

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR PERMANENT VARIATION OF LICENCE CONDITIONS
APPLICATION FOR MATERIAL ALTERATION OF LICENSED PREMISES

LICENCE NUMBER: 80517222

REFERENCE: LC2019/104

LICENSEE: Epilogue Enterprises Pty Ltd

PREMISES: The Epilogue Lounge
58 Todd Mall
ALICE SPRINGS NT 0870

APPLICANT: Epilogue Enterprises Pty Ltd

LEGISLATION: Sections 32A and 119 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: 16 August 2019

DATE OF DECISION: 3 September 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978* ("the Act"), the Commission has determined to vary the conditions of Liquor Licence Number 80517222 ("the licence") with date of effect 29 October 2015, and comprising 12 numbered pages, as follows:

a. Wherever occurring: omit "Liquor Act" and substitute "Liquor Act 1978".

b. Page 1:

Omit the term "**AUTHORITY – RESTAURANT**" and substitute "**AUTHORITY – ON LICENCE**"

Following the heading "**AUTHORITY – ON LICENCE**", insert the following:

Condition issued pursuant to Section 31(3) regarding commencement of trade

- (a) The licence will not become operative in The Rooftop Bar until the Liquor Commission or its delegate has provided written approval to commence the sale of liquor in that part of the premises following receipt from the Licensee of the following materials to the satisfaction of the Liquor Commission or its delegate:
1. Evidence that Northern Territory Fire and Emergency Services (“NTFRS”) has inspected the premises, assessed them as being compliant with the *Fire and Emergency Act* and *Regulations*, and provided instructions as to the maximum number of patrons permitted on the premises; and
 2. Evidence that the Development Consent Authority (“DCA”) has certified that the operation of the licence is permitted or consented to pursuant to the relevant provisions of the Northern Territory Planning Scheme.
- (b) Trading before 17:00 hours in The Rooftop Bar is not permitted until the Liquor Commission or its delegate has provided written approval following receipt from the Licensee of evidence that the DCA has certified that condition 3* of the schedule of conditions of Development Permit DP06/0050 has been satisfied.

*condition 4 amended by Commission to read condition 3 on 20 December 2019 when error detected.

c. Page 4:

Omit "**Upstairs Function Area**" and substitute "**The Rooftop Bar**"

Omit the two paragraphs under the heading "**Upstairs Function Area Trading hours**", and substitute:

(a) Trading Hours for the Rooftop Bar shall be between:

Sunday 12:00 and 02:00 the following day

Monday 17:00 and 02:00 the following day (except when Monday is a public holiday)

Tuesday 17:00 and 02:00 the following day (except when Tuesday is a public holiday)

Wednesday 17:00 and 02:00 the following day (except when Wednesday is a public holiday)

Thursday 12:00 and 02:00 the following day

Friday 12:00 and 02:00 the following day

Saturday 12:00 and 02:00 the following day

A public holiday between 12:00 and 02:00 the following day

On any day between 12:00 and 02:00 the following day for a pre-booked function or event provided that the Licensee shall have given written notice of the proposed function or event to the office of the Director-General at least seven clear days before the holding of the function or event, and provided that no person on behalf of the Director-General shall have notified the Licensee not less than three clear days before the proposed function or event that the holding of the proposed function or event is not consented to by the Director-General.

d. Page 5:

Omit the paragraph designated “(c)”.

Omit the paragraph designated “(d)”.

Omit the paragraph designated “(e)”.

Omit the Special Condition under the heading “**Licence Concept**”.

e. Page 6:

Omit the Special Condition under the heading “**Premises**” and substitute:

The downstairs area of the premises shall at all times have the appearance of and shall trade predominantly as a restaurant or café.

In the Special Condition under the heading “**Advertising/Signage**”, omit “Hotel, Pub, or Bar” and substitute “Hotel or Pub”.

Omit the Special Condition under the heading “**Liquor Service**”.

