

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION FOR PERMANENT VARIATION OF  
CONDITIONS AND MATERIAL ALTERATION OF  
LICENCE

**LICENCE NUMBER:** 81019401

**REFERENCE:** LC2019/066

**LICENSEE:** One Mile Brewery (NT) Pty Ltd

**PREMISES:** One Mile Brewery

Unit 8/111 Coonawarra Road  
WINELLIE NT 0820

**APPLICANT:** One Mile Brewery (NT) Pty Ltd

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

**HEARD BEFORE:** Mr Russell Goldflam (Acting Deputy Chairperson)

Ms Pauline Reynolds (Health Member)

Mr Blair McFarland (Community Member)

**DATE OF HEARING:** 17 June 2019

**DATE OF DECISION:** 25 July 2019

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**Decision**

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978* ("the Act"), the Commission has determined to vary the conditions of Liquor Licence Number 81019401 ("the licence"), as follows:

- a. Amend the trading hours under the heading "Trading Hours On-Premises Consumption" to the following:

Trading Hours for One Mile Brewery shall be between:-

Thursday	17:00 hours to 22:00 hours
Friday	16:30 hours to 22:00 hours
Saturday	11:00 hours to 22:00 hours
Sunday	12:00 hours to 22:00 hours

Public Holidays (except Good Friday and Christmas Day)  
12:00 hours to 22:00 hours

- b. Immediately after the above condition, insert the following condition under the heading "Trading hours for pre-booked special events":

Liquor may be sold for on-premises consumption between 22:00 hours and 23:59 hours on Thursday, Friday, Saturday, Sunday or a Public Holiday (except Good Friday and Christmas Day) for a special event at the licensed premises, provided the licensee has notified Licensing NT of the event by email transmitted during business hours not less than 48 hours prior to the event.

- c. Omit the condition "No trading on Good Friday and Christmas Day" under the heading "Exceptions".

- d. Omit the Special Condition headed "Advertising and Signage" and substitute the following Special Condition under the same heading:

The consumption of liquor other than for the purpose of tasting, for the purpose of consuming with a meal, or for the purpose of special events shall not be advertised or promoted.

- e. Insert the following Special Condition headed "Appearance":

The premises shall at all times have the appearance of and shall trade predominantly as a microbrewery, tasting room and eatery.

- f. Omit the Special Condition headed "Alcohol Restrictions".

- g. Omit the words "The sale of liquor is restricted to products produced by the Licensee at the premises" under the heading "Sale for Consumption On and Away from Premises".

- h. Insert a Special Condition headed "Sale and Consumption of Liquor" as follows:

The sale and supply of liquor, and the consumption of liquor on the premises is restricted to products produced by the Licensee.

2. For the reasons set out below and in accordance with section 119(8) of the Act, the Commission has determined to approve the material variation of the licence by extending the footprint of the licensed premises to include the outdoor area delineated in red on "Attachment H" at page 57 of the brief of evidence marked Exhibit One at the hearing of the application ("the outdoor area").

3. The licence will be issued immediately following the publication of this decision subject to a condition that the licensee will not commence trade in the sale and consumption of liquor in the outdoor area until:

- a. Northern Territory Fire and Rescue Services (NTFRS) has inspected the premises;
  - b. the Director-General has been provided with information regarding the premises' maximum permitted patron numbers and compliance with Fire and Emergency Regulations;
  - c. the Director-General has been provided with evidence that the premises have been satisfactorily constructed and the appropriate statutory approvals, including the issue of any applicable certificate of occupancy, have been obtained by the licensee; and
  - d. The Commission has issued approval in writing to commence trade in the sale and consumption of liquor in the outdoor area.
4. The Commission notes that pursuant to s119(1) of the Act, while the material alteration is being carried out, the licensee must not conduct business on the licensed premises except in accordance with arrangements approved in writing by the Commission.
  5. The Commission requests the Director-General of Licensing (“the Director-General”) to review the status of the licensee as being exempt from application of s31A of the Act.

