

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR SUBSTITUTION OF PREMISES

LICENCE NUMBER: 81419355

REFERENCE: LC2019/092

LICENSEE: Darwin Turf Club Incorporated

PREMISES: Fannie Bay Racing and Sports Club
20 Dick Ward Drive
FANNIE BAY NT 0810

APPLICANT: Darwin Turf Club Incorporated

LEGISLATION: Section 46A of the *Liquor Act 1978*.

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 29 July 2019

DATE OF DECISION: 27 August 2019

Decision

1. For the reasons set out below and in accordance with section 46A(6)(a) of the *Liquor Act 1978* (“the Act”), the Commission has determined to approve the substitution of the licenced premises from the Fannie Bay Racing and Sports Club trading at the Ted D’Ambrosio Bar (“Ted’s Bar”) to Silks Darwin Racing (“Silks”).
2. The following words shall be deleted from the condition headed “**Notice To Be Displayed**”: “and for consumption away from the premises to members only”. The following words shall be deleted from the condition headed “**Public Advertising**”: “Where any such signage, advertising or promotional material indicates or in any way suggests or implies the availability of take-away liquor, there shall be included a prominent statement clearly indicating that the sale of take-away liquor is limited to financial members only.”

Reasons

Background

3. The background to this application is unusually complicated. The Darwin Turf Club Incorporated ("the licensee") is a substantial enterprise based at the Fannie Bay racecourse in Darwin. According to its 2018 Annual Report¹, in that year the licensee had 460 members and 24 permanent staff. In 2018, it conducted over 200 horse races with almost 2,000 runners, paying out stakes of almost \$5,000,000. During the 2018 Carlton Mid Darwin Cup Carnival, the licensee employed 749 casual staff on Cup day, and admitted nearly 35,000 people through the gates. The licensee's total revenue in 2018 was over \$12,000,000 and its net assets were almost \$11,500,000.
4. However, for a Government Capital Grant of about \$1,000,000, the licensee would have traded at a deficit in 2018. As club Chairman Brett Dixon reported, "softening of the Darwin economy led to a decrease to our key events during the Carnival". Declining cash sponsorship, marquee ticket sales, TAB commissions, catering revenue and bar sales all contributed to a decrease in total revenue of over \$1,000,000 compared to the previous year.
5. The licensee's response to these challenges has been, in the words of Mr Dixon:
To restructure our business to contest the slow economy, external cost pressures, improve our facilities and look at ways to return benefits to our valued Industry and Members.

*We are earnestly progressing to build the Fannie Bay Racing and Sports Club, to be known as 'Silks'. With finance in place, planning and building approvals completed, we are confident of completing this very exciting project and opening for Christmas 2019.*²

6. Silks, which is currently under construction, will be the free-standing single-story up-market premises of the Fannie Bay Racing and Sports Club overlooking the turn into the home straight of the racetrack, near the northwest boundary of the licensee's 43 hectare property. The 2100 sq m air-conditioned facility will comprise a foyer (300 sq m), a restaurant (300 sq m), a sports bar (300 sq m), an outdoor deck (300 sq m), a gaming room (220 sq m) containing 55 electronic gaming machines ("EGMs"), service areas (400 sq m) and a multi-use "administration area" (300 sq m)³. The licensee promotes Silks as a substantial new amenity for the Darwin community, a family-friendly eating and drinking establishment, and a convenient and accessible seven day a week venue for gamblers.
7. When operational, the EGMs will supplement and complement the range of gaming and wagering activities available to patrons of the Fannie Bay racecourse, which is generally only open on race days. The EGMs will also provide a substantial additional revenue stream to the licensee. The Commission has not been informed of the projected income from the licensee's proposed EGMs, but notes in New South Wales (where the tax rate

¹ Accessed at <https://darwinturfclub.org.au/annual-report/>

² *Ibid* at 6

³ The areas stated here are approximate

on EGM revenue is roughly comparable to that in the NT), it is reported that clubs return an average annual profit of \$57,670 per EGM.⁴