In the Special Condition under the heading “**Meals to be Available**”, omit the sentence “Meals will be available at all times” and substitute:

Meals from a published menu will be available: in The Epilogue Lounge at all times; and in The Rooftop Bar until no sooner than 90 minutes before the premises close.

Omit the Special Condition under the heading “**Seating**”.

2. For the reasons set out below and in accordance with section 119(8) of the Act, the Commission has determined to approve the following material variations of the licensed premises:

- a. Installation of permanent perimeter screens around the “Epilogue Lounge Alfresco Area” as depicted in the area coloured blue at page 43 of Exhibit One of the hearing of the application (“Exhibit One”), subject to written approval of the Liquor Commission or its delegate to install the screens following receipt from the licensee of evidence that the Alice Springs Town Council has approved the installation of the screens.

- b. Extension of the premises to include the first floor area marked in green at page 44 of Exhibit One.
- c. Extension of the premises to include the north-eastern portion of the ground floor of the premises comprising the areas designated “Accessible” (a disabled toilet), “Foyer”, “NEW LIFT”, “Female Toilets” and “Corridor”, and the staircase alongside the area designated “Corridor”, depicted at page 158 of Exhibit One.
- d. Undertaking of the building works involving structural alterations or alteration to access or egress from the premises that are the subject of Occupancy Permit Numbers 010/05174/7/A1 and 010/05175/4/A1 issued by Project Building Certifiers Pty Ltd on 16 August 2019 and tendered as Exhibit Nine following the hearing of the application.

Reasons

Background

3. Epilogue Enterprises Pty Ltd (“the licensee”) is an Australian Proprietary Company registered in 2013. Christopher Wilkinson (“Mr Wilkinson”) is its Secretary and sole Director. The licensee has leased The Epilogue Lounge (“the premises”) and, under the management of Mr Wilkinson, has owned and operated the business conducted on the premises since 2013.
4. The premises are a popular café, restaurant and music venue situated on Lot 5174 and Lot 5175 of the Town of Alice Springs in the entertainment and tourism precinct of the town’s Central Business District, at the corner of Todd Mall and Reg Harris Lane, a sheltered pedestrian laneway lined with shops and offices, leading to a public carpark. The premises comprise three areas: an indoor licensed restaurant on the ground floor; an alfresco dining area with tables and seating in both Todd Mall and the laneway; and a partially unroofed upstairs area (“The Rooftop Bar”) with a small stage and a sound system.
5. Currently, the licence is subject to conditions that require it to operate with the appearance of and trading predominantly as a restaurant, although the “Upstairs Function Area” (as The Rooftop Bar is currently designated in the licence) is permitted to operate as a licensed venue for pre-booked ticketed functions every day between 17:00 hours and 02:00 hours the following day. The licensee seeks a variation of these conditions, which it submits are unduly restrictive, complicated, unclear, inconsistent or duplicative. Initially, the licensee had also sought to extend the hours of trading for the downstairs restaurant, but prior to the hearing the licensee indicated that it would abandon this aspect of its application. Determination of these proposed variations is governed by s 32A of the Act (“Variation of conditions on application by licensee”).
6. In addition, the licensee seeks to extend the footprint of the premises by enlarging The Rooftop Bar (which will, in effect, be doubled in size) and by adding to the footprint The Rooftop Bar’s new ground floor entrance area. The licensee also seeks approval to install a lift to The Rooftop Bar (to allow disabled access), additional toilets for the use of patrons (including disability access toilet facilities) and permanent perimeter screens

around the Todd Mall section of the alfresco dining area. These proposed variations each constitutes a “material alteration” of the premises for the purposes of the Act, determination of which is governed by s 119 of the Act (“Alteration of premises”).

