

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR AN EXTENSION OF TIME TO
ERECT PREMISES AND COMMENCE TRADE

REFERENCE: LC2022/043

LICENSEE: 9 DLS Pty Ltd

LICENCE NUMBER: FLL1078

PREMISES: Kalidonis Boutique Apartments
9 Daly Street
DARWIN NT 0801

LEGISLATION: Section 110 of the *Liquor Act 2019*

HEARD BEFORE: Richard Coates (Chairperson)

Liz Stephenson (Health Member)

Amy Corcoran (Community Member)

DATE OF HEARING: 27 September 2022

DATE OF DECISION: 27 September 2022

DECISION

1. For the reasons set out below, the Northern Territory Liquor Commission (**the Commission**) has determined to refuse the application to grant an extension of the time within which the Licensee is required to erect the premises and commence trading under the licence.

REASONS

BACKGROUND

2. On 18 January 2019, the Commission refused an application by 9 DLS Pty Ltd (**the Licensee**) for a liquor licence for the proposed premises to be situated at 9 Daly Street, Darwin.
3. That matter was as a result of an application originally lodged on 30 June 2016. The predominant reason given for the refusal was the “...*Commission was unsatisfied with the submissions made by the Applicant addressing the public interest and community impact tests*”.

4. A subsequent revised application was lodged and considered by the Commission which granted a public bar authority and lodging authority to the Licensee on 22 October 2019, on the basis that it would be constructing an 18 storey hotel complex on the site.
5. A gaming machine licence was also granted to the Licensee for the proposed premises by the Director of Gaming Machines on 13 August 2020.
6. The approval of the Commission for the licence was conditional, with the Commission placing a time limit on the erection and commencement of trade at [4] of the decision:

“This licence will lapse within four (4) years of the date of this decision unless the Applicant has erected the premises and commenced trading under the licence unless the Licensee satisfies the Commission that it would be in the public interest to grant it an extension of time to enable it to complete the building works and obtain necessary permits.”
7. The Licensee has not yet commenced construction at the proposed premises however is cognisant of the time imposed by the decision as well as its implications for the loss of the licence.
8. On 23 June 2022, the Licensee wrote to the Director of Liquor Licensing (**the Director**) requesting an extension of a further 4 years to enable it to *“consider all the aspects related to this project so the result to be magnificent¹”*.
9. The Licensee stated:

“When looking back to 2020 and the project we visualised back then, we also see that the community’s needs have also shifted. We need to reflect these needs in our own choices. The market has changed and to think to develop a building with 77 apartments under the current circumstances may not be a viable project at this stage, therefore, we need more time to review our plans so we can build something that will benefit Darwin’s people. The banks have become very strict during and after covid and we need time to rebuild and recoup the resources lost over the last couple of years and ensure what we continue to grow and build is also financially sustainable”.
10. In that letter the Licensee also canvassed the possibility of transferring the licence to existing premises owned by it at 87 Woods Street with a view to establishing a facility for the benefit of the Greek community and its associated sporting clubs.
11. In support of this possible option Mr Kalidonis has been provided with a letter of support from Mr Peter Mousellis, President of the Darwin Olympic Sporting Club.

¹ p.41 Director’s referral

12. A similar letter of support has been provided by Mr Kosta Boubaris, President of the Hellenic Athletic Club.

13. As Mr Mark Wood, the Director's Delegate, cogently observed in the referral document:

"There is no impediment to Mr Kalidonis lodging the relevant applications under the Liquor Act 2019 for any potential expansions at 87 Woods Street, but these could not include a corresponding gaming machine application.

In isolation, the loss of the liquor licence would have little financial effect other than what has been expended to date on obtaining it. There is no statutory impediment to a similar public bar authority being granted for future premises.

It necessarily follows the gaming machine licence is central to this matter and drives the overall need to retain the liquor licence (a public bar authority) for 9 DLS Pty Ltd.

As the licences must travel together, the only option for Mr Kalidonis to move his allocation of gaming machines to 87 Woods Street is to substitute the 9 DLS Pty Ltd licences to other premises, given his submission it is not financially viable to break ground at 9 Daly Street."

