

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR PERMANENT VARIATION OF CONDITIONS OF LICENCE PURSUANT TO THE LIQUOR ACT (2019)

REFERENCE: LC2021/013

LICENCE NUMBER: FLL1048

LICENSEE: OMAD (NT) Pty Ltd

PREMISES: Coolalinga Tavern
Pad 6, 425 Stuart Highway
COOLALINGA NT 0839

LEGISLATION: Section 110 of the *Liquor Act 2019*.

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 28 April 2021 with final submissions received 18 June 2021

DATE OF DECISION: 23 June 2021 and amended on 25 June 2021

Decision

1. For the reasons set out below and in accordance with section 112(2) of the *Liquor Act 2019* (“the Act”), the Commission has determined to approve a variation of the conditions of the licence of OMAD (NT) Pty Ltd (“the licensee”) for the premises known as Coolalinga Village Tavern (“the premises”) by:
 - a. Deleting the current “Entertainment” condition and replacing a condition in its stead in the following terms:

“Entertainment:

 1. Pre-recorded and live entertainment may be provided in the indoor area and shall be consistent with the concept of the premises. It shall cease at midnight and thereafter shall be in the nature of light, background music to allow a graduated departure of patrons from the premises.
 2. No amplification shall be directed in any way outward or away from the licensed premises.

3. Entertainment 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.
4. Live entertainment in the outdoor areas must cease at 22:00 hours on any day of trade and thereafter shall be in the nature of light, background music.

And:

- b. Deleting the current “Concept” condition and replacing a condition in its stead in the following terms:

“The premises shall trade as a family friendly tavern offering quality meals and drinks in a safe and comfortable environment whilst also providing entertainment facilities suitable to other demographics on or after 21:30 hours on any day of trade.”

Further:

- c. Deleting the current “Noise Control” condition and replacing a condition in its stead in the following terms:

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.

2. In accordance with sections 112(4) and 113(5) of the Act, the variations of the conditions of licence are to take effect as of the date of this Decision Notice.

Reasons

Background

3. On 15 December 2020, an application for a permanent variation of licence conditions was lodged pursuant to section 110(3) of the Act by DNS Specialist Services on behalf of the licensee, for the premises known as Coolalinga Village Tavern situated at Pad 6, 425 Stuart Highway, Coolalinga. The licensee is the holder of liquor licence number FLL1048 with Public Bar and Late Night Authorities.
4. The licensee is seeking to delete two (2) conditions of the licence and replace them with new conditions. The two conditions relate to “concept” and “entertainment”.

5. The current concept condition states;

“The premises are to trade as a family friendly tavern offering quality meals and drinks in a safe and comfortable environment.”

6. It is proposed that this condition be deleted and replaced with:

“The premises shall trade as a family friendly tavern offering quality meals and drinks in a safe and comfortable environment whilst also providing entertainment facilities suitable to other demographics outside of the traditional family trading hours.”

7. The current entertainment conditions states;

“Entertainment may be provided and shall be consistent with the concept of the premises but shall not include amplified nightclub or disco style music or entertainment. Live acoustic music performances may be conducted however must be in keeping with the concept of the premises. All live music performances and entertainment to cease at 12 midnight. Any entertainment must not be of the nature that would disturb adjacent premises or residents or interrupt their quiet enjoyment of same”.

8. It is proposed that this condition be deleted and replaced with:

“Entertainment may be provided and shall be consistent with the concept of the premises. Entertainment will include live and recorded music suitable for all demographics. Subject to compliance with the imposed noise conditions, the Licensee is permitted to provide entertainment in the internal and external areas by way of live or pre-recorded music. Any entertainment must not be of a nature that would disturb adjacent premises or residents or interrupt their quiet enjoyment of same.”

9. The following documents have been provided to support the application:

- Affidavit in accordance with section 54 of the Act;
- Community Impact Assessment in accordance with section 51 of the Act relating to the permanent variation application;
- Public Interest Criteria in accordance with section 49 of the Act.

10. As part of the referral to the Commission; several documents were tendered into evidence and became Exhibit 1. All this material was considered carefully by the Commission during the hearing and in determining the application, together with the oral evidence given by the nominee, namely Mr Damien O’Brien (“Mr O’Brien”).

