

Director-General of Licensing

Decision Notice – Review of Delegate’s Decision

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| MATTER: | Review of Delegate Decision – Refusal to approve material alterations |
| PREMISES: | Gove Peninsula Surf Life Saving Club Lot 1192 Approved Survey Plan No. A708 Nhulunbuy NT 0880 |
| LICENSEE: | Gove Peninsula Surf Life Saving Club Inc. |
| APPLICANT FOR REVIEW: | Mr Benn Prowse, Director Gove Peninsula Surf Life Saving Club Inc. |
| LEGISLATION: | Section 119 <i>Liquor Act</i> and Part 3 of the <i>Licensing (Director-General) Act</i> |
| DECISION OF: | Director-General of Licensing |
| DATE OF DECISION: | 3 July 2017 |

BACKGROUND

1. Gove Peninsula Surf Life Saving Club Inc. (the Club) has held a club liquor licence since 1991. The Club’s premises are located in Nhulunbuy and the Club provides a valuable surf lifesaving service to the community. The Club has over 400 members and has, for a number of years, been working to raise funds to redevelop its club house. One of the drivers behind the plan to redevelop the club house was the requirement to remove asbestos materials used in the original construction of the club house.
2. The development proposal includes the demolition of the existing club house and the construction of a new club house incorporating new bar and servery areas, new cold room, toilet and kitchen facilities, the addition of a new beer garden area and an upgrade to the security of the premises. The work to remove the asbestos was to be carried out by qualified tradespersons adhering to the safety requirements applicable to such work. The cost of the proposed redevelopment is significant, estimated in the range of \$750,000 to \$1,000,000. On any measure the redevelopment comprises “material alterations” as that term is defined in the *Liquor Act* (the Act). Material alterations to licensed premises require the approval of the Director-General of Licensing (the Director-General).
3. At some time prior to June 2017, the Club commenced the redevelopment works including the demolition of parts of the old club house and the removal of asbestos from the site, following receipt of Government funding grants. The redevelopment works came to the attention of Licensing NT who advised officers of the Club that the redevelopment of the club house constituted material alterations to the licensed premises which required the approval of the Director-General pursuant to section 119 of the Act. At that stage the Club had not made any application for approval of the material alterations, although it had obtained a development permit from the Nhulunbuy Corporation.

4. On 21 June 2017 Mr Benn Prowse, Vice President of the Club, lodged an application for approval of the material alterations that had already commenced. In separate correspondence Mr Prowse advised that the failure to obtain the approval of the Director-General was an oversight on the part of the Club's committee for which the committee accepted full responsibility. Mr Prowse noted that as of 21 June 2017, the asbestos removal was nearly completed and that a specialist team had flown to Nhulunbuy to complete that task. He also stated that it was planned that the concrete foundations would be poured in the coming days and that any delay in the project would have a significant financial impact on the on-going viability of the Club due to the potential for a breach of contract with the construction company.
5. In support of the application for approval of the material alterations, Mr Prowse submitted that the former club house was old and constructed of asbestos which poses a risk to guests and children in particular. He also noted that in recent times security in the area has become a major concern and the plan was to remove the old building and replace it with a modern building that would be safe and secure for members and their guests. Mr Prowse also submitted that a modern building was in the best interests of the public and that the business of the Club, including the opening hours for the sale of liquor, would remain unchanged.
6. Section 119 of the Act provides that the Director-General may require an applicant for approval of material alterations to publish notice of the application where such publication is considered to be in the public interest. Notices of that nature usually entail a 30 day period during which members of the public and other stakeholders are able to lodge objections opposing the approval of the material alterations.
7. The application for approval of the material alterations was referred to a delegate of the Director-General who made a determination on 21 June 2017.

THE DELEGATE'S DECISION

8. The written decision of the delegate in respect of the application for material alterations was formally published on 24 June 2017. However, due to the fact the renovation works at the club house were under way at the time, a Licensing NT officer informed the applicant of the substance of the delegate's decision by a telephone call on 21 June 2017.
9. In her decision the delegate noted that, apart from obtaining the approval of the Director-General, the Club appeared to have obtained the appropriate approvals in respect of the planning, design and building approval. It was also noted that the materials presented by the applicant were sufficient to satisfy the statutory requirements in regard to approval of the material alterations under section 119 of the Act.
10. In the reasons for decision the delegate noted that there was no evidence before her to suggest that the club house redevelopment was likely to contravene any regulatory requirement as the material submitted by the applicant indicated that appropriate planning, design and building approvals had been obtained. It was also noted that the applicant had provided sufficient evidence to satisfy the requirements of section 119(2) of the Act as applicable to the approval of material alterations.
11. In her decision the delegate also noted that the works had already commenced prior to the officers of the Club becoming aware of the requirement to obtain approval from the Director-General. However, on becoming aware of that requirement, an application was lodged immediately.

