

Licensing Commission

Decision Notice

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

REFERENCE: LC2018/060

LICENCE NUMBER: 80300296

LICENSEE: Marlin Darwin Pty Ltd

PREMISES: The Hotel Darwin
Cnr of Mitchell & Herbert Street
DARWIN NT 0800

APPLICANT: Marlin Darwin Pty Ltd

NOMINEE: Mr Brett Lubicz-Zaorski

OBJECTOR/S: Nil

LEGISLATION: Section 32A, Part IV and V of the *Liquor Act*.

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

DATE OF HEARING: 14 June 2018

DATE OF DECISION: 14 June 2018

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to vary the conditions of the liquor licence for the premises known as The Hotel Darwin by :
 - a. Extending the trading hours of the existing area known within the liquor licence as “Function Room”, but also known as “Sport Bar” as follows:
 - i. from 0400 hours to 0600 hours on Saturday 16 June 2018;
 - ii. from 0400 hours to 0600 hours on Monday 18 June 2018;
 - iii. from 0400 hours to 0600 hours on Tuesday 19 June 2018;

- iv. from 0400 hours to 0600 hours on Sunday 24 June 2018;
- v. from 0400 hours to 0600 hours on Thursday 28 June 2018;
- vi. from 0400 hours to 0600 hours on Friday 29 June 2018;
- vii. from 0400 hours to 0600 hours on Sunday 1 July 2018;
- viii. from 0400 hours to 0600 hours on Monday 2 July 2018;
- ix. from 0400 hours to 0600 hours on Tuesday 3 July 2018;
- x. from 0400 hours to 0600 hours on Wednesday 4 July 2018;
- xi. from 0400 hours to 0600 hours on Saturday 7 July 2018;
- xii. from 0400 hours to 0600 hours on Sunday 8 July 2018;
- xiii. from 0400 hours to 0600 hours on Wednesday 11 July 2018;
- xiv. from 0400 hours to 0600 hours on Thursday 12 July 2018.

- b. That during the extended trading hours identified above, patrons may be permitted to enter into a cordoned off section of the beer garden to access the toilets and for the purpose of smoking, however at no time shall any patron be permitted to enter into that cordoned off section with liquor.
- c. That during the extended trading hours identified above there shall be no amplification of any music or noise relating to the broadcasting of the “2018 FIFA World Cup” into the beer garden area.

- 2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at Thursday 14 June 2018.

Reasons

Background

- 3. Marlin Darwin Pty Ltd (“the applicant”) currently holds a Tavern Liquor Licence authorising the sale of liquor for consumption on, at or away from the licensed premises being The Hotel Darwin. The licensee is the applicant and the nominee under the liquor licence is Mr Brett Lubicz-Zaorski.
- 4. On 15 May 2018 the applicant made application pursuant to section 32A of the Act for a variation to the licence conditions to cater for patrons watching the “2018 FIFA World Cup” (“The World Cup”) that will be broadcast and available for viewing in the area known as the “Sports Bar” at the Hotel Darwin, but is also referred to in its liquor licence as “Function Room”. For the purpose of these reasons, this area will hereafter be referred to as the Sports Bar.

5. The current trading hours for the Sports Bar are from 1000 hours to 0400hours seven (7) days a week. The applicant is seeking to vary those trading hours for the purpose of showing “key match dates”. The applicant has selected “14 out of a possible 25 dates which will feature key participating countries that are highly ranked, or, feature finals games at the end of tournament which are typically higher in public interest”. The applicant has pointed out that “(t)hese events are part of a broader World Cup programme being run at the Hotel which will ultimately see the Hotel broadcast 54 World Cup Games, representing 83% of the total games played during the World Cup tournament”. That is to say that the applicant will be broadcasting other games, but within its “normal” trading hours.
6. The variation sought is that for those specific dates identified, the hours of trade be extended by two (2) hours on each of the dates, i.e. to enable closing time to 0600 hours on each of the respective dates.
7. There has been no evidence or material provided to the Commission to indicate any compliance issues with respect to this particular applicant. It is also noted that the applicant has provided evidence to the Commission in relation to what the applicant has referred as recognition “by the hospitality industry for its high standards and commitment to service and best practice”. In particular the Commission notes that in “2017 and 2018 the Hotel was awarded the following awards by the Australian Hotels Association (NT) and the Australian Hotels Association (National):
 - a. Winner AHA National Awards 2017 – Best Sporting Entertainment Venue;
 - b. Winner AHA NT Awards 2017 – Best Overall Metropolitan Hotel;
 - c. Winner AHA NT Awards 2017 – Best Sporting Entertainment Venue;
 - d. Winner AHA NT Awards 2017 – Best UBET Licensed Venue.
 - e. Winner Hospitality NT Awards 2018 – Best Bar Presentation and Service”.
8. The Commission notes that the applicant has been operating in Darwin since 2015 and it appears on the evidence provided that the applicant has a proven and demonstrated capacity to be able to operate this venue and to comply with the conditions of its licence.