## **Reasons**

### **Background**

6. Stuart Anthony Brown and Bahadir (“Bardy”) Bayram (“the applicants”) are the enterprising founders and sole directors, operators, licence nominees and employees (currently on a part-time basis) of One Mile Brewery Pty Ltd (“the licensee”). The applicants started their craft beer and cider microbrewery in 2012, when they were granted a liquor licence authorising them to trade as a wholesaler of liquor and as a liquor merchant.
7. In 2017, the applicants obtained approval to move their brewing and trading operations from Palmerston to an un-airconditioned industrial shed in the industrial area of Winnellie. They also then applied for “authorisation to supply or sell the brewery’s own products for consumption at the licensed premises from 10:00 am to 10:00 pm Monday to Sunday and not ancillary to a meal.”<sup>1</sup> That application was objected to by police, and, in accordance with the Act as then in force, the Director-General of Licensing conducted a public hearing of the application.
8. Observing that the hours sought were “more in line with those applicable to a hotel or tavern licence and not the normal hours associated with cellar door sales”, the Director-General, while maintaining the designation of the licence

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<sup>1</sup> Director-General of Licensing, *Decision One Mile Brewery – Application for Variation of Licence Conditions* (17 October 2017) (“the 2017 Decision”), 1.

authority as a Liquor Merchant, granted the application in part, on conditions including the following:<sup>2</sup>

- a. Trading hours for on-premises consumption:
    - on Thursday and Friday from 17:00 hours to 22:00 hours; and
    - on Saturday and Sunday from 12:00 hours to 22:00 hours.
  - b. Takeaway hours from Monday to Saturday from 10:00 hours to 22:00 hours.
  - c. Restriction on the sale of liquor for consumption on the premises to 1140 mls per person per visit.
  - d. All advertising to be subject to the approval of the Director-General.
  - e. Tours and liquor tastings outside of on-premises trading hours that have been pre-booked with at least 24 hours' notice are permitted.
  - f. The sale of liquor is restricted to products produced by the licensee at the premises.
9. Since August 2017, when the applicants commenced to operate from their current premises at Winnellie, the business has continued to grow. It now supplies approximately 20 venues and has participated in numerous Darwin festivals and food events, including a Bar-B-Q Festival at the premises that attracted in excess of 1000 visitors. The licensee's products have been promoted at national and international tourism events, and have achieved notable recognition in the national craft beer arena. The applicants aspire to double their annual production at the current premises, with a view to further expansion of production capacity, which in turn will enable the licensee to employ additional staff.
10. As authorised by the 2017 Decision, the licensee commenced to sell liquor for consumption on the premises in October 2017. Since then, the applicants have identified the enhancement and growth of their on-premises trade as a key component of their marketing and sales strategy.
11. To that end, the applicants applied for, and in December 2018 received funding of \$50,000 under the Northern Territory Visitor Experience Enhancement Program towards "an outdoor entertainment area".
12. On 6 March 2019 the applicants applied, pursuant to s32A of the Act ("Variation of conditions on application by licensee"), to vary the licence conditions referred to at paragraphs 8a, 8c, 8d, 8e and 8f above.
13. Specifically, the applicants applied:
- a. To vary trading hours by:
    - i. extending them to one minute before midnight on each trading day except Thursday;

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<sup>2</sup> Liquor Licence Number 81019401, date of effect 17 October 2017

- ii. commencing them an hour earlier on Thursday and Friday, and two hours earlier on Saturday<sup>3</sup>; and
      - iii. permitting trade on Public Holidays (excluding Christmas Day and Good Friday) from noon until one minute before midnight.
    - b. To delete the restriction on the quantity of liquor that may be sold for consumption on the premises.
    - c. To delete the restriction on advertising.
14. In addition, the applicants applied to extend the footprint of the licensed premises to incorporate the outdoor area as an addition to the existing shed. This proposed variation constitutes a “material alteration” of the premises for the purposes of the Act, determination of which is governed by s119 of the Act (“Alteration of premises”). The applicants propose to fit out the outdoor area with two shipping containers, a deck, a large domed shade structure, seating space for 80 people, entry steps, an access ramp, furniture, fittings and lighting.
15. Although these two distinct applications are regulated by different provisions of the Act, the procedures set out in s32A and s119 are conveniently similar, permitting the applications to be investigated together by the Director-General, and for them to be heard and determined together by the Commission.
16. In summary, the applicants seek to supply their brews to walk-in customers for longer hours, in a larger area, with no special restriction on the amount that can be purchased and consumed, and to provide food on-site from a food truck they have had fitted out for that purpose.
17. On 21 May 2019, following consultation, together with an assessment by Licensing NT of the applications, a Delegate of the Director-General of Licensing referred the applications to the Commission for hearing pursuant to s32A(6AA) and s119(6A) of the Act respectively.
18. The Director-General provided the Commission with a brief of evidence (“the brief”) including:
- Application for permanent variation to liquor licence dated 1 March 2019.
  - Application for material alteration to licensed premises dated 1 March 2019.
  - Liquor licence 81019401.
  - Confirmation that licensee is exempt from Banned Drinkers Register<sup>4</sup>.
  - Section 26A affidavits deposed by Stuart Anthony Brown and Bahadir Bayram dated 1 March 2019.
  - Public Interest Statement and Community Impact Assessment.
  - Plans and technical drawings of the proposed extended licensed area.
  - One Mile Brewery Business Plan.
  - Smoking Management Plan incorporating a designated Outdoor Smoking Area.

