

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	APPLICATION FOR PERMANENT VARIATION OF CONDITIONS OF LICENCE
REFERENCE:	LC2022/003
LICENCE NUMBER:	FLL1048
LICENSEE:	OMAD (NT) Pty Ltd
PREMISES:	Coolalinga Tavern Pad 6, 425 Stuart Highway COOLALINGA NT 0839
LEGISLATION:	Section 110 of the <i>Liquor Act 2019</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Bernard Dwyer (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	28 January 2022
DATE OF DECISION:	1 February 2022

Decision

1. For the reasons set out below and in accordance with section 112(2) of the *Liquor Act 2019* (“the Act”), the Commission has determined to approve a variation of the conditions of the licence of OMAD (NT) Pty Ltd (“the licensee”) for the premises known as Coolalinga Village Tavern (“the premises”) by:
 - a. Adding to the current “Entertainment” condition a condition in the following terms:
 - “5. In addition to condition 1 set out above; on any New Year’s Eve trading day pre-recorded and live entertainment may be provided in the indoor area between midnight and 0200 hours and shall be consistent with the concept of the premises.”
2. In accordance with sections 112(4) and 113(5) of the Act, the variations of the conditions of licence are to take effect as of the date of this Decision Notice.

Reasons

Background

3. On 5 November 2021, an application for a permanent variation of licence conditions was lodged pursuant to section 110(3) of the Act by the licensee, namely Mr Damian O'Brien, for the premises known as Coolalinga Village Tavern situated at Pad 6, 425 Stuart Highway, Coolalinga. The licensee is the holder of liquor licence number FLL1048 with Public Bar and Late Night Authorities.
4. The licensee is seeking to "have the entertainment condition of our license changed to 2am on NYE and for this to occur each NYE ongoing".
5. The current entertainment condition relevantly states within condition "1." that:

"Pre-recorded and live entertainment may be provided in the indoor area and shall be consistent with the concept of the premises. It shall cease at midnight and thereafter shall be in the nature of light, background music to allow a graduated departure of patrons from the premises".
6. It is proposed that in addition to this condition there be an additional condition to allow for entertainment on New Year's Eve post midnight. The proposed terms are as follows:

"Pre-recorded and live entertainment may be provided in the indoor area on any New Year's Eve trading day between midnight and 0200 hours and shall be consistent with the concept of the premises."
7. The following documents have been provided to support the application:
 - a. Affidavit in accordance with section 54 of the Act;
 - b. Public Interest and Community Impact Assessment Summary under sections 49 to 52 of the Act.
8. A referral document that was 53 pages in length was provided to the Commission; which included documents in addition to those set out above. This referral was tendered into evidence and became Exhibit 1. All this material was considered carefully by the Commission during its hearing which was conducted on the papers.

Publication and Consultation

9. Pursuant to section 111 of the Act, notice of the application was published in the NT News on 10 and 13 November 2021. In addition, the licensee was directed to display the "Green Sign" at a prominent external area of the premises. The Commission was informed by the Senior Director of Licensing, Ms Andrea Allen ("Ms Allen"), that copies of the notices in the newspaper and photographs of the green sign erected in situ had been retained by Licensing Officers.
10. As a result of the advertising, no objections were received.

11. Notification of the application was also given to the Chief Executive Officer of the Department of Health (“DOH”), the Commissioner of Police (“NT Police”) and the Chief Executive Officer of the Litchfield Shire Council.
12. The Commission was informed by Ms Allen that the DOH had “no comment” and the NT Police had stated “they support the application”. The Commission was further informed by Ms Allen that the Litchfield Shire Council stated that the application was “not objected to”. These notifications and replies were retained by Licensing Officers.
13. It is noted that there is no application to vary the current trading hours.

The Licensee’s Record of Compliance

14. This Commission is familiar with the licensee having been the same assembled Commission that dealt with the licensee in relation to a disciplinary proceeding (together with a separate application for variation of licence conditions) on 28 April 2021¹. At that time the Commission determined that the licensee had intentionally engaged in conduct that contravened its licence conditions and imposed a monetary penalty. The monetary penalty has been paid by the licensee.
15. The Commission was also informed that on 3 May 2021 a noise complaint was lodged and formally accepted on 14 July 2021 by the Director. The complaint was finalised by way of a warning letter to the licensee dated 10 October 2021. It is clear therefore that the licensee does not come before the Commission with a clear compliance history.

The decision to dispense with a public hearing

16. On 19 January 2022, the Director referred this matter to the Commission to be determined by way of a hearing. As there had been no objections to the application and because the licensee was seeking a variation involving a period of two (2) hours on one day per year, namely New Year’s Eve, and affecting only the indoor area, the Commission decided pursuant to section 21 of the Act that it was not appropriate in the circumstances to hold a public hearing as:
 - a. The matter is not considered controversial; or
 - b. Conducting the hearing in public would not be worthwhile.
17. As a result, the Commission determined to deal with the matter “on the papers”.

ASSESSMENT OF THE APPLICATION

18. In accordance with section 112(1) of the Act, the Commission has considered the applicant's affidavit required by section 54 and the public interest and community impact requirements; there being no objections to the application.

¹ Northern Territory Liquor Commission, *OMAD (NT) Pty Ltd, Disciplinary Action pursuant to the Liquor Act 2019* (2 June 2021)

19. In accordance with section 110(2) of the Act, the Commission has also considered whether varying the conditions of the licence is in the public interest, and whether such variations would not have a significant adverse impact on the community. It is these matters that the licensee must satisfy the Commission about. The burden is therefore on the applicant.
20. In considering the application, the Commission has also had regard to the purposes of the Act as set out under section 3.

The Applicant's Associates

21. In the context of a variation application, section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant or expect a benefit from the applicant if the variation is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of section 54. The Commission considers that the contents of the affidavit do not give rise to a concern that the application should be refused.

The Public Interest Test

22. As earlier noted, this application is **not** controversial. The licence already enables the sale of liquor to patrons until 2.00am. There is no proposal to change that or to extend that time in any way. What the licensee is seeking to do is to be able to extend the entertainment in the **indoor** area only for a period of two (2) hours on New Year's Eve which is a date celebrated in this country.
23. As such the Commission does not consider there to have been any negative impact on the public interest by this proposed variation and therefore no impact on those matters set out in section 49(2) of the Act.
24. The licensee is not proposing a significant change in the concept of these premises or the way it is proposed the premises would be operated. It is one night of the year that is proposed to be varied and that one night of the year is one widely celebrated by the public and members of the community.
25. The Commission has also considered those matters required to be addressed under the community impact requirements and has concluded that the terms of the variation sought would not cause a significant adverse impact on the community and that the risks associated with permitting the variation do not outweigh the benefits of permitting a variation of that proposed to be made.
26. For these reasons, the Commission has determined to vary the conditions of the licence in the terms outlined at the commencement of this Decision Notice.

Notice of Rights:

27. Section 31(1) read with section 112(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.

28. 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, the licensee and the persons who made the submission or objection.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
1 February 2022

On behalf of Commissioners Truman, Dwyer, and Corcoran