8. Notably, although the licensee receives a sizable income from various forms of gambling (including, but not limited to, horse racing), the licensee does not currently operate any EGMs, and indeed, as is explained below, is not currently permitted to do so.
9. Pursuant to the *Gaming Machine Act 1995* (NT), a gaming machine licence is required to operate EGMs, and only persons (including bodies corporate) who hold or have applied for either a liquor licence endorsed **AUTHORITY – PUBLIC HOTEL** or **AUTHORITY – TAVERN** (“a hotel liquor licence”), or a liquor licence endorsed **“AUTHORITY – CLUB”** (“a club liquor licence”) are eligible to be granted a gaming machine licence. The holder of a hotel liquor licence is entitled to apply to operate up to 20 EGMs. The holder of a club liquor licence is entitled to apply for up to 55 EGMs. The licensee holds liquor licence number 80803820 (“the main liquor licence”) to sell liquor for consumption of liquor at five designated areas on its property, including Ted’s Bar. However, the licensee’s main liquor licence is endorsed **“AUTHORITY – ON LICENCE”**.
10. On 1 February 2016, the licensee applied for a club liquor licence over its existing licensed area in Ted’s Bar, in conjunction with an application for a gaming machine licence. The licensee also proposed to excise Ted’s Bar area from its main liquor licence. The applications attracted 13 objections, from the NT Police and 15 local residents. At that time, and up until 28 February 2018, when the *Liquor Commission Act 2018* and associated amendments to the *Liquor Act 1978* came into force, it fell to the Director-General of Licensing or her Delegate to determine both gaming machine licences and liquor licences. As these two applications were, as the Director-General’s Delegate put it, “intrinsically linked”, the Delegate took the convenient and sensible course of dealing with them together by way of a single Decision Notice. On 23 December 2016, the licensee was granted both club liquor licence number 81419355 (“the Club liquor licence”) and a gaming machine licence authorising the use of 55 EGMs in the area occupied by Ted’s Bar.⁵
11. Substantial refurbishments to Ted’s Bar would have been required to accommodate the EGMs. Accordingly, the Club liquor licence was made subject to a condition that it not become operative until the construction had been completed and the appropriate statutory approvals had been obtained. It appears that subsequently, however, the licensee abandoned its plan to refurbish Ted’s Bar, and instead decided to build Silks. Consequently, the Club liquor licence has never become operative, and the sale of liquor for consumption at Ted’s Bar remains authorised by the main liquor licence.
12. The Darwin Turf Club Incorporated is, as its name implies, an incorporated club. Membership, which costs \$450 a year, entitles Members to free entry to the 38 race meetings held each year at Fannie Bay as well as race meetings at affiliated race courses around Australia. The licensee proposes to establish a new class of “social

⁴ Nigel Gladstone, “NSW club pokie profits up by \$9500 per machine, *The Sydney Morning Herald* 12 August 2018, accessed at <https://www.smh.com.au/national/nsw/nsw-club-pokie-profits-up-by-9500-per-machine-20180807-p4zvzb.html>.

⁵ This decision (“the Delegate’s decision”) was reviewed on the application of two of the unsuccessful objectors to the applications, and affirmed by the Director-General on 7 March 2017 (“the Director-General’s decision”).

membership”, at an annual fee of less than \$100, entitling social members and their guests to enter Silks and use its services and amenities every day of the year.

13. The Commission notes that at times since the grant of the Club liquor licence there has been some uncertainty and perhaps disagreement between the licensee and the Director-General as to the status of the licensee’s two liquor licences, and the most appropriate means to achieve the licensee’s aspiration to obtain a club liquor licence over Silks.⁶ The licensee and the Director-General have however now reached agreement about how to proceed, namely by way of the instant application, which was lodged with the Director-General on 28 November 2018, to substitute the premises designated in the Club liquor licence – Ted’s Bar – with the premises of Silks. The Commission accepts that this is the appropriate course to take, and that no further action is required in order to secure the operation of the main liquor licence to authorise the continuing sale of liquor for consumption in Ted’s Bar.
14. As noted at paragraph 10 above, although the licensee has not yet commenced to operate any EGMs, it has already been granted a gaming machine licence. The licensee, in conjunction with the instant application to substitute the premises of its club liquor licence, has also applied to the Director-General to substitute the premises of its gaming machine licence. An application to substitute the premises of a gaming machine licence must not be granted unless and until any associated application to substitute the premises of the club liquor licence is granted (*Gaming Machine Act*, s42F). Unless exempted by the Director-General in exceptional circumstances, Applicants for the substitution of the premises of a gaming machine licence are required to conduct and submit a community impact analysis. The Director-General determines gaming machine licence substitution applications (see *Gaming Machine Act*, s42E), and the Commission has no direct role to play in their assessment or determination.
15. Nevertheless, the Commission is of the view that the licensee’s dominant purpose in making the instant application is to permit it to operate 55 EGMs, both to increase its income, and to expand the range of services it offers to its patrons. Otherwise, as was conceded by counsel for the licensee at the hearing of the application, the licensee could and would have simply applied for a material alteration of the main liquor licence pursuant to s119 of the Act to extend its licence footprint.
16. As a result, the Commission’s consideration of this application is rather disconcertingly artificial. On the one hand, the Commission is required to determine a liquor licence application, the underlying dominant purpose of which is to facilitate the establishment of a venue for 55 EGMs, in circumstances where a refusal of the application would preclude the licensee from obtaining approval to operate the EGMs as planned. On the other hand, the task of assessing the gaming machine licence substitution application, including the community impact of the proposed 55 EGMs, falls to another decision-maker.
17. An application by a licensee to substitute liquor licence premises, in contrast to an application to enlarge them, would typically not entail an increase in the size or capacity

