

Director-General of Licensing

Decision Notice

MATTER:	Review of Delegate Decision – Application for the granting of a continuing special licence
APPLICANT:	Darwin Workers Club Inc.
LEGISLATION:	Section 58 and Part VI of the <i>Liquor Act</i> and Part 3 of the <i>Licensing (Director-General) Act</i>
DECISION OF:	Director-General of Licensing
DATE OF DECISION:	30 September 2019

BACKGROUND

1. On 17 July 2019 Mr Patrick Honan on behalf of the applicant Darwin Worker’s Club Incorporated (DWC), applied for a special licence to sell liquor at their proposed premises, basement level, 38 Woods Street, Darwin Pursuant to Part VI of the Liquor Act (“the Act”).
2. By decision notice dated 2 September 2019 Mr Mark Wood, Manager Licensing – Liquor, Gambling and Racing and a delegate of the Director-General of Licensing refused that application pursuant to Section 59(1)(b) of the Act. The background to the application is set out in some considerable detail in that decision notice.
3. The current situation in that decision of 2 September 2019 has been reviewed in this decision.

CURRENT SITUATION

4. On 3 September 2019 Mr Patrick Honan submitted an application for review of decision pursuant to Section 10 of the *Licensing (Director-General) Act*.
5. In that submission Mr Honan provided additional information in relation to:
 - a perception that the club would be selling liquor to the general public;
 - perception that the club would have paid staff, including security and bar- staff;
 - amendments to the *Liquor Act 2019* in October making this application unjustifiable; and
 - that the club would be better served with a full liquor license as the business proposed to be conducted under the special liquor licence was considered a commercial enterprise.
6. Mr Honan in his application for review of the delegate’s decision of 3 September 2019 confirmed that only members and guests will be able to purchase alcohol and this response is most likely in response to paragraph 23 of the decision of 2 September 2019. In addition, Mr Horton submitted that only security staff would be paid (if required) and not bar staff as

was indicated in the decision of 2 September at paragraph 26 of that decision. That was further confirmed by email by Mr Honan on Monday 30 September 2019 in response to the writer's questions from 27 September 2019 on arrangements for security.

7. Although noted by Mr Honan that the commencement of the new *Liquor Act 2019* shouldn't be a justification for not approving his application nor is it reasonable that the decision maker consider this change on its own as a basis for not approving the application.
8. Mr Honan in his application for review also disputed the commercial operation of the Darwin Workers Club Inc. As stated in paragraph 25 of the decision notice of 2 September 2019. Mr Honan indicated that the club will be run for the benefit of members and guests and anticipated at most 50 patrons at a time.

CONSIDERATION OF THE ISSUES

9. The conduct of this review of the delegate's decision involves consideration whether the application for continuing special licence is consistent with other applications for continuing special licence as issued from time to time by Licensing NT.
10. Namely whether the issues identified by the delegate in his decision of 2 September 2019 considered all the issues correctly, that is whether or not the operation of Darwin Workers Club was more of a commercial operation and should operate under a full licence.
11. The issues contained in Mr Woods decision of 2 September 2019 particular reference is made to paragraph 16 that states: 'Licensing NT since 2016 have ceased the practice of granting special licences, under the continuing special license construct, for applications whose business model was more aligned with a commercial enterprise.'
12. In reviewing the above statement contained in that decision I have given particular consideration to whether or not the operations of the Darwin Workers Club should be considered a commercial operation.
13. The points set out by the delegate on 2 September 2019 indicate that his consideration was for issues that seem aligned with a commercial operation include: employment of staff to operate the bar, including Security and live entertainment and the volume of alcohol likely to be sold during the period of the licence.
14. Mr Honan in his email response of 30 September 2019 to questions posed by me on 27 September 2019, and in his original application of 17 July 2019, indicate that payment may be made to security personnel and that bar personnel would work on a voluntary basis (Committee members).
15. Mr Honan in his email response of 30 September 2019 to my question posed on 27 September 2019 regarding the operation of his '*possible live music on Friday nights*' advised that they often had members perform for them (sometimes paid sometimes unpaid) and occasionally they had paid acts but in the main they cannot afford paid entertainment and would use radio to keep costs down.

16. On the basis of Mr Honan's submissions I am satisfied that the Darwin Workers Club does not intend to operate a commercial business under the liquor licence. Rather the Club will operate a business more in line with a small social workplace club for members of the Club and its guests. On that basis I am persuaded to grant the special liquor licence applied for by Mr Honan.

DECISION

17. On the basis of the matters set out above, and in accordance with section 14(2)(c) of the *Licensing (Director-General) Act*, I have determined to set aside the decision of the delegate dated 2 September 2019 to refuse to grant a special liquor licence. The rationale for not approving an application on the basis of a commercial operation and the implementation of the new *Liquor Act* were not sufficiently considered and as a consequence I approve the application to grant a special licence to the Darwin Workers Club.

REVIEW OF DECISION

18. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A refusal to grant a special liquor licence pursuant to section 59 of the Act is included in the schedule to the Act and is therefore a reviewable decision. 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. For the purpose of this decision, and in accordance with section 120ZB(b) and (c) of the Act, the affected persons are the Applicant, namely the Darwin Workers Club Inc.



Alecia Brimson
A/Director-General of Licensing

Date: 30 September 2019