

Director-General of Licensing

Decision Notice

MATTER:	Complaint against Australian Leisure and Hospitality Group Pty Ltd
PREMISES:	The Parap Tavern (Liquor Licence 80315250)
LEGISLATION:	Section 119 <i>Liquor Act</i>
DECISION OF:	Director-General of Licensing
DATE OF DECISION:	16 June 2017

Background

1. The Australian Leisure and Hospitality Group Pty Ltd is the licensee under a liquor licence issued pursuant to the *Liquor Act* (the Act), which provides authority to sell and supply liquor to persons both on the premises known as The Parap Tavern at 15 Parap Road, Parap and for consumption away from the premises.
2. The licensee also holds a licence to have and to operate gaming machines in accordance with the *Gaming Machine Act*.
3. On 12 December 2016 and in accordance with section 68(3) of the Act, the Licensee was notified that I had determined to accept a complaint which alleged that the licensee may have breached section 119 of the Act.
4. The substance of the complaint was particularised as follows:

That following the Director-General's decision to grant approval to Australian Leisure and Hospital Group Pty Ltd for an increase in gaming machines at the Parap Tavern, the licensee undertook works that:

- *Involves structural alteration;*
- *Altered access to or egress from the premises; or*
- *Alters the external appearance of the facility.*

5. As an aside, it might be noted that in late 2015, the licensee made application pursuant to section 41 of the *Gaming Machine Act* in order to increase the number of machines allowed from 10 machines to 20 gaming machines. The application was granted on 11 December 2015 following consideration of the evidence submitted to support the application including various property renovations foreshadowed by the licensee to adapt the premises to suit additional gaming machines.
6. The licensee commenced alterations to the premises in or about April 2016 which included the removal of internal walls and the installation of an additional wall to effect the changes foreshadowed to move the internal location of the gaming room reflected in the floor plan

dated January 2016. Of relevance, the undated floor plan includes a hand written amendment which depicts a 'smoking area' external to the premises.

7. On 10 June 2016, Mr Terry Nixon, Principal and Director of Yellowcity Pty Ltd who had been engaged by the licensee to undertake the building projects advised that consideration was being given to moving the smokers area at the premises and stated that:

"... we are considering moving the smokers area to this location sometime in the future at which time we will make a formal application as such, it does not require planning at this stage, it does have engineering approval. While we have completed various upgrading works inside the premises, we may be undertaking the 'Material alterations' to the main structure sometime in the new financial year..."

8. The present complaint is not related to the internal renovations and refurbishments undertaken by the licensee in relation to the gaming machine application. However, the fact that renovations, refurbishments and building works of various types were undertaken throughout 2016 is relevant to how the investigation of the present matter was initiated and progressed.
9. At some time prior to November 2016, in addition to the internal renovations, the licensee commenced building alterations to the external premises. The works included the construction of a smoker's area outside of the building adjacent to Parap Road.
10. The new smoking area (located at the far right hand side of the premises when viewed from Parap Road) was previously an egress comprising of steps and a disabled ramp. The area is now enclosed to accommodate an undercover smoking area.
11. On 24 November 2016, the Director of Building Control wrote to the licensee's agent and confirmed that the building works had been undertaken without relevant planning and building approvals prior to work commencing. The Director of Building Control acknowledged that a planning permit was approved by the Development Consent Authority retrospectively however, no building permit had been obtained. It was also noted that the planning consent was subject to an appeal in the NT Civil and Administrative Appeals Tribunal (NTCAT) and that consequently, no permit could be issued at that time.
12. The licensee was requested to provide evidence by 16 December 2016 that the building was safe to occupy with reference to fire safety standards and the structural provisions of the National Construction Code.
13. At some time after 6 January 2017 and in response to my letter of 12 December 2016, Mr Nixon advised that no structural alteration had been undertaken to the premises. Specifically, Mr Nixon stated that *"...there has been no alteration to access or egress from the premises...and no impairment of 'directions of travel'"*.
14. Mr Nixon further advised that:

"There is only minor alteration to the appearance of the premises, with the addition of a 2100 high timber and steel fence at the northeast corner of the building surrounding the existing Entry Porch constructed to preclude occupation by itinerants and which may become an additional Outdoor Smoking Area..."

