

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE AND APPLICATION FOR APPROVAL OF MATERIAL ALTERATION

REFERENCE: 2020/009

LICENCE NUMBER: 80104092

LICENSEE: Tamsing Pty Ltd

PREMISES: Litchfield Motel

Lot 220 & 257
BATCHELOR NT 0845

APPLICANT: Tamsing Pty Ltd

LEGISLATION: Section 32A and 119 of the *Liquor Act 1978*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Liz Stephenson (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 2 March 2020

DATE OF DECISION: 2 March 2020

Decision

1. For the reasons set out below and in accordance with sections 32A(7) and 119(8) of the *Liquor Act 1978* (“the Act”) the Commission has determined to vary the conditions of the liquor licence for the premises known as Litchfield Motel and to approve the material alteration to extend the licensed footprint of the premises.
2. The current range of different licensed hours for consumption of liquor on the premises at the Dining Room, Lounge and Public Bar are removed and replaced with common hours of operation for the whole of the licensed premises from 10:00 to 01:00 every day of the year except Good Friday and Christmas day.
3. The hours of operation on Good Friday and Christmas day are from 11:00 to 21:00 if the liquor is sold to patrons purchasing full meals during those hours.

4. The hours of operation on New Years Day are extended an extra hour if the Licensee gives the Director of Liquor Licensing (“the Director”) written notice of the Licensees intention to open during those hours before 3 December of the year preceding the New Years Day.
5. The current hours for take away sales of liquor remain unchanged.
6. The existing licensed footprint of the licensed premises will henceforth be referred to as Licensed Area A and delineated as such on the plan initialled, dated and kept by the Director. There will also be on that plan an area referred to as Licensed Area B which is ordinarily vacant land leased to the Licensee which is directly adjacent to the licensed premises and depicted in Exhibit 5 in these proceedings. Licensed area B may be used for the purpose of pre arranged functions where liquor is sold and consumed (on the premises only), provided that the Director has been given 14 days written notice of the intended use of Area B and consents to its use. In considering any notice of intended use of Area B, the Director will take into account the nature of the proposed event, patron numbers, the availability of crowd controllers and any other relevant matter prior to providing consent.
7. Pursuant to section 119(10) of the Act the Licensee is permitted to continue trading in Area A of the licensed premises but shall not commence operating in Area B until such time as the Director has approved the new plan of the licensed premises and has given his consent to a specific application as outlined in paragraph 6 above.

Reasons

Background

8. On 30 September 2019, an application was lodged pursuant to section 32A and 119 of the Act by Tamsing Pty Ltd (“the Licensee”), for the premises known as Litchfield Motel situated at 49 Rum Jungle Road, Batchelor. The Licensee is seeking to vary conditions of its trading hours coupled with an application to extend the premises’ licensed area.
9. The Licensee is the holder of liquor licence number 80104092 with Authority – Public Hotel. Although the licence is described as a Public Hotel Authority it provides for different trading hours in the Dining Room, Lounge and Public Bar. Liquor may only be sold in the Dining Room between 12:00 and 15:00 and 18:00 and 23:00, in the Lounge generally between 11:30 and 23:00 and the Public Bar between 10:00 and 23:30.
10. A brief overview of the applications is to allow trading for consumption of liquor on the premises, across all bars :
 - Sunday to Saturday 10:00 to 01:00 (the following day);

- Public Holiday trading hours inclusive of New Year's Eve, Good Friday and Christmas Day 10:00 to 01:00 (the following day);and
- To extend the licensed premises area for the sale and consumption of liquor to incorporate the vacant land which is leased to the Licensee (by a related company) and is adjacent to the main Motel.

11. The following documents have been provided to support the application:

- Affidavit in accordance with section 26A of the Act;
- Community Impact Assessment in accordance with section 6 of the Act;
- Public Interest Criteria in accordance with section 6(2) of the Act;
- Site plans of the proposed extended licence area together with Certificate of Title and relevant company search.

Publishing of application and consultation

12. The application was published in the NT News on Saturday 9 November 2019 and Wednesday 13 November 2019. Copies of the notices in the newspaper and photographs of the "Green Sign" erected notice were supplied. The "Green Sign" was displayed on the fence at the front entrance in a prominent position. The Licensee provided a copy of the Statement of Display. The objection period ended on 13 December 2019. As a result of the application being advertised no objections were received.

13. In accordance with section 32A(5) of the Act notification was made to

- CEO of Department of Health;
- Commissioner of Northern Territory Police;
- NT Fire and Rescue Service;
- Litchfield Council.

14. The Department of Health responded as follows:

"The Department of Health (Health) has **no adverse comment** on the application to extend trading hours to the existing licensed premises. Health is **not able to support** the application to allow trading hours to apply to the extended proposed liquor licensed area as applied for. Health could support an application for an extended constructed Outdoor Dining Area (Beer Garden) within proximity to the established licensed premises.

Health could support an application for special events, community events as appropriate from time to time upon application to the Director of Liquor Licensing.

Health could support an application for off premises sales to bona fide persons taking up residency in a caravan park, cabin park or camping grounds as may be constructed in the future.

This is NOT a formal objection".

15. The Northern Territory Police submitted that the extension to 01:00 hours was supported, not including takeaway, only subject to:

- Adoption of crowd controller conditions be included to mirror industry standards for the venue;
- takeaway hours being maintained as per the current licence (80104092) Takeaway hours.

Police did not support the blanket extension of the licenced premises footprint out to the southern corner of the premises including block 257 in its current format.

