

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR APPROVAL OF MATERIAL ALTERATION

LICENCE NUMBER: 80803820

LICENSEE: The Darwin Turf Club Incorporated

PREMISES: The Darwin Turf Club
Dick Ward Drive
FANNIE BAY NT 0820

APPLICANT: The Darwin Turf Club Incorporated

LEGISLATION: Section 96 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Dr Robert Parker (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 20 February 2020

DATE OF DECISION: 3 March 2020

Decision

1. For the reasons set out below and in accordance with section 97(2) of the *Liquor Act 2019* ("the Act"), the Commission has determined to approve the material alteration to the licensed premises as sought by the Applicant.
2. In accordance with the approval given, the Licensee may continue to conduct business on the licensed premises apart from the construction site of the new grandstand, being the area delineated by a red broken line on the plan which is exhibit 3 tendered in these proceedings. The general public are not permitted within that area and secure fencing and appropriate signage is to be erected to ensure the public are excluded from the site.
3. If it becomes necessary to vary the boundaries of the construction site, then the prior approval of the Commission must be obtained.
4. The Licensee must not permit the sale or consumption of liquor in the new grandstand area until documentary evidence has been provided to the satisfaction of the Director of Liquor Licensing of the relevant statutory building and fire safety approvals.

Reasons

Background

5. The Darwin Turf Club Incorporated (the Licensee) is the holder of a liquor licence number 80803820 for premises known as The Darwin Turf Club, located at Dick Ward Drive, Fannie Bay.
6. Through various news reports the Director of Liquor Licensing became aware that the Northern Territory Government had provided a significant grant of money (\$12 Million) to the Licensee to erect a multi-level new grandstand. The Director also formed the view that although work had commenced on the site no application for approval of the material alteration to the licensed premises had been lodged with the Director's office.
7. After contacting the Licensee seeking an explanation as to why there had been no application for a material alteration the Director received a letter dated 28 October 2019 from De Silva Hebron Solicitors, together with an application for material alterations. The letter stated:
 1. *We act for the Darwin Turf Club Inc. ("DTC") in this application.*
 2. *The DTC is located on Dick Ward Drive, Fannie Bay NT 0820 ("The Licensed Premises"). The Premises are situated in the centre of the Fannie Bay, Parap and Bagot Communities. It is an important fixture of the Darwin Community and is the sole venue for the promotion of the sport of horse racing in Darwin. In concert with the important role the DTC plays in attracting tourism to the Top End, the venue hosts a number of regular race meetings throughout the year and most importantly, the Darwin Racing Carnival during the height of the dry season.*
 3. *The DTC makes this application to materially alter the Licensed Premises in accordance with the Development Permit DP19/0241.*

Material Alteration of Licence No.80803820

4. *The DTC propose to materially alter the Licensed Premises by constructing a new multi-purpose grandstand within the current boundaries of the Licence footprint. The new grandstand will be located between the Schweppes Pavilion and the Ted Bailey Grandstand, replacing Ted D'Ambrosio Bar ("Ted's Bar"). The DTC has received a development permit (DP19/024) from the Development Consent Authority to:*

"use and develop the land for the purpose of leisure and recreation (grandstand) addition to an existing horse racing facility comprising, bar, dining, function areas and outdoor viewing decks in a 3 storey building,"

The construction of the structure will be in two stages:

- a. *Firstly, the existing ground-floor structure at the location will be demolished; and*
 - b. *Secondly, the three-storey grandstand structure will be erected at the location.*
5. *The new grandstand will be a three-storey building with each floor being utilised in a different way for the purposes of the Liquor Act 2019:*
 - a. *The Ground Floor will feature a bar/bistro area, with seating options in an outside area, there will also be an adjacent viewing deck with tables for patrons to sit and watch the horse races;*
 - b. *The First Floor will be allocated as a full-service restaurant area with a bar/kitchen and internal seating. An outside viewing deck will be available for patrons to view races in between meals; and*
 - c. *The Second Floor will feature a number of corporate boxes available to be hired out by sponsor entities and patrons. There will be a bar/kitchen area to service the corporate boxes which will not be available to other patrons who do not hold a ticket for a box.*

Ground Floor

6. *The Ground Floor Bar/Bistro will be the main point of sale for the public on day-to-day operation of the Premises. It will be the only point of sale of alcohol on the ground-floor area of the new structure. It must be noted that the requested operating hours in the proposed new building will be the same as the current hours for Ted's Bar. The DTC intends for this space to be used by the general public who access the premises to watch horse racing. Alcohol will be served to patrons both with and without food.*