7. Although these two distinct applications are regulated by different provisions of the Act, the procedures set out in s 32A and s 119 are conveniently similar, permitting the applications to be investigated together by the Director-General, and for them to be heard and determined together by the Commission.
8. The licensee first made application for approval of the material alterations in August 2016. It is regrettable that it has taken three years for these applications to finally be determined, following referral by a Delegate of the Director-General of Licensing on 24 July 2019 of the applications to the Commission for hearing pursuant to s 32A(6AA) and s 119(6A) of the Act respectively. It appears that the delays were no fault of the Applicant. In the meantime, the licensee has, with the knowledge and apparent approval of Licensing NT,¹ proceeded with the associated construction work, which was completed at around the time the Commission heard the applications.
9. Preferably, applications such as these should be made and determined prior to the associated works being undertaken.² However, in the unusual circumstances of the instant application, the Commission makes no criticism of the licensee, which the Commission finds has made conscientious and concerted efforts to thread its way through the fluctuating bureaucratic maze of the Northern Territory’s planning, liquor and building regulatory systems, while at the same time operating and developing its business.

The brief of evidence

10. The Director-General provided the Commission with a brief of evidence (“the brief”) including:
 - Application for material alteration to licensed premises dated 16 August 2016
 - Application for variation of conditions of liquor licence dated 8 August 2017
 - Licensee’s current liquor licence 80517222 effective 29 October 2015
 - Plans and technical drawings of the proposed extended and altered licensed area
 - Correspondence between the Applicant and Licensing NT
 - Alice Springs Town Council Alfresco Dining Permit dated 7 August 2018
 - Newspaper advertisements dated 15 and 18 August 2017 and statement of display of “Green Sign”
 - Correspondence with Department of Health (“DOH”)
 - Correspondence with Alice Springs Town Council (“ASTC”)
 - Objection from NT Police dated 29 September 2017
 - Objection from People’s Alcohol Action Coalition (“PAAC”) dated 25 September 2017
 - Response from Mr Wilkinson to the objections dated 2 November 2017

¹ The licensee has stated that “the refurbishment works were carried out with the approval of Licensing” (Exhibit One, p. 90), and the Commission has not received any suggestion to the contrary.

² The Commission notes that Clause 98 of the *Liquor Bill 2019* (NT), which is scheduled to come into force on 1 October 2019, will make it an offence to make a material alteration to premises without the prior approval of the Commission.

- Public Interest and Community Impact Assessment statement, with attachments including ten letters of support

Consultation

11. Pursuant to s 32A(2) and s 119(3) of the Act, the Director-General required the Applicant to publish notice of the applications, which it duly did.
12. Two objections were received, and the licensee duly responded to them.
13. As required by s 32A(5) and s 119(5) of the Act, the Director-General notified DOH, NT Police and the ASTC of the application. Apart from the NT Police, none of these bodies objected to the variations or alterations sought.

Hearing

14. On 16 August 2019, Mr Grove appeared with Mr Wilkinson on behalf of the Applicant, and Mr Verinder appeared for Licensing NT. Acting Superintendent Dash and Acting Senior Sergeant Zhang appeared for the NT Police. The Commission thanks them for their attendance and assistance.
15. Prior to the hearing, leave had been sought and granted to a representative of the other objector, PAAC, to attend the hearing by telephone. However, at the commencement of the hearing, following clarification by the licensee of the amended terms of its application, the Commission was informed that PAAC had confirmed that its objection was withdrawn. Accordingly, a representative of PAAC did not appear at the hearing, and the Commission has not had regard to the PAAC objection lodged on 25 September 2017.
16. The brief was tendered and admitted into evidence without objection, as Exhibit One. In addition, the following additional documents were tendered:
 - Confirmation by PAAC that its objection was withdrawn (Exhibit Two)
 - Statutory declaration of Acting Superintendent Dash dated 14 August 2019 (Exhibit Three)
 - Table showing incidents of alcohol-related matters recorded by police from 14 August 2017 to 14 August 2019 at the premises and at two other nearby licensed venues, “Bojangles” and “The Rock Bar” (Exhibit Four)
 - Bundle of 12 photographs of the refurbished and extended Rooftop Bar, new lift and new ablution facilities (Exhibit Five)
 - Department of Infrastructure, Planning and Logistics “Technical Assessment of Proposed Development Against Relevant Provisions of the Northern Territory Planning Scheme” (undated) (Exhibit Six)
 - Section 26A affidavit deposed by Mr Wilkinson dated 7 August 2019 (Exhibit Seven)
 - DCA Certificate of Compliance in Part over Lot 5174 and 5175, dated 22 March 2006 (Exhibit Eight)

17. Following the hearing, by leave of the Commission, the Applicant tendered Occupancy Permit Numbers 010/05174/7/A1 and 010/05175/4/A1 and associated documents issued by Project Building Certifiers Pty Ltd on 16 August 2019, which the Commission now identifies as Exhibit Nine.

