

NOTE: BY ORDERS MADE ON 14 MAY 2024, THE NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL VARIED THE LIQUOR COMMISSION'S DECISION AND ORDERS SET OUT BELOW, TO ALLOW THE LICENSEE TO TRADE UNTIL 3:00 AM ([2024] NTCAT 3).

## NORTHERN TERRITORY LIQUOR COMMISSION

### DECISION NOTICE AND REASONS FOR DECISION

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**CITATION:** *TEHG PROPERTY PTY LTD APPLICATION FOR MATERIAL ALTERATION AND VARIATION TO CONDITIONS* [2023] NTLiqComm 37

**FILE NUMBER:** LC2023/028

**LICENSEE:** TEHG Property Pty Ltd

**PREMISES:** TEHG on Mitchell

**LICENCE:** 80304395

**LEGISLATION:** Division 4 of the *Liquor Act 2019*

**DECISION OF:** Ms Jodi Truman (Deputy Chairperson)  
Professor Phil Carson (Health Member)  
Ms Katrina Fong Lim (Community Member)

**DATE OF HEARING:** 11 October 2023

**DATE OF DECISION:** 13 November 2023

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### Decision

#### **Material alteration of the premises**

1. For the reasons set out below and in accordance with section 97(2) of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**), has determined to approve the material alteration of the premises known as "TEHG on Mitchell" (**the premises**) at 76 Mitchell Street, Darwin.
2. In accordance with the approval given, the licensed footprint of the premises shall include the area encompassed within the solid red line area on the plan which is attached to this Decision Notice.

3. Noting that the premises is undergoing refurbishment and construction and that various areas within the premises will be available for trading earlier than others, the approval is subject to the following conditions:
  - a. The works must be carried out and completed within 18 months of the date of this Decision Notice, or such later date as the Commission approves;
  - b. That the Licensee must not permit the sale or consumption of liquor in any of the refurbished or newly constructed areas depicted in purple, green and orange on the plan attached to this Decision Notice, until documentary evidence has been provided to the satisfaction of the Director of Liquor Licensing (**the Director**) that the Licensee has obtained the necessary fire safety and building approvals, including a certificate of occupancy, in respect of each of those areas.
  - c. To avoid doubt, the Licensee may permit the sale or consumption of liquor in any of the areas depicted in purple, green and orange on the plan when the satisfaction of the Director has been obtained in accordance with condition 3(b) above in respect of that area notwithstanding that it has not been obtained in respect of the other area/s and providing that those areas not yet approved are securely fenced off to prevent access by the public until such time as the licensee is able to satisfy the requirements stipulated in paragraph 3(b).

#### **Application to vary conditions**

4. In accordance with section 112(2), the Commission has determined to refuse the application to permanently vary the conditions of the licence for the premises.

#### **Reasons**

##### **Background**

5. TEHG Property Pty Ltd (**the licensee**) is the holder of liquor licence number 80304395 for premises known as "TEHG on Mitchell", 76 Mitchell St, Darwin NT 0800 (**the premises**).
6. The license held over those premises includes a public bar authority and late-night authority with the trading hours being from 10:00 AM to 2:00 AM seven days per week.

#### **The Application**

7. On 20 March 2023, Ms Monique Nixon-Smith (**Mrs Nixon-Smith**) of DNS Specialist Services lodged an application with the Director under section 96 of the Act on behalf of the licensee for approval of a material alteration of the premises together with an application under section 110 of the Act for approval to vary the licence.

8. The substance of the material alteration application is to refurbish the venue to transform the location previously known as Ducks Nuts and The Darwin Cinema into one overall entertainment venue. The application noted that the plan was to re-open as a “high quality, licensed dining and entertainment premises” and that the site was “undergoing a major redevelopment” to “activate a major Darwin landmark and revitalise the area”.
9. Under the application as lodged, the refurbishments proposed increase the floor size from 1,181m<sup>2</sup> to 2,685m<sup>2</sup> thus increasing the size almost 2 ½ fold. This will be done in two stages:
  - a. Stage 1 will increase the total floor area from 1,181m<sup>2</sup> to 1,791m<sup>2</sup>;
  - b. Stage 2 will subsequently increase the total floor area by a further 904m<sup>2</sup>.
10. At the time of the hearing in October 2023, whilst the increase in floor size remained the same, the refurbishments were identified to occur in three stages (set out in Exhibit 18 tendered at the hearing):
  - a. Stage 1 (depicted in purple) which was to include the current licensed area of the old “Ducks Nuts”;
  - b. Stage 2 (depicted in green) which was to include the old “Darwin Cinema” candy bar area;
  - c. Stage 3 (depicted in orange) which was to become a “band” room and “function” room and included areas which were previously cinemas.
11. There was also reference to a Stage 4, however that area is not proposed to be part of the premises to be included under the application for a material alteration of the licence.
12. The substance of the application to vary the licence was to extend the trading hours of the late-night authority already held from 2:00 AM to 3:00 AM. It was submitted within the application that the proposed new closure time could potentially assist with reducing antisocial behaviour known to affect Mitchell Street. This submission was the subject of significant discussion during the course of the hearing.

