

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE AND REASONS FOR DECISION**

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**CITATION:** *DARWIN AIRPORT RESORT OPERATING COMPANY PTY LTD JOINT APPLICATION FOR MATERIAL ALTERATION AND SUBSTITUTION OF LICENCE [2023] NTLiqComm 10*

**FILE NUMBER:** LC2023/003

**LICENSEE:** Darwin Airport Resort Operating Company Pty Ltd

**PREMISES:** Mercure Darwin Airport Resort  
1 Sir Norman Brearley Drive  
MARRARA NT 0812  
Liquor licence number: 80117466

Novotel Darwin Airport  
2 Sir Norman Brearley Drive  
MARRARA NT 0812  
Liquor licence number: 80117946

**LEGISLATION:** Sections 75 and 96 of the *Liquor Act 2019*

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

**DATE OF HEARING:** 21 March and 12 April 2023

**DATE OF DECISION:** 21 April 2023

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**DECISION**

**Material alteration of the premises known as Mercure Darwin Airport Resort**

1. Pursuant to section 97(2) of the Liquor Act 2019 (**the 2019 Act**), the Commission has determined to approve the material alteration of the premises known as Mercure Darwin Airport Resort at 1 Sir Norman Brearley Drive, Marrara.
2. In accordance with the approval given, the licensed footprint of the premises shall include the area encompassed within the blue lined area on the plan which is attached to this Decision Notice.
3. Noting that the premises is undergoing significant construction, the Licensee may continue to conduct business on the licensed premises apart from the areas

depicted as part of the construction site, being the area delineated by a red hatching on the plan attached to this Decision Notice. The general public are not permitted within that area and secure fencing and appropriate signage is to be erected to ensure the public are excluded from the site.

4. In accordance with the understanding of the Commission, it may become necessary to vary the boundaries of the construction site as presently delineated and that if, or when, this becomes necessary the prior approval of the Director of Liquor Licensing (**the Director**) must first be obtained by the Licensee.
5. The approval is subject to the following conditions:
  - a. The Licensee must surrender Liquor Licence Number 80117946 with respect to the premises known as “Novotel Darwin Airport” located at 2 Sir Norman Brearley Drive, Marrara, to the Director within seven (7) days of the date of this Decision Notice.
  - b. The works must be carried out and completed within 12 months of the date of this Decision Notice, or such later date as the Commission approves.
  - c. That the Licensee must not permit the sale or consumption of liquor in any of the newly constructed areas depicted under the red hatching on the plan attached to this Decision Notice, until documentary evidence has been provided to the satisfaction of the Director that the Licensee has obtained the necessary fire safety and building approvals, including a certificate of occupancy, in respect of any premises. To avoid any doubt this includes the area known as “the RV Park”.

### **Substitution of liquor licence regarding Novotel Darwin Airport**

6. Noting the withdrawal of this application and the condition of surrender of this licence as set out above, the Commission formally refuses the application for substitution.

### **REASONS**

#### **THE APPLICATION**

7. On 30 November 2022, joint applications were lodged by Mr Andrew Giles of law firm HWL Ebsworth on behalf of Darwin Airport Resort Operating Company Pty Ltd (**the licensee**) seeking material alteration and substitution of premises involving the licences with respect to the premises known as Mercure Darwin Airport Resort and Novotel Darwin Airport.

8. In summary, the applications at that time were as follows:

**Material alteration of the premises known as Mercure Darwin Airport Resort**

- a. Extend the liquor licenced area of the Mercure Darwin Airport Resort to include all of the licenced area of the Novotel Darwin Airport liquor licence. The licensee is undertaking major renovation works, including refurbishments of the hotels, upgrades to infrastructure, construction of restaurants, landscaping and other civil works. Some of the works are not required to be approved in accordance with the 2019 Act but may constitute further applications in the future. This application is solely to extend the licenced area.

**Substitution of liquor licence regarding Novotel Darwin Airport**

- b. If the above application is approved, the licensee concurrently seeks to substitute the liquor licence of the Novotel Darwin Airport to an area *next* to where it is currently located but still within the same title of land. This is a location where a tourist recreational vehicle park (**RV park**) will be established. The new area and entrance will be on the corner of Cecil Cook Ave and Sir Norman Brearley Drive. The liquor licence of what is known as the Novotel Darwin Airport will apply to this new area.