Preliminary findings

18. On the basis of the evidence adduced to the Commission, the Commission makes the following findings:

- a. On 22 March 2006, the DCA conditionally consented to the development of the premises, which were at the time leased to a previous operator trading as “The Lane Café”, for use as a “restaurant (including alfresco dining area) and ancillary outdoor entertainment and office”.
- b. DCA consent was provided subject to this condition (“the disability access condition”):

The owner of the land or the operator of the restaurant shall ensure that dignified access to the alfresco dining area is provided for persons with disability, during all times that the area is open to members of the public.³

- c. Despite the DCA’s requirement that the disability access condition be complied with by 31 July 2006, the premises have apparently continued to operate in breach of this condition ever since: the only public access to The Rooftop Bar has been by way of a narrow stairway.
- d. In addition, the DCA imposed the following condition on the developer (“the parking condition”) in relation, it should be emphasised, only to the upstairs area:

The restaurant use of the [upstairs] area... shall be limited to the hours of 5.00pm until 7.00am. In the event that the owner of the land or the operator of the restaurant wishes to obtain consent to operate the restaurant between the hours of 7.00am and 5.00pm, consent of the Development Consent Authority is required and the Authority will review parking requirements and determine whether car parking spaces (or a monetary contribution to the Alice Springs Town Council, in lieu of a calculated shortfall) is required to be provided.⁴

- e. On 13 December 2007, the Northern Territory Licensing Commission approved a licence variation and extension of premises to the operator of The Lane Café. There is no reference to the disability access condition in either the Reasons for Decision,⁵ or in the licence that was issued in accordance with that decision.

³ Exhibit Eight, p 7

⁴ Clause 3, Development Permit DP06/0050, issued on 22 March 2006 (Exhibit Eight, p 7)

⁵ Accessed at

https://justice.nt.gov.au/data/assets/pdf_file/0005/252932/071213_The_Lane_Cafe_Restaurant_32A.pdf

- f. The Licensing Commission, however, must have been aware of the parking condition, because the liquor licence it issued included (and still includes) the following condition:

The operating hours of the Upstairs Function Area will not be varied either temporarily or permanently without the Licensee first obtaining the consent of the Development Consent Authority, as per clause 3 of the Development Permit DP06/0050, issued on 22 March 2006.

- g. In 2013, when the licensee acquired the business and the associated lease over the premises, it was apparently unaware of the disability access condition. Whether or not the licensee failed to take all reasonable steps when acquiring the business to satisfy itself that there were no outstanding regulatory issues, since being made aware three years ago of the disability access condition, to its credit the licensee has been working to rectify this issue. The Commission finds this was the licensee's dominant purpose in initiating the process that has resulted in these proceedings.
- h. The proposed material alteration is of a kind permitted by the DCA for the zone in which the licensee's premises are located, and for which it is reasonable to expect that consent will be readily granted.⁶ Commendably, the material alteration rectifies the long-standing failure to comply with the disability condition.
- i. Together with its decision to make the substantial investment required to install a lift to access the upstairs area, the licensee formed the intention of enlarging and refurbishing The Rooftop Bar, which under its management had become a popular and successful live entertainment venue, particularly for local musicians.
- j. In conjunction with these development plans, the licensee also decided to seek a variation to the conditions of its liquor licence.
- k. At the time the licensee acquired the business, the licence conditions included the following:
- i. Trading hours in the downstairs restaurant noon to midnight
 - ii. Trading hours in the upstairs area 17:00 hours to 02:00 hours the following morning
 - iii. Various conditions calculated to ensure that the premises operated as a restaurant (downstairs) and function centre (upstairs), but not as a bar
 - iv. The condition set out at paragraph 18(f) above, referring to the DCA parking condition
- l. By its application made on 8 August 2017, the licensee applied to extend the daily trading hours of the downstairs restaurant to close later, at 02:00 hours, and the upstairs area to open earlier, at noon. This attracted objections from both NT Police and PAAC.