⁶ Licensing NT inadvertently contributed to the uncertainty by issuing a version of the main liquor licence on 20 November 2018 which erroneously omitted Ted’s Bar as one of the designated areas on the licensed premises. The error was understandable: as stated at paragraph 10 above, the licensee had communicated its wish to have Ted’s Bar excised from the main liquor licence when it applied for the Club liquor licence.

of the premises. That indeed was the case with the licensee's first application for a club liquor licence in 2016. However, it is no longer the case. The instant application is for the aggregate footprint of the licensee's premises to be enlarged by 2100 square metres. Mr Stacy informed the Commission that as a rule of thumb, patron capacity can be calculated at one person per 1.5 square metres. On that basis, the combined capacity of the gaming room, sports bar, restaurant and outdoor deck would be in the order of 800 patrons. When used for the consumption of liquor, the "administration area" could also accommodate about 200 patrons.⁷ By comparison, the licensee informed the Commission that Ted's Bar spans 600 square metres, with a capacity of 440 patrons, including a lawn area.

18. On 26 June 2019, following consultation, together with an assessment by Licensing NT of the application, a Delegate of the Director-General of Licensing referred the application to the Commission for hearing pursuant to sections 46A(5AA) and 50(c) of the Act.

19. The Director-General provided the Commission with a brief of evidence ("the brief") including:

- Memorandum from the Director-General's Delegate setting out the circumstances of the application
- Amended application for substitution of premises dated 28 November 2018⁸
- Liquor licence 80803820 effective 22 June 2014, including Ted's Bar (the main liquor licence)
- Liquor licence 80803820 effective 20 November 2018, **not** including Ted's Bar (the erroneous version)⁹
- Liquor licence 81419355 effective 23 December 2016 over "Fannie Bay Racing and Sports Club" (the Club liquor licence)
- Affidavit for the purpose of s26A of the Act deposed by James Keith Stacy, the Applicant's executive officer, dated 28 November 2018
- Community Impact and Public Interest Assessment statement
- Correspondence between the licensee's solicitors and the Director-General
- Plans of proposed new premises
- Development permit DP17/0169 for "a Licensed Club" on the licensee's land issued by Development Consent Authority ("DCA") dated 18 May 2017
- Notice of Consent issued by DCA authorising reduction of car parking requirements for Silks
- Decision Notice to issue the Club liquor licence and associated gaming machine licence by Director-General's Delegate dated 23 December 2016
- Decision Notice affirming Delegate's decision of 23 December 2016 on review, by Director-General dated 7 March 2017
- Registration of Business Name for "Silks Darwin Racing" dated 26 October 2018
- Newspaper notifications of application dated 6 and 9 March 2019

⁷ See paragraph 58-59 below.

⁸ The application as initially lodged was headed "Application for material alterations to licensed premises". The words "material alterations to licensed" have been crossed out by hand and replaced with the words "substitution of". This amendment is initialled and endorsed "28/6".

⁹ See footnote 6 above

- Correspondence between Licensing NT and Department of Health ("DOH"), NT Police, NT Fire and Rescue Service ("NTFRS") and City of Darwin

Consultation

20. As required by s46A of the Act, notices of the application were published in the NT News and displayed on site. No objections were received.
21. Also in accordance with s46A, the Director-General notified DOH, NT Police and the City of Darwin. NTFRS was also notified.
22. The Director-General informed the Commission that:
- The Council responded that it did not object to the application.
 - DOH responded, making no adverse comment.
 - NT Police advised that it had "no objection".
 - The City of Darwin advised that it had "no issues" with the application.
 - NTFRS indicated that it had no objection to the application, providing the relevant approvals were obtained.
23. The Director-General has informed the Commission that the licensee has no previous adverse history of compliance with its liquor licence conditions.

