

## Director-General of Licensing

### Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR VARIATION OF LICENCE CONDITIONS</b>
<b>LICENCE NUMBER:</b>	80300296
<b>PREMISES:</b>	<b>THE HOTEL DARWIN</b> Corner Mitchell and Herbert Streets, DARWIN
<b>APPLICANT:</b>	<b>Marlin Darwin Pty Ltd</b>
<b>NOMINEE:</b>	<b>Mr Brett Lubicz-Zaorski</b> <b>Ms Penelope Phillips</b>
<b>OBJECTORS:</b>	<b>City of Darwin</b>
<b>LEGISLATION:</b>	Section 32A and Part IV of the <i>Liquor Act</i>
<b>DECISION OF:</b>	Director-General of Licensing
<b>DATE OF DECISION:</b>	<b>11 December 2017</b>

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### BACKGROUND

1. The Hotel Darwin currently holds a Tavern Liquor Licence authorising the sale of liquor for consumption on and away from the licensed premises. The licensee is Marlin Darwin Pty Ltd (the Applicant) and the dual nominees under the liquor licence are Mr Brett Lubicz-Zaorski and Ms Penelope Phillips.
2. On 8 May 2017 Mr Trevor Candido, on behalf of the applicant, lodged an application pursuant to section 32A of the *Liquor Act* (the Act) for permanent variation of the licence conditions applicable to the liquor licence for the Hotel Darwin. The application seeks the removal of the licence condition prohibiting trade in the sale of liquor on Good Friday. In addition, the application seeks authorisation for patrons to attend the licensed premises from 5.00 am to 10.00 am on ANZAC Day for the purpose of breakfast in association with ANZAC Day remembrance activities. It is not proposed that alcohol would be sold prior to the usual 10.00 am opening time. The application also seeks approval to change the name of an area within the licensed premise from "Function Room" to "Sports Bar".

3. The Darwin Hotel has for the previous three years been granted approval to trade on Good Friday through temporary variations to the licence conditions. Following the approval to trade on Good Friday 2016, the Applicant was advised that it should not anticipate that future applications for temporary variations of licence conditions would be approved. The Applicant was advised that should it wish to trade on Good Friday it should make application for a permanent variation to its licence conditions in that regard. That advice has resulted in this application.

#### **Advertising**

4. The application was advertised in the Northern Territory News on Wednesday 7 June and Saturday 10 June 2017 with the objection period expiring on Monday 10 July 2017. No objections were received from members of the general public during that period.
5. As per usual practice, the application was also forwarded to the Department of Health, NT Fire & Rescue service (NTFRS), NT Police, City of Darwin and the Development Consent Authority for comment. The Department of Health, NTFRS and the Development Consent Authority raised no adverse comments in respect of the application

#### **NT Police Objection:**

6. NT Police advised that it objected to the application to sell liquor on Good Friday on the grounds that an increase in the number of business serving alcohol on Good Friday places an increased need for services on Police during an already busy period.
7. That objection was found to be invalid on the basis Police resourcing is not a ground for objection prescribed by section 47F(2) of the Act.

#### **City of Darwin Objection:**

8. City of Darwin objected to the variation of licences to allow the sale of liquor on Good Friday noting that over the past two years Council has seen an increase in applications to extend trade to include Christmas Day and Good Friday. Both days have limited or no access to public support services recognised as important health and wellbeing counter measures. The objection also raised concerns regarding the lack of empirical data to inform licensing decisions and in the ongoing absence of services such as Sobering Up Shelters that at minimum, mirror the operating hours of Darwin's alcohol supply.
9. The objection also noted that Council has committed significant resources to address the adverse impacts of alcohol, and that there are limited or no support services on Good Friday. Council submitted that trading on Good Friday may adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located or the health, education, public safety or social conditions in the community.

