

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR SUBSTITUTION OF PREMISES

REFERENCE: LC2022/052

APPLICANT: Newell International Pty Ltd

PREMISES: **Oz Brew**
9 Adams Road
PALMERSTON NT 0831

LEGISLATION: Section 75 of the *Liquor Act 2019*

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Bernie Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 16 November 2022

DATE OF DECISION: 16 November 2022

DECISION

1. For the reasons set out below and in accordance with section 75 of the *Liquor Act 2019* (NT) (“the Act”) the Northern Territory Liquor Commission (“the Commission”) has determined to approve the Substitution of the Premises for Liquor Licence 80817251 from 9 Adams Road, Palmerston to premises at 3, 42 Toupein Road, Yarrowonga, NT 0830.
2. The licensed premises is the entire area of the premises depicted on the site plan tendered at the hearing of the application save and except for the toilets.
3. The licence will be issued immediately following the publication of this decision notice however the licensee shall not be permitted to supply liquor until such time as it provides written confirmation to the Director of Liquor Licensing (“the Director”) that it has obtained the necessary approvals in respect of the premises from the Northern Territory Fire and Rescue Service (NTFRS).

REASONS

BACKGROUND

4. Newell International Pty Ltd (“the Licensee”) is the holder of liquor licence number 80817251 for premises previously known as “Bootleg Barn” which were situated at 9 Adams Road Palmerston NT 0831 (“the Adams Road premises”).

5. On the documentation tendered and exhibited before the Commission, the following history of events is established:
- a. Sometime prior to 12 February 2019, an internal audit was conducted by licensing personnel and discovered the Adams Road premises had ceased trade. As a result, contact was made with the licensee who suggested he would be seeking to substitute the licence to other premises and to be known as “Oz Brew”.
 - b. Considering this information, an email was sent on 12 February 2019 by Mr Jeff Verinder (“Mr Verinder”) to the licensee detailing the requirements and how the application could be made. Within that email, the licensee was warned that if an application was not received within one month, the matter would be referred for disciplinary proceedings with a view to having the licence cancelled.
 - c. On 16 August 2019, the licensee via its nominee Mr Ross Newell (“Mr Newell”) wrote to Mr Verinder advising the February 2019 email had been received into “spam” and he was seeking additional time to complete works necessary for the substitution application.
 - d. That same day Mr Verinder wrote advising the matter had been referred to the compliance team however he would provide them with an update in relation to Mr Newell’s request and reminded the licensee that the “new Act” would soon commence and therefore action needed to be taken by the licensee.
 - e. It appears from the documents that no further communication was made by the licensee from that time and on 14 November 2019, the Director wrote to the licensee advising of the abandonment provision of the Act considering the circumstances that the premises were “not actively trading”. Request was made by the Director that the licensee respond by 1 April 2020 as to their intentions and failure to do so would “likely result in your liquor licence to be deemed abandoned” and action taken to “cancel the liquor licence”.
 - f. Again, it appears from the documents there was no further communication until 4 June 2020 when the licensee finally wrote seeking additional time. Within that request it was made clear by the licensee that they had in fact moved their premises **without** permission. The Commission also notes that within the correspondence the licensee referred to the new premises as where “we are now trading at...”.
 - g. On 30 July 2020, it was confirmed by Licensing NT personnel that no action would be taken to cancel the licence before 31 December 2020 based on submissions made by the licensee but reminding the licensee that if an extension beyond that date was sought “further submissions” would need to be made.
 - h. On 17 February 2021, further communication was sent by Licensing NT to the licensee outlining the obligations for substitution, providing documentation to assist with the same and advising that this be done “as a priority”.