Hearing

24. On 29 July 2019 the application proceeded as a public hearing. Mr Richardson appeared on behalf of the Applicant with the licensee's nominee and Chief Executive Officer, Mr Stacy. Mr Verinder appeared for Licensing NT. The Commission thanks them all for their attendance and assistance.
25. The brief was tendered and admitted into evidence without objection. In addition, the licensee tendered an updated set of site and floor plans for Silks.

Assessment of the Application

26. In considering this application, the Commission is required to have regard to the following:
- a. The s26A affidavit (s46A(5A)(aa));
 - b. Any objection to the application (s46A(5A)(a));
 - c. Any reply to objectors (s46A(5A)(b));
 - d. The public interest and community impact test (s6(1));
 - e. The potential impact on the community (s6(3)); and
 - f. The objects of the Act (s3, together with s6(1) and s46A(6)).

The s26A affidavit

27. Mr Stacy deposes that other than the licensee's Directors, there are no influential persons or potential beneficiaries of the licensee's operation of its liquor licences. Pursuant to s26A(4) of the Act, an Applicant is not required to disclose details of

executive officers carrying out the duties of the person in that capacity. Accordingly, the Commission considers that there is no requirement to disclose further details of the licensee's Directors.

28. The Commission considers that the s26A affidavit does not give rise to a concern that the application should not be granted.

Objections to the application and the Applicant's reply

29. As noted at paragraph 20 above, there are no objections to the application. On its face this is surprising, given that 13 objections were lodged to the licensee's 2016 application for a club liquor licence.

30. The Commission has considered whether this may be at least in part due to the wording of the s46A(3) notices published in the NT News on 6 and 9 March 2019, which the Commission considers create a rather misleading impression. (It is unnecessary to consider whether the licensee intended the notices to be misleading, and the Commission makes no such finding.) The notices state:

*For the avoidance of doubt, the gaming machine licence has already been granted, **this application is simply to move the area** for which it is approved. (Emphasis added)*

This statement is true and accurate, but suggests that there will be no increase in the overall size or capacity of the licensee's licensed premises, and that approval of the substitution of the gaming machine licence premises is something of a foregone conclusion. In fact, as set out at paragraphs 17 and 14 above respectively, neither of these suggestions is correct.

31. The notices also state:

*A liquor licence was granted to the licensee for the premises within the existing licence area footprint of the Darwin Turf Club, specifically the Ted D'Ambrosio Bar and to be known as the Fannie Bay Racing and Sports Club. **The original intention being to either renovate the existing premises, or build new facilities outside of the existing licensed premises.** (Emphasis added)*

If that was indeed the licensee's original intention, it is not apparent in the Decision Notice of the Director-General's Delegate dated 23 December 2016. The only faintly discernible expression of such an intention is the following observation by the Delegate:

The long term vision for the venue is the redevelopment of club facilities and creation of a new Club for members. To that end, the DTC hopes to expand and diversify its membership base by offering a range of services, facilities and membership types.¹⁰

By contrast, the Delegate also stated:

¹⁰ Delegate's decision, [20]

It is significant that whilst an additional licence is sought, the licence footprint will not be extended... Arguably, there will be minimal observable change to the day to day operations of the venue.¹¹

32. Similarly, in her Decision Notice dated 7 March 2017, the Director-General unequivocally stated:

The [licensee] has acknowledged that the prime purpose for obtaining a club liquor licence is to allow the [licensee] to sell liquor and conduct gaming machine activity in the Ted D'Ambrosio Bar area.

The grant of the club liquor licence sought by the DTC will not result in an enlargement of the current licensed area.¹²

33. Likewise, in its submissions to the hearing the subject of these proceedings, counsel for the licensee unequivocally confirmed that the licensee's original intention had been to refurbish Ted's Bar as a gaming machines venue.

34. The notices may have thereby conveyed the misleading impression that when approving the issue of the Club liquor licence in 2016 and 2017, firstly the Delegate and then the Director-General did so in expectation that the premises might be housed in newly built additional premises, and that in approving the licence, the decision-makers had assessed the associated prospect of more patrons, more traffic, more noise and more alcohol-related anti-social behaviour. The Commission is concerned that such an impression may in turn have deterred some would-be objectors this time around.