9. The application was accompanied by a number of documents, including:

- a. Affidavits in accordance with Section 54 of the Act.
- b. Document entitled “Applications To Approve A Material Alteration To A Licenced Premises And Vary A Liquor Licence”.
- c. Community Impact Assessment.
- d. Public Interest Criteria.
- e. Copy Of Food Business Registration.
- f. Business Plan.
- g. Copy Of Smoking Management Plan.

10. The Commission was also provided with the following documents:

- a. An aerial view of the entire site.
- b. Site plan of both proposed licenced areas.

**PUBLICATION AND CONSULTATION**

11. The applications were published by way of a combined notice in the NT News on 3 December 2022. The application and supporting documents were also

published on the Director's advertising web page for the 14 day advertising period. Multiple green advertising signs were erected around both premises for the course of that period. No objections were received.

12. In accordance with the Act, the following were notified of the application:
  - a. The Chief Executive Officer of the Department of Health.
  - b. The Commissioner of Police.
  - c. CEO City of Darwin.
13. The Department of Health and the NT Police responded stating they had no objection. The City of Darwin stated it had no comments and supported the process of the Commission.
14. NT Fire and Rescue Services (**NTFRS**) were not informed of the application. There is no requirement for that to occur, however it is usually a practise 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.

## **CONSULTATION**

15. A check of records held at Licencing NT show that there are no adverse compliance records for either venue.

## **THE REFERRAL**

16. On 20 February 2023, a Delegate of the Director wrote a referral of the applications to the Commission. That referral was not received by the Commission until 27 February 2023. Thereafter, the Commission made arrangements to have the matter listed at a date and time convenient to the licensee. As a result, the applications were listed for hearing to commence on 21 March 2023.

## **THE HEARING**

17. 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.
18. On 21 March 2023, the application proceeded as a public hearing. Mr Duncan McConnell SC, with his junior Ms Caroline Heske and instructed by Mr Andrew Giles appeared on behalf of the Applicant. Ms Helena Higgins initially appeared for the Director however when the matter was not completed on that date, it was

adjourned before the Commission until 12 April 2023. On that date the Director appeared in person with the assistance of Ms Higgins.

19. 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 both the Licensee and the Director.

## **ASSESSMENT OF THE APPLICATION**

20. Section 97(1) of the Act, sets out the matters the Commission must consider in determining an application by a licensee for approval of a material alteration to licensed premises:

### **97 Decision on material alteration of licensed premises**

- (1) In considering an application to make a material alteration to licensed premises, the Commission must consider the following:
  - (a) Any objection to the application made under section 61;
  - (b) Any response provided by the applicant under section 62;
  - (c) The public interest and community impact requirements.
21. 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 approval of the application "is in the public interest" and "will not have a significant adverse impact on the community".
22. 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>1</sup> 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.
23. The Commission notes that the substance of the application is for a planned expansion and redevelopment to see the integration of the Mercure Resort and Novotel Hotel, into a single resort together with the development of a new RV park on the land immediately neighbouring the Novotel Hotel. The licensee states

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<sup>1</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 planned works is scheduled to occur across multiple stages by mid to late 2023.