12. The delegate noted however that section 119(3) of the Act prescribes that an applicant for approval of material alterations may be required to publish a notice of the application should the Director-General determine that to be in the public interest. The Club had submitted that such notice was not required as the removal of the asbestos from the premises and the construction of a new club house were both in the best interests of the members of the Club and the general public. The Club also submitted that the project to renovate the club house was well known to members of the community and that the renovations would result in only minor changes to the licensed area of the premises and a reduction in the area within which liquor could be consumed.
13. The delegate noted that the determination of an application for material alterations requires the Director-General to consider any objections lodged under section 47F of the Act opposing the application. In the event the application was not advertised there was no possibility of objections being lodged with members of the public who have an interest in the application being denied the opportunity to be heard.

CONSIDERATION OF THE APPLICATION

14. Whether or not an application for material alterations is in the public interest and is therefore required to be advertised by way of public notice is a matter within the discretion of the Director-General. A delegate of the Director-General is entitled to exercise the same discretion as he or she sees fit. In this instance the delegate determined that the material alterations were sufficiently significant to require public notification. Given that the material alterations involve the demolition of a major component of the old premises and the construction of a new club house, the delegate's conclusion in that regard is reasonable and appropriate.
15. The delegate formed the view that there is a public interest in publishing notice of the application and providing interested persons the opportunity to object to the material alterations in accordance with section 47F of the Act. On that basis, the delegate determined to defer consideration of the application until such time as public notification of the application had occurred and objections, if any, had been assessed.
16. The delegate also noted that it was not possible or desirable that the premises be restored to their original condition due to the removal of asbestos that had already occurred. The delegate determined that the public interest in the safe removal of the asbestos outweighed the public interest in awaiting the outcome of any objections to the application for material alterations. For that reason the delegate determined that the demolition of the building and the removal of the asbestos could continue whilst the application was advertised.

CONSIDERATIONS

18. It is apparent from the information before the delegate initially and now before the Director-General, that the Club did not seek approval for the material alterations as required by section 119(1) of the Act. Mr Prowse, Vice President of the Club, acknowledged that fact and conceded frankly that the committee was at fault in that regard. He stated that the Club had ample time to make the application allowing that the renovations had been in the planning stage for some years whilst funding was secured. It should also be noted that once the requirement for approval was brought to the attention of the Club, an application for material alterations was lodged immediately.
19. It is a matter for the Director-General's discretion whether or not an application for material alterations is required to be advertised with that discretion to be exercised with the public interest in mind. The delegate in this instance had the same discretion and determined that the material alterations were of such significance as to require public notification, including the opportunity for members of the public and other stakeholders to lodge objections should they

wish to do so. The delegate was entitled to reach that conclusion on the basis of the materials before her and I do not intend to overturn the exercise of her discretion in that regard.

20. The issues confronting the delegate as a result of the premature demolition of the former club house, including the removal of the asbestos, without the approval of the Director-General arose entirely due to the failure of the Club committee to lodge an application prior to the commencement of the redevelopment. That situation cannot now be rectified as significant works have already been undertaken and cannot now be undone. Mr Prowse stressed in his submissions that to halt the project for any significant time at this stage would have dire financial consequences for the Club as contractors had been engaged and had travelled to Nhulunbuy for the purpose of carrying out the works.
21. Whilst I support the delegate's decision to require the application to be advertised it appears to me that there are a number of factors specific to this application that should be taken into account in respect of the location and situation of the Club. Nhulunbuy, also referred to as Gove, is a remote Northern Territory community located on the Gove peninsula in Arnhem Land. The economy of the community has been severely impacted in recent years following the closure of the Rio Tinto alumina refinery.
22. In support of the request to waive the requirement to provide public notice of the material alterations to the licensed premises Mr Prowse submitted that considerable consultation with the community had already taken place. He noted that the Club had advertised and made public the intent to redevelop the club house since April 2016, with numerous articles placed on the Club's Facebook page as well as on the Gove Noticeboard Facebook page, with this being the town's main avenue for information as there is no local newspaper for the Gove/Nhulunbuy community. In addition, the Club had recently held an open day inviting members of the public to comment on the development proposal. Copies of the Facebook posts provided by Mr Prowse indicate that the Club has been proactive in informing members and the general public of the proposed redevelopment of the club house.
23. The usual requirement for the advertising of applications relating to material alterations is for notice of the application to be published on two occasions in the newspaper circulating in the neighbourhood where the licensed premises are located. The objection period is usually open for a period of 30 days after the publication of the second notice. In this case it is apparent that there is no local newspaper for the Nhulunbuy community. Whilst I concur with the delegate's view that material alterations on the scale envisaged for the Club should be advertised to seek public comment, I am prepared to relax the usual requirements given the remote location to which this application relates, together with the fact the Club has taken proactive steps, outside the requirement of the Act, to notify the general public of its intentions in regard to the redevelopment.
24. In accordance with section 119(3) of the Act, I have determined that the period required for the notification of the material alterations is to be seven days from the date of publication of the notice. In addition, and again taking account of the unique circumstances of remote communities such as Nhulunbuy, I have determined that the notification of the material alterations is to be published via the Club's Facebook page as well as publication on the Gove Noticeboard Facebook page in lieu of publication in the NT News or similar daily newspaper. In addition, the Club is to ensure that notice of the material alterations is physically posted on a prominent public notice board within the Nhulunbuy Township.
25. The requirement to publish notification of the material alterations obviously brings with it the inherent possibility that objections may be lodged during the objection period and any such objection may be sufficient to persuade the Director-General to refuse the application. That same risk applies to any application under the Act that is subject to public scrutiny and objection.