### **Publication and Consultation**

13. As required by section 57 of the Act, notices of the applications were published in the NT News on 20 May 2023 and on the Director’s website. The applicant also displayed the required “green sign” at the premises. The Director was satisfied that the applicant had complied with the requirements to advertise the application.
14. In accordance with section 56 of the Act, notification was given to Department of Health (**DoH**), NT Police and the City of Darwin. Notice was also given to Northern Territory Fire and Rescue Services (**NTFRS**).

15. There were no objections to the application by DoH and despite the significant time provided, no response was received from the City of Darwin. It is noted however that the Licensee had been involved in significant discussions with the City of Darwin with respect to various changes proposed to the outdoor dining space and impact on the footpath and carparks.
16. NTFRS had no objection and proposed conditions be imposed that the issue of the licence be subject to approval processes under the *Building Act (NT)* and assessment of the premises by building and fire safety authorities.
17. There were however two objections lodged with respect to the application:
  - a. An objection lodged by Mr. Travis Kelly, a resident of the area living in close proximity to the premises, who objected to the variation application extending trading hours until 3:00 AM. Mr. Kelly expressed concern about the granting of a variation to operate until 3:00 AM “everyday in a residential area”; stating “Are we to get no sleep!”
  - b. An objection lodged by NT Police who also objected to the variation application extending trading hours until 3:00 AM. This objection will be outlined in further detail within these reasons.
18. In submissions to the Commission at the hearing of the application, the representative of the Director stated that the Director “had no concerns with the application”.

## **Consultation**

19. The Director advised the Commission within the referral that “the applicant and its directors are known to Licensing NT. There are no adverse compliance history on file”.
20. The Commission is also familiar with the Directors; Mr Justin Coleman and Mr Stephen Dugan and their knowledge, experience and reputations in relation to operating a number of licensed venues within the Northern Territory.

## **The referral**

21. On 11 September 2023, pursuant to section 59 of the Act, the Director referred the application to the Commission to be determined by way of a public hearing. Notice was subsequently given by the Commission on 18 September 2023 that the matter would be listed for a public hearing on 11 October 2023.
22. The referral included a number of documents, including:
  - a. TEHG Property Pty Ltd liquor licence 80304395, stamped 19 December 2022;
  - b. TEHG Property Pty Ltd gaming licence GM259, stamped 19 December 2022;

- c. Application for approval of a material alteration to a licensed premises dated 20 March 2023;
- d. Application to vary a liquor licence, dated 20 March 2023;
- e. Affidavit in accordance with section 54 of the Act;
- f. Single page headed "Unit Trust Deed for TEHGO Trust, ACN 661 531 899";
- g. Public notice of application pursuant to section 57 of the Act;
- h. Public Interest and Community Impact Assessment Summary and Public Interest Criteria pursuant to section 49 to 52 of the Act;
- i. Community Impact Analysis pursuant to section 50 of the Act;
- j. Development Permit, permit number DP23/0038;
- k. Refurbishment plans for premises;
- l. Objections and licensee's response to objections;
- m. Correspondence with stakeholders.

### **The hearing**

- 23. On 11 October 2023, the application proceeded as a public hearing. Dr Cameron Ford appeared as counsel on behalf of the applicant instructed by Mr Andrew Giles, with Mr Coleman, Mr Dugan and Mr Lachlan Mitchell (all three Directors) in attendance. Ms Monica Thompson appeared on behalf of NT Police with Superintendent James O'Brien. Ms Michelle Ganzer, Deputy Director, appeared for the Director with Mr Bernard Kulda in attendance. The Commission thanks all persons for their attendance, respect shown and assistance provided at the hearing.
- 24. In addition to the documents included in the referral, the following documents were also provided and relied upon:
  - a. Declaration of associates pursuant to section 54 of the Act;
  - b. Community consultation report;
  - c. City of Darwin outdoor dining application approval, dated 30 June 2023;
  - d. Risk Assessment report;
  - e. TEHG Property Pty Ltd liquor licence 80304395, stamped 20 February 2023;
  - f. Unit Trust Deed for TEHGO Trust, ACN 661 531 899;
  - g. Objector affidavit and CCTV footage;

- h. Policies and Procedures Manual for Coleman Management Group;
  - i. ASIC register extract for Mettle and Co Pty Ltd; DALS Pty Ltd; and TEHG Pty Ltd;
  - j. Architectural plan and concept drawings;
  - k. Preliminary environmental noise assessment acoustic services report;
  - l. Letters of support from the Blue Taxi Company and NT Hospitality;
  - m. Northern Territory Tourism Industry Strategy update;
  - n. Liquor density report;
  - o. Updated building staging plan;
  - p. Landmark cocktail menu;
  - q. Breeze Bar and Bistro Dinner and Lunch Menu;
  - r. Financial reports.
25. Pursuant to s 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.
26. At the hearing, the Director's referral brief was tendered into evidence as Exhibit 1. Numerous other documents were also tendered on behalf of the Licensee during the course of the hearing and submissions were made on behalf of the Licensee, the NT Police (as Objector) and the Director. Documents were also tendered on behalf of NT Police.
27. Included within the evidence tendered by the Applicant in support of the application, was relevant confidential financial information, proposed draft menus and drinks lists and likely costs (also tendered on a confidential basis) with respect to the venue.
28. The Commission accepted this material into evidence as tendered by the applicant, without objection.

