

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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| <b>MATTER:</b>           | <b>APPLICATION FOR MATERIAL ALTERATION</b>   |
| <b>REFERENCE:</b>        | LC2018/139   |
| <b>LICENCE NUMBER:</b>   | FLL1020  |
| <b>LICENSEE:</b>         | <b>Darwin Film Society Incorporated</b>  |
| <b>PREMISES:</b>         | <b>Deckchair Cinema</b><br>Jervois Road, Off Kitchener Drive<br>DARWIN NT 0800                                   |
| <b>APPLICANT:</b>        | Darwin Film Society Incorporated   |
| <b>NOMINEES:</b>         | Mr James Parker<br>Ms Alice Body   |
| <b>OBJECTOR/S:</b>       | Nil  |
| <b>LEGISLATION:</b>      | Section 119(2), Part IV and V of the <i>Liquor Act</i> .   |
| <b>HEARD BEFORE:</b>     | Ms Jodi Truman (Deputy Chairperson)<br>Mr Kenton Winsley (Health Member)<br>Ms Christine Hart (Community Member) |
| <b>DATE OF HEARING:</b>  | 1 November 2018  |
| <b>DATE OF DECISION:</b> | 1 November 2018  |

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### **Decision**

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* ("the Act") the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the Applicant.
2. The licence including the material alteration will be issued immediately following the publication of this decision and, in accordance with section 31(1) of the Act, is subject to a condition that the licensee will not commence trade in the sale of liquor in the area under the licence which is subject to the structure until such time as the proposed structure is constructed and a Certificate of Occupancy under the *Building Act* has been issued to the licensee.

3. The licence including the material alteration will become operative once the applicant has presented evidence to the satisfaction of the Commission or the Director-General that the premises have been satisfactorily constructed and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee.
4. The applicant will also be required to obtain the necessary approvals from the Northern Territory Fire Service in respect of patron capacity and fire safety issues prior to commencing operation in the sale of liquor in the area under the licence which is subject to the structure.

## **Reasons**

### **Background**

1. The Darwin Film Society Incorporated (“the applicant”) was originally an Association from 1973. In 1996 it became an Incorporated Association under the *Associations Incorporation Act 1963* (as amended). Its Constitution makes it clear that it is a non-profit making, non-political and non-sectarian film appreciation society. In 1994, The Deckchair Cinema’s Business Name was registered.
2. The applicant has had Special Licences since 1996, and has operated at the current premises since 2002. In 2017 the applicant applied for a Liquor Licence. That application was dealt with by the Commission on 29 May 2018 with the applicant receiving an “On Licence” Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises. The licensee is Darwin Film Society Incorporated and the nominees are Mr James Parker and Ms Alice Body.
3. On 8 October 2018 Mr James Parker applied to the Director-General of Licensing (“the Director-General”) for approval pursuant to section 119(2) of the Act to make a material alteration to the licensed premises. The material alteration proposed is to install a permanent roof extension over the area used by caterers at the premises. On 22 October 2018 pursuant to sections 119(6A) and 50(d) of the Act the Director General of Licensing (“Director-General”) referred this application to the Commission to be determined by way of a public hearing whether to grant or to refuse the application.
4. The Commission was advised by the Deputy Director-General (Operations) that the “(r)ecords held by Licensing NT do not indicate any negative compliance history.
5. During the course of the hearing the applicant confirmed that it had no intention of altering the manner in which it has operated the premises for many years now and that it sought the material alteration in the hope of creating the following positive impacts:

“... increased space for the queues, currently the area can become congested, and protection from rain and UV for customers and catering staff. The roof extension will not alter the area used for selling alcohol, will not change the method of sale of liquor, volume of liquor sales or change the consumption of liquor in any way.”

## **Advertising and Objections**

6. Section 119(3) of the Act provides the Director-General with a discretion to require the applicant to publish notice of the application should the Director-General consider it in the public interest to require the applicant to do so. With respect to this application, the Director-General determined that public notice was not required.
7. Section 119(5) however requires that the Director-General inform the CEO of the council within the area where the premises are located. These premises however are not located under the control of a council, but are instead under the control of the Department of Lands, Planning and Environment (“DLPE”). Notice was therefore given to DLPE on 8 October 2018. On 29 October 2018 a response was received from Mr Greg Woodroffe, Manager of Crown Land Management of DLPE advising that it did “not have any issue” with the application made by the applicant.
8. Although the Act only requires the Director-General provide notice to the CEO of the relevant council in applications of this nature, a “practice” has developed whereby the Director-General also consults with relevant stakeholders concerning the application, namely the Department of Health (“DOH”), Northern Territory Fire and Rescue Service (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”) and seeks their comment.
9. With respect to this application:
  - a. The DOH had no adverse comment, but requested patron and community safety and amenity be considered. In this regard it is clear that the applicant is already complying with the relevant provisions under the *Tobacco Control Act*.
  - b. The NT Police advised there were “no objections”.
  - c. The NTFRS advised they would “inspect the structure after its completion”.

## **Public Hearing**

10. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 119 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
11. As earlier noted, on 22 October 2018 the Director General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 12 noon on 1 November 2018 and notice was given to the applicant on 23 October 2018.

12. Pursuant to section 53 of the 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.
13. The public hearing in fact was able to commence early and did so commenced just prior to 11.00am on 1 November 2018. Mr Parker appeared on behalf of the Applicant. Ms Sally Ozolins as representative for the Director-General provided information and assistance to the Commission during the course of the hearing. The Commission thanks both Mr Parker and Ms Ozolins for their assistance.

### **Assessment of the Application**

14. As earlier noted, there were no objections to this application. Despite there being no objections, it is important to recall at all times that the Act makes clear under section 6B 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.
15. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed 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;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;

- 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;
- 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; and
  - ii. provisions of or under the Planning Act;
- 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;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- 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;
- 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;
- 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;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;

- 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.”

16. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
  - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
  - ii. the cultural, recreational, employment or tourism impacts; and
  - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
  - iv. the density of existing liquor licences within the community area; and
  - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
  - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

17. 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”.

18. Those matters are identified as follows:

| <b>Criteria</b>   | <b>Matters to be considered</b>   |
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| The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability | Are there any 'at-risk' groups or sub-communities within the locality? This may include – |

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| <p>and accessibility of an additional liquor outlet.</p> | <ul style="list-style-type: none"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul>   |
|  | <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> |
|  | <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>   |

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| <p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p> | <p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>  |
| <p>Volume</p>  | <p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>  |
| <p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>  | <p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>   |
| <p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>  | <ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul> |

19. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

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

20. 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 for a material alteration to the premises. It is also an application that does not seek to increase the licensed footprint of the premises, but merely to provide for a roof extension at the premises which is intended to increase space for patron queuing, reduce congestion and protect both patron and catering staff alike from the elements. 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.

21. As required by the Act the applicant provided written submissions addressing the public interest test and community impact guidelines. Given the very limited nature of this application, i.e. the extension of the roof, the Commission does not intend to repeat these submissions but to note its agreement that it is clear that the material alteration does not:

- a. Alter the area used for selling alcohol;
- b. Change the method of sale of alcohol;
- c. Increase the volume of liquor sales; or
- d. Change the consumption of liquor on the premises.

22. It is clear therefore that the applicant intends to continue to abide by the terms of its licence as it has done previously. 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 material alteration sought. 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.

23. It is as a result of the matters that this Commission is, on balance, satisfied that the approval of the application for a 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:**

24. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
25. 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.
26. 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.

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

JODI TRUMAN  
Presiding Member  
Deputy Chairperson