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<sup>3</sup> Subsequently, by email to Licensing NT dated 11 April 2019 the applicants amended their application for trading to commence at 16:30 hours on Friday, and 11:00 hours on Saturday, with commencement times on Thursday and Sunday to remain unchanged.

<sup>4</sup> See Schedule 1 and Regulation 5A(2), *Liquor Regulations*; and s31A, *Liquor Act*

- Letter from Minister for Tourism and Culture dated 11 December 2018 confirming funding grant towards outdoor entertainment area.
- Correspondence between the applicants and Licensing NT regarding planning approval.
- Newspaper advertisements and “Green Sign” in compliance with notification requirements.
- Correspondence with Department of Health (“DOH”).
- Correspondence with NT Police.
- Correspondence with City of Darwin.
- Correspondence with NTFRS.
- The 2017 Decision.

19. The Director-General informed the Commission that the licensee has no adverse history of non-compliance with its licence conditions or the Act.

### **Consultation**

20. Pursuant to s32A(2) and s119(3) of the Act, the Director-General required the applicants to publish notice of the applications, which they duly did. No objections were received.

21. As required by s32A(5) and s119(5) of the Act, the Director-General notified DOH, NT Police and the City of Darwin Council of the application. The Director-General also consulted with NTFRS. None of these bodies objected to the variation sought.

### **Hearing**

22. On 7 June 2019, the Commission notified the applicants that the application would be heard at a public hearing on 17 June 2019. On 17 June 2019, Mr David De Silva, De Silva Hebron, appeared on behalf of the applicants, and Mr Verinder appeared for Licensing NT. The Commission thanks them for their attendance and considerable assistance.

23. The brief was tendered and admitted into evidence without objection. In addition, the following documents were tendered by the applicants: a bundle of photographs of the premises and the food truck; a copy of the licensee’s Visitors Book; a Building Permit for the works to establish the proposed outdoor area of the premises; a building fire safety report, a development permit; and a Certificate of Registration of a Food Business. Following the hearing, at the request of the Commission, it was provided with a copy of the licensee’s licence as in effect prior to the 2017 Decision.

24. Mr Brown gave oral evidence on behalf of the applicants, and Mr De Silva made oral submissions. At the request of the Commission, written submissions were also provided by Mr De Silva, received by the Commission on 3 July 2019 and by the Director-General, received by the Commission on 25 July 2019.