Publication and Consultation

11. Pursuant to section 111 of the Act, notice of the application was published in the NT News on 23 and 27 January 2021. In addition, the licensee was directed to display the “Green Sign” at a prominent external area of the premises. Copies of the notices in the newspaper and photographs of the green sign erected at the premises were provided to the Commission.

12. As a result of the advertising, two (2) objections were received as follows:
- a. Acting Superintendent Paul Faustmann on behalf of the Commissioner Northern Territory Police (“NT Police”). NT Police object on the following bases:
 - i. “The applicant is fundamentally seeking (to) change the concept and entertainment condition to allow the business to operate as a nightclub/late night entertainment venue at the cessation of family related activities”.
 - ii. An assessment by NT Police “of the CVT … provided the following information;
 1. “The number of incidents (assaults/noise/liquor/traffic) requiring Police attendance is currently at a low manageable level.
 2. Police data identifies that the number of disturbances requiring Police attendance has increased from two in 2019 to seventeen in 2020.
 3. Over half (57%) of incidents at the CVT occur during evening 1500-2259 hours followed by 33% during night 2300-0659 hours.
 4. The CVT is situated adjacent to the Stuart Highway and is approximately 150 metres northeast of the Coolalinga Caravan Park and 130 metres southwest of high-density housing.”
 - iii. The proposed change would “have the potential to significantly impact the social amenity of the surrounding community which will result in an increased need for the services of Police”.
 - iv. “The proximity … to residential premises, combined with increased patronage in the latter part of the evening/night and amplified music emanating from internal and external areas increases the potential risk to public order and safety”.
 - v. The proposed change would “result in:
 1. Increase in alcohol fuelled incidents including anti-social behaviour, offences against person.
 2. Increased risk of alcohol related traffic offending; and
 3. Increased in reported noise complaints from residential dwellings situated in close proximity”.
 - vi. NT Police requested that if the application was approved “strict licensing conditions” be “imposed to mitigate the risk to public order and safety”. No details were provided as to what would be “strict licensing conditions”.
 - b. Mr “Michael” – a local resident – who has requested that his full address, surname and contact details not be disclosed. Michael has consented to his

full details being provided independently to the Liquor Commission and Licensing NT officers have confirmed the validity of his identity and address and are satisfied this is a valid objection. The Commission accepts that evidence and accepts Michael is a valid objector.

It is noted that Michael is in fact the same person who initially commenced the noise complaint referred to in the disciplinary proceedings, which the Commission heard at the same time as this application.

Michael objects to the variations sought on similar bases to those of the terms of his complaint, i.e., noise and that the premises have been operating outside of their current licence conditions for some time already.

Michael requests ultimately that if the Commission were to consider any variation that consideration be given to the fact that this is a “rural” area and therefore a “remote location to taxi availability” and there be consideration to “drink driving” risks.

Michael requested that the Commission continue “to support responsibility to minimising incidents and reducing alcohol fuelled harm with the intent of the *Liquor Act* and look to keep the current licensing conditions applied to the Coolalinga Village Tavern and concept of a family venue tavern and entertainment concept as similar to that of the recent Liquor Commission of Breezes Bar & Bistro”.

The Commission notes that this decision was confirmed by the NTCAT on 26 May 2021.

13. In accordance with section 96(6) of the Act, notification was given to the chief executive officer of the local council, the Litchfield Shire Council. In addition, the Director notified the Department of Health (“DOH”). The DOH had no adverse comments. The Litchfield Shire Council stated that it did not object to the changes provided the current trading times did not alter and the entertainment was restricted to the current closing times.
14. It is noted that there is no application to vary the current trading hours.