## **ASSESSMENT OF THE APPLICATION**

29. In accordance with sections 97 and 112 of the Act, the Commission has considered:
- a. the applicant's affidavit required by s 54 (relevant to the application under section 112).
  - b. the objections to the application.

- c. the applicant's response to those objections.
  - d. The public interest and community impact requirements.
30. When considering this application (and therefore exercising its power or performing its function under the Act), the Commission must also 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<sup>1</sup>.
31. As set out in section 3(1) the "primary purpose" of the Act is to "minimise the harm associated with the consumption of liquor in a way that recognises the public interest in the sale, supply, service, promotion and consumption of liquor". The Commission therefore accepts that the Act makes clear that there is a public interest in the sale, supply, service, promotion and consumption of liquor, which is a legal substance. It is also clear that there is a public interest that this occur in a way that **minimises** the harm associated with the consumption liquor.
32. Much was said in this case about the October 2017 "Alcohol Policies and Legislation Review" (colloquially referred to as "The Riley Review") (**the Riley Review**). One of the aspects of the Riley Review concerning the question of "public interest" that appears to have either been forgotten or largely ignored, and which is relevant to the matters to be considered by the Commission is the following:
- "The need for demonstrated public interest is greater because of the greater harm caused by alcohol in this jurisdiction.
- "The *Liquor Act* should make it clear that the onus of establishing that the grant of a relevant application is in the public interest rests firmly upon the Applicant at all times. The sale of alcohol should be seen as a privilege not a right and the supply and sale of it should be supported only if the community is protected from harm by sensible controls."
33. These are important matters and the Legislature's enactment of section 49 and 51 are consistent with that recommendation. As made clear by section 51, at all times the onus is upon the Applicant to satisfy the Commission that approval of the application "is in the public interest" and "will not have a significant adverse impact on the community".
34. 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 term<sup>2</sup> and in accordance with that earlier ruling the Commission will proceed on the basis

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<sup>1</sup> Section 3(4) of the Act

<sup>2</sup> 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

that the term “significant adverse impact” means an adverse impact that is important or of consequence but not necessarily substantial”.

35. As previously referenced, the Commission notes that the substance of this application is for a major refurbishment, expansion and redevelopment of two popular premises that had closed in 2017 and 2018 respectively. The licensed premises have in fact been vacant and have not operated since 2017. It was during this period that the Director endorsed the transfer of this licence to the applicant on 19 December 2022.
36. The licensee has already commenced early stages of the planned works which have included completely gutting the premises. These proposed premises involve significant construction work and investment in the NT, particularly the city of Darwin. As a result of these works and upon granting of the material alteration, the premises will upon completion become one of the largest licensed premises on Mitchell Street and provide a variety of entertainment in the city to locals and tourists alike at a location that is presently a “dead spot” in the city centre.

### **The applicant**

37. The Commission notes that the applicant already holds this licence. This is therefore not an application for the issue of a new liquor licence or the transfer of one. It is an application for a variation and material alteration of the licence already in existence and held by the applicant. There is no issue therefore for the Commission to consider in relation to whether the applicant is fit and proper.
38. Should the Commission be mistaken in this regard, the Commission is satisfied as to the well-established credentials of principals of the applicant, in particular Mr Coleman. The Commission was also informed by the Director that this licence was issued in 2016 and then transferred to the applicant in 2022. Given these circumstances, the Commission is satisfied that sufficient disclosure has previously been provided to enable that transfer to occur.

### **The applicant’s associates**

39. Whilst that may be the case concerning the applicant, section 112 does require that the Commission consider the affidavit required under section 54 of the Act that discloses persons of influence and potential beneficiaries.
40. The applicant is an Australian proprietary company limited by shares. The current office holders are Mr Justin Coleman (Director) and Mr Lachlan Michell (Director). There are currently 10 ordinary class shares issued with Little Cashy Pty Ltd beneficially holding 3 shares, Mettle and Co Pty Ltd beneficially holding 5 shares and DALs Pty Ltd beneficially holding the remaining 2 shares.
41. Mr Coleman is the sole Director, Secretary and shareholder of Little Cashy Pty Ltd. Mr Michell is the sole Director and shareholder of Mettle and Co Pty



Ltd. Mr Dugan is the sole Director, Secretary and shareholder of DALS Pty Ltd.

42. On 9 October 2023, the applicant lodged with the Commission an affidavit from Mr Coleman pursuant to section 54. The Commission is satisfied with the matters set out within that affidavit and compliance with section 54 of the Act.