### **Applicant's Response to the Objection:**

10. The applicant responded to the City of Darwin objection by way of letter dated 19 July 2017. The Applicant submitted that the objection restates Council's policy position in relation to such matters, however the policy position has not been stated as a ground of objection and the policy position does not take into account the specific attributes of the Hotel Darwin. Although the objection references grounds prescribed by section 47F of the Act it does not submit any valid facts supporting the grounds as required by section 47F(4)(c) of the Act.
11. The Applicant also submitted that aside from its policy position the City of Darwin has not provided any evidence in relation to the amenity of the neighbourhood where the Hotel Darwin is located or the manner in which approval of the application will impact adversely on the health, education, public safety or social conditions in the community. For those reasons the Applicant submitted that the City objection is invalid and should be disregarded.
12. The applicant also noted that the Hotel Darwin has traded on Good Friday in 2015, 2016 and 2017 with no recorded incidents which adversely affected the amenity of the neighbourhood where Hotel Darwin is situated and that it is unfair to assume adverse findings against the applicant when all the evidence demonstrates the opposite.
13. The Applicant also submitted that The Hotel Darwin has already been trading on Good Friday for the past three years without increasing or adding to the harm or ill-health of the area. The improved business model implemented by the Applicant since taking over the Hotel Darwin in September 2015 have made the venue more approachable to the general public largely due to the quality provision of food which now accounts for 29.7% of the venue's overall revenue.
14. It was also submitted that the Hotel Darwin is a low-risk venue due to the nature of operation which now exists under current management. The clientele is mainly local Darwin residents attending the venue for food and the provision of live sports in the newly renovated Sports Bar. The significant reduction in crowd numbers post 10.00 pm is in stark contrast to other high-risk venues on Mitchell Street.
15. The Applicant stated that it does not intend to sell takeaway alcohol on Good Friday. Further, no objections were lodged in respect of previous applications for trade on Good Friday from 2015 to 2017 and each time the Hotel Darwin has traded on Good Friday it has done so without incident or disturbance to neighbours. It was further submitted that the failure to grant the Application would be anti-competitive, given that numerous other licensed venues are permitted to trade on Good Friday, venues that Hotel Darwin has traded alongside in the past three years.
16. In order to mitigate key concerns, the Applicant proposed the following conditions in relation to trading on Good Friday:
  - Kitchen to be open for Lunch and Dinner service as per usual trading periods;
  - Closing time of 12.00 midnight (as opposed to the usual closing time of 2.00 am);
  - No takeaway liquor to be sold.

## PUBLIC HEARING

17. Due to the receipt of a valid objection, the application was referred to a public hearing in accordance with the Guideline issued by me as the Director-General of Licensing (Director-General) in respect of the conduct of public hearings.
18. The public hearing in respect of the application was convened at 11.00 am on 9 November 2017. Originally the hearing was scheduled for 10.00 am on that date however the parties were advised that the commencement time was deferred to 11.00 am due to unavoidable circumstances that had resulted in the unavailability of the Director-General at the original time. Mr Ben Rasheed, Group General Manager, and Mr Trevor Candido, Operations Manager, attended the hearing as representatives of the Applicant. Representatives of the City of Darwin did attend the Licensing NT offices at 10.00 am for the hearing and were advised of the delayed start time. Despite follow up phone calls, no representatives of the City of Darwin were in attendance for the hearing at the rescheduled start time of 11.00 am

### **Submissions on behalf of the Applicant:**

19. Mr Rasheed advised that Marlin Group Pty Ltd currently operates seven licensed premises across all Australian jurisdictions with the exception of Tasmania and the Australian Capital Territory. The company employs over 300 staff and prides itself on the professional management of its premises and the adoption of best practice in respect to the sale and supply of liquor.
20. Marlin Group acquired the Hotel Darwin in 2015 at which time the premises were regarded as being in a run-down condition. Since taking over the premises, the licensee has implemented a business model based around the provision of a high standard of food, beverage and gaming services catering to a more mature and more discerning clientele that includes local residents, local CBD workers and travellers seeking a higher standard of venue.
21. In support of that submission, Mr Rasheed noted that the Hotel Darwin has been recognised by the hospitality industry for its high standards and commitment to service and best practice and in 2017 received the following awards presented by the Australian Hotels Association (NT) and the Australian Hotels Association (National):
  - Winner AHA National Awards 2017 - Best Sporting Entertainment Venue;
  - Winner AHA NT Awards 2017 - Best Overall Metropolitan Hotel;
  - Winner AHA NT Awards 2017 - Best Sporting Entertainment Venue; and
  - Winner AHA NT Awards 2017 - Best UBET Licensed Venue.
22. Mr Rasheed stated that the Hotel Darwin now has an extensive food menu and sells in the order of 40,000 plates of food per annum and that income from food sales has increased two or threefold since the Marlin Group has been operating the premises. He stated further that the premises caters to the tourist market and that management is actively involved in the promotion of Darwin as a tourist destination and a member of Tourism Top End. The Hotel contributes towards tourism in the Darwin CBD and is regularly servicing out of town visitors, including on Good Fridays. Mr Rasheed referred to a letter of support from Tourism Top End endorsing the submission for Good Friday trading.