25. The following matters were the subject of uncontested evidence adduced at the hearing:

- a. Visitors to the licensee's premises are typically 30 to 50 years old, with a disposable income, and willing to pay a premium price for a distinctive, locally made product.
- b. The only liquor the applicants wish to sell or supply is beer or cider they produce themselves, whether at the current premises or, in the future, at other sites.
- c. The applicants intended to commence the preparation, sale and supply of food from the food truck in early July 2019, and would employ an additional staff member for that purpose.
- d. The proposed material alteration will substantially enhance the suitability and attractiveness of the licensee's premises as a venue for pre-booked social, commercial and tourism functions.
- e. The applicant's products retail at a relatively high price: \$90 to \$99 for a carton of beer, and \$25 to \$30 for a six-pack.
- f. None of the other 3 licensed micro-breweries in the Northern Territory has a special licence condition restricting the quantity of liquor that patrons are permitted to purchase and consume on the premises.
- g. The proposed material variation is of a kind permitted by the Development Consent Authority for the zone in which the licensee's premises are located.
- h. There is ample public parking available in the immediate vicinity of the licensee's premises.
- i. The licensee's premises are located in a light industrial and commercial precinct, not a residential neighbourhood.
- j. Numerous persons have left comments in the licensee's Visitors Book stating that the amenity of the venue would be significantly enhanced if patrons were permitted to drink outside the shed, which can be stiflingly hot, particularly when beer is being brewed.
- k. Once the proposed alterations have been completed, patrons will have access to three toilets, including a disabled toilet.
- l. The licensee has CCTV installed on the premises, which covers entry points to the premises and all areas used by patrons.
- m. The licensee contributes to the community by sponsoring local football teams, providing ad hoc advice to home brewers and, in the near future, by offering employment to bar and food truck staff.
- n. In accordance with the applicable regulatory regime, the licensee has a smoking management plan which will be updated when the alterations are undertaken.
- o. The Banned Drinker Register exemption was granted to the licensee prior to the 2017 Decision, when the licensee's conditions restricted retail sales to customers who had pre-ordered their purchases at least 24 hours in advance.

26. The Commission accepts the above evidence.

## Assessment of the Applications

27. In considering these applications, the Commission has had regard to the objects of the Act (s3), the application of the public interest and community impact test (s6), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to s6A, and the onus on the applicants to satisfy the Commission that the approval of each of the applications meets the public interest and community impact test (s6B).
28. The Commission considers that the following Community Impact Assessment Guidelines Criteria are of particular relevance in assessing these applications:
- The potential harm or health impacts 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.
  - Any cultural, recreational, employment or tourism benefits for the local community area.
  - 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.
29. At the outset of the hearing, the Commission flagged to the applicants its concern that if the applications were granted, the licensee might become authorised to trade in effect as a bar, tavern or hotel, rather than as a boutique “cellar door” venue for tasting brews as an aid to selling takeaway product and as a venue for special events and functions. In other words, the Commission is concerned to prevent what can be conveniently termed “licence creep”.
30. The Commission considers that the restrictive Special Conditions imposed by the Director-General in the 2017 Decision and referred to at paragraph 8 above were calculated and calibrated to minimise licence creep. An apparent purpose of various provisions of the Act, including s32A(7A), is to prevent licence creep. As conceded by the applicants in written submissions, that provision would prohibit the Commission from varying the licensee’s licence, which is a “store licence” as defined by s32A(10) of the Act, in a way that would permit the licensee to sell takeaway liquor on a Sunday. For this reason, the applicants have not sought to extend their takeaway trading periods to include Sundays.
31. The applicants have not submitted (and the Commission does not find) that it is in the public interest for the licensee to be permitted to trade as a de facto bar, tavern or hotel. Instead, they have maintained that their proposed trading practices will not result in One Mile Brewery becoming a de facto bar, tavern or hotel. They submit that the applicants’ plans constitute “business evolution” rather than licence creep.
32. The applicants have sought to extend their on-licence trading hours on Sundays (among other days), to 23:59 hours. The Commission readily accepts that this is a genuine expression of the applicants’ legitimate pursuit of business evolution. However, in the view of the Commission, it also exemplifies licence

creep: if the licensee is a microbrewery that, like a winery, opens its door to enable visitors to taste its products with a view to purchasing quantities of craft beer or cider to take away, then why should it be licensed to sell liquor for consumption on the premises on Sunday, a day when it is not permitted to sell takeaway? To the Commission, the proposed Sunday trading is more like a bar, tavern or hotel than a cellar door enterprise.