### **Public interest and community impact requirements**

43. Before turning to the application itself, the Commission notes that both sections 97 and 112 require the Commission to consider the public interest and community impact requirements.
44. In considering the public interest requirements the matters set out in section 49(2) of the Act must be considered:
- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor.
  - (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner.
  - (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises.
  - (d) protecting the safety, health and welfare of people who use licensed premises.
  - (e) increasing cultural, recreational, employment or tourism benefits for the local community area.
  - (f) promoting compliance with this Act and other relevant laws of the Territory.
  - (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business.
  - (h) preventing the giving of credit in sales of liquor to people.
  - (i) preventing practices that encourage irresponsible drinking.
  - (j) reducing or limiting increases in anti-social behaviour.
45. When considering the community impact requirements, the matters set in section 49(3) of the Act must be considered:
- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;

- (b) the geographic area that would be affected;
  - (c) the risk of harm from the excessive or inappropriate consumption of liquor;
  - (d) the people or community who would be affected;
  - (e) the effect on culture, recreation, employment and tourism;
  - (f) the effect on social amenities and public health;
  - (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
  - (h) the effect of the volume of liquor sales on the community;
  - (i) the community impact assessment guidelines issued under section 50;
  - (j) any other matter prescribed by regulation.
46. The Commission notes there are no such “other” matters prescribed by regulation. As recently identified by the Commission<sup>3</sup> there are also apparently no community impact assessment guidelines currently in force, following the expiry on 1 October 2020 of Part 8 (“Transitional matters”) of the Regulations, which included a provision deeming the community impact assessment guidelines previously published under the *Liquor Act 1978* to be guidelines issued under s 50 of the *Liquor Act 2019*.
47. Finally, it is important to note that at all times, the applicant bears the onus of satisfying the Commission of the relevant matters. Even if there were no objections, the applicant must still satisfy this Commission of all matters.

### **The Objections**

48. As mentioned earlier, there were however objections to this application. The objection lodged by Mr Kelly, a nearby resident, focused on the concern of not being able to sleep. The Commission understood his concern to be a reference to increased noise in the area that may affect his sleep. Although Mr Kelly referred to the area as a “residential area” it is clear to the Commission that the premises are located in the central business district (CBD) of Darwin.
49. The second objection was from NT Police. The objection focused solely on the application to vary the licence to enable the applicant to sell liquor until 3:00 AM, extended from its current licence authority of 2:00 AM.

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<sup>3</sup> See DCL Hospitality Pty Ltd decision (LC2023/10) paragraph 142

50. Evidence was provided in the form of an affidavit from Superintendent James O'Brien. Within that affidavit, Superintendent O'Brien set out his extensive knowledge and experience as a police officer and particularly in relation to City Safe duties and late-night incidents in the CBD setting.
51. Superintendent O'Brien noted the following matters:
- a. Based on his experience alcohol fuelled violence and related disturbances are often reported outside of late-night trading venues.
  - b. As a result, it was his belief that allowing another late-night venue to trade beyond 2:00 AM on Mitchell St. would "more than likely ... result in more people being on the street beyond 2:00am, which significantly increases the risk of more persons being apprehended under sections 128 or 133A PAA (or arrested generally for alcohol fuelled violence) which will necessarily impact policing resources within the CBD."<sup>4</sup>
  - c. That this potential could occur "regardless of how well the licensee managed on premises activities and alcohol consumption"<sup>5</sup>.
  - d. It was his opinion that if the variation were granted it would "provide opportunity for a rise in the consumption of alcohol which could further impact the rate and incidence of alcohol fuelled violence within the Darwin CBD"<sup>6</sup>.
  - e. As a result, a reassessment of police resources and responses would be required "in light of the additional risk posed to the community"<sup>7</sup> and would likely stretch police resources even further and potentially impact on police "resourcing generally across the Darwin region"<sup>8</sup>.
52. Evidence was also provided as to the impact of licensed premises within the CBD and in particular the premises known as Mayberry Darwin and what Superintendent O'Brien referred to as the demonstrated increase in the number of assaults and disturbances in and around that venue and CBD generally.

### **The reply to the objections**

53. Although the Commission received additional oral evidence in relation to the nature of the proposed premises, the refurbishments and the financial circumstances of the proposed premises, the preponderance of the evidence and issues raised in this application related to the objection made by NT Police and the applicant's response to the same.

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<sup>4</sup> Paragraph 23 of Affidavit of James O'Brien sworn 28 September 2023

