

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR MATERIAL ALTERATION</b>
<b>REFERENCE:</b>	LC2021/034
<b>LICENCE NUMBER:</b>	81401431
<b>LICENSEE:</b>	<b>Darwin Golf Club Incorporated</b>
<b>PREMISES:</b>	<b>Darwin Golf Club</b> 5 Links Road MARRARA NT 0812
<b>APPLICANT:</b>	Darwin Golf Club Incorporated
<b>NOMINEE:</b>	Mr Steven Green
<b>LEGISLATION:</b>	Section 96 of the <i>Liquor Act 2019</i> .
<b>HEARD BEFORE:</b>	Mr Richard Coates (Chairperson) Mr Bernie Dwyer (Health Member) Ms Christine Hart (Community Member)
<b>DATE OF HEARING:</b>	9 September 2021
<b>DATE OF DECISION:</b>	21 September 2021

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### **Decision**

1. For the reasons set out below and in accordance with section 97 of the *Liquor Act 2019* (the Act) the Northern Territory Liquor Commission (the Commission) has determined to approve the application by the Darwin Golf Club Incorporated (the Licensee) to make a material alteration to the premises known as the Darwin Golf Club located at 5 Links Road, Marrara in the terms sought by the Licensee being the construction of a new covered alfresco dining area in which it will extend the existing licensed footprint in the manner depicted in Attachment I to Exhibit 1 in these proceedings.
2. The Licensee must keep the new alfresco dining area fenced off to prevent public access and not allow any trade in this area until such time as it receives written confirmation from the Director of Liquor Licensing (the Director) that it has provided all the required planning and safety approvals.

## **Reasons**

### **Background**

3. The Licensee is the holder of liquor licence number 81401431 for premises known as the Darwin Golf Club (the Club) situated at 5 Links Road Marrara.
4. On 18 February 2021, initial correspondence was lodged by Mr Thomas Richardson of DeSilva Hebron to the Director advising that initial construction work would be commencing noting that it would not impose on current liquor licensing requirements due to it being out of the licensed footprint. Mr Richardson confirmed an application would be lodged as required prior to any conduct of business or sale of alcohol on the newly constructed area and the granting of a material alteration by the Commission.
5. The Licensee's solicitor confirmed in that letter that the reason for the urgency in relation to commencing construction was due to the terms of a Government "Immediate Works Grant" that it had been awarded. The Director noted that advice but warned the Licensee of the risk that should the material alteration be refused by the Commission that this new area would not be able to be used for the supply of liquor.
6. On 1 June 2021, by way of cover letter, Mr Richardson lodged an application for a material alteration on behalf of the Licensee. Mr Richardson has stated that the Licensee makes the application as follows:

#### **Material Alteration**

- Proposal to extend the liquor license footprint to cover a new alfresco dining area that is currently being constructed in a space located adjacent to the current licence footprint for the premise located at 5 Links Road, Marrara NT 0812;
- That the extension of the licence footprint will not cause an adverse effect to the surrounding community and will better enable the Club to provide sufficient outdoor dining options for members and guests; and
- Does not wish to vary or change any other aspect of its licence or licensed premises.

Within point 3(d)(ii) of the prepared community impact and public interest statement from Mr Richardson, it is proposed that the alteration is designed exclusively to benefit the patrons of the Club. The alteration is to provide a shaded cover area over a designated food and beverage precinct at the premises. The shade structure will provide patrons with a relaxed and cool area to enjoy the amenities of the Club.

It is further stated at point (iv) that the Club regards the increased service area to be aligned with the intention of the COVID-19 social distancing directives of the Federal Government, with the alfresco dining areas being intrinsically more open than the internal dining areas.

7. The following supporting documents were also supplied:

- Draft Public Notice;
- Receipt of application fee;
- Photographic ID – NT Drivers Licence expiry 17/07/2021 – Steven John Green– current nominee;
- Design and Elevation Plans;
- NT Building Act Section 40 Certificate of Compliance and Occupancy Permit provided 13 August 2021;

It is to be noted that the Occupancy Permit 055/04051/20 (stage PO 20/07/21) is for the alfresco veranda area only which is to be made ‘not accessible’ until all landscaping works are complete. The OP is valid till 21 August 2021;

- With developments of COVID-19 events the week of 16-19 August 2021, the matter was referred for consideration by the Director on 20 August 2021. On the same date, Mr Richardson was advised by email to manage any building permit extension requirements;
- Development Permit issued 5 May 2021;
- Proposed liquor licensed area.

## **Publication and Consultation**

8. The application was published by way of two notices in the NT News on Wednesday, 9 June 2021 and Saturday, 12 June 2021. A green sign was also erected at the premises for the course of the advertising period.

9. As a result of the public advertising of the application, there were no formal objections received.

10. In accordance with the Act, the following stakeholders were notified of the application:

- the Chief Executive Officer of the Department of Health;
- the Commissioner of Police;
- the Chief Executive Officer of the City of Darwin.

11. Due to the nature of the application the Northern Territory Fire & Rescue Service (NTFRS) was also notified of the application.