The Licensee’s Record of Compliance

15. The Commission was advised that a check of records held at Licensing NT reveals that the licensee holds two (2) liquor licences, namely Coolalinga Tavern and Virginia Tavern. In respect of the Virginia Tavern liquor licence there is no recorded negative compliance history.
16. In respect of the Coolalinga Village Tavern liquor licence, there is no prior compliance decisions, however on the same date of hearing this application, the Commission heard a complaint matter involving several dates of breaches of the licence. Whilst the noise complaints were dismissed on the day, the Commission found itself satisfied of the other complaints alleged which relevantly relate to the licensee breaching the terms of the licence, which it now seeks to have permanently varied.
17. The Commission notes that it does not place the licensee in good stead to have been breaching these specific conditions whilst at the same time preparing an application to

permanently vary such conditions. It leaves the Commission with the distinct impression that the licensee has considered compliance whilst this application is outstanding to be optional. Optional compliance is not a view held by the Commission, nor should it be one held by any licensee, including this one.

Public Hearing

18. On 30 March 2021, the Director referred this matter to the Commission to be determined by way of a public hearing. This was at the same time as referral of the complaint matters referred to earlier. The Commission informed the parties it would deal with this application on the same date as hearing the complaint referral. There were no objections to this course of action.
19. The matter was listed for hearing on 28 April 2021. At the hearing, the Director appeared via his Delegate, Mr Jeff Verinder. The licensee was represented by counsel, namely Mr Michael McCarthy and Mr O'Brien was present at the hearing. The Commission has earlier noted the evidence tendered before it, which was carefully considered in determining this application.
20. Pursuant to section 23 of the Act, the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate.
21. Following the hearing, the Commission sought further evidence in relation to the material provided by NT Police and further details from the licensee in relation to the various matters it proposed concerning noise issues. The concern for the Commission with respect to these two (2) areas was whether the police information could be attributable to the licensee and further whether the licensee's proposals to deal with noise could in fact find him in breach of other legislative regimes with respect to smoking and/or this Act, concerning material alterations.
22. Further evidence was received in relation to the NT Police matters (including incident reports provided from the licensee) on 12 May 2021. The licensee also provided further submissions on 26 May 2021. In addition, the Commission received information from the Director that the changes made by the licensee to the premises to address any concerns relating to noise were not considered a material alteration and therefore there was no issue of any potential breach.
23. In addition, and as will be outlined later in these reasons, the Commission also received further submissions on behalf of the licensee in relation to the proposed variations on 18 June 2021.

ASSESSMENT OF THE MATTER

24. In accordance with section 112(1) of the Act, the Commission has considered the objections, the response to the objections, the public interest and community impact requirements, and the applicant's affidavit required by section 54.
25. In accordance with section 110(2) of the Act, the Commission has also considered whether varying the conditions of the licence is in the public interest, and whether such variations would not have a significant adverse impact on the community. It is these matters that the licensee must satisfy the Commission about. The burden is therefore on the applicant.

26. In considering the application, the Commission has also had regard to the purposes of the Act as set out under section 3.

The Applicant's Associates

27. In the context of a variation application, section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant or expect a benefit from the applicant if the variation is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of section 54. The Commission considers that the contents of the affidavit do not give rise to a concern that the application should be refused.

The Public Interest Test

28. To determine whether the variation of the licence is in the public interest, the Commission is required to consider how the issue of the licence would **advance** the following objectives set out in section 49(2) of the Act:

- a. Minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- b. Ensuring liquor is sold, supplied, served, and consumed on or in licensed premises in a responsible manner;
- c. Safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- d. Protecting the safety, health and welfare of people who use licensed premises;
- e. Increasing cultural, recreational, employment or tourism benefits for the local community area;
- f. Promoting compliance with this Act and other relevant laws of the Territory;
- g. Ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- h. Preventing the giving of credit in sales of liquor to people;
- i. Preventing practices that encourage irresponsible drinking;
- j. Reducing or limiting increases in anti-social behaviour.

29. The Commission considers there are no issues of concern in relation to subparagraphs (g) or (h) of the Act. Closer consideration however must be given to the remaining objectives.

30. What is important to keep in mind is that it is for the licensee to satisfy the Commission of these objectives. Simply because the licensee already has a licence does not mean that the Commission will be automatically satisfied that these matters have been previously addressed and are therefore satisfied for the purposes of any variation application.