26. As noted in paragraph 16 above, the delegate determined that it was in the public interest that the Club should continue with the removal of the asbestos from the site pending the final determination of the material alterations application. With respect, that component of the delegate's decision exceeds the powers of section 119 of the Act. Section 119(8) of the Act provides that, following consideration of an application for material alterations the Director-General may either approve or refuse the application. There is no capacity for the Director-General, or the delegate in this instance, to approve only a component of the material alterations, that is the removal of the asbestos. Whilst the dangers and health safety risks associated with asbestos in buildings is well known in the general community that is not a matter for which the Director-General has any powers or authority under the *Liquor Act*.
27. The financial repercussions of ceasing works at the Club pending determination of the material alterations application have been well articulated by Mr Prowse in his submissions. However, the continuation of the works prior to approval of the alterations by the Director-General brings with it the risk, that approval of the material alterations may be refused and the Club may be directed, in accordance with section 120(1) of the Act, to restore the premises to a condition that is satisfactory to the Director-General. Having said that, it is unlikely, regardless of any objection that may be lodged and upheld, that the Club would be directed to restore the asbestos.
28. It must be noted that the failure of the Club to obtain the approval of the Director-General prior to the commencement of the material alterations constitutes a potential breach of the Act for which disciplinary action may be taken. Whilst this decision is not concerned with the prospect of disciplinary action, the Club is now aware that there may be repercussions as a result of the building works being commenced without approval under the Act.

DECISION

29. For the reasons set out above I have determined to uphold the decision of the delegate to refuse to approve the material alterations to the Club's premises pending the public advertisement of the application and the receipt and consideration of any objections that may be received.
30. In addition, I have determined to lessen the time usually applicable for the lodgement of objections to a period of seven days from the date of publication of the notice of the proposed material alterations. The notice advising the community of Nhulunbuy of the material alterations shall be published on the Club's Facebook page and on the Gove Noticeboard Facebook page. The notice is also to be placed on a public notice board in the Nhulunbuy Township to which the public has general access. The seven day objection period will commence from the date those notices are first published or posted.
31. I have also determined to overturn the component of the delegate's decision that purports to authorise the Club to continue with the removal of the asbestos pending approval of the material alterations. As noted above, authorisation in that regard is beyond the powers available to the delegate, and the Director-General. The continuation of the works prior to approval of the alterations by the Director-General brings with it the risk, that approval of the material alterations may be refused and the Club may be directed, in accordance with section 120(1) of the Act, to restore the premises to a condition that is satisfactory to the Director-General. Whilst the risk may be slight, the Club is now aware that the ultimate refusal of the application for material alterations may result in a direction from the Director-General to restore the premises to their previous condition.

REVIEW OF DECISION

32. Section 120ZA of the *Liquor Act* provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision to refuse to approve an

application for material alteration to licensed premises in accordance with section 119(8) of the *Liquor Act* is specified in the Schedule and is a reviewable decision.

33. 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(1) of the *Liquor Act*, the affected person is the Gove Peninsula Surf Life Saving Club Inc.



Cindy Bravos
Director-General of Licensing

3 July 2017