⁶ In making this finding, the Commission has had particular regard to Exhibit Six.

- m. However, by the time of the hearing over two years later, the licensee had abandoned the application to extend the trading hours of the restaurant, and modified the application to extend the trading hours of the upstairs area, to four days a week, plus public holidays and pre-booked special functions.
- n. The licensee also applied for variation of the conditions referred to at paragraph 18(k)(iii) above. If granted, the effect of these variations would be to clearly and expressly authorise the licensee to operate The Rooftop Bar as a bar.
- o. Although the licensee has substantially complied with the conditions referred to at paragraph 18(k)(iii) above, the upstairs area has operated (until it closed for the renovation works in January 2019) as a de facto bar. It is designated in the liquor licence as the “Upstairs Function Area”, with a condition that pre-booked tickets be available for all events. However, the licensee’s practice has been to pre-book and conduct events and functions in the upstairs area every Thursday, every Friday and every Saturday, generally with either live music or a DJ. This has permitted the upstairs area to trade, within the terms of the existing licence, every weekend until as late as 02:00 hours.
- p. Taking that into account, the Commission finds that the variation of conditions sought is unlikely to substantially alter the nature or character of the licensee’s evening liquor trading.
- q. However, with the size of The Rooftop Bar being approximately doubled, Mr Wilkinson's uncontested evidence is that the material alterations will result in an increase in the capacity of the upstairs area to 180. Accordingly, the Commission finds that it is likely that there will be a substantial increase in the licensee’s evening liquor trading.
- r. In addition, if, as proposed, The Rooftop Bar is permitted to open several days a week from noon instead of 5 pm, the Commission finds that this will also likely lead to a substantial increase in the amount of liquor sold and consumed on the premises.
- s. The licensee has sought advice from officers of the Department of Infrastructure, Planning and Logistics in relation to the parking condition, but has to date been unable to obtain a clear indication as to whether or not the DCA is likely to consent to trade being conducted in the upstairs area prior to 17:00 hours, and if so, under what conditions.
- t. The premises are now fitted with 16 CCTV cameras and associated data storage facilities, 13 toilets (including toilets with disability access) and a lift providing access to persons with mobility impairments to The Rooftop Bar.
- u. The extensions, improvements and refurbishments to The Rooftop Bar have been satisfactorily completed and the appropriate statutory approvals have been obtained.⁷

⁷ In making this finding, the Commission has had particular regard to Exhibit Nine.

- v. The proposed permanent perimeter screens for the alfresco dining area in Todd Mall, which will be about waist or chest high, are intended to provide more privacy and security for patrons, enhance the appearance of the premises, more clearly demarcate the boundary of the premises and improve the amenity of the premises.
- w. The licensee has no significant adverse history of non-compliance with its licence conditions or the Act.

The objection

19. Following the withdrawal of the PAAC objection, there was one remaining objection, from NT Police. A member of the Police Force acting in that capacity is entitled to make an objection, and Acting Superintendent Dash (“Officer Dash”) did so. Quite properly, no challenge was made to the validity of the objection.