33. Nevertheless, the Commission is also mindful of the fact that the licensee is already permitted to engage in on-licence trading on Sundays between 12:00 hours and 22:00 hours at its Winnellie premises, by way of the 2017 Decision, and that the applicants' detailed business plans and substantial investments have been formulated in reliance on the continuation of that trading opportunity. Despite its concerns referred to above, the Commission accepts that it would be unfair to now prohibit the licensee from selling liquor on the premises on Sundays.
34. The Commission is of the view that if the licensee were permitted to continue to trade as usual from 22:00 hours until midnight, the licensee would be operating during those periods as a de facto bar, tavern or hotel, and accordingly, the Commission declines to vary the night-time trading hours as sought by the applicants.
35. On the other hand, the Commission considers that the proposed modest extension of commencement times on two days (Friday, by half an hour, and Saturday, by an hour) would not alter the character of the licensee's liquor trading. The Commission approves that variation.
36. Similarly, the Commission considers that the proposed variation to permit on-licence trading on Public Holidays (when takeaway trading is already permitted) except for Good Friday and Christmas Day (when takeaway trading is not permitted) is consistent with the character of the licensee as a developing microbrewery operating from the cellar door, and approves that variation.
37. The applicants seek removal of the condition restricting on-premises sales to 1140 mls per person per visit. This condition was imposed in the 2017 Decision "to address the legitimate concerns... in the regard to the premises becoming a de facto hotel without the usual safeguards for premises of that nature".<sup>5</sup>
38. In considering this issue, the Director-General placed particular weight on two features of the premises. Firstly, she noted that the licensed area was confined to an un-air-conditioned, uninsulated shed capable of accommodating up to only 28 patrons. Secondly, she found that the service of food was limited to an "ad hoc and loose arrangement with a local food van operator".
39. The Commission finds that the applicants have now satisfactorily addressed both of these issues, by progressing the execution of detailed plans to extend the licence footprint to encompass the outdoor area, and by securing and fitting out their own food van. In addition, the Commission finds that the applicants

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<sup>5</sup> 2017 Decision, 6

have made arrangements for toilet facilities, car parking, CCTV surveillance and smoking management that are appropriate and adequate for the intended operation of the licence.

40. The Commission considers that the removal on the 1140 mls restriction is likely to result in more liquor being sold and consumed on the premises by more patrons. The venue would become one at which, like a bar, tavern or hotel, patrons can spend a day drinking as much liquor as they choose to purchase.
41. Nevertheless, on balance, the Commission is satisfied that the removal of this condition meets the public interest and community impact test, having particular regard, in addition to the matters referred to above at paragraph 39, to the matters set out above at paragraph 25a, 25b, 25c, 25e, 25f and 25i.
42. As a corollary of this finding, and in conjunction with it, the Commission is also satisfied that approval of the proposed material alteration meets the public interest and community impact test.
43. The Commission accepts that the current advertising condition is unduly restrictive, and has decided to fix an alternative condition intended to mitigate the risk that the licensee will evolve into a de facto bar, tavern or hotel. In addition, and for the same reason, the Commission has determined to fix the condition headed "Appearance".
44. The Commission also accepts a submission by the applicants that although the licensee should only be permitted to sell liquor produced by the licensee, the current additional requirement that this be liquor produced by the licensee "at the premises" is unnecessary and could be unduly restrictive in the event that the applicants grow their business to commence brewing at another location. The Commission has determined to amend the licence accordingly.
45. A further aspect of the applicant's business evolution is as a venue for special events. The applicants submit that if the material alteration is approved, their premises, with capacity to accommodate over 100 guests, would become substantially more attractive as a venue for social, commercial and tourism functions, and particularly so if they are permitted to trade until midnight. The Commission accepts these submissions and is satisfied that the enhanced use of the premises as a function centre would confer cultural, recreational, employment and tourism benefits for the local community area. Accordingly, the Commission has determined to fix conditions allowing trade to continue until midnight on Thursdays, Fridays, Saturdays, Sundays and Public Holidays, but only for pre-booked special events.
46. As set out at paragraph 25 o above, prior to the 2017 Decision, the licensee was only permitted to sell takeaway liquor to customers who had pre-arranged to attend the premises. In those circumstances, the Commission acknowledges that it was appropriate for the licensee to be granted an exemption from the Banned Drinkers Register. Those circumstances were altered by the 2017 Decision, and have been further altered by the Commission's decision herein. The Commission now queries whether it is appropriate for the exemption to

remain, and requests the Director-General to review this issue and take whatever steps she considers appropriate in the light of the current licence conditions.

### **Notice of Rights**

47. 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 vary conditions of licence pursuant to s32A and a decision to approve a material alteration pursuant to s119(8) of the Act are both specified in the Schedule and are reviewable decisions.

48. 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.

49. 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  
25 July 2019

On behalf of Commissioners Goldflam, Reynolds and McFarland