35. In these circumstances, the Commission has given serious consideration to requesting that further and better s46A(3) notices be published by the licensee, to provide members of the community with a further opportunity to make objections. Ultimately, however, the Commission has decided not to take that step, having regard to the following matters:

- a. The notices were issued in accordance with s46A(3), in a form approved by the Director-General.
- b. Silks is about 175 metres further away from the neighbouring residential area than Ted's Bar.¹³ It is at least partially screened from the residential area by another nearby building, Brett Dixon House. It is an enclosed building facing the racetrack, and any noise emanations are likely to be directed away from the residential area. Any noise-related nuisance to residents would be substantially less than the nuisance caused by the same level of noise emanating from Ted's Bar.
- c. The principal access to Silks will be from Dick Ward Drive, a non-residential major thoroughfare. Access to Ted's Bar is from Playford Street, a suburban residential street. Any traffic-related nuisance to residents would be substantially less than the nuisance caused by the same amount of traffic arising from the use of Ted's Bar.

¹¹ Delegate's decision, [96]

¹² Director-General's decision, [80]

¹³ The Commission makes this finding on the basis of its perusal of the site plans tendered by the licensee.

- d. The 2016 application was originally for trading seven days a week until 02:00 hours, and to include authority to sell liquor for consumption away from the premises. In response to the objections, the licensee amended its application to the more restricted hours of the Club liquor licence (i.e trading permitted until midnight on four days a week, and until 02:00 hours three days a week), with no takeaway trading. These amendments may have satisfied most of the objectors.
 - e. Although there were 13 objections to the first application, only the authors of one of those objections proceeded to seek a review of the Delegate's decision to grant the licences.
 - f. Despite the deficiencies in the notices adverted to above, the Commission considers that it is likely that at least some of the original objectors are aware of the actual circumstances of the current applications.
36. As there are no objectors to the application, and as the Commission has determined not to request that further consultation be conducted, no issue arises for consideration by the Commission pursuant to s46A(5A)(a) or (b).

A changed legal framework

37. On one view, this liquor licence substitution application is a matter of simply moving a licence that has already been approved from one area to another. Arguably, the Commission has simply to decide whether or not to approve the change in premises for a licence that has already been granted by the Delegate of the Director-General in 2016 and affirmed on review by the Director-General in 2017 ("the previous approvals").
38. In the view of the Commission, however, the application is not so simple, for two reasons.
39. The first reason is that the legal framework within which the previous approvals were granted has changed.
40. Section 6(a) of the Act structures the discretion of a decision-maker "considering or determining an application under this Act in respect of a licence or licensed premises". "Licence" is defined in s4 of the Act as "a licence issued under Part III". An application for substitution of premises is made under s46A, which is in Part III of the Act. Section 50(a) of the Act as currently in force requires the Director-General to refer to s46A application to the Commission. In the view of the Commission it follows that in relation to the instant application the Commission is a decision-maker, and that the provisions of s6 are applicable to its decision-making.
41. On 28 February 2018, the *Liquor Legislation Amendment (Licensing) Act 2018* ("the amending Act") commenced. By amendment to s6 of the Act, the previous requirement for a decision-maker to consider any of the relevant public interest criteria when determining an application in respect of a licence or licensed premises was replaced by a more stringent provision: the decision-maker is now required to apply the public interest and community impact test, which in turn requires consideration of all 14 of the previous criteria (plus a further one), which are now styled "objectives" (as discussed under the heading **Public interest and community impact test**, below).