20. Officer Dash, a former Officer in Charge of the Alice Springs Police Station who the Commission finds is highly qualified and experienced, made the following observation, which the Commission accepts:

Todd Street continues to be one of the major ASB [anti-social behaviour] hotspots for Alice Springs, especially on Friday and Saturday nights where there is a large number of people attending licensed premises. There is frequent ASB, intoxicated persons and assaults, all of which continue to adversely impact public safety.⁸

21. Officer Dash caused an analysis (“the police analysis”) to be conducted of relevant incidents (including disturbance, criminal damage, domestic violence, drunk persons, stealing, unlawful entries, assaults and liquor licence breaches) for the preceding two years comparing the number of incidents involving the licensee’s premises with those at two other nearby licensed premises, Bojangles and the Rock Bar. In the twelve months to 14 August 2018, 10% of the 310 such incidents recorded by police occurred at or in the vicinity of the licensee’s premises. In the following twelve months, 8% of the 381 recorded incidents occurred at or in the vicinity of the licensee’s premises.⁹

22. Officer Dash attributes these “positive outcomes” to the licensee’s “existing conditions”, together with its “good compliance history”. The Commission finds that the licensee’s practices have indeed produced positive outcomes, as illustrated by the impressive results of the police analysis.

23. The nub of Officer Dash’s objection is that if the existing licence conditions are relaxed and the trading hours are extended, “this could result in a loosening of trading controls resulting in the venue operating akin to that of a pub or tavern, similar to the other licensed venues as referred to in the comparison.”¹⁰

⁸ Exhibit Three, at paragraph [16]

⁹ Exhibit Four

¹⁰ Exhibit Three, at paragraph [19]

24. The licensee's response, in summary, is that the variations it seeks will not substantially alter its pattern or practice of night-time weekend trading, which the police analysis demonstrates is responsible and beneficial.
25. The Commission notes that during the twelve months to 14 August 2019, there was a 23% increase in reported incidents, from 310 to 381. For over nine months of this period, The Rooftop Bar was closed for renovations. Conversely, in the twelve months to 14 August 2018, throughout which The Rooftop Bar was in operation, there were significantly less reported incidents in its vicinity than after it ceased trading in about October 2018. Having regard to these matters, the Commission does not find that the anticipated increase in the patronage of the premises resulting from the enlargement of The Rooftop Bar is likely to cause a substantial increase in alcohol-related harm or associated anti-social behaviour at or in the vicinity of the premises.

Assessment of the Applications

26. In considering these applications, the Commission is required to have regard to the objects of the Act (s3), the application of the public interest and community impact test (s6), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to s6A, and the onus on the Applicants to satisfy the Commission that the approval of each of the applications meets the public interest and community impact test (s6B).
27. In assessing the applications the Commission has regard to the public interest and community impact test objectives as follows:

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

The Commission refers to its following findings:

- At paragraph 18(p) above, that the variation of conditions sought is unlikely to substantially alter the nature or character of the licensee's evening liquor trading.
- At paragraph 18(w) above, that over six years of trading, the licensee has had no significant history of non-compliance with its licence conditions or the Act.
- At paragraph 22 above, that the licensee's practices have produced positive outcomes.
- At paragraph 25 above, that the Commission is not satisfied that the anticipated increase in the patronage of the premises resulting from the enlargement of The Rooftop Bar is likely to cause a substantial increase in alcohol-related harm at or in the vicinity of the premises.

The Commission considers that the proposed variations and alterations will not lead to a substantial increase in harm or ill-health to people caused by the consumption of liquor.

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

The Commission has regard to:

- The findings of the Commission at paragraph 27(a) above; and
- Section 31(4) of the Act, which makes it a condition of all licences that licensees must not engage in conduct that would induce the irresponsible or excessive consumption of liquor on licensed premises.

The Commission considers that the proposed variations and alterations will facilitate the continued sale and consumption of liquor on the premises in a responsible manner.

- (c) *Public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises*

The Commission refers to its findings at paragraph 27(a) above, and considers that the proposed variations and alterations will not jeopardise public order and safety.

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

The Commission refers to its findings at paragraph 27(a) above, and its finding at paragraph 18(t) above that the premises are now fitted with 13 toilets, including toilets with disability access, and a lift providing access to persons with mobility impairments to The Rooftop Bar.

The Commission considers that the proposed variations and alterations will enhance the safety, health and welfare of patrons.

