

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR MATERIAL ALTERATION
REFERENCE:	LC2018/138
LICENCE NUMBER:	81401431
LICENSEE:	Darwin Golf Club Incorporated
PREMISES:	Darwin Golf Club 5 Links Road MARRARA NT 0812
APPLICANT:	Darwin Golf Club Incorporated
NOMINEES:	Mr Steven Green Mr Gary Howkins
OBJECTOR/S:	Nil
LEGISLATION:	Section 119(2), Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Mr Richard Coates (Chairperson) Mr Kenton Winsley (Health Member) Mr Lindsay Carmichael (Community Member)
DATE OF HEARING:	5 November 2018
DATE OF DECISION:	6 November 2018

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* ("the Act") the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the Applicant.
2. The licence including the material alteration will be issued immediately following the publication of this decision and, in accordance with section 31(1) of the Act, is subject to a condition that the licensee will not commence trade in the sale of liquor in the new gaming room and enclosed courtyard until such time as the necessary building modifications are completed and a Certificate of Occupancy under the *Building Act* has been issued to the licensee authorising it to extend the operation of its business into the extended area.

3. The licence including the material alteration will become operative once the applicant has presented evidence to the satisfaction of the Commission or its delegate, that the premises have been satisfactorily constructed and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee.
4. The applicant will also be required to obtain the necessary approvals from the Northern Territory Fire Service in respect of patron capacity and fire safety issues prior to commencing operation.

Reasons

Background

5. The Darwin Golf Club has been operating in Darwin at this site to over 40 years. It is Darwin's premier golf club with 761 members across a range of membership types, the majority of which are full playing members.
6. The applicant, Darwin Golf Club Incorporated, holds a "Club (Incorporated)" Liquor Licence authorising the sale of liquor for consumption on the licensed premises by a member of the Club or by a visitor in the presence of such a member. It is also entitled to sell a limited quantity of liquor for consumption away from the premises but that can only be consumed on the golf course by persons participating in golfing events.
7. On 4 July 2018 an application was lodged with the Director-General of Licensing for approval to make a material alteration to the licensed premises. At the time of lodgement, the application was deemed incomplete and it was re-lodged on 11 August 2018.
8. The substance of the material alteration application before the Commission is to extend the existing licensed premises to incorporate the adjoining premises, previously known as Meihua Restaurant, and converting that area into a gaming room. An enclosed courtyard is also intended to be constructed in front of the previously existing restaurant and will be used as a designated outdoor smoking area that will include a toilet for patrons.
9. The Meihua Restaurant was previously licensed but the licence was surrendered by the Licensee, Ms Thi Phuong Fraser on 27 August 2018, she having previously surrendered the lease on the restaurant back to the Golf Club in April this year.

Advertising and Objections

10. The application was advertised in the NT News on Saturday 11 August 2018 and Wednesday 15 August 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period ended on 14 September 2018 and no objections were received.
11. The following stakeholders were also invited to provide comment on the application:
 - the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
 - Northern Territory Police, Fire and Emergency Services;
 - Northern Territory Fire and Rescue Service;
 - The Chief Executive Officer of the City of Darwin; and
 - Chairman of the Development Consent Authority.

No adverse comments were received. The Development Consent Authority advised that a development permit had been issued for the alterations and also confirmed that there are no town planning concerns in relation to the application.

Public Hearing

12. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 119 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
13. On 22 October 2018 the Director-General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10:00am on 5 November 2018 by notice given to the parties on 26 October 2018.
14. Pursuant to section 53 of the Act, the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
15. The public hearing commenced at 10:00am on 5 November 2018. Mr Steve Green, the General Manager of the Golf Club appeared on behalf of the Applicant and Ms Sally Ozolins appeared as the representative of the Director-General. They both provided information and assistance to the Commission during the course of the hearing for which we are most grateful.

