

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Hot Tamale
Applicant:	Amigos Mexican Cantina Pty Ltd
nominee:	Mr David Robinson
Licence Number:	80518538
Proceeding:	Application for Variation of Licence Conditions Pursuant to Section 32A of the <i>Liquor Act</i>
Commission Members:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mrs Jane Large

Background

- 1) On 13 November 2012 a restaurant liquor licence was granted to Hot Tamale by the Northern Territory Licensing Commission ("the Commission"). The licence granted was restricted to the internal area of the premises and did not include the external alfresco dining areas.
- 2) Following the Commission not approving an application for the alfresco area of the venue's high perimeter tables and high chairs, Mr Robinson on 28 December 2012 lodged:
 - a) an application for a temporary variation to "*include authorisation to trade from the alfresco areaas built*".
 - b) an application for a permanent variation to the licence issued to authorise trade from the alfresco area as built.
- 3) The application for a temporary variation to enable trading in the alfresco area was granted. The Commission, then by notice to the applicant, of 5 March 2013 sought a meeting pursuant to Section 28 of the *Liquor Act* ("the Act") to consider the permanent variation. This letter stated:

This meeting sought by the Commission is pursuant to Section 28 of the Liquor Act ("the Act") Assessment of applications. Section 28(4) of the Act states:

- (4) *The Commission may require an applicant, a nominee manager of the applicant or an associate of the applicant to provide the Commission with the additional information or material that the Commission considers necessary to make a proper assessment of the application.*

The Commission is likely to seek further information from you as to how you propose to operate the alfresco area of the restaurant. The Commission will also extend an invitation to the Darwin Waterfront Corporation to attend the meeting and will seek to be advised if the Corporation has any matters or

concerns over the issue of the liquor licence for the alfresco area. Licensing Inspectors will also be present and may be asked questions over the processing of your application.

- 4) A meeting was convened with the panel of three Commission members on 13 March 2013 pursuant to Section 28 of the Act. Present at the meeting were Mr David Robinson, Nominee of Hot Tamale, Mr Terry O'Neill, Deputy CEO of the Darwin Waterfront Corporation ("DWC"), Ms Karen Avery, Director of Licensing and Inspector Bernard Kulda.
- 5) Mr Robinson outlined that his initial application included the positioning of high tables and high stools in the alfresco area and that this concept was changed in mid 2012 to include a perimeter bench around the alfresco area to be accompanied by high stools.
- 6) The Commission asked Mr Robinson how he would operate the Al Fresco area of the venue so as to conform to the requirement to function and have the appearance of a restaurant. Mr Robinson outlined that when patrons entered the venue, they would be seated by the host and provided with food and beverage menus, napkins, cutlery and condiments. He explained that menus, napkins etc were not always on the tables or perimeter bench due to the exposure to high winds. He advised that glasses in particular would not always be present at the tables due to the risk of high winds causing them to be blown off the bench or tables.
- 7) He explained that all patrons in the alfresco area would need to be seated and serviced by wait staff. He advised that he would not permit customers to stand around in this area and consume drinks. He advised the Commission that currently the alfresco area had a seating capacity for approximately eighty patrons. He referred to there being further furniture being installed which could increase this to a capacity of around one hundred patrons in the alfresco area.
- 8) The Commission queried Mr Robinson on how often he expected to seek a variation of his licence to allow patrons to be standing for various functions. He responded that his main focus was that of a Mexican themed restaurant and that while he did expect to make application for licence variation to enable special functions where guests could be served drinks and nibbles standing, he thought these would be few in number.
- 9) The Commission then sought the views of Mr O'Neill, Deputy CEO of DWC on the issue of furnishings and fixtures in the alfresco area. Some background was provided as to the mixed use nature of the Darwin Waterfront which is to include attractions for children and provide a family friendly atmosphere.
- 10) Mr O'Neill explained that the DWC's main interest was that the alfresco dining areas of licensed outlets in the Waterfront Precinct present and appear as a restaurant rather than bars or taverns. He explained that the expectation of the DWC would be that patrons in an alfresco area would be served by wait staff and be seated. He also stated that noise was the main issue impacting on residents. The Commission was informed that noise disturbance from licensed areas appeared to have decreased significantly with the construction of awnings over the alfresco areas within the Precinct.
- 11) In terms of furnishings and fittings Mr O'Neill stated that the DWC "*never tried to prescribe what that means*", in reference to whether high tables, chairs, benches were an issue in defining the premise "*appearing as a restaurant*". Mr O'Neill

concluded by saying that the DWC had a legitimate interest in ensuring the Precinct presented in a way to attract its mix of users and that their principal concern with the alfresco areas was that they had the appearance of and operate as a restaurant.

- 12) The Commission outlined that in the past it had used prescription of furnishings as a means to achieve the desired objective of a premises appearing and presenting as a restaurant. The Commission explained that it was seeking to adopt a more contemporary and less prescriptive approach in relation to such licence conditions.
- 13) The Commission explained that this could be achieved through the insertion of licence conditions requiring that:
 - patrons be seated;
 - patrons be served by wait staff;
 - the venue to close one and half hours after the kitchen ceases to provide meals; and
 - the licence trading capacity of the venue be equal to the number of seats provided.
- 14) Mr Robinson advised that such licence conditions were acceptable to him. Mr O'Neill also advised that such licence conditions were acceptable to the DWC.
- 15) The Commission also noted that Mr Robinson initially applied for a licence with trading hours until 02:00am (the following day), but that those hours were moderated and that his present application was to trade from 11:30am to 11:59pm seven days a week. The trading hours, which apply to both the internal area (already granted) and the alfresco area were supported by the DWC and it was noted by the Commission that a number of other licensed restaurants in the Precinct had later trading hours.
- 16) Following a brief adjournment of the meeting, the Commissioners advised Mr Robinson that his application for variation of licence conditions for the alfresco area to be granted on the basis of its current appearance, fixtures, fittings and furnishings.
- 17) Mr Robinson was also advised that the licence conditions outlined in paragraph 13 above would be incorporated for the alfresco area of his licence.

Decision

- 1) The Commission confirms verbal approval of the grant of a licence to the alfresco area of Hot Tamale as built, fitted out and furnished. The licence is to include the conditions:

All patrons in the alfresco area are to be seated and served by wait service and the alfresco area patron capacity contained in the licence condition is to equal or not exceed the seating capacity of the area.

The existing licence for the internal area requires that "*Premises shall close no later than one and one half hours after the kitchen closes*" and this condition is also to be operative for the alfresco area.

Richard O'Sullivan
Chairman

18 March 2013