

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: Application for variation to licence conditions

REFERENCE: LC2022/046

LICENSEE: DTKT Group Pty Ltd

LICENCE NUMBER: 80901579

PREMISES: Parap Supermarket
17 Douglas Street
Parap, NT, 0820

LEGISLATION: Section 110 of the *Liquor Act 2019*

HEARD BEFORE: Richard Coates (Chairperson)

Liz Stephenson (Health Member)

Katrina Fong Lim (Community Member)

DATE OF HEARING: 28 September 2022

DATE OF DECISION: 28 September 2022

DECISION

1. For the reasons set out below and in accordance with section 110 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to vary the condition of Liquor Licence 80901579 for premises known as Parap Supermarket at 17 Douglas Street Parap held by DTKT Group Pty Ltd (**the Licensee**).
2. The current condition in relation to trading hours is deleted and replaced with:

The trading hours will be those prescribed for a Grocery store authority by Regulations 52 of the *Liquor Regulations 2019*, namely:

Monday to Friday 10:00 hours to 22:00 hours

Saturday and Public Holidays 09:00 hours to 22:00 hours

No trade on Sunday, Good Friday or Christmas Day

3. The Special Conditions restricting the sale of more than one cask of wine or one bottle of spirits to any person on any one day or the sale of cask wine or spirits after 16:00 hours are also deleted.

REASONS

BACKGROUND

4. DTKT Group Pty Ltd is the holder of liquor licence number 80901579 for premises known as Parap Supermarket situated at 17 Douglas Street, Parap, NT.
5. On 20 August 2020, the Commission determined to vary the liquor licence conditions by reducing the trading hours and inserting a special condition as part of disciplinary action against the then licensee, Sabine Trading Co Pty Ltd.
6. At the time of the offences, the office holders / members of Sabine Trading Co Pty Ltd were Leo Paris, Hien Dieu Thi Nguyen and Van Thanh Pham.
7. On 20 September 2021, the liquor licence was transferred to Hien Dieu Thi Nguyen and underwent a change of business name from Douglas Street Supermarket to Parap Supermarket.
8. On 6 July 2022, the liquor licence was transferred to the present licensee - DTKT Group Pty Ltd.
9. It has been confirmed that the office holders / members of DTKT Group Pty Ltd, being Doan Ngoc Cao and Thao Le Thu Vo, were at no time office holders / members of Sabine Trading Co Pty Ltd.

THE APPLICATION

10. An application was lodged by Mr Doan (Tommy) Ngoc Cao on behalf of the Licensee seeking two variations to current licence conditions.
11. It is proposed to remove the current trading hours which are:

Current licence trading hours:

Monday to Friday - 12:00 hours to 20:00 hours

Saturday and Public Holidays – 12:00 hours to 20:00 hours

No trade on Sunday, Good Friday or Christmas Day

And to replace the trading hours with:

Proposed licence trading hours:

Monday to Friday - 10:00 hours to 22:00 hours

Saturday and Public Holidays – 09:00 hours to 22:00 hours

No trade on Sunday, Good Friday or Christmas Day

It is proposed to permanently remove the special condition as per below:

Special Conditions:

The licensee shall not permit the sale of:

- (i) more than one (1) cask of wine or
- (ii) more than one (1) bottle of spirits of a maximum size of 750mL
- (iii) to any one (1) person on any one (1) day.

The licensee shall not be permitted to sell cask wine or spirits after 16:00 hours on any occasion.

12. The application was accompanied by:

- A cover letter explaining the application;
- Affidavit in accordance with Section 54 of the Act;
- Public Interest Community and Impact Assessment;
- Liquor and Food Sales between 1 July 2021 to 30 June 2022;
- The Licensee initiated a community consultation feedback via the Ludmilla Neighbourhood Connection Facebook page, letter box drop (radius of 500 metres from store) and in store. A total of 43 feedback records were received, however only the adverse responses were provided with the referral;
- Statutory Declaration – Declaring all feedback replies have been provided;
- Agreement to use business name Parap Supermarket between DTKT Group Pty Ltd and Hien Dieu Thi Nguyen dated 6 September 2021;
- ASIC Business Name (Parap Supermarket) Registration dated 23 February 2021;
- Registrar of Titles extract identifying landlord and tenant dated 27 June 2022;
- Liquor products and prices;
- Photos of Parap Supermarket; and
- Email stating the relationship between office holders / members of DTKT Group Pty Ltd and office holders/members of Sabine Trading Co Pty Ltd.