31. What the licensee is proposing here *is* a significant change in the concept of these premises and the way it was proposed the premises would be operated. Counsel for the licensee repeated suggestions that had been made in the application that this was not a significant change. The Commission does not accept this submission.
32. The continual refrain that the premises would “remain family friendly” was simply disingenuous in light of the manner in which the “Babes on Bulls” had been operating and the way the premises were being set up in the evening as akin to a disco with a separate area for dancing and amplified music known to get people dancing and lighting utilised commonly for also encouraging dancing. The Commission does not consider, nor accept, that the manner in which the premises were being operated and promoted in this regard was “family friendly”.
33. Whilst the Commission does accept that being open until midnight Sunday to Thursday and 2.00am Friday and Saturday are not “family friendly” hours, that is not to the point. Those hours were sought and granted when this license was originally applied for. Although it is noted that in fact 2.00am was ultimately granted by way of a later variation¹ after an “administrative error” by Licensing NT when issuing the license and recording 2.00am, rather than 1.00am in accordance with the original Reasons for Decision². The licence was specifically noted to have been granted on the basis that:
 - a. It was for a “family friendly tavern in the rural community of Coolalinga offering quality food and beverage services accompanied by local live entertainment and gaming machines”³;
 - b. The trading hours applied for were sought on the basis that they “were consistent with those of similar tavern venues currently operating in shopping complexes located in residential neighbourhoods in the Darwin area”⁴;
 - c. The premises were to be “a family friendly venue and not a nightclub or late night entertainment venue. Entertainment provided would be of an acoustic style and an adjunct to patrons' enjoyment of the venue **rather than a reason to attend the venue. Any live music will cease by midnight on Fridays and Saturdays with the expectation that majority of patrons remaining at the premises after that time would be enjoying a quiet drink or playing the gaming machines.**”⁵ (emphasis added);
 - d. That the “trading beyond midnight on weekends is sought **mainly to accommodate patrons who wish to utilise the gaming machines and for patrons who finish an evening with a drink before heading home.** Live local entertainment is planned for the venue however, the Applicant submitted that any live entertainment will be of an acoustic nature only with no amplified or nightclub style music or entertainment. In addition, all entertainment will

¹ Northern Territory Liquor Commission, OMAD (NT) Pty Ltd, Application for variation of conditions of licence (16 April 2020)

² Director General of Licensing, Reasons for Decision, Coolalinga Village Tavern, Application for Liquor Licence (5 June 2017)

³ Ibid, para 3

⁴ Ibid, para 8

⁵ Ibid, para 13

cease at midnight on weekends even if trading is approved until 2.00 am.”⁶ (emphasis added);

- e. That “the main reason for the later closing time was to allow patrons to continue to utilise the gaming machines or to enjoy a final drink before leaving the premises”⁷;
 - f. Finally, that “specific conditions will be attached to the licence to **ensure that the future development and management of the premises continues to present a family friendly tavern in a rural setting, offering a quality food and beverage service accompanied by appropriate entertainment** in a welcoming, comfortable and safe environment regardless of the entity or individual who ultimately holds the liquor licence”⁸ (emphasis added).
34. The Commission further notes that in the reasons given by the Commission with respect to the variation application in 2020, the Commission specifically noted⁹:
- “... one of the Commissioner’s is aware of the positive reputation the premises has established amongst the local community as a well-run family friendly venue.”
- And further¹⁰:
- “It is also likely that a not insignificant proportion of the Tavern’s late night clientele will be there to play gaming machines rather than indulge in excessive drinking”.
35. The Commission does not consider any of the matters set out above to be at all consistent with what is now being proposed by the licensee. The licensee on this occasion has now instead stated that:
- “... being ‘family friendly’ after 9.30pm and up until 2.00am on Friday and Saturday is extraneous and not in keeping with the demographic who would be seeking entertainment at these times.
- There is no family market in the evening and early hours of the morning, if CVT is restricted to function as family friendly during these times it will not be able to sustain continued economic growth and remain relevant in the highly competitive local market”.¹¹
36. This is completely contrary to what was said in support of this licence when sought originally and contrary to the basis for the specific conditions that were put in place when it was issued. Further, there has also been no evidence put before the Commission to support any assertion that the premises will “not be able to sustain continued economic growth and remain relevant”.
37. Reference by the licensee to “(t)he range of choice for evening and late-night entertainment geared toward an older demographic indicates that the CVT will be at a

