

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE NUMBER: LC2019/119

LICENCE NUMBER: 81402891

LICENSEE: **Gillen Club Incorporated**

PREMISES: **Gillen Club**
57 Milner Road
ALICE SPRINGS NT 0870

APPLICANT: Ian Matthew McCormack

LEGISLATION: Section 119(2), Parts I, IV and V of the *Liquor Act 1978*.

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Mrs Amy Corcoran (Community Member)

DATE OF HEARING: 30 October 2019

DATE OF DECISION: 30 October 2019

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act 1978* (“the 1978 Act”), the Commission has determined to approve the material alteration to the licensee’s licensed premises as sought by the Applicant.
2. In accordance with the approval given, the licensee may conduct business on the licensed premises whilst the alteration is being made on condition that the licensee provides to the Director of Liquor Licensing (“the Director”) a copy of the building site management plan prior to the commencement of any such alterations.

Reasons

Background

3. Gillen Club Incorporated (“the licensee”) currently holds a Club (Incorporated) Licence (“the licence”) authorising the sale of liquor:
 - a. For consumption on or at the licensed premises by a member of the club or by a visitor in the presence of such a member.

- b. For removal and consumption away from the licensed premises **only** to financial members of the club.
4. The premises are located at 57 Milner Road, Alice Springs and are said to be “Alice Springs largest club” being “home to four foundation clubs including: Wests cricket, Wests AFL, Wests rugby and Wests netball”. Part of the application includes the submission that the club “have and support Alice Springs hockey, darts, tennis, ping pong, soccer, pony club and men’s shed and we provide sponsorship for varying athletes who wish to compete locally, nationally and internationally”.
5. On 23 May 2019, Ian McCormack, the Nominee for the licensee applied to the Director-General of Licensing NT (“Director-General”) pursuant to section 119(2) of the 1978 Act, for approval to make a material alteration to the licensed premises.
6. At the time the application was deemed incomplete and further requests were made. On 8 August 2019, all documents in support of the application were received. The substance of the application is to:
 - a. refurbish the kitchen,
 - b. create a new internal doorway from the kitchen into the main area,
 - c. install a cool room, and
 - d. install staff toilets.
7. Despite the proposed alterations, the licensed footprint will in fact remain unchanged. The installation of the cool room and toilets however will in fact reduce the “public area” within the licensed footprint.
8. In relation to this application it is important to note that since lodgement the 1978 Act has in fact been repealed and replaced by the *Liquor Act 2019* (“the 2019 Act”): see section 321 and Schedule of the 2019 Act. The 2019 Act also introduced its own regulations being the *Liquor Regulations 2019* (“the Regulations”). The Regulations provide for transitional matters under Part 8.
9. Relevant to this application is regulation 132 that provides as follows:

“An application for approval of a material alteration of licensed premises, made under section 119 of the *Liquor Act 1978*, that was not determined under that Act before the commencement is to proceed and be determined under that Act unless the applicant gives the Director written notice that the applicant wishes to proceed and have the application determined under section 97 of the *Liquor Act 2019*.”
10. In this regard, the applicant confirmed during the hearing that it wished to proceed under the 1978 Act and therefore this application has proceeded and been determined under the *Liquor Act 1978*.

11. In relation to the term “material alteration” it is important to note that this is defined under section 4 of the 1978 Act as follows:
“material alteration means an alteration to licensed premises which:
 - a. increases or decreases the area used for the sale of liquor or the sale and consumption of liquor; or
 - b. involves structural alteration; or
 - c. alters access to or egress from the premises; or
 - d. alters the external appearance or facilities.
12. In basic terms, this application in fact seeks authorisation to decrease the area used for the consumption of liquor as well as involve structural alteration, alteration of access and alteration of facilities.
13. In relation to this licensee, the Commission was informed by Licensing NT that there have been “no” reported compliance issues. In fact the Commission was advised that this was “generally a very well run venue”.