PUBLICATION AND CONSULTATION

13. The application was published in the NT News on Saturday 30 July 2022 and published on the Director's website applications page for the required 14 days advertising period.
14. A green advertising sign was also displayed at the premises. Copies of the NT News, photographs of the green sign erected at the premises and Statement of Display have been retained by Licensing Officers.
15. As a result of publication of the application, two objections were received.
16. One objection was received from Ms Simone Saunders, CEO of the City of Darwin.
17. One objection was received from Ms Helena Jackson who resides at Brown Street, Fannie Bay.
18. The objections were forwarded to the Licensee on the 15 August 2022, in accordance with Section 62 of the Act informing them of their right to respond.
19. The Licensee provided a substantial response to the objections on the 24 August 2022.

CONSULTATION

20. In accordance with the Act, the following were notified of the application:
 - The Chief Executive Officer of the Department of Health
 - The Commissioner of Police
 - Chief Executive Officer of City of Darwin
21. NT Fire & Rescue Service was also notified of the application however, had not provided a response at the time of referral.
22. The Department of Health replied via email dated 29 July 2022, stating they have reviewed the application and have no objection.
23. The Northern Territory Police initially raised concerns as to whether the current Licensees had some ongoing connection with the personnel that had previously been disciplined by the Commission when Sabine Trading Co. Pty Ltd was the Licensee. On being assured by licensing officers that the officeholders of the current licensee had no involvement with the operation of this license during the events which gave rise to the disciplinary proceedings, Police Superintendent O'Brien advised that police would not be objecting to the application.
24. The City of Darwin replied via email on 2 August 2022, and submitted an objection stating it had concerns regarding the potential impact to community amenity should the current licence conditions change.

25. A check of the records held by the Director indicate that there have been no adverse compliance matters recorded against the present licensee.

THE REFERRAL

26. The Director of Liquor Licensing (**the Director**) referred this matter to the Commission on 9 September 2022.

THE HEARING

27. On 12 September 2022, the Licensee and the objectors were advised that the matter would proceed by way of public hearing on 28 September 2022. On that date, Ms Jenny Vo, an office holder of the licensee corporation, appeared for the Licensee. She was assisted by a qualified Vietnamese interpreter. Mr. Mark Wood appeared to represent the Director and Ms Angela O'Donnell appeared on behalf of the objector the Darwin City Council. The Commission is grateful for the assistance provided by all those that attended the hearing, including the several local witnesses who spoke in support of the application.
28. At the commencement of the hearing, the Chair ruled that many of the documents which the Licensee had claimed were "commercial-in-confidence" and had therefore not been disclosed to the objectors were in fact public documents and should have been disclosed. Copies of the relevant documents were provided to Ms O'Donnell and the hearing proceeded.
29. The Chair also queried why the Commission had not been provided with a copy of the sale of business agreement between the former and current licensees as well as a copy of the commercial lease over the premises, all of which should have been considered by the Director's delegate when the transfer of licence was approved. These were then tendered as part of the evidence and were crucial in establishing the bona fides of the new licensee.
30. Four witnesses attended the hearing in person and gave evidence on behalf of the Licensee. They were Mr Gordon Simmons, Mr Stephen Glover, Ms Jenny McManus and Mr Brendan Moss. They all attested to the fact that this was a very well run corner grocery store and operated in a completely different manner to that which had been the case when the licensee was the Sabine Trading Company Pty Ltd. They said that the proprietor was increasing the range and quality of the non-liquor grocery products and that there were none of the problems with antisocial behaviour around the store which had previously existed. They wanted to support their local independent grocery store which they regarded as an asset to the local community. While some of the witnesses were not particularly concerned about the limited time available within which they could purchase liquor, others said it was inconvenient. However, they all expressed the view that the new owners should not be punished for the sins of the previous licensee when they had done so much to turn the business around and make it such a popular convenience store for the local residents.
31. Ms Vo also provided the contact details for several other local residents who had agreed to be on standby to give similar evidence in support of the application by telephone. She also queried why the Director's referral only contained the four

adverse responses to the Licensee's circular letter which had been distributed amongst the local community explaining the proposed changes but did not include the 40 favourable responses. Copies of those positive comments were then tendered and received by the Commission as evidence in the proceedings. This was important evidence which Mr. Wood conceded should have been in the brief, and as Ms O'Donnell observed, had the Darwin City Council been aware of the depth of support amongst local residents for this Licensee's application then it may very well not have determined to object to the application.

32. Many of those who responded favourably to the circular letter mentioned the unsatisfactory way in which the licence had operated under the previous owners and spoke of the great improvements that had been implemented by the new licensee. Comments included *"This family owned business plays a vital role in our community"*, *"they are assets to the community"* and *"I have lived in this area 14 years and have seen a lot at this business. Things have dramatically changed since the new owners took over. These changes have been for the better on many levels and I have no hesitation in supporting this proposal"*.