⁶ Ibid, para 41

⁷ Ibid, para 47

⁸ Ibid, para 52

⁹ Northern Territory Liquor Commission, OMAD (NT) Pty Ltd, Application for variation of conditions of licence (16 April 2020) @ para 27

¹⁰ Ibid para 28

¹¹ Attachment D of Exhibit 1 - Community Impact Statement and Public Interest test.

competitive disadvantage with these venues if the application is not granted¹² is a further indicator that what is being proposed by the licensee is in fact a very different concept to that upon which this licence has been granted and yet it was continually submitted on behalf of the licensee that it would remain “family friendly”. This submission is simply not accepted.

38. Much was sought to be said on behalf of the licensee that these premises were not to become a “nightclub”. In the written response from the licensee, it was stated that there was no intention to do this, and no application made to change the trading hours “to 4.00am”¹³. The Commission considers it is not to the point that these premises will not be open to 4.00am and therefore cannot be considered a “night club”. The setting up of lights, the establishment of a separate area for people to dance and the playing of music encouraging people to dance are all indicators of a disco or nightclub. Simply because the premises will not be open until 4.00am does not address the very real issue that what is being proposed is a different venue concept to the one that was granted.
39. Such a venue would also encourage far more people to attend during evening hours. This was in fact finally accepted on behalf of the licensee during closing submissions. Such a concession was however unavoidable when the application spends significant time referring to the need to be “competitive” with other venues that very much operate like a disco or night club at those times.
40. As such, it is not mere “conjecture”¹⁴ as was suggested on behalf of the licensee that this would result in an increase in police services. The documents provided by NT Police establish the requirement for greater attendance at the premises because of incidents in or around the premises either directly related to the premises or closely coinciding to incident reports or closure of the premises.
41. In terms of the issues to be considered under the public interest test:
 - a. “Minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor” - the licensee has simply relied upon its “strong policy surrounding the sale of liquor” and implementation of its RSA Policy. The challenge with such a limited submission is that what is now being proposed by the licensee is a venue which will be clearly seeking to provide to a very different demographic and providing very different entertainment.

There is evidence before the Commission that on balance establishes there has been an increase in the consumption of liquor on the premises. The information provided by NT Police and the licensee’s own incident reports provide such evidence.
 - b. The same may be said with respect to “ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner”. Again, the licensee simply refers to its policy and training in RSA. However again the information provided by NT Police and the licensee’s own incident reports provide evidence that there appears to have been an increase in incidents relating to the sale, supply, service, and consumption of liquor that does not

¹² Ibid

¹³ Attachment H of Exhibit 1

¹⁴ Ibid, p.3

appear to be occurring in a responsible manner and has resulted in an increase of incidents in the area.

- c. Consideration must also be given to “safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises”. Again, the information provided by NT Police and the licensee’s own incident reports provide evidence that there has been an increase in incidents impacting on public order and safety because of large numbers of people being attracted to these premises.

The Commission accepts the submission on behalf of the licensee that not all incidents alleged by police could be found to be directly related to these premises however there are several incidents that can be sufficiently related to either incidents *at* the premises or very closely to *after* the premises have closed that give the Commission cause for concern.

- d. As for “protecting the safety, health and welfare of people who use licensed premises” - the Commission notes its findings in relation to the complaint matter, in particular with respect to the conduct on the premises of the “Babes on Bulls” and specifically the various stages of undress and at times nudity.

The Commission finds there was no consideration of the safety, health and welfare of people who use licensed premises when the licensee was allowing that sort of conduct to occur when such “entertainment” was taking place on the premises.

This is even more significant as the licensee was clearly made aware such conduct was occurring (ignoring for the moment that it was also a clear breach of the conditions of the licence) and yet allowed it to occur several times thereafter.