First Floor

7. *The First Floor area will feature a full-service restaurant with the capacity to be rented out for functions and special events. The DTC is not proposing to change the current operating hours of Ted's Bar for the first floor restaurant. The DTC wishes to reserve the right to utilise the first-floor area as an alternative viewing space for overflow of patrons if the maximum capacity of the Ground Floor area is reached.*

A viewing deck is attached to the race course side of the first floor to allow patrons to go outside the building and watch the races. There will be betting facilities on the first floor for patrons to place bets on the horse races.

Second Floor

8. *The Second Floor area will feature six corporate boxes, able to be hired out on race days. A kitchen and bar area will service the corporate boxes with food and alcohol served by staff. A viewing deck is attached to the race*

course side of the Second floor to allow patrons to go outside the building and watch the races. There will be betting facilities on the Second floor for patrons to place bets on the horse races.

The Second Floor area will operate on the same operating hours as the rest of the building, in compliance with the existing trading hours for the licence over Ted's Bar.

Compliance with Section 95(2)

- 9. Subject to point 10 below, the DTC does not believe that the demolition of the existing structure and construction of the new grandstand will be in breach of any of the laws stated in Section 95(2) of the Liquor Act 2019.*
- 10. The DTC advises that in accordance with the Development Permit and the Building Permit issued in September demolition has already commenced at the Premises in accordance with the first stage of the building process. The DTC was unaware that they would be required to apply to the Liquor Commission prior for the removal of an alcohol service point on the Premises and is making the application now before the commencement of the second stage of construction is due to commence.*
- 11. Furthermore, the DTC wishes to advise that there was a matter of urgency in commencing the demolition/construction process immediately, as the new grandstand is proposed to be operational for the Darwin Racing Carnival in August 2020. The popularity of the Darwin Racing Carnival with both locals and tourists has meant that the DTC has to take measures to increase the capacity at the Premises to accommodate all patrons in a safe and efficient manner.*
- 12. We submit that the renovations made to the Premises are essential to the DTC being able to accommodate the growing number of supporters of Darwin Racing and to continue facilitating one of the largest tourism events of the year.*
- 13. Similarly, we submit that in accordance with the Community Impact Assessment responses attached to this Application, approval of the Material Alteration will allow the DTC to better cater to its patrons and improve their experience as the popularity of the sport of Horse Racing in the Northern Territory grows. History supports that the DTC takes its responsibilities under the Liquor Act very seriously and therefore it is safe to conclude, that the new grandstand building will be operated in the same consistent manner, with control and diligence in accordance with all other service areas on the Premise are operated.*
- 14. We attach the following supporting documentation:*
 - a. Application Form for Approval of Material Alteration of a Licensed Premises;*
 - b. Community Impact Assessment;*
 - c. Development Permit DP19/0241;*

- d. Detailed Floor Plans;
- e. Building Permit Stage 1;
- f. Building Fire Safety Report;
- g. Keith Stacy Drivers Licence.

Please do not hesitate to contact the writer should you require any further material to support this application.

8. On 18 November 2019 the Director wrote to the licensee's Solicitor reaffirming his view that approval for the material alterations should have been sought and obtained prior to any demolition or other works involving structural alterations to the premises. The Director also advised the Licensee that it was not his intention to take disciplinary action for the works that had already been taken.
9. The Director's letter to the licensee's Solicitor also contained the following paragraph:

"I draw your attention to section 99 of the Act and the authority vested in the Liquor Commission to direct the removal of unapproved material alterations. The risk in that regard rests with your client and my decision to not take disciplinary or compliance action in respect of the demolition works undertaken to date should not be seen as tacit approval of the material alterations nor the fact that the demolition works have commenced prior to the application being referred to the Liquor Commission".
10. Despite that warning, the Licensee continued with the unauthorised building work such that at the date of hearing the external walls of the grandstand had been erected with the expected date of completion of all works estimated to be 17 June 2020.
11. This new grandstand, although incorporated within the existing liquor licensed area, will provide a much larger area for the sale and consumption of liquor.
12. Section 95(1) of the *Liquor Act 2019* provides;
 - (1) The prior written approval of the Commission is required before any of the following material alterations are made to licensed premises:
 - (a) *a significant increase in the area of the premises used for the sale, supply, service or consumption of liquor;*
 - (b) *a structural alteration to any part of the premises where liquor is sold, supplied, served or consumed;*
 - (c) *a change to an entrance to or an exit from the premises;*
 - (d) *a significant change to the external appearance of the premises;*
 - (e) *a significant change to the premises' facilities related to the sale, supply, service or consumption of liquor.*