- i. On 8 June 2021, further correspondence was sent by Licensing NT to the licensee advising the application for substitution be “lodged within the next 2 weeks to avoid any referrals leading to direction for failing to comply” with the Act.
6. Unfortunately none of these communications resulted in an application being lodged promptly by the licensee. It is noted that further internal communications occurred within Licensing NT in relation to the matter and updating the Director. It is apparent from those communications that contact was being made with the licensee and Licensing personnel referred to Mr Newell as being “forthcoming” in the challenges that he was experiencing in getting his business trading following its relocation. It is apparent there were also issues in relation to email communications.
7. Finally on 25 July 2022, an application for substitution was lodged on behalf of the licensee. That initial application was incomplete and Licensing NT continued to work with the licensee in relation to ensuring compliance with the application process. On 19 September 2022, the final materials required for the application were provided on behalf of the licensee.
8. From the documents provided to the Commission, Licensing NT has worked **extremely** hard to assist the licensee with this application and the licensee is fortunate indeed that the matter was not referred for non-compliance or disciplinary proceedings.

THE APPLICATION

9. The application is to substitute the licence from the Adams Road premises to its current location 3/42 Toupein Road Yarrowonga, NT 0830 (“the Toupein Road premises”). There is no application to amend or change any of the conditions of the liquor licence. The distance between the two (2) locations is approximately 500 metres or one (1) minute drive by car.
10. The application was accompanied by a number of documents including:
 - a. Affidavits in accordance with Section 54 of the Act
 - b. Submissions seeking to address the Public Interest and Community Impact Assessment criteria
 - c. Photo identification
 - d. Building inspection report
 - e. Community survey of surrounding businesses in relation to the application
 - f. Rates notice for premises
 - g. Site plan

PUBLICATION AND CONSULTATION

11. The application was published in the NT News on 1 October 2022, and electronically published on the Department of Industry, Tourism and Trade website. A green advertising sign was erected at the premises for the course of the advertising period. No objections were received.
12. 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
 - CEO, City of Palmerston.
13. The Department of Health did not respond. The NT Police supported the application. The City of Palmerston did not provide a response.
14. The NTFRS were not informed of the application. There is no requirement for this to occur however it is usually a practice of Licensing NT. The Commission notes that part of its decision includes the requirement for written confirmation of approval from NTFRS to be provided to the Director before the licensee may operate under the terms of the licence.

COMPLIANCE HISTORY

15. There are no compliance issues in relation to this licensee since the granting of its licence in 2003, **however**, it is to be noted that it is sheer good fortune for the licensee that this is the case. The Commission finds, based on the documents tendered, which include various emails from the licensee itself, that **extensive** opportunities were given to the licensee by Licensing NT in relation to lodging this application and yet this was not done for a significant period.
16. The documents by themselves would support a finding of an arguably cavalier approach by the licensee in determining when it would lodge its application for substitution and this was of particular concern to the Commission upon receipt of the referral from the Director, particularly in relation to the licensee's attitude (and that of the nominee, Mr Newell) to their obligations under the licence.
17. This issue was raised with Mr Newell at the commencement of the hearing who stated that he had in fact contacted Licensing staff in relation to such an application "about 6 or 7 years ago" and then had issues in relation to staff, data deleted by a manager which was reported to police, and IT challenges. Mr Newell initially submitted that he considered he "took as much action as practically possible". The Commission does not accept such a submission, particularly given that none of this (other than some challenges with emails) was raised in the material lodged by Mr Newell in support of this very application.
18. Fortunately, however, Mr Newell eventually conceded that in terms of making the application in a timely fashion and complying with the requirements of the licence and the Act, "I take responsibility. It does fall back to me". The Commission was pleased Mr Newell finally made this concession as it is incumbent on all licensees and their

nominees (including Mr Newell) that they understand their obligations under the Act, Regulations and their licence and ensure they comply at all times.

19. As stated to Mr Newell a liquor licence is a privilege, they are not a right and they carry obligations upon those who hold them that must be complied with.

THE REFERRAL

20. On 26 October 2022, the Director referred this application to the Commission. On 27 October 2022, the Applicant was notified that the matter was listed for public hearing at the next scheduled hearing date of 16 November 2022.

THE HEARING

21. Pursuant to section 23 of the Act, the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No submissions were made to the Commission to this effect.
22. On 16 November 2022, the application proceeded as a public hearing. Mr Newell appeared on behalf of the Applicant. Mr Mark Wood (“Mr Wood”) appeared for the Director. The Director’s referral brief was tendered into evidence and additional evidence obtained orally on behalf of the Applicant.