42. Furthermore, the amending Act added six additional specific matters to which the decision-maker is required to have regard in considering the potential impact on the local community of a decision to grant or refuse an application (as discussed under the heading **The impact on the community**, below).
43. Moreover, the amending Act places an onus on Applicants to satisfy the Commission that approval of an application meets the public interest and community impact test (s6B).
44. Given this change in the law, the Commission considers that it is not permitted to merely endorse and adopt the previous approvals. However, the Commission considers that where relevant it can refer to and in appropriate instances adopt the factual findings embodied in the previous approvals, and apply them to the law as currently in force.
45. Accordingly, the Commission refers to the following findings from the Delegate's decision of 23 December 2016.
- a. *"The harms which appear to be of most concern to the community including rubbish, anti-social behaviour and the proliferation of liquor outlets in the immediate vicinity of the DTC can be mostly attributed to the availability of alcohol for consumption away from the premises."*¹⁴ The Commission agrees with and adopts this finding, which goes to s6(2)(f) and s6(2)(o) of the Act.
 - b. *"I am not satisfied on the evidence available to me that the grant of a club liquor licence would have an adverse effect on public order or safety or that it would contribute to the negative impact of alcohol misuse in the community... there is no evidence to suggest that the impact of a club authority presents additional risk of harm."*¹⁵
The Commission has regard to this finding, which goes to the objective at s6(2)(c) of the Act, while noting the s6B onus that now rests on the Applicant.
 - c. *"I am satisfied that the grant of a licence in the terms sought will not adversely impact the community or its social harmony and wellbeing."*¹⁶
The Commission has regard to this finding, while noting the additional matters it is required to consider pursuant to s6(3) in assessing community impact.
 - d. *"The DTC has operated from its current location for over 50 years offering liquor and gambling services. It has co-existed with all the other identified sites and sensitive venues for many years without causing identified harm to local businesses or locality."*¹⁷
The Commission adopts this finding, which goes to s6(3)(a)(iv) and (v) of the Act.
46. The Commission refers to the following finding from the Director-General's decision of 7 March 2017:
- a. *"The fact that the DTC has held a liquor licence for many years without significant complaint from Police or regulatory authorities regarding its responsible service*

¹⁴ Delegate's decision, [101]. See also Director-General's decision, [82].

¹⁵ Delegate's decision, [104]. See also Director-General's decision, [84].

¹⁶ Delegate's decision, [107]

¹⁷ Delegate's decision, [130]

practices provides a clear indication that the DTC takes its responsibilities in that regard seriously and will continue to do so in the future.”¹⁸

The Commission adopts this finding, which goes to the objective at s6(2)(b) of the Act.

A larger footprint

47. A second feature that complicates the determination of this application, is that, as explained at paragraph 17 above, the substitution will not be merely a move, but an expansion of both the area, and of the number of patrons who attend, purchase and consume liquor at the premises.
48. The Commission considers that Silks will have a substantially greater capacity than Ted’s Bar, although on the limited information provided to it, the Commission is unable to confidently assess how many more patrons will visit the premises when Silks is added to the licensee’s total licence footprint.
49. The licensee informed the Commission that it anticipates that a significant patron base for Silks will be the 400 to 500 employees of corporate bookmakers operating around the clock from the immediately adjacent Brett Dixon House. The Commission considers that this is unlikely to result in a significant increase of vehicular traffic to the premises, as these potential patrons will already be on site in any event.
50. The establishment of a substantial new venue for consuming liquor next door to a substantial workplace is two-edged: it elevates both the risk of alcohol-related harm, and the opportunity of an amenity for the benefit of the workers.
51. As mentioned at paragraphs 31 and 32 above, in granting the previous approvals, both the Delegate and the Director-General expressly adverted to the fact that the licence they approved did not entail an increase to the licensee’s overall footprint.

The public interest and community impact test

52. The Commission is required to consider each of the fifteen objectives in s6(2). In doing so, the Commission has had particular regard to the relevant findings of the previous approvals, as set out above, the licensee’s public interest and community impact statement, and the existing terms of the social Club licence.

(a) Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised.

The Commission considers that alcohol-related harm to patrons of Silks will be satisfactorily mitigated by the “club-specific” conditions of the club liquor licence, including the conditions headed “**Obligations of the Management Committee**”, “**Consumption by Members and Guests**”, “**Sale to Members and Guests**”, “**Club’s Constitution Not To Be Changed Without Approval**”, “**Members Register to be Kept**”, “**Visitor’s Book to be Kept**”, “**Maximum of Six (6) Visitors**” and “**Public Advertising**”. The combined effect of these conditions is

¹⁸ Director-General’s decision, [83]

to generally limit the sale and consumption of liquor on the premises to properly admitted members of the club and their guests.

- (b) *Liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner.*

The Commission has regard to the licensee's good compliance history, as adverted to at paragraph 46(a) above.

- (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.*

The Commission notes the licensee's impressive record of successfully conducting very large events – notably the Darwin Cup carnival. The Club liquor licence will only accommodate much smaller events than large race meetings.

