

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

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**MATTER:** APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE  
APPLICATION TO MAKE A MATERIAL ALTERATION

**LICENCE NUMBER:** 80318470

**LICENSEE:** Craft Beer Australia Pty Ltd

**PREMISES:** The Precinct Tavern  
Ground Floor  
Medina Vibe Hotel Complex  
Kitchener Drive  
DARWIN NT 0800

**APPLICANT:** Craft Beer Australia Pty Ltd

**NOMINEE:** Mr Darren Lynch

**OBJECTOR:** Mr Michael Caldwell

**LEGISLATION:** Section 32A, section 119(2), Part IV and V of the *Liquor Act*.

**HEARD BEFORE:** Ms Jodi Truman (Deputy Chairperson)  
Dr Charles Douglas (Health Member)  
Mr Lindsay Carmichael (Community Member)

**DATE OF HEARING:** 22 March 2018

**DATE OF DECISION:** 22 March 2018

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**Decision**

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to vary the conditions of the liquor licence for the premises known as The Precinct Tavern by :
  - a. Removing from the conditions of the existing area known as the “Restaurant” the condition “No trading on Good Friday or Christmas Day”.
  - b. Extending the trading hours of the existing area known as the “Alfresco Area” from 1.00 am to 2.00 am.

- c. Including within the licence an area known as the “Alfresco Deck”.
- d. Providing the trading hours of the “Alfresco Deck” to be between:
  - i. Sunday 10.00 am to 11.59pm;
  - ii. Monday 10.00 am to 11.59pm;
  - iii. Tuesday 10.00 am to 11.59pm;
  - iv. Wednesday 10.00 am to 11.59pm;
  - v. Thursday 10.00 am to 11.59pm;
  - vi. Friday 10.00 am to 11.59pm;
  - vii. Saturday 10.00 am to 11.59pm.
- e. Removing the following conditions from the licence:
  - i. No trading on Good Friday or Christmas Day.
  - ii. With the exception of those persons entering or exiting the venue through the Alfresco area, all patrons are to be seated.
  - iii. No external dry bar permitted.
  - iv. Smokers may utilise any designated smoking area within the Alfresco area after 0100 hours provided they do not possess alcohol in this area.
- f. Varying the condition entitled “Entertainment” within the “Special Conditions” of the licence to provide as follows:

“Entertainment may be provided and shall be consistent with the premises.

Entertainment will include live and recorded music suitable for the over 25 age market.

Subject to compliance with the imposed noise conditions, the Licensee is permitted to provide entertainment in the internal and external areas by way of live or pre-recorded music”.

- 2. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* the Commission has determined to approve the material alteration to the licensee’s licensed premises as sought by the Applicant.
- 3. As noted at the date of making this decision and in accordance with section 32A(9) the variations of the conditions of licence are to take effect as at 4.00 pm on Friday 23 March 2018.

## **Reasons**

### **Background**

4. The Precinct Tavern (“the Tavern”) currently holds a Tavern Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises. The licensee is Craft Beer Australia Pty Ltd (the Applicant) and the nominee under the liquor licence is Mr Darren Lynch.
5. On 25 October 2017 made application under the Act as follows:
  - a. pursuant to section 32A of the Act for a variation to the Tavern’s licence conditions; and
  - b. Pursuant to section 119(2) of the Act for approval to make a material alteration to the licenced premises.
6. At the time of lodgement, the application was deemed incomplete. Further materials were therefore sought and these were received on 7 November 2017.
7. The substance of the application is to extend the licensed footprint of the premises to include an all-weather ‘Alfresco Deck’ adjacent to the existing premises which shall have a small bar area for the purpose of serving patrons that will be secured when not operational as well as a BBQ style setup for food service. Trading hours sought for this area are 10.00am to 23.59pm seven (7) days a week including Christmas Day and Good Friday.
8. In addition, the Applicant seeks to
  - a. Extend the trading hours of the existing area known as the Alfresco Area” from 1.00 am to 2.00 am including Christmas Day and Good Friday; and
  - b. Remove the following conditions from the existing licence:
    - i. No trading on Good Friday or Christmas Day.
    - ii. With the exception of those persons entering or exiting the venue through the Alfresco area, all patrons are to be seated.
    - iii. No external dry bar permitted.
    - iv. Smokers may utilise any designated smoking area within the Alfresco area after 0100 hours provided they do not possess alcohol in this area.
9. Prior to the commencement of the hearing, it also became clear that there was application to vary the entertainment conditions of the licence to remove reference to restriction upon “nightclub or disco style music or entertainment” and to allow for music to be played in the external areas with removal of reference to the restriction of “no live performances permitted in the alfresco area”.