- e. In relation to “increasing cultural, recreational, employment or tourism benefits for the local community area”; there is no evidence to suggest that this will provide any such benefits to the local community area other than another venue providing such entertainment late at night, of which the application itself makes clear there are a number in the area already.
- f. Concerning “promoting compliance with this Act and other relevant laws of the Territory” – whilst this application was on foot, the licensee was continuing to breach conditions of the current licence after having them brought to its attention and taking little to no action to remedy the breaches.
- g. In relation to “preventing practices that encourage irresponsible drinking”, the Commission is concerned by the evidence of what was occurring when the “Babes on Bulls” took place at the premises and particularly the various stages of undress and reference to “Sexy Round”. The Commission considers this to be evidence of the adoption of a practice that encouraged irresponsible drinking at the premises.
- h. As for “reducing or limiting increases in anti-social behaviour”; the Commission is satisfied there has been an increase in anti-social behaviour at or near the venue and (as noted earlier) whilst not all occurrences can be directly related to these premises, enough do correlate with events occurring at the premises

such as removal of patrons as seen in corresponding incident reports and/or the closing of the premises.

42. Whilst there are areas of concern and whilst the Commission was unimpressed by submissions suggesting this was not a change in concept, the Commission does accept that the allowance of trade until midnight Sunday to Thursday and 2.00am on Friday and Saturday is not synonymous with the concept of being a “family friendly” tavern until those hours. Clearly, families are not still at the premises at such times, and it was generally accepted that most had likely left by 9.30pm.
43. Further, whilst the Commission has found breaches of the conditions of licence by the licensee, it is also clear that the licensee has been able to trade these premises previously in a responsible and safe manner and that the premises are a very popular location. There is clearly a clientele wishing to utilise those premises at those later evening hours and so much is evidenced by the fact that the premises have a “late night authority” on Friday and Saturday evenings.
44. The Commission also notes the evidence that was given with respect to changes that the licensee had made to the premises fit out which included several noise abatement measures.
45. The Commission also notes the information provided on behalf of the Director that Licensing NT “supported” that there was a “need” for “this type of premises providing this kind of entertainment in this location”.
46. On balance, the Commission is satisfied that there is a public interest in allowing a variation of the current conditions of the licence, however not in the exact terms as those sought by the licensee. The Commission considers there needs to be a careful balancing of allowing entertainment that is consistent with the type of patrons who would be attending licensed premises in the later evening (after families) and minimising the harm caused by the consumption of alcohol and anti-social behaviour.
47. It is for these reasons that the Commission has made variations to the licence in the terms of those set out at the commencement of these reasons. The Commission notes that variation to the terms of the noise control condition had not been part of the application before it. However, after considering all the evidence and the evidence relating to the issue of noise, the Commission determined of its own initiative that a variation to that condition should also be considered.
48. As a result, on 8 June 2021 the Commission provided notice to the licensee (including the Director) of the terms of the condition being considered. The licensee was invited to respond to the proposal. The Director advised “the proposed licence condition relating to noise abatement” was regarded as “appropriate and sensible”.
49. Counsel for the licensee responded on 18 June 2021. Within that response counsel made several requests for matters to be considered by the Commission, including (*inter alia*) a “sunset clause” and inclusion of similar protections to those relating to notice under section 113 of the Act.
50. The Commission has carefully considered the response and additional submissions made on behalf of the licensee. The Commission is not satisfied that it is appropriate in all the circumstances to make a sunset clause as proposed on behalf of the licensee.

The Commission considers it is appropriate that there be the ability for the Director to attend promptly to minor noise issues without referring them to the Commission.

51. The Commission is also not satisfied that it is appropriate in all the circumstances to include provisions like those set out in section 113 in relation to any sound attenuation and noise mitigation measures proposed by the Director. The Commission is satisfied that if the Director determines to exercise the “own initiative” power now provided for, and the licensee fails to comply, that all relevant matters would then be provided to the Commission at any subsequent alleged breach (should one be alleged). All relevant matters would then be able to be considered by the Commission at that time, including the reasonableness of the measures proposed by the Director, the relevant notice, the reasons of the Director and any response by the licensee.
52. The Commission therefore considers the terms of the variations to the conditions set out at the commencement of these reasons to be appropriate and far more in keeping with carrying out the fine balance of allowing the premises to operate in a manner consistent with the hours it is permitted to trade, whilst also providing relevant protection to the public.