12. The Department of Health replied via email dated 11 June 2021 stating it had no adverse comment however requested that the Director consider patron and community safety and amenity when determining this application with regard to the venue clearly displaying signage to delineate Non Smoking and Smoking area. This was provided to the Licensee via an email on 11 June 2021.
13. The NT Police replied via email dated 15 June 2021 stating it had no objection.
14. NTFRS responded via email dated 16 June 2021 advising they support the application with the following conditions:
  - Building works to go through the building approvals process as per the *Building Act (NT)*;
  - On completion of building works (occupancy permit issued) NTFRS will inspect to ensure compliance with *NT Fire and Emergency Act & Regulations* (any affected licensed areas will be re-assessed for maximum patron numbers at this time)
15. The City of Darwin did not oppose the application.

## **Public Hearing**

16. The Director referred this matter to the Commission on 26 August 2021.
17. On 31 August 2021, the Commission notified the Licensee that this matter would be determined by way of public hearing on 9 September 2021.
18. At the hearing Mr Richardson of DeSilva Hebron Solicitors appeared for the Licensee. Also present was the General Manager of the Club, Mr Steven Green together with the Club President, Mr Brett Weinhart. Ms Tania Chin appeared to represent the Director. The Commission is grateful for the assistance provided by all those present at the hearing. In particular, the Commission commends Mr Richardson once again for the quality of his submissions in relation to the public interest and community impact criteria. The Commission also acknowledges the frank provision of information from Mr Green in relation to the significance of the Club's gaming operation, an issue that will be referred to later in these reasons.
19. The following exhibits were tendered at the hearing
  1. Hearing Brief;
  2. Photographs including floor plan provided by Mr Richardson via email dated 6 September 2021;
  3. Amended copy of the occupancy permit.

## Assessment of the Application

20. The application to extend the premises to include another undercover alfresco dining area is not particularly contentious. The Licensee was able to take advantage of a grant aimed at encouraging new building works during the COVID-19 Pandemic and the site of the new Pavilion overlooking the 10th tee will enhance the amenity of the premises.
21. The issue that was of most concern to the Commission during this hearing was whether the increase in the outside dining area was associated with any prospective plans to increase the amount of space inside the premises that would be devoted to gaming.
22. In November 2018, the Commission dealt with another application by this Licensee for a material alteration to establish a dedicated gaming room within these premises.<sup>1</sup> At that stage the Club had only deployed 13 of the 45 gaming machines it held a licence to operate and was seeking an expansion of the premises into what had previously been a Licensed Restaurant attached to the premises.
23. In the hearing of the matter, the Commission was told:

“At present there are only 13 gaming machines operating and these are situated in the general bar area. If the Application is approved, the existing and new gaming machines as well as the other gambling facilities will be moved into the extended premises. Mr Green said that would improve the amenity of the existing bar and function room. If the Club was to install the additional machines in the existing bar area this would inconvenience those members and guests who had no interest in gambling. It would also make it more difficult if not impossible to continue to hold functions at the club”.<sup>2</sup>
24. During the course of that hearing one of the presiding Commissioners, Kenton Winsley, a local indigenous man, suggested to Mr Green that the establishment of the gaming room in a separate part of the Club, with its own outdoor smoking area was aimed at encouraging patronage from the nearby public housing residents, many of whom were indigenous and could ill afford to expend what little money they had on gambling.
25. Although Mr Green, at that time, denied this was the case, it would appear that the concerns voiced by Commissioner Winsley were justified.
26. At the hearing of this matter, Mr Green told the Commission that whereas the number of total playing members at 750 has remained fairly consistent, the social membership, who only pay \$10 per annum, now total 1,800 which represents an 80% increase in the last two years. He also confirmed that 50% of the Club’s turnover is now derived from its gaming business. Although Mr Green would not be drawn on the racial mix of the Club’s social membership, any visitor to the

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<sup>1</sup> Decision Notice - LC2018/138 Darwin Golf Club Incorporated – Application for Material Alteration

<sup>2</sup> Decision Notice - LC2018/138 Darwin Golf Club Incorporated – Application for Material Alteration

premises will see that a significant proportion of the people using the gaming machines are indigenous women.

27. While the Commission accepts the Licensee's submission that the development of its gaming business is in accordance with the current legal requirements, it encouraged the President and General Manager to carefully consider whether its actions are in keeping with its social responsibilities as an entity which holds significant assets that have been provided by the community.
28. Although golf might be regarded as a fairly egalitarian sport in the Northern Territory, it still carries notions of elitism with some sections of the community. The fact that this club is deriving so much of its income from the gaming activity of its social members may raise the perception that the activities of the golfers are being subsidised at the expense of some of the most disadvantaged members of the community.
29. Both Messrs Green and Weinhart assured the Commission that there had been no discussions at board level about increasing or changing the current gaming area and that the new Pavilion had no connection at all with the operation of its gaming machines.
30. On the evidence now before it and having regard to the considerations set out in section 49 of the Act, the Commission is satisfied that approving the material alteration will not have any significant adverse impact on the community and is also in the public interest. Accordingly, the application is approved on the conditions set out at the commencement of this Decision Notice.
31. The Licensee was notified that its application had been approved at the conclusion of the hearing.

**Notice of Rights:**

32. Section 31(1) read with section 60(3) of the Act provides that the decision set out in this decision notice is reviewable by 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.
33. 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 and the Licensee.



RICHARD COATES  
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION  
21 September 2021

On behalf of Commissioners Coates, Dwyer and Hart