16. NT Fire and Rescue submitted “NTFRS will be conducting further inspections of this building once an occupancy permit has been issued for the alterations to ensure the building complies with Fire and Emergency Regulations”.

Compliance History

17. A check of the records held at Licensing NT indicate no compliance issues are evident.

The Hearing

18. The applications were referred to the Commission on 17 February 2020.

19. Pursuant to section 50 of the Act, the Director must refer applications such as these to the Commission to be determined following a public hearing (section 53).

20. The hearing was conducted on 2 March 2020. Mr Michael McElwee, one of the nominees, assisted by Mr Alex Bruce, Hospitality NT appeared for the Applicant. Mr Jeff Verinder appeared for the Director. The Commission thanks all those appearing for their assistance. During the course of the hearing the following documentation was tendered as exhibits:

- Exhibit 1 Referral of the Director of Liquor Licensing;
- Exhibit 2 Email chain of Police communications being replacement of Attachment J;
- Exhibit 3 2 x photos showing wire fence;
- Exhibit 4 Arial view of licensed premises;
- Exhibit 5 Photo of current licence boundary and special licence boundary;
- Exhibit 6 Bundle of photos showing upgraded works at licensed premise.

Assessment of the Application

21. There were no objections nor any adverse comments from stakeholders in relation to the application to rationalise and extend the trading hours for on premises consumption of liquor. However both Police and Health whilst not formally

objecting to the application for material alteration did express concern over any “blanket extension” of the licensed premises into the adjoining vacant block.

22. The Commission considers the matters raised by the stakeholders to be valid concerns and these issues were discussed at length with the Licensee during the course of the hearing.
23. Despite there being no objections made to the application lodged by the Licensee, the Act clearly provides that these types of applications must be referred to the Commission for decision. In addition, section 6B of the Act makes clear 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.
24. As is clear from section 6(1) of the Act; when considering or determining an application in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Sections 6(2) and 6(3) of the Act set out what the Commission must consider.
25. In addition, 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”.
26. Those guidelines set out the matters that are “to be considered” when assessing the community impact against the criteria under section 6A. There are therefore a large number of matters that the Commission must therefore consider and that the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines.
27. 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”.
28. With respect to these applications, the Commission considers it relevant to note that they are not applications for a new licence. The proposal is to standardise the hours of operation across the whole of the premises following discussions with licensing officers. Given the nature of the premises there seems no valid reason for imposing different hours of operation for the different points of sale within the licensed premises. If the Licensee wants to use the Dining Room for a function between 14:00 and 18:00 why should it not be permitted to do so?

29. The Commission was not persuaded that the ordinary trading hours should apply on the Christmas Day and Good Friday holidays. The Liquor Regulations 2019 made under the new Liquor Act 2019 will allow a Public Bar Authority to operate from 11:00 to 21:00 on both these days, provided a full meal is served to patrons. Although this matter is being determined under the old Act, the Applicant conceded that there were no compelling reasons why it should be entitled to trade for any longer period on these holidays than it will be permitted once the new authorities come into force. The Commission also agreed to afford the Licensee the option of trading for another hour on New Year's Day in line with the standard conditions for the new Public Bar Authority.
30. In relation to the application for an extension of trading hours until 01:00 hours for all other days of the year the Licensee pointed to the improvements it had made to the premises to make it more attractive to tourists. There are not a lot of options for tourists wanting accommodation at Batchelor and the Licensee is to be commended for making a significant investment in upgrading the facilities at the motel and to also providing a much better dining experience for visitors than was previously available in the town. Although the Licensee is hoping that the new abattoir with its shift workers will provide some new local patronage for the business, it is the tourism market that is its primary focus. Mr. McElwee spoke at length about his plans to encourage tour groups and individual tourists to the Motel. He and his family have a proven record of operating well managed licensed businesses in the Territory. What is being proposed is a realistic rejuvenation of what was a "tired old business" for the benefit of both tourists and the local community alike. On the evidence before it the Commission is satisfied that the modest increase in trading hours will not have an adverse impact on community harm and is in the public interest.
31. As part of its focus on bringing more tourists to Batchelor the Licensee has held a number of special events such as weddings, a music festival and corporate events on its adjoining vacant block. In the past it has been obliged to apply for a special licence or temporary material alteration to allow these events to take place. New toilet facilities have been erected on the block and the Licensee has a mobile bar which can be moved on to the site for the sale of liquor. At the hearing Mr Verinder presented the Commission with a draft of conditions which had been prepared by licensing officers which would allow the Licensee to obtain permission from the Director to use the extended licensed footprint for special events on an ongoing basis without having to make individual application in respect of each event. The Licensee was content to abide by those conditions which would limit its use of the extended area to special pre-arranged events rather than persist with its application for a blanket extension of the licensed premises. The Commission considers this to be a sensible compromise and is indebted to Mr Verinder and his licensing officers for developing the framework for this conditional extension of the licensed premises.

32. The Commission is satisfied that it is in the public interest to approve the material alteration on the terms proposed and that it is also permissible for the Licensee to continue trading whilst the material alteration is being made pursuant to section 119(10) of the Act.
33. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined decided to approve the material alteration to the licensee's licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights

34. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the 1978 Act. A decision to vary the conditions of a liquor licence pursuant to section 32A of the Act and a decision to approve a material alteration pursuant to section 119(8) of the Act are specified in the Schedule and are reviewable decisions.
35. Section 120ZC of the 1978 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.
36. 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.



RICHARD COATES
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
X March 2020
On behalf of Commissioners Coates, Stephenson and Hart