ASSESSMENT OF THE APPLICATION

23. In accordance with section 75(1) of the Act, if a licensee wishes to substitute other premises for the licensed premises, the licensee “must apply for a new licence for those premises”. That section does however go on to provide as follows:

(2) *Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that the substitution satisfies the public interest and community impact requirements.*

24. As noted earlier, the licensee has sought that the Commission amend the licence to substitute other premises and therefore exercise its discretion under section 75(2) of the Act. Pursuant to section 75(2), in order to amend a licence to substitute other premises the Commission must be satisfied that the substitution satisfies the public interest and community impact requirements.
25. Section 49 of the Act addresses public interest and community impact, in particular section 49(2) lists the objectives the Commission must consider in determining the question of public interest and section 49(3) lists the matters the Commission must consider in determining whether there would be a significant adverse impact on the community.
26. Further, when considering this application (and therefore exercising its power or performing its function under the Act), the Commission must have regard to the primary and secondary purposes of the Act set out in section 3 and exercise its power in a way consistent with those purposes. At all times, section 51 makes it clear that the onus is upon the Applicant to satisfy the Commission that issuing the licence or authority “is in

the public interest” and further that issuing the licence “will not have a significant adverse impact on the community”.

27. In relation to the question of “significant adverse impact”, the Commission notes this term is not defined in the Act. The Commission has considered the previous discussion in an earlier ruling on the meaning of this term¹ and in accordance with that earlier ruling the Commission will proceed on the basis that the term “significant adverse impact” means an adverse impact that is important or of consequence but not necessarily substantial.
28. In considering these matters, it is important to note that this application for substitution is somewhat unusual given the nature of the business being operated by the licensee. As noted on behalf of the Director at the time of referral to the Commission; this licence is unique in that the licensee does not *prima facie* sell liquor.
29. What is meant by this is that the business model as understood by both the Director and the Commission is that the licensee sells brewing and related equipment, and produces some of his own product (not for sale), and effectively operates a bank for others who produce their product (also not for sale) on the premises.
30. There are also conditions upon the licence that provide for product sampling in limited amounts and on designated tasting days and only after notice has been provided to the Director with restrictions placed on the number of customers who may be permitted to participate in the tasting at any one time. It is not proposed that these conditions be changed.
31. Because there is production and supply (although limited) on these premises, the Commission agrees with the submission on behalf of the Director that a licence is required pursuant to section 42 of the Act, in particular because of the wording of section 42(1)(c).
32. The Commission notes that the authority presently in place on the licence is a “special venture authority” and that the licensee does not seek any variation to that authority with the circumstances in which the licensee is authorised to sell liquor remaining ancillary to the sale and supply of brewing and bar supply products and ingredients.
33. The Commission has considered the objectives set out in section 49 (2) of the Act. The Commission has also considered the unique nature of this licence and that the basis for the substitution is because the licensee moved its location a distance of approximately 500 metres. There are no other changes sought to the nature of this licence that has been successfully operated since being issued in 2007 (albeit noting that here was a period of time where the premises were not trading for a number of reasons).
34. As earlier indicated, although the Commission was concerned by the lack of action taken by the licensee with respect to this application for a significant period, it is now clear that Mr Newell understands the terms of this licence and the obligations placed upon him with respect to what is required under the Act and Regulations. Having now

¹ See Northern Territory Liquor Commission Decision Notice – *Application for Substitution of Premises and Application for Variation of Conditions of Licence – Liquorland (Australia) Pty Ltd (“Palmerston Liquorland Decision Notice”)*, 3 July 2020, para. 103

lodged his application, it is also clear that appropriate action has been taken in relation to security, storage and the sampling as per those obligations.

35. Therefore, considering all the evidence, the Commission is satisfied that the proposed substitution of premises is in the public interest and will not have a significant adverse impact on the community. As a result, the Commission has determined to amend the licence to substitute Unit 3, 42 Toupein Road, Yarrawonga for the licensed premises in the terms outlined at the commencement of this Decision Notice. The licensee was advised of this decision at the conclusion of the hearing.

NOTICE OF RIGHTS

36. 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* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
37. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Applicant and Director.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
16 November 2022

On behalf of Commissioners Truman, Dwyer and Hart