Assessment of the Application

16. As earlier noted, there were no objections to this application. This is despite the fact that the applicant undertook its obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the Act. The objection process is specifically provided for under the Act at section 47F. That section clearly identifies those persons *who* may make an objection, the specific *kinds* of applications that may be objected to, the *grounds* upon which an objection can be made and *how* the objection is to be made.
17. Despite there being no objections, it is important to recall at all times that the Act makes clear under section 6B that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
18. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;

- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the Local Government Act; and
 - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

19. In addition, pursuant to section 6(3), the Commission must:

- p. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- q. apply the community impact assessment guidelines.”

20. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

21. Those matters are identified as follows:

Criteria	Matters to be considered
The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include – <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and

	<p>those Aboriginal people that might be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <hr/> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <hr/> <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans</p>

of licensed premises within the community area.	developed to address these potential issues.
Volume	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

22. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:
- “... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.
23. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application for a material alteration which effectively increases the licensed footprint of the premises, thus increasing the area upon which liquor will be sold and consumed. As a result some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a variation and material alteration
24. The Applicant has included in its Application a Community Impact Assessment (“CIA”) that had been prepared by external consultants DWS in June 2018. Although the CIA contained demographic data and a “marketing analysis” the Commission did not find the document particularly helpful. It contained a list of licensed premises in the local area which was materially incorrect in that it did not include Northlakes Liquorland but listed minor or irrelevant licences such as the Darwin Clay Target Club, the Jingili BMX Club and the Qantas Club at Darwin Airport. Overall, it did not make a compelling case as to why the approval of the alteration was in the public interest.
25. Mr Green spoke in support of the Application. He stressed that this was not an application for a new licence. The Applicant had held a licence for many years and was intending to extend its trading area into adjoining premises which it already owned and which had previously been licensed for the sale of liquor. The Applicant holds a licence to operate 45 gaming machines as well as Keno and TAB gambling facilities. At present there are only 13 gaming machines operating and these are situated in the general bar area. If the Application is approved, the existing and new gaming machines as well as the other gambling facilities will be moved into the extended premises. Mr Green said that would improve the amenity of the existing bar and function room. If the Club was to install the additional machines in the existing bar area this would inconvenience those members and guests who had no interest in gambling. It would also make it more difficult if not impossible to continue to hold functions at the club.
26. Mr Green spoke of his vision for the Golf Club to be the Northern Territory’s preeminent golf club and a venue for national competitions. He said that the Club was already a popular destination for golfing tourists and that by maintaining and improving the course, visitor numbers would increase. He stressed that significant expenditure was required to keep a golf course in good repair and the additional revenue that would be derived from the establishment of the new games room would greatly assist with the upkeep and improvement of the golf course.

27. Information was provided within the Application indicating that the Darwin Golf Club has over many years hosted Charity Golf Days and that in the previous year an amount of almost \$300,000 was raised for charitable purposes.
28. It is relevant to note that although Commissioners might have concerns about the social dysfunction that is caused by “problem gambling” it was not our decision to approve the Applicant’s licence to operate these gaming machines. That decision was made by another authority in accordance with the relevant guidelines and public interest criteria.
29. It there is to be an increase in patronage at the Applicant’s premises because of the deployment of the additional gaming machines, that will likely occur regardless of where the machines are positioned. It seems to us that moving the existing gambling facilities out of the bar area and relocating them in a separate dedicated area will only improve the general amenity of the club room,
30. The Commission was impressed with the submissions that have been made by Mr Green. We accept that this has been a well-run Club with a clear focus on promoting the sport of golf and advancing the interests of its members. We are confident that if the new gaming facility were to encourage the attendance of patrons with a tendency to misbehave then the governing members of the Club would act quickly to remedy that situation.
31. The Commission is satisfied that the public interest and community impact test and guidelines, as far as they are relevant with respect to this application have been satisfied.
32. Therefore for the reasons outlined above the Commission approves the material alteration to the licensee’s licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights:

33. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
34. 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.

35. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
Presiding Member
Chairperson

18 December 2018