23. Mr Rasheed stated that the Hotel Darwin has a strong business relationship with Palms City Resort, a nearby tourist accommodation venue, where it provides food services to their guests. Palms City Resort does not provide lunch or dinner services for its guests, they refer them to the Hotel Darwin and a chargeback arrangement has been established allowing guests of the Palms City resort to charge purchases back to their room. The Palms City Resort has also provided a letter of support for the application for Good Friday trading.
24. In response to the objection lodged by City of Darwin, Mr Rasheed submitted that there are a number of other licensed venues in the Darwin CBD that are permitted to trade on Good Friday. He tendered into evidence a map identifying the location of those premises within the CBD. He noted that premises which are authorised to trade on Good Friday include seven other taverns and bars, 14 licensed restaurants licensed, three backpacker bars as well as two other licence type venues. He submitted that given that these other licensed premises are located to the north, south, east and west of the Hotel Darwin an approval for it to trade on Good Friday will not increase the geographical bounds of any Police or Emergency Services response or patrols.
25. Mr Rasheed emphasised that the targeted clientele of the venue were locals and up-market tourists and not the backpacker or nightclub markets. On most evenings trade ceased around 10.00 pm and the Hotel Darwin does not wish to compete with late night nightclub venues also located in the Darwin CBD.
26. As noted above, the Darwin Hotel has been open for trade on Good Friday for the previous three years under the authority of temporary licence condition variations. Mr Rasheed stated that trade on Good Fridays by the Hotel Darwin had not resulted in any Police interventions or alcohol related incidents. He stated that the ability to trade on Good Fridays provided a positive benefit to tourists seeking a safe venue to dine and enjoy a drink. He noted that the level of patronage on previous Good Fridays provided a clear indication that there was public need for the types of services offered by the Hotel Darwin on that day.
27. Mr Rasheed submitted that, should the application be approved, the licensee was agreeable to the following specific licence conditions being imposed for Good Friday trading:
  - Takeaway alcohol will not be sold;
  - Crowd controllers will be employed at peak periods;
  - The venue will be open from 10am to midnight, as opposed to the usual trading hours which cease at 2.00 am;
  - The full food menu will be available from 11.30 am to 9.00 pm, which is the same as any other trading day; and
  - No gaming machine activity will be conducted.

28. In response to the objection lodged by City of Darwin, Mr Rasheed submitted that whilst the objection referred to the potential for an adverse impact on the amenity of the neighbourhood no relevant facts were provided to support that assertion. The objection does not provide any linkage to the Hotel Darwin specifically and is, in effect, a bald statement of council's policy position. On that basis he submitted that the objection should be rejected outright or given little weight in considering this specific application. Mr Rasheed noted further that the objection included no empirical data relating to Good Friday trade and the impact on the amenity of the community, adverse or otherwise.
29. Mr Rasheed stated that Representatives of the Applicant attended the City of Darwin Council Ordinary Meeting on 11 July 2017 when the application was considered and noted the following observations:
- The City of Darwin Lord Mayor, who voted against supporting the Application Hotel Darwin's application, was unaware that other venues in the Darwin CBD were able to trade on Good Friday;
  - A councillor submitted that people didn't need to access the services of taverns on Good Friday, when actual patronage evidence, including that of Hotel Darwin's trade, supports the opposite; and
  - A councillor submitted, when speaking in favour of Hotel Darwin's application, that not allowing trade on Good Friday was "an ancient tradition and may be an old and worn view", a position supported by the Applicant.
30. In respect of the statement by council that alcohol support services do not operate on Good Fridays, Mr Rasheed tendered a document into evidence which indicates that of the 10 alcohol support service providers located in Darwin, two providers do not offer services on Good Friday, four providers do in fact offer services on Good Friday and the position in that regard with the remaining four is unclear. He submitted that the statement contained in Council's objection was inaccurate at best and, at worst, made flippantly without any effort to confirm its accuracy.
31. The Director-General referred Mr Rasheed to the recently published Alcohol Policies and Legislation Review Report and the recommendation that Good Friday should be treated a restricted day with trading restricted to 10.00 am to 10.00 pm. Mr Rasheed acknowledged that, should that recommendation be adopted by Government, the Hotel Darwin would of course comply with any restrictions in that regard. However, he was not inclined to make that concession at this stage as the premises that are currently authorised to trade on Good Friday would enjoy a commercial advantage as they are not currently restricted in that manner. He emphasised that the Hotel Darwin is not seeking any more than the status quo that is currently enjoyed by the numerous licensees who are presently authorised to trade on Good Fridays.
32. In respect of the religious significance of Good Friday, Mr Rasheed submitted that society has changed significantly over time and the significance of religious holidays has been eroded over the years. He also submitted that Good Friday is not a day of significance for persons of non-Christian religions.