14. Whilst the impetus for this extension application is clearly aimed at preserving the gaming machine licence there can be no guarantee that the Director of Gaming Machines would be prepared to provide the Licensee any further latitude in continuing that licence without the machines being utilised, even if the Commission was persuaded to grant a further extension for completion of the building works.

15. Although this matter was referred to the Commission by the Director on 11 August 2022, purportedly pursuant to section 87 of the Act and section 43 of the *Interpretation Act 1978*, it should probably have proceeded as an application pursuant to section 110 of the Act to vary the conditions of licence. However, given the fact that the Licensee was legally unrepresented at the time and Mr Wood has quite properly encouraged it to raise the issue of an extension with the Commission in a timely manner, we have determined to deal with the extension application on this occasion on the basis of the material currently before us.

THE HEARING

16. The matter was originally listed for hearing on 22 August 2022, however the Licensee sought an adjournment and the matter proceeded as a public hearing on 27 September 2022. Mr Michael Grove appeared as counsel for the Licensee and Mr Theo Kalidonis, the Director of the Licensee corporation, was also present and addressed the Commission. Mr Wood appeared to represent the Director via audio visual link from Alice Springs.

17. At the outset, the Chair expressed the view that the potential extension that had been provided by the Commission in its decision of 22 October 2019 was only

available to enable the completion of building works for the proposed hotel complex at 9 Daly Street. Any proposal for a licensed social club in Woods Street would require a fresh application.

18. Mr Wood fairly conceded that he has had a number of conversations with Mr Kalidonis in relation to the Licensee's concerns about losing its gaming licence if it continued to remain inactive. His account of those dealings provided some context for what otherwise appeared to be a bizarre proposal to convert a liquor licence, that had been granted as part of a new tourist hotel development with the effect that it would operate at different, already existent premises, so that the attached gaming licence might be used in some form of "social club".
19. It would now appear that the sole motivation behind this vague proposal to somehow "activate" this licence at alternative premises is an attempt to preserve the gaming licence which would be extinguished upon the cancellation of the liquor licence.
20. Mr Kalidonis spoke at length about the deleterious impact of the COVID pandemic on his construction business and the associated difficulties in obtaining financial support from the banks for his boutique hotel project in Daly Street. He also said in his letter of 23 June 2022:

"For this reason, we decided that we would change our initial plan and develop a project that will be viable and more beneficiary for Darwin. The local community needs more of a community club where the entire families can spend time together enjoying the different facilities we could provide to them".²
21. The Commission is prepared to accept that, through no fault of the Licensee, events have transpired which may make it no longer feasible for it to proceed with the proposed hotel development at 9 Daly Street. However, the decision granting the licence was made on the basis of an assessment by the Commission that the proposal to establish a tourist hotel complex at that site was in the public interest. If the Licensee is contemplating the prospect of abandoning or significantly delaying that project and is now interested in operating a different type of licensed business at other premises then it should apply for a new licence. That would enable the appropriate stakeholder consultation process to occur and for the Commission to make a proper assessment of the public interest and community impact criteria associated with the new proposal.
22. If, despite the apparent contrary indications in the Licensee's letter of 23 June 2022, it does intend to pursue the original Daly Street project within a realistic timeframe then it would be open to it to pursue a further application for an extension of the existing licence. If that is to occur then it is the Commission's view that it should proceed as an application pursuant to section 110 of the Act to vary the conditions of licence and any interim arrangements sought in relation

² p.41 Director's referral

to the temporary operation of the licence would need to be clearly articulated in the application and supported by evidence.

23. On the basis of the evidence currently before the Commission, it is not satisfied that it is in the public interest to grant an extension of the time within which the Licensee is required to complete the building works and obtain the necessary permits for the public hotel proposed for 9 Daly Street, Darwin. The Licensee was advised of the Commission's decision at the conclusion of the hearing on 27 September 2022.

NOTICE OF RIGHTS

24. 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.
25. 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.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
3 October 2022

On behalf of Commissioners Coates, Stephenson and Corcoran