<sup>5</sup> Ibid, paragraph 43

<sup>6</sup> Ibid, paragraph 44

<sup>7</sup> Ibid, paragraph 45

<sup>8</sup> Ibid

54. Significant discussion took place (which was expanded upon in closing submissions filed on behalf of the applicant) in relation to the relevance, or otherwise, of reliance by NT Police upon matters raised in Riley Review concerning the impact of late-night trade<sup>9</sup> and a further study referred to by NT Police conducted in Copenhagen, Denmark in 2022<sup>10</sup> (**the Copenhagen study**).
55. The submissions made on behalf of the applicant in relation to these studies were detailed and lengthy. The Commission has considered them very carefully. Without seeking to oversimplify such submissions, it is apparent to the Commission that in substance those submissions can be summarised as follows:
- a. The Copenhagen study cannot be extrapolated to one venue in Darwin extending their operating hours from 2:00 AM to 3:00 AM. As such the variables inherent make the Copenhagen study inapplicable<sup>11</sup>.
  - b. The Riley Review and Parliament were aware of the asserted link between late night trade and harm, yet both accepted that venues could be open to 4:00 AM and still minimize harm appropriately<sup>12</sup>. Further, that if the studies referred to in the Riley Review were similar to the studies of area wide closures; their results were similarly inapplicable to this application<sup>13</sup>.
56. Counsel for the licensee relied heavily in their submissions upon the risks with respect to extrapolation<sup>14</sup>. The Commission acknowledges these risks and in particular the danger of ideas becoming encapsulated in phrases which are thereafter no longer subject to further analysis<sup>15</sup>. In this regard counsel for the licensee referred specifically to the phrase “late- night trading increases the risk of alcohol related harms”.
57. Whilst the Commission acknowledges this risk, the Commission does not consider that means the Commission is prevented from utilising such studies when considering the objectives under the Act, in particular the risk of harm or ill-health caused to people by the consumption of liquor, safeguarding public order and safety and reducing or limiting increases in anti-social behaviour. The Commission must however be cautious in the usage of these studies and the circumstances in which they were conducted. That is the process the Commission has determined to adopt.

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<sup>9</sup> See in particular discussion within the Review commencing at page 54 under “Extended Hours Trading Authority”

<sup>10</sup> Anders Ejrnaes and Rune H. Scherg “Nightlife activity and crime: The impact of COVID-19 related nightlife restrictions on violent crime” January 2022, Journal of Criminal Justice 79 (2022) 101884

<sup>11</sup> See paragraph 28 of Licensee’s Closing Submissions dated 18 October 2023

<sup>12</sup> Ibid, para 27

<sup>13</sup> Ibid, para 35

<sup>14</sup> Ibid, see in particular para 31 to 37

<sup>15</sup> Ibid para 37

58. Since its inception, the Commission has received on numerous occasions via the material referred to in the Riley Review and numerous other applications; studies addressing the correlation between trading hours and alcohol related harm. Time and again the scientific literature has demonstrated a strong correlation between extended alcohol trading hours and increased alcohol related harms. This correlation is consistent with what was found and referred to in the Riley Review.
59. There can always be differences found in the circumstances of the studies and the circumstances of a relevant application. The Commission agrees that use of the findings based on large populations of interventions which vary in time and extent need to be contextualized when applied to a specific location and a specific venue within an entertainment district.
60. However, the Commission is comfortably satisfied that there is general consensus as a result of numerous studies, like those referred to in the Riley Review (i.e. the La Trobe study) and the Copenhagen study, that there is an increase in alcohol related harms with each extra hour of trading. As was stated by the authors of the Riley Review<sup>16</sup>:
- “The La Trobe study concluded that increasing trading hours tends to result in higher rates of harm, while restricting trading hours tends to reduce harm. The evidence of effectiveness is strong enough to consider restrictions on late-trading hours for bars and pubs as a key approach to reducing late-night violence in Australia”
61. The Commission finds this is therefore an important factor to be considered in determining this application.
62. It is therefore pertinent to note that it is for the applicant to satisfy the Commission that increasing the trading hours by one additional hour (as proposed by this variation) would **not** have that impact. The burden is, and remains, on the applicant.
63. It is also important to recall that on the question of the public interest, the Act states clearly that the Commission “**must** consider how (the application) would **advance** ... **minimising** the harm or ill-health caused ... by the consumption of liquor” <sup>17</sup> (emphasis added).
64. The applicant submits that the extension of one hour would “not appreciably – or at all - increase the harm or ill-health of people and may reduce it”<sup>18</sup>. However, that is not what the Act requires the Commission to consider. It is not a matter that the proposed application does not “appreciably” increase the harm. The Commission must consider in fact how the proposed application **advances** the **minimisation** of that harm among the other objectives set out.

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<sup>16</sup> Riley Review, p.87, para 3.3

<sup>17</sup> See section 49(2)(a) of the Act

<sup>18</sup> Licensee’s Closing Submissions, para 9

65. In this regard the applicant states:

- a. The venue will be a responsible alternative to other venues open until 4am<sup>19</sup>;
- b. That of the “possible permutations” of patrons’ attendance at venues closing at 2am, 3am and 4am, and then going home; if the venue closed at its currently licensed 2am, patrons would have the option of going home or going to a 4am venue and that (in accordance with the evidence of Mr Coleman) “many people” are not ready to go home at 4am but are ready to go home by 3am. Therefore “those persons” would be likely to go to a 4am venue if this venue closed at 2am<sup>20</sup>;
- c. If this venue were permitted to close at 3am, the 3am lockout would have the effect they would go home if they left at or around 3am, and this would mean they had less to drink than they would have had if they had gone to a 4am venue<sup>21</sup>;
- d. If the venue were used as a “skip” venue with patrons leaving enough time before 3am lock out to get into a 4am venue, those “skippers” would not be drinking more due to the venue because they would have done the same when the venue closed at 2am, they just stayed at this venue later<sup>22</sup>;
- e. It is a “logical fallacy to reason that because this venue is open for one extra hour from 2 am to 3 am, more alcohol will be consumed *across the board* than it would otherwise have been”<sup>23</sup>;
- f. That the demographic sought to be attracted to this venue were “the older demographic looking for a quieter night, perhaps after an event such as the Star Ball” who “*may* drink more than they would *had they gone home instead*, but they are not the demographic generally contributing to the harm, and they are the type to leave gradually and peacefully between 2 and 3 am”<sup>24</sup>.