Whether the variation would not have a significant adverse impact on the community

53. Again, it is for the licensee to satisfy the Commission of this question. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must consider the matters set out at section 49(3) of the Act:
 - a. The risk of undue offence, annoyance, disturbance, or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital, or a school;
 - b. The geographic area that would be affected;
 - c. The risk of harm from the excessive or inappropriate consumption of liquor;
 - d. The people or community who would be affected;
 - e. The effect on culture, recreation, employment, and tourism;
 - f. The effect on social amenities and public health;
 - g. The ratio of existing liquor licences and authorities in the community to the population of the community;
 - h. The effect of the volume of liquor sales on the community;
 - i. The community impact assessment guidelines issued under section 50;
 - j. Any other matter prescribed by regulation.

54. The Commission notes there are no such “other” matters prescribed by regulation. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of *the Liquor Act 1978* and in force immediately

before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50. The Commission has reminded itself of the guidelines and considered them in assessing the application.

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

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

56. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.
57. Obviously one of the relevant issues that has been raised in the objections (particularly that of “Michael”) is noise. As earlier noted, the licensee has sought to address this by installation of noise abatement cladding. The licensee also maintains its submissions that it made in the disciplinary proceedings (and which were ultimately accepted by the Commission) that there is no evidence of excessive noise at the premises.
58. What is being proposed by the licensee is not “easy listening”. It is intended that persons of a younger demographic would be encouraged to come to the premises. The licensee made clear he intended for the DJ to continue at the premises and “hoped” “Babes on Bulls” would return. The Commission notes there is no allowance for adult entertainment and this will not change. If “Babes on Bulls” does return to the premises the Commission would expect that the Director would ensure compliance with the conditions of licence.
59. Again, the Commission is required to undertake a careful balancing exercise of the public’s interest in the sale, supply, service, and consumption of alcohol and whether there is a **significant adverse impact** on the community caused by the same.
60. Having considered these matters carefully, the Commission has concluded that the terms of the variations it proposes to be made to the licence would not cause a **significant adverse impact** on the community and that the risks associated with permitting the variation do not outweigh the benefits of permitting a variation of that proposed to be made.
61. For these reasons, the Commission has determined to vary the conditions of the licence as set out at the commencement of these reasons.
62. Before concluding these Reasons, the Commission wishes to note that during deliberations very careful consideration was given to imposing an additional condition within the licence concerning the camera surveillance equipment. This was considering the evidence of the use of “fish-eye” cameras and the problems such cameras cause in terms of what can be seen in any footage. Consideration to such an addition was also considering the concerns raised by police with respect to incidents occurring outside of the premises and an increase in anti-social behaviour.

63. It is noted that there is clearly a camera placed on the outside of the premises near the main entrance/exit of the premises. Evidence was given by Mr O'Brien that he is upgrading his cameras so that there will be no more "fish-eye" cameras used. Reliance has been placed upon Mr O'Brien's promise to give truthful evidence to the Commission and on this occasion there will be no additional condition imposed that this upgrade occur.
64. It is noted however that it is already a condition of the licence that:

"The Licensee shall comply with such requirements for and in relation to camera surveillance as the Director of Liquor Licensing shall at any time notify to the Licensee in writing as being thereafter applicable to the licensed premises".
65. The Commission would anticipate that if it is later established that this upgrade has not occurred, that the Director would likely consider providing written notice to the licensee about the same.
66. It is also noted that should the concerns of police be borne out and there is a significant increase in anti-social behaviour at or around the premises following these variations, that both police and/or licensing inspectors would utilise their powers under the Act and obtain a copy of any relevant evidence to support any assertions that it is the way the premises are being operated that has caused such behaviour.

Notice of Rights:

67. Section 31(1) read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by Northern Territory Civil and Administrative Tribunal ("NTCAT"). Section 94(3) of the NTCAT Act provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
68. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensee and the persons who made the submission or objection.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
25 June 2021

On behalf of Commissioners Truman, Dwyer, and Corcoran