10. By the date of hearing, the 'Alfresco Deck' had already been constructed. This construction was not in breach of the Act as the area on which the 'Alfresco Deck' was constructed did not fall within the licensee's licensed footprint. The actual **construction** of the 'Alfresco Deck' was therefore not captured by the Act and therefore did not require approval.
11. Nevertheless, the term "material alteration" is defined under section 4 of the Act as follows:

**material alteration** means an alteration to 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.
12. It is clear therefore that an application under section 119 of the Act was properly made by the Applicant as inclusion of the constructed Alfresco Deck would mean an "increase" of the "area used for the ... sale and consumption of liquor", would also "alter access to or egress from the premises" and would (if included) "alter the external appearance or facilities". It was on these bases that the application was heard.

### **Brief history**

13. According to the material provided to the Commission, the Tavern has been operating since 2012. It has a "theme" noted within its current licence as:

"... a blend of classic and comfortable Aussie Pub with a craft beer theme promoting boutique beers and good food."

And to be:

"... 'family friendly' during the day and evening until 9.30pm. The market groups are hotel guests, national and international tourists, conference attendees and customers from the Convention Centre, family groups during the day and locals in the twenty-five (25) plus age group later in the evening".
14. It was confirmed during evidence that it was intended that this was the theme that the Applicant intended to continue to operate the Tavern. It is also apparent from the material before the Commission that the Tavern has, since 2012, continued to operate in compliance with the Act and its licence conditions. There was no evidence presented to the Commission of any breaches.
15. It is further noted that in that period the Tavern has also applied and subsequently been approved a number of temporary variations. In 2016 and 2017 such variations utilised the then grassed area adjacent to the licensed premises (where

the Alfresco Deck is now located) for events such as “Beer Garden Parties”, AFL and NRL Grand Final screenings and “Territory Taste Festival”. It appears to the Commission; based on the evidence before us that the history of the operation of this venue by the Applicant is such that they have a proven and demonstrated capacity to be able to operate the venue and to comply with the Act.

### **Disclosure of influential persons or potential beneficiaries**

16. The Commission notes that section 32A(1A) of the Act now requires Applicants to make an affidavit disclosing whether certain persons may be able to influence the Applicant, or expect a benefit from the Applicant, if the licence is granted. The Applicant has filed such an Affidavit and has disclosed that there are **no** such persons.

### **Advertising and Objections**

17. Details of the application were advertised in the Northern Territory News on Saturday 11 November and Wednesday 15 November 2017 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on Friday 15 December 2017.
18. In the objection period three (3) objections were received, however following responses by the Applicant, two (2) of the objections were withdrawn leaving only the objection of Mr Michael Caldwell (“Mr Caldwell”) (a resident of the Darwin Waterfront) remaining.
19. As was the usual practice, the application was also forwarded to the Department of Health (“DOH”), NT Police, NT Fire & Rescue service (“NTFRS”), Development Consent Authority (“DCA”) and the City of Darwin for comment. It is noted that section 32A(5) of the Act requires that the Director-General inform the Chief Executive Officer (“CEO”) of the DOH, the Commissioner of Police and (if the application relates to premises within the area of a shire council or a regional council) the CEO of the council.
20. With respect to this application:
  - a. The DOH made no adverse comment.
  - b. The NT Police supported the application and in fact noted that the structure was “situated sufficiently far enough away from the wave pool to mitigate risks for members of the public, particularly children using this space, and that the application outlines that there will be no increase in capability as a result and same operating procedures to occur”. It was further noted “(w)e see no objection and see no real impact from a law and order, Community Safety or Public amenity perspective”.
  - c. The City of Darwin noted that it did not have “jurisdiction over the Darwin Waterfront” and as a result it would “not be making comment on this application”.
  - d. The NTFRS made no adverse comment.

- e. The DCA confirmed that “appropriate planning approval has been granted for the development” and that they had “no town planning concerns in relation to the application”.
21. The Commission notes that the response by NT Police is particularly relevant to the Commission’s considerations with respect to public order and safety, and particularly with respect to the application to vary the conditions so as to allow liquor to be served on Good Friday and Christmas Day. We will return to this aspect later in these reasons.

