

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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**MATTER:** APPLICATION FOR A LICENCE

**REFERENCE NUMBER:** LC2018/147

**PREMISES:** Dundee Social and Recreation Club  
21 Lepanto Street  
DUNDEE BEACH NT 0840

**APPLICANT:** Dundee Social and Recreation Club Incorporated

**PROPOSED NOMINEE:** Mr George Mills

**LEGISLATION:** Section 26, Part IV and V of the *Liquor Act*.

**HEARD BEFORE:** Mr Richard Coates (Chairperson)  
Dr Charles Douglas (Health Member)  
Ms Sandra Cannon (Community Member)

**DATE OF HEARING:** 5 December 2018

**DATE OF DECISION:** 5 December 2018

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### Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act* ("the Act") the Commission has determined to issue a licence authorising the sale of liquor for consumption on or at the licensed premises to Dundee Social and Recreation Club Incorporated in respect of the premises, Dundee Social and Recreation Club.
2. In accordance with section 31 of the Act, the licence shall be subject to the specific conditions (in addition to those general conditions of all such licences) that:
  - a. The liquor shall be sold pursuant to an authority as Club (Incorporated) authorising the sale of liquor for consumption on or at the premises known as Dundee Social and Recreation Club.

- b. The trading hours shall be between:
    - i. Monday to Sunday 11:30 hours to 23:59 hours.
  - c. The licence shall be subject to and inclusive of such additional conditions as may at any time be:
    - i. Requested in writing by the Licensee;
    - ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and
    - iii. Notified in writing by the Director-General to the Licensee.
  - d. Those conditions set out at the conclusion of these reasons in addition to the general conditions included in a Club (Incorporated) authority.
3. This licence will be issued and commence as and from the date of this Decision Notice.

## **Reasons**

### **Background**

- 4. On 18 February 2018, an application was lodged on behalf of Dundee Social and Recreation Club Incorporated (“the Applicant”) seeking a licence for premises known as Dundee Social and Recreation Club located at 21 Lepanto Street, Dundee Beach, NT 0840 (“the premises”). At the time of lodgement, the application was deemed incomplete and was not taken to be lodged until 5 September 2018.
- 5. The premises are an established social club at Dundee Beach which has been operating under a special liquor licence for approximately 10 years, managed in the past by volunteers. The Club is desirous of having greater flexibility in relation to the days and times on which it opens particularly during the dry season when there is an influx of tourists and fishers.
- 6. The application is for a licence to be permitted to undertake liquor sales between 10:00 hours and 23:59 hours, Monday to Sunday.
- 7. The Club’s current licence is valid until 31 December 2018 and allows it to trade on Friday from 17:00 until 23:59, Saturday from 14:00 until 23:59 and on Sunday from 14:00 until 23:59. The Club however operates only on Friday evenings.
- 8. The Applicant has been encouraged by officers of Licensing NT to apply for this licence as it is more appropriate for its needs than an ongoing Special Licence.

9. On 16 November 2018, pursuant to sections 28(1) and 50(a) of the Act, the Director- General referred this application to the Commission to be determined by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application.

### **Disclosure of influential persons or potential beneficiaries**

10. The Commission notes that section 26A(1) of the Act now requires applicants to make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The applicant has filed such an affidavit noting that only the executive officers of the incorporated association are able to influence the applicant.
11. The Applicant is registered with the Australian Securities and Investments Commission (“ASIC”) and the Northern Territory Registrar of Associations.
12. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

### **Advertising and Objections**

13. Details of the application were advertised in the NT News on 8 and 12 September 2018. Signage was displayed at the premises for a period of 30 days. The objection period expired on 11 October 2018. No objections were received.
14. It is noted that section 27(3) of the Act requires that the Director-General must inform:
  - a. the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
  - b. the Commissioner of Police; and
  - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.
15. In relation to this application, the Director-General also informed the NT Fire & Rescue service (“NTFRS”) and the Development Consent Authority (“DCA”).
16. The Commission notes that the following responses were received:
  - a. The DOH made “no adverse comment”. However it asked that the venue clearly display signage relating to smoking.
  - b. The NT Police advised that there was no objection to the application.
  - c. The Shire Council of Wagait did not respond.
  - d. The NTFRS advised it had no objection to the application.