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

The Commission finds and has regard to the following:

- An existing condition of the licence¹¹ requires the licensee:
 - Not to permit noise to emanate from the premises to the disturbance of the comfort of other premises;
 - To attenuate noise emanation as directed by any Licensing Inspector or Police Officer; and
 - To comply with a direction by a Licensing Inspector or Police Officer to terminate an event on grounds of noise disturbance.
- The licensee has not applied to vary this condition.
- The licensee has recently installed a “state of the art” networked sound system that “enables each musician and the sound engineer to work

¹¹ The two paragraphs designated “(b)” under the heading “**Upstairs Function Area – Trading Hours**” on page 4 of the licence.

together to control the sheltered and outside area's sound separately", and to improve noise attenuation.¹²

- A noise complaint had been made against the licensee's predecessor, the operator of The Lane Café,¹³ but that since taking over the operation of the licence in 2013, no further complaints have apparently been made. The Commission considers that the proposed variations and alterations will not result in excessive noise emanations.

(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*

Taking into account that the premises are located in a retail, entertainment and tourism precinct of the Alice Springs Central Business District, the Commission considers that the proposed variations and alterations will not cause undue offence, annoyance, disturbance or inconvenience to persons in the vicinity.

(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 has regard to:

- The conditions the Commission has determined to impose pursuant to s 31(3) of the Act, as set out at paragraph 1(b) above, and the condition set out at paragraph 2(a) above.
- The Commission's observations at paragraph 9 above.
- The Commission's findings at paragraphs 18(a) – (h) above.
- The Commission's findings at paragraph 18(w) above.

The Commission considers that the licensee has demonstrated the capacity and commitment to comply with the relevant laws.

(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 has regard to:

- The licensee's six years of responsible operation of the licence;
- The Commission's findings at paragraph 22 above; and
- The condition of the licence under the heading "**Responsible service of alcohol certificate**".

¹² Malcolm McDonald (Audio/Visual and Live Events Manager, Central Australian Aboriginal Media Association), Letter (undated), Exhibit One, page 129

¹³ Licensing Commission, Reasons for Decision, Complaint pursuant to Section 48(2) of the *Liquor Act*, 4 April 2006

The Commission is satisfied that licensee's staff are effectively trained and managed.

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

The Commission has regard to:

- The licensee's six years of responsible operation of the licence;
- The Commission's findings at paragraph 18(w) above; and
- The condition of the licence under the heading "**Credit**".

The Commission is satisfied that the licensee will control the use of credit.

(j) Practices which encourage irresponsible drinking must be prohibited

The Commission has regard to:

- The licensee's six years of responsible operation of the licence;
- The Commission's findings at paragraph 22 above;
- The Commission's findings at paragraph 18(w) above;
- The condition of the licence under the heading "**Responsible service of alcohol certificate**"; and
- Section 31(4) of the Act, which makes it a condition of all licences that licensees must not engage in conduct that would induce the irresponsible or excessive consumption of liquor on licensed premises.

The Commission considers that the licensee will not encourage irresponsible drinking.

(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;*

The Commission considers that the days and times at which liquor may be sold should be limited, and has imposed conditions accordingly. The Commission does not consider that the kinds of liquor, manner of service or container type or number should be limited.

(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 Commission has regard to the condition under the heading "**Fire Precautions**", and the associated s 31(3) condition it has imposed requiring

NTFRS assessment and instruction regarding maximum patron numbers. The Commission considers that these measures adequately address this objective.

- (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 considers that given the established history of the licensee providing a venue for musical entertainment, it is neither necessary nor desirable to impose such a condition.

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

As there is no material before the Commission to suggest that the licensee offers reduced prices as a promotional tool, the Commission considers that such a condition is neither necessary, nor desirable.

- (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 has found, at paragraph 18(q) above, that there will be a substantial increase in the licensee's evening liquor trading. However, for the reasons set out at paragraph 26 above, the Commission has not found that this is likely to cause a substantial increase in anti-social behaviour.

28. Section 6(3) requires the Commission to consider the impact on the community, having regard to:

- a. *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 considers that the variations and alterations are unlikely to lead to a significantly increase in the excessive or inappropriate consumption of liquor to the community as a whole or to a group within the community.