### **Mr Caldwell objection**

22. As earlier noted Mr Caldwell made a written objection and objected to both applications. With respect to the application for approval to make a material alteration to the licensed premises, Mr Caldwell’s objection noted that the material alterations were (then) already underway and made complaint about such circumstances; including in relation to the planning purpose of the area and that the proposed material alteration will change the zoning structure. As previously noted, because the area on which the ‘Alfresco Deck’ was constructed did not fall within the licensee’s licensed footprint, the actual **construction** of the ‘Alfresco Deck’ was not captured by the Act and therefore did not require approval of this Commission. Decisions with respect to planning are also not a matter for this Commission. The Commission will therefore not refer to these aspects any further in these reasons.
23. Mr Caldwell has also made numerous references to the “Darwin Waterfront Corporation Liquor Guidelines” (“DWC Guidelines”). It is important to note that this Commission is **not** bound by the DWC Guidelines. In particular the Commission wishes to make clear that any references to decisions made by the DWC as to what particular areas are on the DWC development master plan have nothing whatsoever to do with this Commission and is a matter for the DWC.
24. With respect to Mr Caldwell’s objections, the Commission finds that these appear to fall broadly within the following categories:
- a. No evidence of the Applicant being willing or able to “effectively manage the impacts on the amenity of the neighbouring residential and community properties and manage public safety in a family friendly zoned public space.”
  - b. Noise concerns.
  - c. Security and Safety concerns.
  - d. “That the variation will affect the amenity of the neighbourhood and the social conditions in the community”.

## Public Hearing

25. Pursuant to section 50 of the Act, the Director-General of Licensing (“the Director-General”) must refer *inter alia* applications under sections 32A and 119 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
26. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10.00am on 22 March 2018 and notice was given to the Applicant and relevant persons (including Mr Caldwell) on 12 March 2018. Mr Caldwell did not appear at the hearing, however it is important to recognise that Mr Caldwell (like all objectors) is not **required** to appear. This Commission did however ensure that it considered the objection filed (and not withdrawn) by Mr Caldwell when considering the applications and making its determination.
27. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
28. The public hearing commenced at 10.00 am on 22 March 2018. Mr David De Silva of De Silva Hebron appeared on behalf of the Applicant. Mr Darren Lynch and Mr Samuel Burke gave oral evidence before the Commission and Ms Sally Ozolins as representative for the Director-General of Licensing provided information and assistance to the Commission during the course of the hearing. The Commission thanks both Mr De Silva and Ms Ozolins for their assistance.
29. Mr Lynch gave evidence before the Commission consistent with the application made on behalf of the Applicant. It is clear that Mr Lynch is rightly proud, as Nominee of the premises, of the manner in which the premises have been operated particularly in the last 2 and ½ years that he has been nominee.
30. Mr Burke gave evidence before the Commission as the General Manager of the Darwin Waterfront Corporation (“DWC”). Although called as a witness on behalf of the Applicant, it was clear to the Commission that Mr Burke provided his evidence to the Commission representing the interests of DWC and not that of the Applicant. Mr Burke provided helpful evidence to the Commission as to the arrangements between DWC and the Applicant for the area upon which the Alfresco Deck has been constructed. Relevantly the Commission notes as follows:
  - a. DWC is the Crown lease holder of the land where the new Alfresco Deck is located.
  - b. DWC has licensed the Alfresco Deck to the Applicant under a twelve (12) year arrangement. DWC owns the infrastructure of the Alfresco

Deck and the Applicant pays a licence fee to DWC during the term of the licence.

- c. The Applicant would be required to operate the Alfresco Deck in accordance with the terms of the Deed of Licence entered into with the DWC.
- d. That DWC was supportive of the application to vary the licence as sought by the Applicant.
- e. That the construction and concept surrounding the Alfresco Deck and its operation was one that had been understood and supported by the Treasurer and Deputy Chief Minister when discussions were held with DWC concerning the leasing of the relevant area and licensing to the Applicant.
- f. That funding had been provided through a tourism infrastructure grant from Tourism NT for construction of the Alfresco Deck.
- g. That it is the experience of DWC that whenever issues have arisen involving the operations of the premises that these have been addressed promptly and appropriately by the Applicant.
- h. That DWC had in fact considered that the area where the Alfresco Deck is now located was (prior to construction) developing the potential to be an area of anti-social behaviour and an undesirable location at night time and that it was the view of DWC that the Alfresco Deck now provided a “great meeting place” for persons attending at the waterfront.