24. The licensee has already commenced and partly completed early stages of the planned works, which includes refurbishment works at both the Mercure Resort and Novotel Hotel and upgrades to infrastructure. It is noted that both the licensee and the Director agreed that such works do not constitute a material alteration of the premises.
25. The works that relate to the material alteration application cover significant construction works at the Mercure Resort and the variation to the licenced premises whereby the Novotel Hotel and surrounds will be consolidated under the liquor licence relating to the Mercure Resort. As a consequence of these significant proposed construction works; it is the footprint of the Mercure Resort that will be increased.
26. As earlier noted, initially it is proposed under the application that if approval were granted to the material alteration (which would result in the Mercure Resort liquor licence covering the Novotel Hotel liquor licence) the licensee then made application for a substitution of the current Novotel Hotel liquor licence to cover a proposed RV park to be constructed on the land immediately neighbouring the current Novotel Hotel site.
27. This was the application before the Commission when the hearing commenced on 21 March 2023. At that time the Commission indicated that it did not have sufficient evidence that would satisfy the Commission that such a substitution was in the public interest. As a result, application was made by the licensee for an adjournment to allow further instructions to be obtained and further evidence if necessary. That application was granted and the hearing adjourned to 12 April 2023.
28. When the application recommenced on 12 April 2023, the licensee stated it wished to amend its application which was summarised as follows:
  - “1. The Licensee intends to:
    - a. vary its current application for transfer of a licence and material alteration of premises, and instead proceed on the basis of a material alteration application only;
    - b. seek an extension of the current footprint of the current Mercure Darwin Airport Resort Licence (80117466) to cover the fully fenced premises of the new integrated Darwin Airport Resort including the Novotel Hotel building and the RV Park; and
    - c. if this extended licence is granted, surrender the current Novotel Darwin Airport Licence (80117946).

2. In light of the changed approach to the application, the proposal for the RV Park will be simplified and incorporated into the overall management of the Resort, with the RV Park to be operating under the existing Resort Licence as a Lodging Authority.”
29. As a result, the substantive application before the Commission became one solely in relation to a material alteration.
30. In relation to the proposed material alteration; it is apparent that the Licensee is undertaking significant work at the premises. Amongst the extensive material made available, it is clear that this will be an extensive redevelopment and a significant investment in Darwin. The current premises are undergoing a significant “revamp” and new facilities provided. The proposed RV Park onsite is also a significant change to what is presently offered onsite. The Commission was informed that co-locating an RV park with a hotel is not an uncommon business. Current and successful examples were given at Yulara and Glen Helen in Central Australia and Coinda in Kakadu.
31. The licensee noted that the proposed RV park within the airport would enable guests who are on a fly/explore experience to start and end their trips at the airport, as opposed to just passing through. The licensee’s market research indicates that a large number of tourists are bypassing Darwin and heading directly to regional areas, causing local businesses to miss a critical revenue stream.
32. Within the application, the licensee highlighted that it did not consider approval of the applications to pose a risk to public safety and amenity given that the premises are located adjacent to the airport and therefore in this way they are separate and distinct from the greater Darwin community and neighbouring localities. It was noted that the Darwin International Airport holds a leasehold interest in the land from the Commonwealth of Australia and the land is therefore subject to strict compliance with the airport lease, joint user arrangements with the Department of Defence, the *Airports Act 1996* (Cth) and the *Airports Regulations 1997* (Cth).
33. The applicant intends that the RV park be a premium offering for the recreational vehicle market and that it attract a demographic looking to stay for a shorter period of time and utilised the advantages of location and facilities that the premises and the airport can provide, rather than long term stays.
34. As this is now an application for a material alteration, the application does not require the licensee to provide evidence of financial stability or probity as they relate to existing licenced premises. The Commission accepts that the licensee should be considered to have satisfied the financial means, general reputation and character tests that are set out within Part 3, Division 4 of the Act.

35. In relation to the important issue of the impact upon the Community, the Commission notes that what is proposed here is that liquor will only be consumed within the premises, which are a secure and self-contained location adjacent to the Darwin International Airport. As a result of its location, the Commission accepts the premises are located within arguably one of the most secure and heavily patrolled areas within the Northern Territory.
36. In addition, with respect to the material alteration application, what is being proposed is effectively the joining of two already existing licensed premises into one and the expansion to provide for an RV park which would supply and serve alcohol to its guests via lodging authority. This is relevant to the question of density of licensed premises within the area. Whilst it is likely (and obviously intended by the licensee) that there will be an increase of persons attending at the premises, the “density of licensed premises” within the area is unchanged from that which currently exists.
37. The licensee submits that the premises will be “predominantly patronised by a relatively affluent demographic”. The Commission accepts that there is indeed a focus on luxury products and that a “higher end” demographic will be marketed to. This is likely to reduce the potential harm or health impacts that may be caused to people within “at risk” groups in the community. The risk posed to such groups is further reduced because. It’s the location, nature and style of the business proposed to be undertaken.
38. The Commission accepts the submission that the approval of the applications will improve the amenity of the area and allow the licensee to undertake significant redevelopment and construction and provide an enhanced and luxurious service to the target market.
39. In relation to the question of volume, obviously if the applicant's intentions are fulfilled in having an increase in patrons at the premises, there will also be an increase in volume of liquor sold. However, given the nature of the premises to be conducted, the Commission accepts that the emphasis will be on providing high quality customer service, high quality food and beverage services and will therefore not have a significant adverse impact on the community.
40. In relation to the objectives that the Commission must have regard to under section 49(2) of the Act relating to the responsible service of alcohol (subsections 2(a) – (d), (g) – (j)) the licensee relies on its past record and provided evidence relating to harm minimisation procedures with respect to the service of liquor. No compliance issues were raised by the Director and the Commission accepts on the basis of the evidence that the Licensee can manage the premises in an appropriate manner to minimise the harmful consequences of liquor consumption.