- e. The Department of Infrastructure, Planning and Logistics did not respond outside of the standard automated response.

## Public Hearing

17. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
18. As earlier noted, on 16 November 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 11:30am on 5 December 2018 and notice sent to the applicant on 22 November 2018 advising of the hearing scheduled to take place.
19. 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.
20. The public hearing commenced at 11:30am on 5 December 2018. The Applicant was represented by Mr George Mills, President, Ms Roslyn Andrews, Secretary, Ms Angela Gifford, Assistant Secretary and Ms Natalie Hewitt, Member and resident of Dundee Beach. Ms Stephanie Monck as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks all parties for their assistance.

## Assessment of the Application and Objections

21. The Act now clearly provides that the Director-General must refer these types of applications 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 Act; when considering or determining an application under the Act in respect of a licence, 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.”

23. 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.”

24. 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”.

25. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
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 –

<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>
<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</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p>

includes information about the density of licensed premises within the community area.	This could also include traffic and pedestrian impact and any plans developed to address these potential issues.
Volume	<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>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<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>

26. 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”.

27. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;
- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager”.

28. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

29. The Commission notes there are no such matters prescribed by the Regulations.

30. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.

31. The Commission notes that there is no suggestion, nor any evidence to suggest, that the Applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee.
32. The Commission notes there are no issues of concern in relation to the business reputation and financial stability of the applicant and the general reputation and character of the officers of the applicant. In fact there is evidence as to their good character before the Commission.
33. In relation to the public interest test; the applicant provided written submissions which detailed the measures in place to promote responsible drinking. It relied heavily on the fact that it had been trading without serious incident as a licensed social club, albeit under a Special Licence, with the support of the local community for 10 years. It stated: “The population of Dundee is increasing and is estimated at 700 residents with over 200 visitors and holiday makers during school vacations and long weekends. Most families are members of the Club as it encourages family activities. The Club provides competitions and social activities that are not available elsewhere. The Clubroom is a community asset providing a venue for public meetings, polling and the Christmas markets. The Friday night meals are very popular and the Club always provides a low cost meal option so that everyone can afford a night out.
34. During the hearing the applicant impressed the Commission with the Club’s intention to make a positive contribution to the local community which has limited entertainment opportunities. It is important to acknowledge that this is not an application for a new liquor outlet. Liquor has been provided from these premises for 10 years without complaint from the local community, the police or licensing authorities. On the basis of the information provided by the Applicant we do not believe there is likely to be any significant increase in liquor sales to members as a result of the grant of a Club licence.
34. Having taken into account the evidence provided by the Applicant during the course of the hearing and the various submissions made the Commission is satisfied that the community impact and public interest tests have been properly addressed such that it is appropriate to grant the applicant an Incorporated Club licence, we are however not convinced that it is necessary for the applicant to be able to commence trading from 10.00 am as a matter of course. During the hearing the Applicant conceded that it was unlikely to open in the mornings other than for a few days a year when it was hosting a special event. The Commission therefore considers it would be more appropriate for the applicant to exercise its rights under the “Club fundraising or Promotional event” conditions and notify the Director-General of its intention to commence trading at 10.00am because of the particular function just as it can do if it needs to extend trading hours until 2.00am to cater for a special event. The normal daily trading hours will therefore be from 11.30 am until 11.59pm.

35. For the reasons set out above the Commission approves the issue of a Club (Incorporated) licence to Dundee Social and Recreation Club Incorporated for premises at 21 Lepanto Street, Dundee Beach. Trading hours will be from 11.30 am to 11.59pm daily save that the Licensee can notify the Director-General of its intention to commence trading at 10.00am or extend trading until 2.00am for club fundraising or promotional events. There will be no trading on Christmas day or Good Friday.

**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 Act. A decision to issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
37. 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.
38. 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 .



RICHARD COATES  
Presiding Member  
Chairperson

12 December 2018