

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE: LC2018/069

LICENCE NUMBER: 80104092

LICENSEE: Tamsing Pty Ltd

PREMISES: Litchfield Motel

Lot 220 and 257
BATCHELOR, NT

APPLICANT: Michael and Janet McElwee

LEGISLATION: Section 119(2), Parts I, IV and V of the *Liquor Act*.

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Ms Kenton Winsley (Health Member)
Mr Russell Goldflam (Legal Member, by audio-visual link)

DATE OF HEARING: 28 June 2018

DATE OF DECISION: 6 July 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.

Reasons

Background

2. The Litchfield Motel is a tourism and hospitality venue in Batchelor employing six core staff and 30-40 transitional staff throughout the year. The proprietors state that 80% of the business is tourism, and that the Litchfield Motel is the prime location for passing trade to the Litchfield National Park.
3. Tamsing Pty Ltd (“the licensee”) currently holds a Public Hotel Liquor Licence (“the licence”) authorising the sale of liquor for consumption on and away from the Litchfield Motel’s licensed premises, which the licence specifies the inclusion of a “Dining Room”, a “Lounge”, and a “Public Bar”, each of which has different specified trading hours.

4. On 26 March 2018, the dual nominees for the licence, Michael and Janet McElwee (“the applicants”), made application under the Act pursuant to section 119(2) of the Act for approval to make a material alteration to the licenced premises (“the application”).
5. The application does not employ the same terminology as the licence for the areas affected by the application. The Commission proceeds on the assumption that:
 - the area referred to in the application variously as “Main Bar and Gaming Room” and “Lounge Bar” corresponds to the area referred to in the licence as “Public Bar”;
 - the area referred to in the application as “Conference/Function Room” or “Function Room” corresponds to the area referred to in the licence as “Lounge”; and
 - the area referred to in the application as “Restaurant” corresponds to the area referred to in the licence as “Dining Room”.
6. In this decision notice, the Commission identifies the affected areas using the terminology employed in the licence.
7. The term “material alteration” is defined under section 4 of the Act as an alteration to the licensed premises which:
 - a. increases or decreases the area used for the sale of liquor or the sale and consumption of liquor; or
 - b. involves structural alteration; or
 - c. alters access to or egress from the premises; or
 - d. alters the external appearance or facilities.
8. In essence, the application seeks authorisation to conduct renovations to the premises which will result in the area currently being used as the Public Bar to be used as the Lounge, and the area currently being used as the Lounge to be used as the Public Bar.
9. This will not entail an increase or decrease to the area used for the sale or consumption of liquor. It will entail an alteration to access to or egress from the premises, structural alterations, and an alteration to the external appearance of the premises. In particular, the applicant seeks to:
 - construct a new Gaming Room adjacent to and accessed from the new Public Bar;
 - install a new kitchen, coldroom, fridges, benches, bar, servery and fittings, and make other alterations to service areas inaccessible to the public;
 - improve the external appearance of the venue by way of new screening, glazing, decking, cladding, flashing and guttering; and
 - install bi-fold doors between the Public Bar and the Beer Garden.

The applicants' submissions

10. The applicants advance the following reasons for the proposed alterations:

- Organisational efficiency
- Develop a dedicated gaming room
- Lift brand and business profile
- Modernisation
- Increase premise visibility and therefore increase passing trade
- Improve security
- Ease flow of customer traffic
- Improve family atmosphere
- Improve workplace productivity by overcoming the current poor layout of the venue from an operational structure

11. The applicants submit that the proposed alterations:

- will not lead to an increase in harm having regard to the objectives of the public interest and community impact test set out at section 6(2) of the Act;
- will not lead to the excessive or inappropriate consumption of liquor, a relevant consideration pursuant to section 6(3)(a)(i) of the Act;
- will have a positive employment and tourism impact, a relevant consideration pursuant to section 6(3)(a)(ii) of the Act;
- will have a positive impact on the amenity of the premises, a relevant consideration pursuant to section 6(3)(a)(iii) of the Act;
- will not affect the density of existing liquor licences in the community area, a relevant consideration pursuant to section 6(3)(a)(iv) of the Act; and
- will not lead to an increased volume of liquor sales, a relevant consideration pursuant to section 6(3)(a)(v) of the Act.

12. Following the public hearing, the applicants submitted an undated document titled "Arrangements for the continuation of trade at the licensed premises for the purposes of section 119(10) of the *Liquor Act*" ("the proposed arrangements"). The proposed arrangements were received by the Commission as an attachment to an email from Philip Timney sent at 9:06 am on 29 June 2018.

Advertising and Objections

13. Details of the application were advertised in *The Sun* newspaper on 17 April 2018 and 24 April 2018, and signage of the proposed development was displayed at the premises in accordance with planning requirements.

14. The Commission has been informed that no objections were received.

15. As required by section 119(5) of the Act, on 22 January 2018, the Director-General notified the Chief Executive Officer of Litchfield Council of the application.

16. In addition, and although not required by the Act, the Director-General, in accordance with her standard practice in matters involving proposed amendments to liquor licences, notified the following agencies of the application:

- Commissioner of Police
- Department of Health
- Northern Territory Fire and Rescue Service
- Development Consent Authority

17. These agencies were also each notified of their entitlement to object to the application by way of the procedure set out at section 47F of the Act. No section 47F objections were lodged with the Director-General, and none of these agencies appeared or notified the Commission that they wished to appear at the ensuing Commission hearing.

18. The following responses were received with respect to the application:

- a. No response was received from the Chief Executive Officer of Litchfield Council.
- b. The NT Police raised no objections to the application.
- c. The Department of Health made no adverse comment.
- d. The Northern Territory Fire and Rescue Service made no objection, subject to compliance with the building approvals process involving its service.
- e. The Development Consent Authority raised no objections to the application, and advised that the proposed alterations and additions did not require further consent from the DCA.

Public Hearing

19. Pursuant to section 50(d) of the Act, the Director-General must refer applications under section 119 of the Act to the Commission for hearing. Accordingly, the Commission convened to conduct a public hearing, on 28 June 2018.

20. At the hearing the applicants appeared in person, as did Mr Philip Timney, Director Legal, Licensing NT. The Commission is grateful for the assistance it received from the applicants and Licensing NT.

Assessment of the Application

21. Pursuant to section 6A of the Act, a section 119 applicant is required to satisfy the Commission that the approval of the application meets the public interest and community impact test set out in section 6(2) of the Act. The applicants have submitted a statement addressing the relevant elements of the test.

22. In considering the application, the Commission has had regard to the objects of the Act (section 3 of the Act), the application of the public interest and community impact test (section 6 of the Act), the community impact assessment

guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to section 6A, and the onus on the applicants to satisfy the Commission that the approval of the application meets the public interest and community impact test (section 6B of the Act).

23. The Commission accepts the uncontested submissions of the applicants referred to at paragraphs 10 and 11 above.
24. The Commission finds that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the material alteration sought.
25. The Commission determines that approval of the application satisfies the public interest and community impact test, and accordingly the Commission grants the application.
26. For the purpose of section 119(10) of the Act, the Commission approves the proposed arrangements referred to at paragraph 12 above.

Notice of Rights

27. 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.
28. 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.
29. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the applicants.



Russell Goldflam
Member
Northern Territory Liquor Commission

6 July 2018

On behalf of Commissioners Truman, Winsley and Goldflam