13. Those provisions are less onerous than the requirements imposed on a Licensee by section 119 of the *Liquor Act 1978* (the old Act) which mandated obtaining prior approval for any material alteration.
14. In support of the application, the Licensee has provided the following documents.
 - Copy of plans of the new building.
 - Copy of DCA Development Permit dated 16 September 2019
 - Copy of Building Fire Safety Report dated 3 May 2019.
15. Although the applicant's solicitor's letter of 28 October 2019 asserted at para 14(b) that the requisite Community Impact Assessment was attached that document was not in fact compiled and lodged until 14 February 2020.

Publishing of application and consultation

16. The application was advertised by way of publication of a notice in the NT News on 9 November 2019 and 13 November 2019 and the erection of a green coloured advertising sign at the premises. The Licensee has provided a photograph of the green sign erected in-situ and also provided a Statement of Display indicating the dates the green sign was displayed.
17. As a result of the publication of the application, no objections were received from the public.
18. In accordance with Section 96(6) of the Act, notification of the application was sent to the CEO City of Darwin on the 7 November 2019. To date, no reply has been received from the City of Darwin.
19. Whilst not legislatively required, notification was also sent to:
 - NT Police
 - Department of Health
 - NT Fire and Rescue
20. NT Police replied via email dated 12 November 2019 stating it has no objections.
21. Department of Health replied via email dated 7 November 2019 stating it has no adverse comments.
22. NT Fire and Rescue replied via email dated 7 November 2019 stating it supports the application conditional to an occupancy permit being obtained and that the premises comply with relevant fire legislation.

Public Hearing

23. On 20 February 2020 the application proceeded as a public hearing. The applicant was represented by Mr Miles Crowley SC instructed by Mr Thomas Richardson of De Silva Hebron Solicitors. Also in attendance were Mr Damien Moriarty from the Darwin Turf Club Board and Mr Brad Morgan the CEO of Darwin

Turf Club. Mr Jeff Verinder appeared on behalf of the Director of Liquor Licensing. The Commission thanks them all for their attendance and assistance.

24. The Director of Liquor Licensing referral hearing brief was tendered and admitted into evidence and marked exhibit 1. The letter from De Silva Hebron dated 14 February 2020 containing the Community Impact Assessment was also admitted into evidence and marked as exhibit 2 and the plan showing the location of the construction site was tendered and marked exhibit 3. No further documentary evidence was adduced.

Assessment of the Application

25. In considering the application, the Commission has had regards to the purposes of the Act (section 3), the application of the public interest and community impact test (section 49), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018, pursuant to section 50, and the onus on an applicant to satisfy the Commission that the approval of the application is in the public interest and will not have a significant adverse impact on the community (section 51).
26. The assertion in the letter of 28 October 2019 from the applicant's Solicitor that the Licensee was unaware it would be required to apply to the Liquor Commission for approval of this material alteration beggars belief. The requirement to obtain prior approval from the licensing authority for structural changes to licensed premises has been a long standing provision of the old Act and certainly preceded the creation of this Commission.
27. The massive scale of this re development and the brazen failure to obtain the necessary approval from the Commission prior to commencing the works initially raised concerns that this Licensee had an arrogant disregard for its obligations under the Act. However having now heard from the applicants counsel who properly conceded this was an inexcusable mistake on the part of the applicant together with the assurances of Messrs Moriarty and Morgan that the applicant does take its responsibilities under the Act very seriously, the Commission is prepared to accept that the failing on this occasion was a massive oversight rather than a contumelious disregard for the Territory's licensing laws.
28. Despite that finding in favour of the applicant the fact remains that despite being warned by the Director in October 2019 that it must obtain approval for the material alteration the applicant continued with the building works and by doing so put at risk the millions of dollars that it had been entrusted with by the Northern Territory Government.
29. In considering whether to approve the material application the Commission is required to have regard to the public interest and community impact requirements (section 97(1)(c)).
30. The proposed material alteration involves the demolition of the old Ted D'Ambrosio Bar and the construction in its place of a new multi-purpose three storey grandstand. The ground floor will feature a bar/bistro area, with seating

options in an outside area. There will also be a viewing deck for patrons to sit and watch the races. The first floor will comprise a full service restaurant as well as a bar and also offer the option of an outside viewing deck. The second floor will contain six corporate boxes where food and alcohol will be served by staff. Each floor will offer gambling facilities and as ordinarily configured the grandstand will cater for 1,000 patrons as compared to the old Ted's D'Ambrosio bar which only had a capacity of 400. If the restaurant was reconfigured for "cocktail service" and the corporate boxes "rolled back" the Commission was advised that the grandstand could accommodate up to 2,000 patrons.