66. In relation to the above matters the Commission:

- a. Acknowledges Mr Coleman and Mr Dugan are “responsible” operators with a long history in Darwin. However, whether these premises will in fact be a “responsible alternative” is not as easy a conclusion to make and in fact remains to be seen. This application is not just about a variation of one hour in trade. It is an application that involves the alteration of the venue that will increase its size almost 2 ½ fold, making

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<sup>19</sup> Licensee’s Closing Submissions, para 10

<sup>20</sup> Ibid para 14

<sup>21</sup> Ibid para 15

<sup>22</sup> Ibid para 17

<sup>23</sup> Ibid para 18

<sup>24</sup> Ibid, para 19

it one of the largest licensed entertainment venues. It is also an application in relation to a venue which is not and has not operated in this proposed form at all. There is no operational history of this venue, as it is proposed by the applicant, that would enable the Commission to be satisfied it would be a “responsible alternative to other venues”. What is proposed here is in fact a significant change. The Commission therefore can only find that the proposed premises would be an “alternative”.

- b. Whilst respecting the experience of Mr Coleman as a licensed venue holder, his opinion that “many people” are not ready to go home at 4am but are ready to go home by 3am, is simply one opinion. His opinion therefore that “those persons” would be likely to go to a 4am venue if this venue closed at 2am is given little weight by the Commission. Such persons may go home, and they may not. The example given by Mr Coleman in his evidence of his experience following attendance at Starlight Balls therefore adds little to the matters to be considered by the Commission.
- c. The effect of the lockout on patrons being unable to attend other venues is understood. The Commission does not however find itself satisfied that this means that patrons “had less to drink than they would have had if they had gone to a 4am venue’. True it is that the opportunity to do so would exist however the Commission does not consider there is sufficient evidence for it to be able to quantify how much additional liquor would be consumed by patrons in that last hour, than would have been consumed had these premises remained open until 3.00am.
- d. Accepts what is submitted about the impact of this variation on “skippers”.
- e. Does not accept the submission that it is a “logical fallacy to reason that because this venue is open for one extra hour from 2 am to 3 am, more alcohol will be consumed *across the board* than it would otherwise have been”. It was made clear that part of the business plan by the applicant is not just in relation to providing an alternative to patrons who may already be going out to venues, but in fact to attract increased numbers of patrons into the city centre. It would be a “logical fallacy” to suggest otherwise. As successful business operators, it is reasonable the applicant would want to attract patrons to the venue. Any smart business operator would. However, that intention does mean that if carried out successfully there are more people in the vicinity and more people who are likely to consume alcohol and therefore likely to result in more alcohol being consumed “across the board” as a result of these premises. This is particularly so with the increase in size of the venue as proposed under the material alteration application.
- f. Whilst the Commission accepts that evidence was given that **one** of the demographics sought to be attracted to this venue were “the older demographic looking for a quieter night, perhaps after an event such as the Star Ball”, that was not the only demographic who would be attracted

to this venue. The Commission understands the proposed venue will have a band space for live entertainment, outdoor pizza bar, function room, as well as a “duelling pianos” area that the Commission was informed had proven to be “extremely popular” at another venue operated by Mr Coleman and Mr Dugan. It is therefore not just an older demographic likely to be attracted to this venue. The Commission finds there are numerous demographics who may attend these premises and, young or old, if they have consumed “more than they would *had they gone home instead*” there is an increased risk of harm and an increased risk with respect to public order and anti-social behaviour.

67. Submission was made on behalf of the applicant in relation to either a “formal or informal policy” by NT Police “to restrict all venues to 2am closing” and that such a policy (if there is in fact one) “would subvert Parliament’s express policy, and the Commission would be an inappropriate forum to advocate for its adoption”<sup>25</sup>. The Commission does not find there is such a policy by police either formally or informally.
68. It was patently clear to the Commission that the evidence given by Superintendent O’Brien was a considered professional opinion of a locally informed experienced senior police officer regarding his experience and that of City Safe Operations of the effect of increased hours of trade for late night venues, the impact that a venue such as the one proposed by the applicant is likely to have upon police resourcing to carry out obligations under the *Police Administration Act* and the impact this may have upon harm, public order, safety and anti-social behaviour. The objection from NT Police was very clearly made pursuant to section 61(2) of the Act being that the variation would adversely affect either the amenity of the neighbourhood and/or the public safety or social conditions in the community.
69. Even if it were the case that NT Police had such a policy, it would be an utterly irrelevant factor to the Commission’s consideration of this application or any other application. The Commission exercises its powers and functions in accordance with the Act. It does not carry out the policies of NT Police or any other agency or organization for that matter.
70. The Commission finds that the concerns raised by NT Police within their objection and addressed more fulsomely in the evidence of Superintendent O’Brien are relevant and go to the objectives that must be considered by the Commission when considering both the public interest and the community impact requirements.
71. It was submitted on behalf of the applicant that the “submissions” by NT Police were “of very limited value” as it was “disclaimed” that there were “any issues with these premises or this licence”<sup>26</sup>. Further that the “submissions ... gloss over the fact that the venue will be open until 2am in any case”.