- b. *The cultural, recreational, employment or tourism impacts*

The Commission notes that there is a high level of support for the licensee's applications from commercial and business establishments in the neighbourhood, the tourism sector and the local music community, as evidenced in the ten letters of support in Exhibit One. The Commission considers that the proposed variations and alterations will have a significant positive impact for culture, recreation, employment and tourism in the Todd Mall precinct, which is likely to benefit from the stimulus provided by the re-opening of a refurbished and expanded entertainment and hospitality venue.

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

Similarly, the Commission considers that the proposed variations and alterations will have a positive social impact, and will enhance the amenity of the locality.

d. The density of existing liquor licences within the community area

The Commission notes that there are several licensed premises in the locality, although three such premises have closed down in recent years, so the density is rather lower than it has been. The proposed variations and alterations will not increase the density of licensed premises. They may attract patrons from other local premises, including premises with a less impressive record of responsibly managing the sale and consumption of liquor.

e. 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

The Commission considers it is likely that the volume of alcohol sold on the premises will increase, because The Rooftop Bar will be both enlarged, and its trading hours will be extended. However, having regard to the character of the licensee's operation, the Commission does not make a positive finding that the volume of alcohol sales in the community area will increase.

f. Any other prescribed matter

There are no other prescribed matters.

29. The Commission is also required to apply the community impact assessment guidelines. It has done so.

30. The Commission has also given consideration to the significance of the licensee's application to replace its current "Restaurant" Authority with an "On licence" authority. At first glance, this change might be seen as an instance of "licence creep". Currently, an "Authority" has no express legal status or significance under the Act. By contrast, the *Liquor Bill 2019*, which will come into force on 1 October 2019, establishes a Risk Based Licensing scheme ("the new scheme") incorporating in Clause 47 an array of licence authorities which will, in due course, be assigned to every existing Northern Territory liquor licence. The licensee is already authorised to trade in the upstairs area until 02:00 hours. The new scheme provides that licensees who trade after midnight must obtain a "late night authority". A late night authority can only be issued in conjunction with a "small bar authority" or a "public bar authority". Accordingly, the change in the Authority the subject of this application is, in effect, merely nominal, as in all likelihood the licensee will in any event qualify to be issued with a public bar licence once the new scheme comes into force.

31. Of more concern to the Commission are the proposed variations to specific conditions sought by the licensee, the practical effect of which will be to permit the licensee to operate less like a restaurant and more like a bar. Having examined the affected conditions with care, the Commission accepts the submission of the licensee referred to at paragraph 5 above that they are all either unduly restrictive, complicated, unclear, inconsistent or duplicative. Moreover, the Commission is satisfied that the proposed

variations are unlikely to result in a substantial alteration in the nature or character of the licensee's liquor trading. The Commission is satisfied that the downstairs area will continue to operate predominantly as a café and restaurant, and that the upstairs area will continue to operate predominantly as a bar featuring music events.

32. Having regard to the foregoing considerations, the Commission is satisfied that approval of the applications meets the public interest and community impact test.
33. The Commission has had regard to both the primary and further objects of the Act in determining the applications.
34. For the purpose of the s 31(3) condition referred to at paragraph 1(b) above, and the conditional approval set out at paragraph 2(a) above, the Commission hereby delegates to any of Members Goldflam, Reynolds and Cannon the authority to provide written approval to commence trade. Once these approvals have been granted, the Commission authorises the licence to be re-issued with the s 31(3) condition deleted, and the deletion in condition 2(a) of the following words:

Subject to written approval of the Liquor Commission or its delegate to install the screens following receipt from the licensee of evidence that the Alice Springs Town Council has approved the installation of the screens.

Notice of Rights

35. 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 vary conditions of licence pursuant to s32A and a decision to approve a material alteration pursuant to s119(8) of the Act are both specified in the Schedule and are reviewable decisions.
36. 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.
37. 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 and the Objector.



Russell Goldflam
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

On behalf of Commissioners Goldflam, Reynolds and Cannon
3 September 2019