

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATIONS FOR MATERIAL ALTERATION AND PERMANENT VARIATION OF CONDITIONS OF LICENCE

LICENCE NUMBER: 80818038
80817924

REFERENCE: LC2021/003

LICENSEE: Crocosaurus Cove Pty Ltd

PROPOSED PREMISES: “The Tap on Mitchell Street” and “Crocosaurus Cove”
56 and 58 Mitchell Street
DARWIN NT 0800

APPLICANT: Crocosaurus Cove Pty Ltd

LEGISLATION: Sections 96 and 110 of the *Liquor Act 2019*

HEARD BEFORE: Ms Jodi Truman (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 22 February 2021

DATE OF DECISION: 3 March 2021

Decision

1. For the reasons set out below the Northern Territory Liquor Commission (“the Commission”) has determined to refuse to approve the material alteration.
2. For the reasons set out below the Commission has determined to refuse to vary the conditions of the licence as sought in the application.

Reasons

Background

3. On 26 October 2020, an application was lodged by Mr Chris Foy (“Mr Foy”) on behalf of Crocosaurus Cove Pty Ltd (“the Licensee”). The Commission was informed that over the next few weeks, the nature of the application was further clarified with Licensing Officers with the application identified as being a concurrent application for a material alteration and permanent variations affecting both liquor licences. The application was stated as being to:

- a. “Incorporate the entire liquor licensed area of the Crocosaurus Cove liquor licence onto the Tap on Mitchell Liquor Licensed area;
 - b. If the material alteration is approved, the application is to amend or remove 8 conditions that relate to the Tap on Mitchell liquor licence; and
 - c. If the application is approved in its entirety, the Licensee would immediately surrender the Crocosaurus Cove liquor licence”.
4. Along with the application; a Public Interest Statement was also provided.
 5. During the course of processing the application and in consultation with the Licensee, a sample liquor licence was created to show interested parties and relevant stakeholders which outlined in detail the proposed changes to the licences. That sample liquor licence formed part of the evidence before the Commission.
 6. In support of the application a number of documents were tendered into evidence and became Exhibit 1. All of this material was considered carefully by the Commission during the course of the hearing and also in determining this application, together with the oral evidence that was given in particular by Mr Foy.

Publication and Consultation

7. Pursuant to section 57(1) of the *Liquor Act 2019* (“the Act”), notice of the application was published in the NT News on Wednesday 18 and Saturday 21 November 2021. In addition, the licensee was directed to display the “Green Sign” at a prominent external area of the proposed premises for a 30-day period coinciding with the notices published in the NT News. Copies of the notices in the newspaper and photographs of the green sign erected at the proposed premises were provided to the Commission.
8. The Commission was informed that no objections were received from the public to this application.
9. In accordance with section 56 of the Act, the Director of Liquor Licensing (“the Director”) informed the following of the application:
 - CEO of Department of Health (“the DOH”);
 - Commissioner Northern Territory Police (“NT Police”);
 - CEO of the City of Darwin (“DCC”).
10. The DOH advised via email dated 26 November 2020 that it:

“... has no adverse comment”

However it also drew:

“... attention to the fact that the below licence condition is in conflict with the *Tobacco Control Regulations 2002* where regulation 15B(3)(g) stipulates that “staff service is not available from staff in, or to patrons in, the outdoor smoking areas”.

11. A further email was also received from DOH dated 8 December 2020 noting it should also not be forgotten:

“... no staff service in “buffer areas”.

12. The NT Police replied via email dated 21 December 2020 advising it had no objection.
13. The DCC replied via email dated 14 December 2020 advising it had no comment.
14. On 20 January 2021, the application was referred to the Commission by the Director to fix a time and place for the hearing of the application.
15. The Commission set down a hearing for the next available date on 22 February 2021.

ASSESSMENT OF THE APPLICATION

The Hearing

16. At the hearing, Mr Jeff Verinder appeared on behalf of the Director to assist the Commission if required. Mr Jarrod Ryan appeared for the Licensee, with Mr Foy, Ms Anita Clark and Ms Lorraine Phelan all in attendance for the Licensee. The Commission thanks all persons for their assistance and attendance at the hearing of what was not an easy application to determine.
17. Pursuant to section 23 of the Act, the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No such submission was made.

Legislative Regime

18. In accordance with section 96(3) of the Act, if a licensee seeks approval of a material alteration, it must be accompanied by the following:
 - (a) *a copy of the plans and specifications for the alteration;*
 - (b) *a copy of any permit required under the Building Act 2004 to carry out the alteration;*

- (c) *a summary of any notice given under the Fire and Emergency Act 1996 in relation to the premises;*
- (d) *evidence that the proposed alteration would not result in a contravention or failure to comply with a law specified in section 95(2).*