41. In considering the impact on the local community, the Commission must have regard to the matters set out in section 49(3) of the Act, and in addition apply the community impact assessment guidelines. The Commission notes that this is not an application for a new licence and, as earlier noted, whilst there would be an increase in the amount of liquor sold, this is as a result of the increase likelihood of persons attending at the premises, rather than increase in the level of liquor consumed by individual patrons.
42. It is relevant to note that no objections were lodged from members of the public in respect of this application. There were also no adverse comments arising from the required stakeholder consultation process. Further, as earlier referred, these premises are in a self-contained location adjacent to the Darwin International Airport and therefore any increased patronage of the premises unlikely to result in any discernible further loss of amenity to the local community.
43. The Commission has also considered the unique nature of this material alteration application and that what is being proposed is effectively the inclusion of the current "Novotel licence" into the "Mercure licence" which presently exist "across the road" from one another.
44. Therefore, considering all the evidence, the Commission is satisfied that the proposed material alteration is in the public interest and will not have a significant adverse impact on the community. As a result, the Commission has determined to approve the material alteration of the premises known as Mercure Darwin Airport Resort at 1 Sir Norman Brearley Drive, Marrara in accordance with the terms of the orders set out at the commencement of this Decision Notice.
45. The Commission notes that the licensee stated that if the material alteration were granted, it would surrender the licence held with respect to the premises known as the Novotel Darwin Airport ("the Novotel licence"). Whilst the Commission accepts the bona fides of the licensee, to avoid any confusion, it is a condition of the approval of the material alteration that the licence be surrendered within 7 days.
46. In addition, with respect to the application for substitution of premises under the Novotel licence, whilst the Commission notes that the licensee sought to "vary" its application to "proceed on the basis of a material alteration application only", for the avoidance of doubt the Commission has determined to refuse the application and notes surrender of that licence as part of the conditions of the material alteration.