## **Assessment of the Application and Objections**

31. Throughout the course of the hearing, the matters raised in the objection lodged by Mr Caldwell were carefully considered. The Commission does however note the evidence that the Applicant attempted and undertook significant public consultation with the various stakeholders in the immediate area of the premises and neighbouring residents, including Mr Caldwell. This was in addition to the ordinary notice provisions required under the Act. Mr Caldwell’s objection was the only objection maintained.
32. Despite these matters, even if there had been no objections made to the application lodged by the Applicant, the Act now clearly provides that the Director-General of Licensing must refer these types of applications 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.
33. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
  - i. by-laws made under the Local Government Act; and
  - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
  - i. the kinds of liquor that may be sold;
  - ii. the manner in which liquor may be sold;
  - iii. the containers, or number or types of containers, in which liquor may be sold;

- iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

34. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
  - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
  - ii. the cultural, recreational, employment or tourism impacts; and
  - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
  - iv. the density of existing liquor licences within the community area; and
  - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
  - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

35. 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”.

36. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
<p>The potential harm or health impact 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.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> </ul>

	<ul style="list-style-type: none"> <li>any other area where young people may congregate or be attracted to.</li> </ul> <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
Volume	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
Any cultural, recreational, employment or tourism benefits for the local community area.	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
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.	<ul style="list-style-type: none"> <li>What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> </ul>

	<ul style="list-style-type: none"> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>
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37. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. 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”.

38. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application to vary conditions on an existing licence and to effectively increase the licensed footprint of the premises, thus increasing the area upon which liquor will be sold and consumed. As a result some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a variation and material alteration.

39. During the hearing, the Commission received into evidence a copy of a Community Impact Analysis (“CIA”) obtained by the Applicant in June 2016. Although 18 months has passed since the CIA was undertaken, the Commission members considered themselves able to give appropriate weight to the matters contained in the CIA and any changes that may have occurred in that time. The CIA provided useful evidence to the Commission with respect to the “groups” or “sub-communities” within the locality of the premises. It is clear from that material that the premises is in close proximity to the wave pool which is an area well frequented by children and young people. It is also clear that it is a locality that experiences high tourist/visitor numbers.

40. Be that as it may, the Commission notes that this application is one that NT Police have supported and had relevantly noted that the structure was “*situated sufficiently far enough away from the wave pool to mitigate risks for members of the public, particularly children using this space, and that the application outlines that there will be no increase in capability as a result and same operating procedures to occur*”. As earlier noted, NT Police further noted that there was “*no objection and see no real impact from a law and order, Community Safety or Public amenity perspective*”.

41. The Commission also notes the evidence received (and confirmed by Mr Burke during the course of his oral evidence) as to the support given by Tourism NT to the structure of the Alfresco Deck; which has clearly been the impetus for this application. Further, the support given by Toga Hotel Management Holdings Pty

Ltd who operates the Adina Apartment Hotel and Vibe Hotel which are located directly above the premises.

42. The Commission is also aware that Charles Darwin University (“CDU”) operates a campus facility within the local community area. Relevantly however, that facility provides for courses for university aged students and again it is noted that no objections were received from CDU or any students in relation to this application.
43. Based on the evidence presented to this Commission, the Commission finds on balance 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 variation and material alteration sought.
44. The Commission received evidence that there are eleven (11) licensed premises in the local community area which includes the Applicant. Again the Commission considers it relevant that this application does not propose any increase to that number, but instead to increase the area upon which liquor can be sold and consumed.
45. The CIA received into evidence also provided useful information to the Commission about the crime profile of the local community area. The Commission notes that the data used had been obtained from the NT Police Crime Statistics May 2015 and are therefore somewhat dated. However the Commission again notes the response from NT Police to this application and particularly that they could “*see no real impact from a law and order, Community Safety or Public amenity perspective*”.
46. It is noted that part of the objection from Mr Caldwell included concern about traffic and pedestrian impacts in the local area, however the Commission notes the evidence of Mr Burke in relation to the continued efforts to be made by DWC in this regard and particularly the evidence that it was considered that this had improved in recent times with taxis in particular being more willing to attend at the waterfront to collect passengers.
47. Whilst this Commission accepts that of course it is likely that there will be an increase in numbers attending at the premises should this application be granted, the Commission finds on balance that there is no evidence to suggest that there will be a social impact upon the community to such an extent that it would merit a finding against this application.
48. In keeping with what would be an expected increase in the number of persons attending at the premises, the Commission received evidence from the Applicant as to the anticipated increases in volume. This included projected sales volumes. The Commission notes however that these projected sales volumes included an increase in terms of food not just alcohol. The Commission also notes the evidence received as to the intention of the Applicant to maintain the customer demographic upon which the premises was intentionally marketed, namely over 25 year olds, and the intention to continue to operate in accordance with its “Concept” noted within its licence of:

“The theme being a blend of classic and comfortable Aussie Pub with a craft beer theme promoting boutique beers and good food. The licensed premises are to remain ‘family friendly’ during the day and evening until 9.30pm. The market groups are hotel guests, national and international tourists, conference attendees and customers from the Convention Centre, family groups during the day and locals in the twenty-five (25) plus age group later in the evening”.