Disclosure of influential persons or potential beneficiaries

9. The Commission notes that section 32A(1A) of the Act now requires applicants to make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The applicant has filed such an affidavit.
10. Mr Michael Dene Rasheed is the principal executive officer of the applicant and pursuant to section 26A(2)(a) of the Act is the appropriate person to make the affidavit. Mr Rasheed has disclosed as follows:

“... there are no other person/s other than Marlin Darwin Pty Ltd as trustee for Marlin Darwin Unit Trust who will by any lease, agreement or arrangement be able to influence any decision made by the Director in relation to the sale of liquor or the sale and consumption of liquor”.

And further:

“...there is no other person other than Marlin Darwin Pty Ltd as trustee for Marlin Darwin Unit Trust and its unitholders who by any lease, agreement or arrangement may expect any benefit from Marlin Darwin Pty Ltd in relation to the sale of liquor or the sale and consumption of liquor”.

11. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

12. The Commission was advised that due to the nature of the variation sought, i.e. an increase for two (2) hours of trade per date “for a special event”, the Director-General had exercised her discretion under section 32A(2) and not required the applicant to publish a notice of the application.
13. It is noted that section 32A(5) of the Act requires that the Director-General must inform:
 - a. the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
 - b. the Commissioner of Police; and
 - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.
14. That occurred with respect to this application. The Commission notes that the application was also forwarded to the Northern Territory Police, Fire and Emergency Services (“NTFRS”) for comment.
15. With respect to this application:
 - a. The DOH made no adverse comment.
 - b. The NT Police made no objection but stated they “do not support alcohol consumption before 10.00am.” Further that “(a)llowing the consumption of alcohol from 4-6am really does go against the efforts that NT Government agencies are working towards to reduce alcohol related harm”.
 - c. The City of Darwin acknowledged receipt of the email giving notice of the application but did not provide a response.

d. The NTFRS had “no objection”.

16. The Commission notes that the response from NT Police was provided to the applicant. In relation to the response the applicant stated:

“We note that the Drug and Alcohol Policy Unit of the NT Police submitted that they are not supportive of the Application. This statement has been made without any supporting evidence and is merely outlining policy. The statement does not take into account the specific nature of this Application and does not directly link the Hotel to any potential conflicts with the policy being outlined.

Accordingly, this communication with NT Police should not be considered an objection and should be disregarded”.

17. The Commission agrees that there has been no formal objection lodged by NT Police and that there is a clear process to be undertaken should Police wish for that to occur. The Act clearly identifies and prescribes the process to be undertaken to object to an application including an application such as this for a variation to conditions of a licence. If there is to be an objection then that process must be undertaken pursuant to section 47F of the Act. The NT Police on this occasion have determined not to undertake that process and have not lodged an objection. The matters raised therefore by NT Police are not considered to be an “objection” as that term is understood. The response will however be considered as part of those matters to be considered (where relevant) under section 6 and the Minister’s guidelines issued under section 6A of the Act.

Public Hearing

18. Pursuant to section 50 of the Act, the Director-General of Licensing (“the Director-General”) must refer *inter alia* applications under section 32A of the Act to the Commission. Therefore this application must be heard and determined by this Commission.

19. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. This application was referred to the Commission on 31 May 2018. The hearing was fixed for 3.45pm on 14 June 2018 and notice was given to the applicant on 1 June 2018.

20. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.

21. The public hearing commenced shortly after 3.45pm on 14 June 2018. Mr Brett Lubicz-Zaorski and Mr Trevor Candido appeared on behalf of the applicant. Mr Mark Wood as representative for the Director-General of Licensing was also

present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks all persons for their assistance.

Assessment of the Application

22. As earlier noted, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, the Act now clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, section 6B of the Act makes clear that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.

23. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

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

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the Local Government Act; and
 - ii. provisions of or under the Planning Act;

- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

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

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and

- iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

25. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

26. Those matters are identified as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <hr/> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p>

	<ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>

Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

27. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

“... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

28. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application to vary conditions of an existing licence and to do so for a period of only two (2) hours on 14 specific dates. As a result some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a variation and material alteration.

29. The applicant provided written submissions addressing the public interest and community impact test and also the community impact assessment guidelines. Those submissions were detailed and extensive and were considered carefully by this Commission. Despite the very short period sought with this variation, the Commission is reassured by the level of detail provided by the applicant within their application and considers this to be an indicator as to the level of seriousness the applicant takes its conditions of licence. In addition, the manner in which both

Mr Candido and Mr Lubicz-Zaorski conducted themselves during the course of the hearing reinforces the level of seriousness that is being taken on behalf of the applicant to this application and to the conditions of licence.

30. With respect to the submissions made addressing the public interest and community impact test and also the community impact assessment guidelines, the Commission considers it important to highlight some of those submissions which were considered particularly relevant to those tests:

“The Hotel’s business model is based around providing a high standard of live sport, food, beverage and gaming services to older and more discerning clientele that includes local residents, local CBD workers and travellers of a higher standard.

Our motivation to show World Cup Soccer matches is driven out of providing the service due to our stature as Australia’s leading sporting entertainment venue. There will be an expectation by our patrons and the public that we will show the matches live”.

And:

“Local broadcaster SBS will only be showing 18 out of a possible 64 games live on free to air television, putting the onus on the public to acquire pay TV, which many people cannot afford.

We will be providing the service of showing World Cup matches at considerable cost to the venue, and our only means of cost recovery are the provision of food and drinks.

The Hotel caters to the tourist market. Hotel management are actively involved in the promotion of Darwin as a tourist destination and are a member of Tourism Top End and SKAL International. The Hotel contributes towards tourism in the Darwin CBD and is regularly servicing out of town visitors, including many whom originate from participating countries in this year’s FIFA World Cup Soccer tournament.

The proposed mode of operation during any extended hours granted will be as follows:

- a. Takeaway alcohol will not be sold;
- b. Crowd controllers will be employed as per industry standard numbers;
- c. Only our Sports Bar area and a very small area in our beer garden will be open to the public. The small area of the beer garden is purely to facilitate a small smoking area (approximately 7m x 3m) and a pathway to the toilet area. The smoking area will be provided to ensure patrons do not loiter on the Mitchell Street Pathway at the front of the venue;
- d. Food will be available during the extended hours.

- e. No live music will occur, sound will be limited to background music to allow conversation in addition to the live commentary of the soccer matches shown.

The Hotel Darwin provides a high standard of hospitality, which caters to a discerning market segment, a point re-affirmed by this year's Hospitality NT Award for Best Bar Presentation and Service".

Further:

"An audience of 3.2 billion people watched soccer matches during the 2014 FIFA World Cup making it the most watched sporting event on the planet. Audience reach in Australia alone was 8.2 million people, with a peak audience of 2.5 million people at any one time. Meaning, nearly half of all Australians watched soccer matches televised in 2014 during the FIFA World Cup".

31. The applicant also provided detailed submissions to the Commission as to the community impact test and guidelines.
32. It is clear from that material that The World Cup is an event likely to be of interest to a large number of persons in the local community. The Commission has been advised that the relevant matches are likely to commence at 3.30am and conclude at 5.30am. This means that persons who would ordinarily attend at the main bar of the premises would have left those premises at 2.00am, some 1 ½ hours prior to the game/s commencing. The Commission is therefore satisfied that it is more likely than not that those persons attending at the Sports Bar between the extended hours of trade are persons who will be attending to view the relevant game.
33. There is no evidence that the applicant has been unable to comply with its conditions in the past. The applicant is proposing that patrons will only be able to utilise the Sports Bar and a small section of the beer garden area for smoking only and to access the toilets. The applicant has confirmed that the cordoned off area of the beer garden will be managed by security staff and that no persons shall be permitted to take alcohol into that area. Further, that the games will not be broadcast and/or amplified into that area.
34. In all of the circumstances, including the limited nature of the application, the processes put in place by the applicant to ensure appropriate service and consumption of alcohol at all times and that there is no evidence of any compliance issues or particular adverse impact upon the community; this Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought. Therefore, for the reasons outlined and having regard to the objects of the Act the Commission has decided to vary the conditions of the licence as outlined at the start of this Decision Notice.

Notice of Rights:

35. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to vary the

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

36. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
37. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN
Presiding Member
Deputy Chairperson