19. The Commission notes that although Mr Foy had set out in correspondence dated 24 September 2020 that this was “solely a commercial decision by the Licensee to combine two current licenses on the same property” and that “no building works are involved”; it was made clear during the course of the hearing that there would in fact need to be some structural alterations for access from the Tap Bar to the floors presently forming part of the premises known as Crocosaurus Cove. In particular it was identified that there would need to be the installation of stairs and also some bi-fold doors within the Crocosaurus Cove premises to separate various locations which also had not been clearly identified.
20. Although this was the case, no plans or specifications were lodged with the application of the proposed (and clearly necessary) alterations. Nor was there any evidence of any permit under the *Building Act 1993* or indeed an application having even been lodged. Further there was no evidence of any notice given under the *Fire and Emergency Act 1996*.
21. Further section 97(1)(c) of the Act requires that the Commission **must** consider the “public interest and community impact requirements” when determining an application to make a material alteration.
22. In this regard the applicant had filed a public interest statement but had not filed a community impact statement and instead had submitted that:

“There is no community impact as the current operations will continue as per the existing two licenses”.
23. The Commission will return to this submission in a moment.
24. In accordance with section 112 of the Act, when considering an application to vary the conditions of a licence or an authority, the Commission is again required to mandatorily consider the public interest and community impact requirements.
25. Again the Commission notes the absence of any evidence provided by the Licensee that addresses the community impact criteria to assist the Commission in its consideration of the material alteration or variation application.
26. The Commission does not agree with the submission, earlier noted, by the Licensee that there “is no community impact”. It was apparent during the course of the evidence there would indeed be occasions where an area of the premises currently under the Crocosaurus Cove licence, which is a Special Venture authority, would in fact be a Public Bar Authority with a Late Night Authority. Numerous assurances were given that the space would not be used in such a manner “regularly”, however

that does not deal with the fact that the application, if granted, would indeed enable the Licensee to use the area in such a manner.

27. The Commission therefore considers this in fact to be a significant change and one which requires proper material to be provided by the Licensee to the Commission to enable the Commission to consider the issues of the community impact which it is mandatorily required to consider. This has not occurred in this application.
28. This is a significant deficit in each of the applications and leads the Commission to consider that there has not been adequate consideration given to the actual nature of the application being made by the Licensee. The Commission does not suggest there to be any mischief on the part of the Licensee in failing to provide such material, simply that the applicant appears not to have appreciated the true nature of the application it was making.
29. Whilst it was noted on behalf of the Licensee that the use of part of the Crocosaurus Cove premises had occurred to “be able to adhere to mandated social distancing provisions”, those same conditions do not apply at this time and further it was clearly proposed that such usage was only ever intended as a temporary measure. There is simply no substantive evidence before the Commission as to why those temporary measures should continue on a permanent basis.
30. Further, it was said on behalf of the Licensee that the area proposed to be used of the Crocosaurus Cove premises was an “under-utilised space”. Whilst that may in fact be the case, that does not provide sufficient support that such space should instead become a public bar authority with late night authority, particularly when it is stated that that part of the premises will also continue to operate as a crocodile and reptile exhibit where such animals are permanently housed.
31. The Commission also noted that the area of Crocosaurus Cove that is proposed to be used on a regular basis for patrons of The Tap is suggested (although no proper plans were provided) to be approximately 50m². The Commission is simply not satisfied that there is a sufficient basis to warrant such an alteration and variation when the space suggested is of that size.
32. Further, the substance of the oral evidence given to the Commission on behalf of the Licensee was that the space proposed to be used in the Crocosaurus Cove area would “predominantly” be used for functions rather than as additional space for The Tap.
33. When all of this evidence is considered by the Commission there appears to be no proper basis for there to be a change to the current licences in the manner in which they operate now. The area of Crocosaurus Cove can continue to be utilised for functions under its current licence and there is nothing to suggest any particular issues with the manner in which The Tap is operating under the terms of its current licence.
34. As a result, all the Commission is left with is the submission that granting the application will “have the effect of a reduction in licenses in Mitchell Street as the Licensee would immediately surrender the Crocosaurus Cove licence”.

35. Had it been the case that the Licensee was proposing to surrender The Tap licence, the Commission may have been persuaded that there would be a reduction in licences on Mitchell Street that was of real substance. However the Commission finds that the reality is that what “the effect” of this application would be (if it were successful) is that one of the high risk licences (i.e. a public bar authority with late night authority) would have a larger area to conduct its business.
36. Without proper material being placed before the Commission addressing the impact on the community, the Commission does not consider it appropriate to grant the application and refuses to do so on the basis of the current application before it.
37. The Commission notes that it may be that a different determination would be made by the Commission if an appropriately considered, thorough and expansive application were subsequently made by the Licensee but that is not the state of the evidence in support of this current application.
38. Further, the Commission reminds itself (and all applicants) that when considering this application (and therefore exercising its power or performing its function under the Act), the Commission must have regard to the primary and secondary purposes of the Act set out in section 3 and exercise its power in a way consistent with those purposes. The Commission does not consider that exercising its power on this occasion in favour of the applications would support those purposes.
39. For these reasons, the Commission has determined that the applications should be refused.

Notice of Rights

40. Section 31(1) read with section 60(3) of the Act provides that the decision set out in this decision notice is reviewable by Northern Territory Civil and Administrative Tribunal (“NTCAT”). Section 94(3) of the NTCAT Act provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
41. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the Licensee.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
3 March 2021

On behalf of Commissioners Truman, Winsley and Hart