49. Whilst this Commission accepts that an increase in sales volumes presents an increase in current alcohol consumption rates for the community area, the Commission finds that this increase is to an extent ameliorated by the accompanying (although not equal) increase in sales volumes for food. The Commission also finds on balance that there is no evidence to suggest that any increase in volumes is to such an extent as to merit a finding against this application.
50. The Commission also received evidence from the Applicant that should the applications be granted, this would likely lead to the employment of at least 4 further staff and up to 10 further staff during peak season. It is also clear from the evidence of Mr Burke that it is anticipated by both DWC and Tourism NT that there will be economic, recreational and tourism benefits as a consequence of the application being granted. So much is seen by virtue of the support provided by DWC and Tourism NT, particularly in terms of the infrastructure grant.
51. In relation to the Applicant’s conduct of its business at the premises, there is no evidence before this Commission to suggest that the Applicant intends to do anything to change the manner in which it provides liquor to its customers. The evidence before the Commission is clear that to date the Applicant has provided liquor in a manner known to be safe and to minimise adverse impacts and has ensured its staff is properly trained in order to do so.
52. Although the material alteration sought by the Applicant would mean an increased area for the sale and consumption of liquor, the Commission considers it is highly relevant that the Applicant has in the past (through temporary variations) demonstrated a good track record in respect of the operation of its business activities. The permanent variations now sought (in part) result in those previously successful arrangements being solidified.
53. In terms of the variation to permit trade on Good Friday and Christmas Day, the Commission notes that there are a number of venues that are open on these days and supported by significant patron numbers in attendance on such days. There is therefore an obvious public need for access to licensed premises on these days. In addition, tourists and visitors to Darwin frequent the Darwin Waterfront on such days and the variation sought would mean these persons would be able to enjoy food and drink options.
54. A further matter that the Commission gave careful consideration to was with respect to the issue of noise and any resulting impact upon the social amenity of the community area. As earlier noted this was also a matter raised in Mr Caldwell’s objection. With respect to this issue, the Commission noted the current licence which allows “live and recorded music for the over 25 age market”. The

Commission also noted that such music was already delivered to the Alfresco area by way of speakers and there was no evidence of this having caused significant public disturbance.

55. The Commission also noted the support of Toga Hotel Management Holdings Pty Ltd who are the landlord for the premises who relevantly stated:

“Our concerns about noise levels during events in The Precinct Tavern have been addressed swiftly by Craft Beer management in the past and we expect this will continue when the all-weather deck is open to the general public. Our experience with the team at the Precinct has at all times been positive with any queries we have had in the past”.

56. Mr Burke also stated on behalf of DWC that he had shared a similar experience in his dealings with the Applicant in relation to any issues to do with the operation of the premises and that he too fully expected that to continue. Mr Burke stated frankly that if that was not his expectation “then we would not be here”.

57. The Commission also considers it relevant that there will continue to be the general “Noise Control” provisions contained within any liquor licence held by the Applicant. Further there is a provision within the licence between the Applicant and DWC for the operation of the Alfresco Deck that in terms of “Permitted Use” of the Alfresco Deck:

“Other uses (such as live music) will require a permit from the Licensor”.

58. It is clear from the evidence given by Mr Burke that DWC would be diligent in its supervision of the requirement for permit in terms of any such operation on the Alfresco Deck area. As a result the Commission considers that issues as to noise are sufficiently addressed by the general terms of the liquor licence that will remain and the specific terms of the licence held by the Applicant with DWC.

59. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the application for variation and material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined decided to grant the variations to the conditions of licence as sought and 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**

60. 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 the conditions of a liquor licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision. 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.
61. 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.

62. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the Applicant and the person who made an objection during the process that resulted in the decision being made, namely Mr Michael Caldwell.



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**JODI TRUMAN**  
Deputy Chairperson  
Northern Territory Liquor Commission

26 March 2018