhibit 7, p.15

<sup>51</sup> Exhibit 11, p.12

youth facilities we note that there are other licensed premises in the area that have been operating for many years without any significant impact on the facilities listed in the guidelines. We have however also taken into account the objections lodged by the community groups and members of the public, together with Clubs NT.

## **Conclusion**

130. The Commission has found that granting this application would marginally increase the density and or ratio of licensed premises in the locality. We find that the harmful consequences of alcohol that were identified in the Menzies School of Health Research Report "*The social and economic costs and harms of alcohol consumption in the Northern Territory*" apply to this location, however, we do not find that granting this application would arrest the ongoing National and Territory wide declining trend in alcohol consumption.
131. We accept that there would be economic benefits through the creation of additional employment positions during the construction phase and then long term in the operational phase. This remains the case, even taking into account the risk of loss of employment were TVSSC to close, although noting that such closure is a risk that exists with or without these premises.
132. Although there are concerns expressed about impacts to the amenity of the neighbourhood in a number of the objections, there was not an objection to the proposed premises by the NT Police which would normally be expected if there were evidence to support such concerns from residents.
133. The Commission finds on the evidence that having regard to the demographic of the local community, the nature of the proposed premises and guided by the Purposes of the Act together with all the objectives specified in section 49(2); the Commission is satisfied that granting this application is in the public interest.
134. Furthermore the Commission, having been guided by the Purposes of the Act and having had regard to the considerations listed in section 49(3) and the Community Impact Assessment Guidelines, finds that granting the application would not have a significant adverse impact on the community.
135. Accordingly, for the reasons outlined in this Decision Notice the Commission has determined to grant this application subject to the conditions outlined.

## **Notice of Rights**

136. Section 31 of the 2019 Act provides for any decision of the Commission for which a decision notice is required under the Act is reviewable by Northern Territory Civil and Administrative Tribunal.

137. Section 112(3) of the 2019 Act requires the Commission to give a decision notice to the Applicant and each person who lodged an objection after making a decision under section 112 (2)(b).

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

Jodi Truman

DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION

14 December 2020

On behalf of Commissioners Truman, Dwyer and Hart