

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: DUNMARRA WAYSIDE INN APPLICATIONS FOR MATERIAL ALTERATION AND PRODUCERS' AUTHORITY [2025] NTLiqComm 9

REFERENCE: LC2024/045

LICENSEE: Boxian Holdings Pty Ltd

LICENCE NUMBER: 81200366

PREMISES: Dunmarra Wayside Inn
13729 Stuart Highway
DINMARRA NT 0852

LEGISLATION: Part 3 Division 4, Part 4 Division 2 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Deputy Chairperson)
Ms Ebony Abbott-McCormack (Health Member)
Ms Rachael Shanahan (Community Member)

DATE OF HEARING: 11 December 2024

DATE OF DECISION: 20 February 2025

Decision

1. For the reasons set out below and in accordance with s 97 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to approve a material alteration to the licensed premises known as the Dunmarra Wayside Inn at Dunmarra NT 0852 (**the licensed premises**) of liquor licence number 81200366 (**the licence**) held by Boxian Holdings Pty Ltd (**the licensee**).
2. In accordance with s 48 of the Act the Commission has determined to issue a producers' authority with the licence.
3. In addition to the existing conditions of the licence, the licence will be subject to the prescribed conditions for producers' authority at Regulations 73A and 73B *Liquor Regulations 2019* (**the Regulations**).
4. The operating hours for the producers' authority and takeaway authority are:

- (i) Sunday to Friday inclusive between the hours of 10:00 and 22:00; and
 - (ii) Saturday and Public Holidays between the hours of 09:00 and 22:00.
5. The footprint of the licensed premises following the material alteration is as shown by the area delineated in red on the plan marked as Exhibit Two at the hearing of the applications.
6. The altered licence and producers' authority will be issued immediately following the publication of this decision notice.
7. Liquor must not be sold under the producers' authority or outside the area of the pre-existing licensed premises until the Director of Liquor Licensing (**the Director**) gives written approval to do so, following the provision of documentary evidence to the satisfaction of the Director that the licensee has:
- a. installed and is operating an upgraded camera surveillance system covering the increased area of the licensed premises in compliance with the existing condition in the licence headed "CCTV Condition"; and
 - b. has obtained any permits for the alterations required under the *Building Act 1993*.

Reasons

Background

8. The Dunmarra Wayside Inn is situated 634 km south of Darwin on the Stuart Highway. The licensee is the registered proprietor of the premises, which occupy two adjoining parcels of land, NT Portions 01341 and 01342 within the area administered by the Roper Gulf Regional Council. For the purposes of Schedule 3 of the Regulations, the premises are situated in the Katherine region.
9. The licence nominee, Mr Gary Frost (**Mr Frost**), is the secretary, sole director and sole shareholder of the licensee, and has operated the premises for 19 years.
10. The licence currently operates with a takeaway authority and a wayside inn authority.
11. In about 2021, Mr Frost formed a plan to establish a micro-brewery at Dunmarra, in order to encourage tourists and travellers along the sparsely populated and serviced stretch of the Stuart Highway between Katherine and Tennant Creek to stay the night at the premises, where there is a motel and a caravan and camping park. The plans included the expansion of the footprint of the licensed premises to include an undercover outdoor dining area, and the installation of large stainless-steel tanks and associated brewing, refrigeration, storage and service equipment.

The Application

12. In May 2022 the licensee lodged incomplete applications with the Director for a producers' authority and approval of a material alteration. Following delays explained by Mr Frost to the Commission as being due to COVID-19 and the difficulty in recruiting staff and contractors, it was not until 18 June 2024 that the licensee provided the Director with sufficient documentation to enable the Director to accept the applications.

Consultation

13. As required by ss 57 and 96 of the Act, on 7 September 2024 notice of the application was published in the NT News, posted on the Director's website and displayed at the premises. No objections to the applications were received.