15. Mr Nixon provided copies of the advice he had received from specialists in relation to the renovations and external building works confirming that the structural integrity of the existing building had not been compromised.
16. Mr Nixon also confirmed that internal renovation and refurbishment of the premises to accommodate the additional gaming machines was commenced on 25 April 2015 following:
 - a development application made on 31 March 2015;
 - a development permit being granted on 23 July 2015; and
 - completion of works on 4 December 2016.

Public Hearing

17. On 1 June 2017, I convened a Public Hearing in relation to the complaint during which Counsel for the licensee acknowledged that:
 - a) at some time prior to November 2016, in addition to the internal renovations, the licensee commenced building alterations to the external premises which included the construction of a smoker's area outside of the building adjacent to Parap Road; and
 - b) that the newly constructed enclosed smoking area was previously an egress comprising of steps and a disabled ramp.
18. Counsel for the licensee conceded that the building works undertaken at the licenced premises met the definition of 'material alteration' as expressed in the Act in that the access to or egress from the premises was altered and that the external appearance of the facilities was altered. However, it was submitted that there was not sufficient evidence for me to be satisfied that the alteration of the premises amounted to a structural alteration.
19. Counsel for the licensee further conceded that the licensee had not submitted an application for material alterations in accordance with section 119(1) of the Act.
20. Additionally, Counsel for the licensee advised that it would be prudent for the licensee to now make an application for approval for the material alteration in accordance with section 119(2) of the Act and that it would have been "...prudent to do so, some time ago."

Consideration of the Issues

21. Section 119(1) of the Act requires that:
 - (1) *A licensee must not make a material alteration to the licensee's licensed premises without the Director-General's approval.*

Maximum Penalty: 100 penalty units
22. Pursuant to section 4(1) of the Act, a material alteration is defined as:

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.*

23. I am satisfied that the works undertaken by the licensee were material alterations in that the works altered access to and egress from the premises and, that the external appearance of the premises has been altered. Having reached that view, I have not further considered (and make no finding as to) whether or not the building works involved structural alteration. The definition of 'material alteration' provided is in the alternative and in my view, determination of the structural nature of building works is immaterial to determination of this matter.
24. As noted at paragraph 19, Counsel for the licensee during the public hearing conceded that the licensee had not submitted an application for material alterations in accordance with section 119(1) of the Act. Had the licensee done so, section 119(3) would have been enlivened in that had I considered it to be in the public interest to do so, I may have required the licensee to publish notice of the application thereby allowing for objections to be made by affected members of the community. Following of which, pursuant to section 119(8) I would have made a determination to approve or refuse to approve the material alteration.

Decision

25. Having considered all of the evidence and taking into account the appropriate concessions made on behalf of the licensee, I am satisfied that the licensee did breach the Act in that it did not seek or obtain approval to make material alterations to its premises as required by section 119(1) of the Act.
26. Having made that finding and taking into account the public interest in ensuring that licensees deal with licensed premises in a manner that is compliant with the Act, and to ensure that material alterations to licensed premises which have potential to affect the neighbourhood and community are dealt with transparently and in a way which allows affected people to exercise their right to participate in the application processes, I have determined to issue a written notice of my intention to take disciplinary action in accordance with section 68(5)(b)(iii) of the Act.
27. Section 120 of the Act permits me to direct that the premises altered without authority be restored to the previous condition or to some other condition. Having regard to the circumstances of this case, I am not minded to give such direction.
28. However, as canvassed in the public hearing of this matter, I do require the licensee to make application for approval for the material alteration in accordance with section 119(2) of the Act.

Review of Decision

29. The determinations reported here, that is my decision to issue a written notice of my intention to take disciplinary action in accordance with section 68(5)(b)(iii) of the Act and my decision not to give any direction pursuant to section 120 of the Act are not reviewable decisions under the Act.



Cindy Bravos
Director-General of Licensing

Date 16 JUNE 2017