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<sup>25</sup> Licensee’s Closing Submissions, para 23

<sup>26</sup> Ibid, para 24



72. On this issue and with respect to counsel for the Applicant, until the Commission made its decision set out herein it was **not** a “fact” the venue in its proposed form would be open as a **licensed** venue “until 2am in any case”. To suggest this ignores the “fact” that the only part of the venue that would be opening “until 2am in any case” is Stage 1 of the proposed development and in fact not the entirety of that Stage 1 given some of it is not currently part of the terms of the existing liquor licence.
73. The applicant still needs to satisfy the Commission that the material alteration should be granted to enable “the venue” as proposed to open until 2am. That was the case whether the NT Police objected or not.
74. The Commission understood that the objection by NT Police related specifically to the variation portion of the application. That does not mean that the matters referred to by NT Police should be given any less weight or are of “very limited value”. This submission made on behalf of the applicant ignores the fundamental obligation upon the applicant to satisfy the Commission of the application. Again, this remains the case whether there is any objection to the application or not.
75. Ultimately, the Commission finds that the matters raised by NT Police in support of their objection are relevant and do form part of the numerous matters and objectives that the Commission must consider when determining this application.

### **The public interest and community impact requirements**

76. In determining the question of the public interest, the Commission notes the following objectives under section 49(2) to be particularly relevant as to considering how the material alteration and variation would **advance** the following objective:
  - a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
  - c. safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
  - d. protecting the safety, health and welfare of people who use licensed premises;
  - j. reducing or limiting increases in anti-social behaviour.
77. In relation to the matters set out in section 49(2)(b), (e), (f), (g), (h) and (i) the Commission accepts that these objectives can be adequately addressed by the applicant via its operational practices and that the venue, as proposed under the material alteration, would provide *some* recreational, employment and tourism benefits.

78. The Commission has therefore closely analysed the evidence provided in light of particularly addressing those remaining objectives under section 49(2), namely (a), (c), (d) and (j).
79. Further, in determining the question of whether the material alteration or variation would have a significant adverse impact on the community, the Commission notes the following to be particularly relevant considerations under section 49(3):
- a. the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
  - b. the geographic area that would be affected;
  - c. the risk of harm from the excessive or inappropriate consumption of liquor;
  - d. the people or community who would be affected;
  - g. the ratio of existing liquor licences and authorities in the community to the population of the community;
80. In relation to the remaining matters set out in section 49(3) the Commission accepts that these can be adequately addressed by the applicant via its operational practices and (as previously noted) that the venue, as proposed under the material alteration, would provide *some* recreational, employment and tourism benefits.
81. The Commission has therefore also closely analysed the evidence provided in light of particularly addressing those remaining objectives under section 49(3), namely (a), (b), (c) (d) and (g).
82. In relation to the geographic area/community/neighbourhood, the Commission notes the evidence provided by the Director (without objection from the applicant) that there are 80 licensed venues in and around the premises of various types. Of these venues, 35 hold a licence permitting trade until 2.00am and 8 hold a licence permitting trade until 4.00am. There is therefore a high ratio of existing licences in the vicinity of the licensed premises.
83. The Commission is also aware that in terms of the geographic area, there are three (3) hostels providing accommodation, namely Galawu Hostel, Silas Roberts and the Salvation Army Hostel. There are also Housing Commission flats known as Tomaris Court nearby. There is no evidence before the Commission to indicate there would be anything about these premises that would make them “unattractive” to such persons (noting there will be a gaming area also located within these premises).
84. Generally, the Commission considers that what the applicant proposes to offer to the community with the proposed premises by way of entertainment within the licensed venue is likely to offer a benefit to the community. The

Commission also considers that, given the history, experience and reputation of Mr Coleman and Dugan in particular, the venue is likely to be well run and in compliance with the Act.

85. The Commission further finds that the granting of the material alteration would also result in a significant financial investment being made in the premises and therefore to the Territory and this benefits the wider community in what are presently challenging financial times. For these reasons, the Commission considers there is little issue in granting the material alteration having considered the public interest and community impact requirements.
86. The same however cannot be said in relation to the application for variation to enable an additional hour of trade to 3.00am. The Commission finds that when considering the application to vary, this must be considered in light of the decision to grant the material alteration and therefore the Commission is obliged to consider what impact premises of the kind permitted under that material alteration would have.
87. With the size of the premises proposed, the Commission does not consider that the granting of an additional hour of trade as sought under the variation application would **advance** the objective of minimizing the harm or ill-health caused to such people by the consumption of liquor.
88. There will be a real change caused in the local area as a result of the commencement of operation of these premises. It is the applicant's intention to operate a very successful and popular venue. It appears more likely than not, given the experience and prior success of both Mr Coleman and Mr Dugan in particular, that the applicant is likely to be successful in this endeavour.
89. That means that it is more likely than not that there will be a greater amount of liquor consumed and therefore an increase in the risk of harm or ill-health being caused by virtue of that increase in consumption.
90. In addition, the likelihood of operating such a large venue means that an area now described as a "dead spot" will generate significantly more traffic and noise than at present, particularly given its size. Having that noise and traffic continue for an additional hour (particularly given the size of the premises) is not an insignificant matter and the Commission considers it will more likely than not have a significant impact on those residents nearby.
91. The Commission has already acknowledged that these premises are in the CBD, however that does not mean that persons who choose to live in the CBD (or to visit as tourists for that matter) are not entitled to reasonable quiet enjoyment. In fact, as much is made clear under section 49(3)(a) of the Act. Whilst the Commission accepts that the applicant would have policies and procedures in place to attempt to mitigate noise, once a patron leaves the premises, the applicant has very little control over the noise, disturbance or anti-social behaviour generated. This is often the lament expressed by licensees when criticised for the conduct of patrons leaving their premises.