- (d) *The safety, health and welfare of persons who use licensed premises must not be put at risk.*

The only particular potential concern to the Commission regarding this objective relates to the use by club patrons of EGMs. However, as discussed at paragraph 14 to 16 above, the Commission accepts that this is a matter exclusively for the Director-General to consider. The Commission considers that the scope of s6(2)(d) of the Act does not extend to consideration of the risk to the welfare of patrons arising from their use of EGMs while using the licensed premises, because that is a field covered by the *Gaming Machine Act*. That Act establishes a scheme to regulate the assessment of applications for gaming licences, and for the substitution of gaming licences. The scheme includes the requirement to conduct and consider a community impact analysis, which in turn is required to address, among other matters, problem gambling risk management and responsible gambling strategies.

- (e) *Noise emanations from licensed premises must not be excessive.*

The Commission refers to its findings at paragraph 35(b) above.

- (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.*

The Commission refers to paragraphs 35(c), 35(d), 35(e) and 45(a) above.

- (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 2008; and*
(ii) *provisions of or under the Planning Act 1999.*

The Commission is satisfied that the licensee has obtained the requisite approvals from the Development Consent Authority, and notes that the City of Darwin has been consulted about the application and has raised no issues.

- (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.*

The Commission is satisfied that the licensee appropriately manages and supervises its bar staff.

- (i) *The use of credit in the sale of liquor must be controlled.*

This issue is addressed to the satisfaction of the Commission by the condition in the licence headed "**Credit**".

- (j) *Practices which encourage irresponsible drinking must be prohibited.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

(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.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

(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.*

The capacity of the premises will be fixed by NTFRS in accordance with the condition of the licence headed "**Fire Precautions**".

(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.*

The Commission is satisfied that the entertainment generally provided on the premises will be the screening of broadcasts of sports events, which it is unnecessary to prohibit or limit. The Commission is further satisfied that the condition of the licence headed "**Club Condition**" is appropriate to reasonably limit the entertainment that may be provided on the premises for pre-booked special functions and events.

(n) *It may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.*

The Commission considers that this issue is adequately addressed by the condition of the licence headed "**Public Advertising**".

(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.*

The Commission refers to paragraph 45(a) above.

The impact on the community

53. In considering the impact of the decision on the local community, as it is required to do, the Commission must have regard to five matters set out at s6(3)(a) of the Act, and in addition apply the community impact assessment guidelines. In doing so, the Commission has given weight to the previous findings set out at paragraphs 45(b) and (c) above.

(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.*

The Commission accepts that the harm to the community will be satisfactorily minimised both by the operation of the "club-specific" conditions of the licence identified at paragraph 52(a) above, and by the matters the subject of the previous findings set out at paragraph 46(a) above.

(ii) *The cultural, recreational, employment or tourism impacts.*

The Commission considers that Silks will have a significant positive impact on recreation, tourism and employment. The club is a major component, along with

the new grandstand to be built with very substantial support from the Northern Territory government, of the licensee's strategic plan to modernise, extend and upgrade its facilities, services and amenities with the aim of drawing more interstate and international visitors, as well as making the venue more accessible and attractive to locals between race days.

- (iii) *The social impact in, and the impact on the amenity of, the locality of the premises or proposed premises.*

The Commission considers that Silks will enhance the amenity of the locality. It will offer a new, comfortable and well-appointed facility for the hosting of private functions. With areas set aside for children's play both adjacent to the outdoor deck and inside the restaurant, it will be a suitable venue for informal family dining in a safe, "members-only" supervised club environment. Finally, it will be a highly convenient place for the substantial workforce in Brett Dixon House next door to relax, eat, drink, follow sport and gamble before and after shifts.

- (iv) *The density of existing liquor licences within the community area.*

The licensee's large property is in close proximity to the relatively affluent residential Darwin suburbs of Fannie Bay, Parap, Woolner, Ludmilla, the Narrows, Bayview and Winnellie, which are already serviced by several existing hotels, licensed restaurants and licensed clubs, none of which objected either to the instant application or its predecessors. The Commission has regard to the findings at paragraph 45(d) above.

- (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.*

As discussed at paragraph 17 and 47 to 51 above, the Commission anticipates that the establishment of Silks will increase the volume of alcohol sales within the community area. It is notorious that alcohol-related harm in the Northern Territory is both disturbingly high and deeply entrenched. However, the Commission has not been informed either that the existing volume of sales in the locality of the licensee's premises is unusually high or particularly problematic, or that the anticipated increase will result in the area becoming one of unusually high or particularly problematic levels of alcohol sales or consumption. Ultimately, the Commission is of the view that the adverse impact of increased volume of sales is outweighed by the positive impact of items (ii) and (iii) above.