14. In accordance with ss 56 and 96 of the Act, notification was given to the Department of Health (**NT Health**), NT Police and the Roper Gulf Regional Council. The Director also notified Northern Territory Fire and Rescue Services (**NTFRS**).

15. The Director informed the Commission that:

- NT Health asked the Commission to consider the impact of the applications on the communities of Elliott North Camp and Elliott South, 100 km to the south of the premises. The Commission discusses this issue below.
- NT Police advised that they had no objection to the applications.
- NTFRS supported the applications, subject to the issue of any required *Building Act* approvals for building works.
- The Roper Gulf Shire Regional Council did not provide a response.

The licensee's record of compliance

16. On the basis of information it has received from the Director, the Commission is of the view that for the purpose of considering these applications the licensee has a satisfactory record of compliance with the Act and the conditions of its licence.

The referral

17. On 25 October 2024, pursuant to ss 59 and 96 of the Act, the Director referred these applications to the Commission to be determined by way of a public hearing. Notice was subsequently given to the licensee that the matter would be listed for a public hearing on 11 December 2024.

18. The Director provided a brief (**the brief**) to the Commission, including the following documents:

- a. Correspondence between Licensing NT and licensee, 21 September 2022 to 14 July 2023
- b. Application for approval of a material alteration, 27 May 2024
- c. Application for producers' authority, 27 May 2024
- d. Site plan
- e. Public interest and community impact statement
- f. Affidavit and Declaration of Associates pursuant to s 54 of the Act;
- g. Food Business registration
- h. Smoking management plan
- i. Evidence of good character of Mr Frost
- j. Certificate of Title for premises
- k. ASIC Business Name registration: Dunmarra Wayside Inn
- l. ASIC company extract: Boxian Holdings Pty Ltd
- m. Correspondence re public notification and stakeholder consultation
- n. Warning letter dated 21 February 2023 from Licensing NT to licensee re non-compliance

The hearing

19. On 11 December 2024 the application proceeded as a public hearing. Mr Ryan of the applicant's solicitors appeared on behalf of the applicant, accompanied by Mr Frost. Ms Kimber and Mr Verity appeared for the Director. The Commission thanks them all for their attendance and assistance.
20. The brief was tendered, admitted into evidence without objection and marked as Exhibit 1.
21. In addition and also without objection the following documents were admitted into evidence:
 - Exhibit 2: site plan of proposed premises
 - Exhibit 3: report of audit by Licensing NT of the licensed premises, 26 November 2024 (**the audit report**)

ASSESSMENT OF THE APPLICATIONS

22. In accordance with s 59 of the Act, the Commission has considered:
 - a. the applicant's affidavit required by s 54, and, if the Commission considers it appropriate, whether each associate of the licensee is a fit and proper person to be an associate of the licensee;
 - b. the suitability of the premises to be licensed to operate with a producers' authority, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
 - c. the financial stability and business reputation of the licensee;
 - d. the general reputation and character of the secretary and executive officers of the licensee;

e. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

23. In accordance with ss 49 and 97 of the Act, the Commission has also considered whether issuing the producers' authority and approving the material alteration is in the public interest, and whether the licence will have a significant adverse impact on the community.

The applicant's associates

24. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the application for a producers' authority is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of s 54, and that the only associate of the applicant is Mr Frost. By operation of s 51(3) of the Act, the licensee is assumed to be a fit and proper person in the absence of evidence to the contrary. The Commission received no such evidence. Mr Frost is the sole director and proprietor of the licensee. The Commission is satisfied that he is a fit and proper person to be an associate of the licensee.

The suitability of the applicant's premises

25. The Commission assesses the premises as suitable for the supply and consumption of liquor with a producers' authority.

The financial stability, general reputation and character of the body corporate

26. Although the Commission has not received any evidence regarding the licensee's current financial circumstances, for the limited purposes of considering an application for an authority to be added to an existing licence, and having regard to the licensee's lengthy record of successfully operating the premises, the Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

The general reputation and character of the applicant's secretary and executive officers

27. The Commission assesses the general reputation and character of the applicant's executive officer and secretary, Mr Frost, to be satisfactory.