## **NOTICE OF RIGHTS**

47. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides

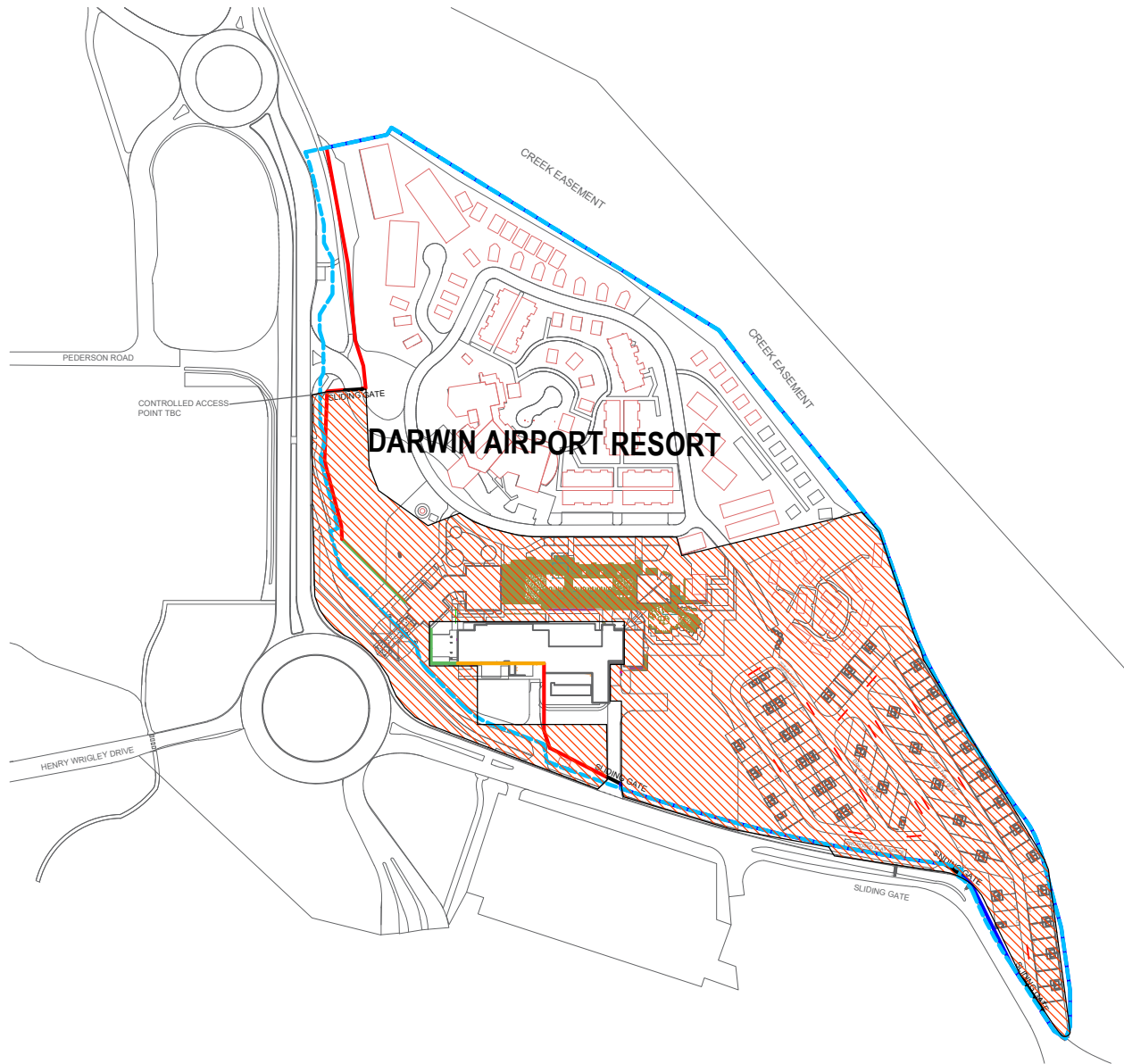
that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

48. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Licensee and Director.



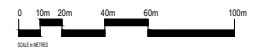
JODI TRUMAN  
DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
21 April 2023

On behalf of Commissioners Carson and Fong Lim



LEGEND	
	<b>TYPE 1 FENCE</b> 2400 HIGH -VERTICAL SLATS WITHIN LANDSCAPE SETTING
	<b>TYPE 2 FENCE</b> 2400 HIGH SCREEN FENCE - COMBINATION OF COLOURBOND & DECORATIVE SECTION WITHIN LANDSCAPE SETTING
	<b>TYPE 3 FENCE</b> 1800 HIGH -CHAIN MESH SECURITY
	<b>BUILDING LINE</b> PROVIDES SECURE PERIMETER
	<b>SLIDING GATE</b>
	<b>SITE BOUNDARY</b>
	<b>CONSTRUCTION SITE</b>

RESORT AREA	= 65762m <sup>2</sup>
RV PARK AREA	= 14950m <sup>2</sup>
<b>TOTAL AREA</b>	<b>= 80712m<sup>2</sup></b>



REV.	DATES	AMENDMENTS
A	17/04/23	AREA UNDER CONST. MARKED
-	11/04/23	FIRST ISSUE



DATE	17/04/23	SCALE	NTS
DRAWN	SUMIT	REV.	A

TITLE
<b>SITE PLAN FOR DARWIN AIRPORT RESORT</b>