ASSESSMENT OF THE APPLICATION

33. The Commission took disciplinary action against the former licensee, Sabine Trading Company Pty Ltd on 20 August 2020, having found it had failed to perform the required Banned Drinker Register (**BDR**) scans on 41 occasions, sold liquor to banned drinkers on two occasions, sold liquor to intoxicated persons on eight occasions, failed to ensure employees held the required RSA accreditation and operated in breach of the Darwin Liquor Accord by selling multiple casks of wine to the same customers on the same day. The evidence before the Commission disclosed that the then licensee's employees were deliberately flouting the BDR requirements in order to sell liquor to patrons who were clearly using another's identification as well as selling liquor to people who were clearly intoxicated. The Douglas Street Store, as it was then known, sold 7,681 litres of cask wine in the first three months of 2019. This was more than twice the amount of cask wine sold by any of its much larger competitors and was only achieved by egregious breaches of the terms of the local Liquor Accord.
34. In suspending the licence for 28 days and imposing significant ongoing restrictions in relation to certain liquor products and trading hours, the Commission warned the former licensee that it had seriously considered cancelling the licence altogether and would do so in the event of further breaches of a similar nature.
35. Accordingly, the former licensee was on notice that it could lose its licence and that it would be subject to increasing levels of scrutiny from both police and licensing officers over its management of these premises.
36. Given that context, the Commission was concerned to establish whether there had been a bona fide sale of the business to the current Licensee rather than a short term arrangement whereby DTKT would lease the premises for the initial two year term of the lease, obtain a variation of the restrictive licence conditions and then vacate the premises such that the business would likely revert back to the previous licensees who retain freehold ownership of the property. It therefore

sought and obtained copies of the sale of business agreement dated 10 June 2022 and the lease dated 27 June 2022. These reveal that the current Licensee has paid what can be regarded as reasonable consideration for the purchase of the business. Although the rent for the initial two year term of the lease may be somewhat less than the market rate, Ms Vo explained that the rent was discounted because the tenant had undertaken to pay for necessary repairs to the building and for a number of significant improvements to the premises. It is also relevant that after the initial two year term, the further two five-year options are at market rental unless the Licensee exercises the option contained in both the lease and sale of business agreement to purchase the freehold. Ms Vo said that it was her and her husband's goal to purchase the freehold for the amount specified in the agreement and lease. That sum appeared to the Commission to be a realistic assessment of the value of the real estate.

37. For approximately 18 months prior to this Licensee purchasing the business and obtaining the transfer of licence, one of its directors, Doan Ngoc Cao had been employed by the former licensee as a manager in the business and it claimed that many of the improvements in the operation of the premises commenced during that period. The Licensee relied on the good relationship Mr Cao had developed with licensing officers during this period and the fact that the focus of the business had changed so that it no longer attracted large numbers of problem drinkers. This was not disputed by Mr Wood, who also confirmed that liquor sales for the business were below the 25% limit allowed with Grocery Store authorities so the Licensee was compliant with that condition of its licence.
38. On the evidence before it, the Commission is satisfied that the Licensee is making this application on its own behalf and in its own interest without any regard to creating a potential benefit to the former licensee.
39. The Commission could not fail to be impressed by the level of support for this Licensee from the local residents. The fact that several of them took the time to attend this hearing and others were standing by to also express their support for the new owners of this business is quite unusual in our experience. The responses to the circular letter appeared genuine and were overwhelmingly favourable to the Licensee. Mr Cao and Ms Vo are entitled to be proud of what they have achieved in this community in such a short time.
40. The Commission is satisfied that there is real public support for this application to vary the conditions of licence as proposed by the Licensee.
41. The Commission has had regard to the objections lodged by the Darwin City Council and Ms Helena Jackson but as has been noted earlier, Council had not been aware of the strong support for this application by a significant number of local residents.
42. In accordance with section 110 of the Act, the Commission is satisfied that varying the conditions of licence is in the public interest and that while this Licensee holds the licence that the variation will not have a significant adverse impact on the community. Having also had regard to the purposes of the Act as set out under section 3, the Commission has determined to vary the conditions

of licence in the terms outlined at the commencement of this Decision Notice. The Licensee was informed of this decision at the conclusion of the hearing.

43. At the conclusion of the hearing the Commission also raised a concern with Mr Wood that in the event that occupation of these premises, for any reason, revert back to persons associated with the previous licensee that any proposed transfer of the licence to those persons or an associated entity should be determined by the Commission rather than by delegation. This is because the Commission expects it may be necessary for witnesses to be called to give evidence and be cross examined as part of any such application. Accordingly, it would seem appropriate that this procedure take place before the Commission at a public hearing. Mr Wood undertook to bring that issue to the Director's notice.

NOTICE OF RIGHTS

44. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
45. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Licensee and Director.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
10 October 2022

On behalf of Commissioners Coates, Stephenson and Fong Lim