33. With regard to the application to authorise patrons to access the Hotel Darwin from 5.00 am on ANZAC Day, Mr Rasheed noted that this had been approved in previous years and the variation was requested to allow persons attending Dawn Services to access the hotel for breakfast. No alcohol will be available for purchase until the usual opening time of 10.00 am. He also noted that the Darwin RSL supported the early opening time. Mr Rasheed noted that no objections were received in respect of that component of the application.
34. The application for variation to the licence condition also seeks to change the name of the current "Function Room" to the "Sports Bar" to properly reflect the type of activity that is conducted in that area of the licensed premises since the Applicant took over the operation and management of the premises.

**Submissions on behalf of City of Darwin:**

35. By letters dated 25 September 2017 the parties, including City of Darwin, were advised of the date and time of the public hearing, being 10.00 am on 9 November 2017. By emails dated 2 November 2017 the parties were further advised that the commencement time for the public hearing had been deferred to 11.00 am due to unavailability of the Director-General. Despite the email advice, which was forwarded to the same email address as the original notification, representatives of City of Darwin attended at the Licensing NT offices at 10.00 am at which time the deferment of the hearing to 11.00 am was re-confirmed.
36. Unfortunately no representative of City of Darwin appeared for the hearing at 11.00 am and a follow up phone call revealed that City of Darwin would not be represented at the hearing. This was a particularly disappointing outcome given the City of Darwin objection was the prime reason the hearing was convened. I am satisfied that officers of City of Darwin were appropriately advised on the hearing details, including the deferment of the hearing start time. On that basis it is reasonable for me to conclude that City of Darwin chose not to appear at the hearing for reasons not disclosed to the Director-General.
37. On that basis the only submissions on behalf of City of Darwin that may be taken into account by the Director-General in determining the application are those contained in the letter of objection dated 12 July 2017. Those submissions are summarised in paragraphs 8 and 9 above.

## **ASSESSMENT OF THE APPLICATION AND OBJECTIONS**

38. The City of Darwin objection relies on its policy position in respect of licensed premises advocating for liquor supply reduction, demand reduction and harm minimisation. That policy position underpins the objectives of the Safer Vibrant Darwin Plan. As noted by the Applicant in its written submissions and at the public hearing, the council objection makes no specific reference to the Hotel Darwin itself nor to any harms that have arisen during the previous three years when the premises have traded on Good Friday under the authorisation of temporary variations of licence conditions.