Advertising and Objections

14. Details of the application were advertised in the Centralian Advocate on 16 and 20 August 2019 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 20 September 2019.
15. It is important to note that there were no objections received in the objection period.
16. As required by section 119(5) of the 1978 Act, on 13 August 2019, the Director-General notified the Chief Executive Officer of Alice Springs Town Council (“the Council”) of the application. Despite the period of time that has passed, the Council did not respond to the notice. The Commission notes the Director-General has complied with its obligations and there is therefore nothing for the Commission to consider from the Council.

Public Hearing

17. Pursuant to section 50 of the 1978 Act, the Director-General must refer applications under section 119 of the Act to the Commission for hearing. Accordingly, the Commission convened to conduct a public hearing on 30 October 2019.
18. Pursuant to section 53 of the 1978 Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.

19. The public hearing commenced at 12 noon on 30 October 2019. Mr Luke Gardiner, solicitor, appeared for the licensee with Mr Ian McCormack and Mr Kyle Pearson in attendance on behalf of the applicant. Mr Mark Wood appeared as representative for the Director of Liquor Licensing to provide information and assistance to the Commission during the course of the hearing.

Assessment of the Application

20. There were no objections to this application with the applicant having undertaken its obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the 1978 Act.

21. Despite there being no objections made to the application lodged by the applicant, the 1978 Act clearly provides that these types of applications must be referred to the Commission for decision. In addition, section 6B of the Act makes clear that it is the applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.

22. As is clear from section 6(1) of the 1978 Act; when considering or determining an application in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Sections 6(2) and 6(3) of the Act set out what the Commission must consider.

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

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

24. Those guidelines set out the matters that are “to be considered” when assessing the community impact against the criteria under section 6A. There are therefore a large number of matters that the Commission must therefore consider and that the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines.

25. 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”.

26. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application to effectively **decrease** the area used for the sale and consumption of liquor. As a result; some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a material alteration.

27. In relation to the question of the “public interest”; the applicant provided written submissions that clearly identify that it would continue to operate in the manner in which it has successfully operated for the last few years with all of its existing policies to continue.
28. As already noted, it is also apparent that what is being proposed is a decrease in the area used for the sale and consumption of liquor. Nothing else is being changed in terms of the **operation** of these premises which Licensing NT has itself stated is “generally a very well run venue”.
29. The Commission also received into evidence written submissions from the applicant seeking to address the community impact assessment guidelines. Those submissions make clear that what is being proposed by the applicant is being undertaken to provide a “better experience” for members and the public who visit the club. The material alterations to the kitchen were described as making the kitchen “more ergonomic”, which the applicant hoped would reduce the waiting time that exists when the club is particularly busy.
30. Based on the evidence presented, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the material alteration sought.
31. The Commission notes the information provided as to the licensed premises in the local community area. Again the Commission considers it relevant that this application does not propose any increase to that number, but instead to decrease the area upon which liquor can be sold and consumed.
32. The Commission has received no information that would suggest there is likely to be an impact upon law and order, community safety or public amenity by virtue of this application.
33. There is also no evidence to suggest that there will be a social impact upon the community to such an extent that it would merit a finding against this application.
34. As earlier noted, there is no evidence before this Commission to suggest that the applicant intends to do anything to change the manner in which it provides liquor to its members and guests. The evidence before the Commission is clear that to date the applicant has provided liquor in a manner known to be safe and to minimise adverse impacts and has ensured its staff are properly trained in order to do so. The applicant has in the past also demonstrated a good track record in respect of the operation of its business activities, including stopping the sale of jugs of alcohol at the premises. It is clear that the licensee is proactive in terms of appropriate conduct under the terms of its licence.
35. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined decided to approve the material alteration to the licensee’s licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights

36. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the 1978 Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
37. Section 120ZC of the 1978 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.
38. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons is the Applicant.



JODI TRUMAN
Presiding Member
Deputy Chairperson
31 October 2019