92. With numbers of patrons leaving these premises likely to be high at closing time (whenever that time may be), the Commission finds that given the size of the premises proposed there is a significant risk of undue offence, annoyance, disturbance or inconvenience to persons who reside in the vicinity if there were also a variation of an additional hour of trade and that this would have a significant adverse impact on the community.
93. The Commission notes the submission made on behalf of the applicant that “a gradual exit from around 2am (based on Mr Coleman’s experience and available data) rather than a mass exit at 2am<sup>27</sup>”. Again, whilst this may be the experience of Mr Coleman, that is just one experience given (not unreasonably) in support of his own application. Further, the data referred to is with respect to two venues operated by Mr Coleman and alcohol sales during that time period rather than the dispersal of patrons from the premises in that time.
94. The Commission is not satisfied on the state of the evidence that if closing time remains at 2.00am that means patrons will wait until that time before leaving and en masse. The Commission notes the surveys undertaken by the applicant and “strong support for the extension<sup>28</sup>”. There is also no doubt that such an extension would be extremely profitable for the applicant. That however does not mean such an extension of hours is in the “public interest”.
95. Ultimately it is submitted on behalf of the applicant that the “extension of one hour will add to the vibrancy and diversity of the CBD precinct in a way that minimises - and conceivably may reduce - harms perceived to be associated with late night trading”. This submission is not accepted by the Commission.
96. The Northern Territory and its community continues to experience the harms associated with the large scale consumption of alcohol. This remains the experience of the panel and the general state of the evidence that has been presented many times to this Commission since its inception and founded on the findings made in the Riley Review.
97. As a result the Commission is not persuaded by the applicant that an additional hour of trade as proposed by the variation for a venue of the size that is provided for under the material alteration is in the public interest or would advance the relevant objectives set out under section 49(2) of the Act.
98. Whilst there are benefits to the community of this venue being established (and hence the reason for granting the material alteration), it is not considered by the Commission that those benefits outweigh the risks previously identified in these reasons. The Commission considers that if an additional hour were granted it would have a significant adverse impact on the community, which is to say an adverse impact that is important or of consequence.

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<sup>27</sup> Licensee’s Closing Submissions, para 52

<sup>28</sup> Ibid para 60

99. For these reasons whilst the Commission has determined to grant the material alteration to the premises, the Commission has determined to refuse the variation to the licence.

### **Extension of time**

100. Section 60(2)(c) of the Act requires the Commission to make this decision within 28 days after the expiry of the period allowed for the applicant to respond to the objections. The hearing proceeded on the first date convenient to the parties and the Commission following receipt of the referral by the Commission. Request was made at the conclusion of the hearing which lasted the entire day for time to file written submissions. That additional time was provided.
101. The submissions filed on behalf of the applicant were detailed and raised important matters which required careful consideration by the Commission. In these circumstances, and having regard to the complexity of these proceedings, the Commission, in the exercise of its discretion conferred by s 318 of the Act, extends time for the making of this decision to the date of this decision notice.

### **NOTICE OF RIGHTS**

102. 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.
103. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensee and the objectors listed at paragraph 17 of these reasons.



JODI TRUMAN  
DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
13 November 2023

On behalf of Commissioners Truman, Carson and Fong Lim

BRIGGS STREET

MOTT COURT

MITCHELL STREET

CARPARK

CINEMA 03  
(200m<sup>2</sup>)

STAGE 04  
(900m<sup>2</sup>)

CINEMA 02  
(200m<sup>2</sup>)

CINEMA 04  
(215m<sup>2</sup>)

CINEMA 01  
(404.780m<sup>2</sup>)

STAGE 03

CINEMA 05  
(215m<sup>2</sup>)

BAR

STAGE 01

STAGE 02

ALFRESCO 01  
348m<sup>2</sup>

ALFRESCO 02  
175m<sup>2</sup>

NEW BIFOLD DOOR

NEW SERVERY WINDOW

PROPOSED CAR PARKING

ROLLERS SHUTTERS

ROLLERS SHUTTERS

PROPOSED ALFRESCO

PROPOSED ALFRESCO

PROPOSED ALFRESCO