39. In its submissions, the Applicant noted that 10 hotels, bars and taverns located in the Darwin CBD are authorised to trade on Good Friday. In addition 13 restaurants within the CBD and the Darwin Waterfront Precinct are permitted to trade on Good Friday along with Skycity Casino. Of significance, the Hotel Darwin have traded on Good Friday from 2014 to 2016 via temporary variations without any indication of alcohol related hard or anti-social behaviour arising. During the previous three years, no issues of concern have been brought to the attention of Licensing NT in respect of the Hotel Darwin trading on Good Friday. Whilst the objection lodged by NT Police was deemed invalid Police did not raise any issues of concerns relating to incidents at the Darwin Hotel on previous Good Fridays.
40. It must be noted that a number of licensed premises authorised to trade on Good Friday are in close proximity to the Hotel Darwin premises. Through temporary variations the Hotel Darwin has demonstrated a good track record in respect of the operation of its business activities on Good Fridays, including the sale of alcohol for on-premises consumption. To deny the application submitted for the Darwin Hotel clearly places the business at a competitive disadvantage in comparison to similar premises that are currently open for trade on Good Friday.
41. As submitted by the Applicant, there is an obvious public need for access to licensed premises on Good Friday, as evidenced by the fact venues that are open on that day are supported by significant numbers of patrons. In addition, tourists and visitors to Darwin frequent the Darwin CBD on Good Fridays to enjoy the food and drink options available. The Applicant specifically referred to tourists staying at the Palm City Resort as clients who have utilised the services provided by the Hotel Darwin on Good Friday in previous years.
42. Good Friday is a day of religious significance for a proportion of the population. However, it is also fair to say that not all members of the community share those religious beliefs. Given the multicultural make-up of the Darwin population it is not surprising that many people do not celebrate Good Friday as a religious day but as merely a public holiday. There is little doubt that the views of society generally have shifted in regard to Good Friday and many services, including petrol stations and supermarkets, are now available on Good Friday that were not available in the past.
43. The Applicant was advised following the previous temporary variation that no further applications for temporary variations would be considered by the Director-General. The Applicant has subsequently adopted that advice and made application for a permanent variation to its licence conditions.
44. In the absence of any information or data within the City of Darwin objection linking alcohol related harm arising from trade on Good Friday by the Darwin Hotel during the previous three years, I am not persuaded that there are any reasonable grounds on which to refuse the application. In reaching that conclusion considerable weight is placed on the fact that numerous licensed venues do open for trade on Good Friday attracting significant numbers of patrons without any indication of an increase in harms or anti-social behaviour beyond what is experienced during other trading periods.

45. I have also determined to approve the application for authorisation to allow patrons to attend the Hotel Darwin premises from 5.00 am on ANZAC Day for the purpose of purchasing breakfast before or after the traditional Dawn Services held on The Esplanade in the Darwin CBD. There is no intention for alcohol to be sold prior to the normal opening time of 10.00 on ANZAC Day with the result no issue arises in respect to any alcohol related harms. In reaching that determination I also note the Applicant's submission that the proposal has the support of the Darwin RSL.
46. The application to vary the licence conditions to note the change of name of the area within the premises from the former "Function Room" to the "Sports Bar" would not actually result in a change to the conditions but rather a reflection of the current activities conducted in that area. The new liquor licence issued as a result of this decision will incorporate the name change.

## DECISION

47. On the basis of the reasons set out above and in accordance with section 32A(7) of the *Liquor Act* I have determined to vary the conditions of the liquor licence for the Hotel Darwin by removing the existing condition prohibiting trade in the sale of liquor on Good Fridays. The approval to trade on Good Friday shall be subject to the following special conditions:
- Trading hours for the sale of liquor for on premises consumption on Good Friday shall be from 10.00 am until 12.00 midnight;
  - Take away alcohol will not be sold on Good Friday;
  - Crowd controllers will be engaged during peak periods;
  - The full food menu will be available form 11.30 am until 9.00 pm.
48. It is unnecessary to include a condition prohibiting gaming machine activity as Regulation 10 of the Gaming Machine Regulations, currently prohibits gaming from being conducted after 4.00 am on Good Friday.
49. In addition, I have determined to approve the application to allow patrons to enter and remain on the licenced premises from 5.00 am on ANZAC Day for breakfast associated with services conducted on that day. The approval does not authorise the sale of liquor prior to the usual opening time of 10.00 am.

## REVIEW OF DECISION

50. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision to vary the conditions of a liquor licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision. 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. For the purpose of this decision, and in accordance with section 120ZB(b) and(c) of the Act, the affected persons are the Applicant and persons who lodged a valid objection, namely City of Darwin.



**Cindy Bravos**  
**Director-General of Licensing**

11 December 2017