- (vi) *Any other prescribed matter;*

No matters have been prescribed.

54. Section 6(3)(b) requires that the Commission also apply the community impact assessment guidelines. The Commission has done so.

55. Having considered all of these matters, the Commission has come to the same conclusion as the previous decision-makers, including the finding referred to at paragraph 45(c) above. The Commission is satisfied, in accordance with s6B of the Act, that the approval of the application meets the public interest and community impact test.

The objects of the Act

56. Finally, s46A(6) provides that after considering the application, the Commission must have regard to the objects of the Act in deciding whether to approve or refuse the application.

57. Throughout its consideration of this application, the Commission has steadily born the objects in s3 of the Act in mind. The Commission is satisfied that the grant of the application is in accordance with the primary object of the Act read in conjunction with its further objects.

Footprint area

58. Following the hearing, the Commission granted leave to the licensee to provide written submissions in relation to the area of the substituted premises, and in particular, whether, as the licensee sought, they should extend to the entire Silks building, or be confined to the public areas of the premises, excluding the approximately 300 sq m area of the building labelled on the plans exhibited at the hearing as "Administration", on the western side of the premises ("the area").

59. The licensee has submitted that despite its labelling, the licensee's actual intention is that the area be used for various purposes, including activities involving the supply and consumption of liquor, and that it be available to be hired out as a private function room or for meetings and other events for which a large unfurnished, unserviced room would be suitable. The Director-General did not oppose this submission.

60. As discussed under the heading **Objections to the application and the Applicant's reply** above, the Commission is concerned that the licensee has previously failed to present its development plans with optimum clarity. Those concerns also arise in relation to the labelling of the area as being for "Administration". This creates a rather misleading impression, namely that it is not intended that the area be used for the supply and consumption of liquor, and that accordingly the increase in the size and capacity of the proposed substituted premises is smaller than it is in fact intended to be. It is unnecessary to consider whether the licensee intended the Plans to be misleading in this way, and the Commission makes no such finding.

61. However, after careful consideration, and giving the licensee the benefit of the doubt, the Commission accepts the licensee's submissions on this issue. The licensee's explanation that the area was always intended for various uses is inherently more plausible than the theory that such a large area was only ever intended for exclusively administrative use.

62. There is no bar in the area, and the Commission accepts the licensee's assurance that it would be impracticable to retrofit a bar, which would require complex plumbing works. Accordingly, the Commission is satisfied that the area would not be used for the consumption of liquor on a daily basis, but only occasionally. The Commission is comforted by the fact that such use would be subject to a degree of oversight. As set out in the Club liquor licence condition headed "**Club Condition**", commercial hiring events of the premises or part of the premises, and public fundraising or promotional events on the premises, can only be conducted with prior notice to and the consent of the Director-General.

63. Accordingly, the Commission has decided to designate the entire Silks building (excluding the external children's playground) as the substituted licence area.

Varied conditions

64. As set out at paragraph 2 above, the Commission has determined to vary the conditions of the licence, to correct clear flaws in the licence as currently in force. The deleted terms refer to liquor being sold for consumption away from the premises. However, the Club liquor licence does not authorise such trade, and accordingly references to it should be omitted from the licence conditions.
65. The Commission directs that the condition headed “**Condition issued pursuant to Section 31(3) regarding commencement of trade**” be retained, for the time being. This condition provides that the licence will not become operative until the licensee has provided evidence that the construction and associated inspections and approvals have been satisfactorily completed. The Commission delegates any of Members Goldflam, Reynolds or Cannon the power to approve compliance with this condition.
66. The Commission requests the licensee to provide evidence in relation to this condition to the Director-General. The Commission requests the Director-General to investigate such evidence received from the licensee and refer the results of that investigation, together with its advice on whether or not the condition has been complied with, to one of the above-named Members of the Commission for their consideration. The Commission directs that on approval being granted that the condition has been complied with, the condition be removed from the Club liquor licence, and that the licence be re-issued accordingly.

Notice of Rights

67. 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 substitution of premises pursuant to s46A of the Act is specified in the Schedule and is a reviewable decision.
68. 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.
69. 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.



Russell Goldflam

MEMBER, NORTHERN TERRITORY LIQUOR COMMISSION
27 August 2019

On behalf of Commissioners Goldflam, Reynolds and Cannon