31. It is important to note that no concerns in relation to patron safety arising from the proposed changes have been raised by Licensing Officers through the Directors representative at this hearing. If any significant issues had arisen then the Commission would have been compelled to consider whether to order the removal of the structure.
32. It is relevant that the proposed redevelopment will result in three points of sale for liquor where there was previously one and a significant increase in patron capacity.
33. The applicant admits that it is hoping to attract more racing enthusiasts to Darwin for the 2020 racing carnival which has been in operation for over fifty years and the applicant estimates that 35,000 patrons attended its premises over the 2018 carnival with 20,000 people arriving in Darwin for just the 2019 cup carnival weekend. It relies on the boost to employment (749 casual staff employed during 2018 carnival) and the overall benefit to the Territory economy due to the influx of tourists in support of its application.
34. The Commission accepts the evidence at hearing of both Mr Morgan and Mr Moriarty to the effect that whilst there may be a modest increase in the overall level of liquor consumed at the licensed premises with the introduction of the new bars this will be due to an increase in the numbers of people attending the cup carnival rather than any increase in the level of consumption by individual patrons. We also accept that the new facility will provide greater comfort for regular race goers and also enable the Turf Club to broaden its revenue base through the use of the new facilities for private and corporate functions.
35. In relation to those objectives that the Commission must have regard to under section 49(2) of the Act relating to the responsible service of alcohol (subsections 2(a) – (d), (g) – (j)) the applicant relies on its past record and comprehensive harm minimisation procedures in relation to the service of liquor. No compliance issues were raised by the Director and the Commission accepts on the basis of the evidence before us that the Licensee can manage the premises, including those times when large numbers of people attend, in an appropriate manner to minimise the harmful consequences of liquor consumption.
36. In considering the impact of the decision on the local community, the Commission must have regard to the matters set out in section 49(3) of the Act, and in addition apply the community impact assessment guidelines. Having regard to the fact that this is not an application for a new licence together with our earlier finding that

there would be no increase in the level of liquor consumed by individual patrons we have focussed primarily on the potential for an adverse impact on the amenity of the local community.

37. It is relevant that no objections were lodged from members of the public in respect of this application. There were also no adverse comments arising from the required stakeholder consultation process. Any increased patronage of the premises over the cup carnival is unlikely to result in any discernible further loss of amenity to the surrounding residents who have probably adopted a “grin and bear it” attitude to the inconvenience they experience during that period of the year. Any increased use of the premises for functions may cause some minor disturbance to local residents however, given that the major point of ingress and egress from the premises is via Dick Ward Drive we find that this would not result in any significant adverse impact on the local community.
38. Having had regard to the community impact requirements, on the basis of the evidence before us the Commission has determined to approve the application for a material alteration on the terms and conditions set out at the commencement of this decision notice.
39. In the course of prosecuting its application the Licensee relied heavily on its prior good record in relation to its compliance with its obligations under the Liquor Act. Although the Director has exercised his discretion to not take the disciplinary action that was clearly open under section 98 of the Act for making a material alteration without approval, the Commission is in no doubt that this was a serious lapse on the part of the licensee. Furthermore, on being warned that the works had commenced without approval it apparently determined to “press on regardless” despite the risk of an order being made that the alteration be removed pursuant to section 99 of the Act.
40. The Licensee should take note, that as far as the Commission is concerned, it no longer has an exemplary compliance record.

Notice of Rights

41. Section 31 of the Act provides for any decision of the Commission for which a decision notice is required under the Act is reviewable by Northern Territory Civil and Administrative Tribunal.
42. Section 97(4) of the Act requires the Commission to give a decision notice, after making a decision under subsection (2) to the applicant and each person who lodged an objection to the application under section 61.



RICHARD COATES
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
3 March 2020
On behalf of Commissioners Coates, Parker and Hart