Whether the applicant is a fit and proper person to hold a producers' authority

28. As noted above, by operation of s 51(3) of the Act, the licensee is assumed to be to be a fit and proper person to hold a licence with a producers' authority, and the Commission so finds.

Whether the licensee's nominee is a fit and proper person to hold a producers' authority

29. Similarly, as the sole director and proprietor of the licensee, the Commission finds that the licence nominee, Mr Frost, is a fit and proper person to hold a licence with a producers' authority.

Public notice and consultation

30. The Commission is satisfied that public notice of the applications was given and consultation was undertaken in accordance with ss 57 and 96 of the Act.

Whether issuing the licence is in the public interest

31. To determine whether the issue of the producers' authority and the making of the material alteration is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in s 49(2) of the Act:

- (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.

32. Since 2009, the licence has included the following conditions:

Sale of alcohol shall be restricted to no more than six (6) cans (375ml) of beer per day to Elliott and Marlinja residents.

The Licensee must retain a register of takeaway sales to Elliott and Marlinja residents in a form approved by the Director of Liquor Licensing. The register shall include the date and time of purchase and the name of the customer to inform the Commission on buying patterns.

Register is to be retained and made available for inspection to Licensing Inspectors and Police on request.

Requirement to maintain a register shall be reviewed once an Alcohol Management Plan for the region has been prepared and is in place.

Individual purchasers must personally request the purchase of takeaway alcohol and be assessed by the Licensee as to their age (i.e. 18 years and over) and sobriety.

33. The Commission notes that Marlinja is an Aboriginal community with about 60 residents situated about 80 km south of Dunmarra.
34. On being notified of the applications, Ms Tania Davidson, Senior Policy Officer, Clinical Policy and Planning, Mental Health, Alcohol and Other Drugs Branch, NT Health, responded as follows:

There are two Aboriginal localities identified as Community Living Areas (Elliott North Camp and Elliott South) with a combined population estimated to be 247 located roughly 100 km away from Dunmarra. Both localities are currently in the process of developing a Community Alcohol Plan (**CAP**) and are classified as an Interim-Alcohol Protected Area (**I-APA**).

Key points of consideration regarding this liquor licence application include:

- It is understood from community feedback that residents of Elliott and the Community Living Areas travel to other locations such as Katherine, Daly Waters and Mount Isa to purchase alcohol without restrictions.
- Elliott has a restriction (2x6 packs per day) on community residents purchasing alcohol.
- Community residents have expressed concerns about residents travelling to other locations in order to purchase alcohol because of the restrictions and pricing.
- Community engagement with Community Living Area residents indicate that they are considering safe alcohol supply measures, therefore removing the I-APA.

Nearby outstations of Lily Hole (BushTel reports 6 residents), Jingaloo and Murrarji (BushTel report less than 5 residents) are

also I-APA areas and no contact has been made with these locations yet to develop a CAP.

Any liquor licencing applications should consider the status and/or completion and implementation of the CAP that will identify the safe measures around supply, demand reduction and harm reduction. In addition to considering the wider health, wellbeing, community safety and place-based Aboriginal leadership and governance supports, structures and services available in near Aboriginal localities [sic]. At this stage, we are not in a position to provide a timeframe of when the CAP is expected to be completed as the process is community led and engagement to support the development of CAP commenced in August 2024.

35. The Commission thanks NT Health for its helpful contribution to these proceedings, and accepts Ms Davidson's comments as being factually accurate, while noting that no mention is made in them of the Marlinja community, which appears to be an omission.

36. In their written response to the NT Health comments on behalf of their client, the licensee's solicitors stated that:

- the licensee supports the development of a CAP for Elliott North Camp and Elliott South;
- the licensee is committed to implementing as much of any CAP as is reasonable;
- the licensee will ensure trade is conducted in a manner that supports the restrictions the I-APA policy has set on these communities;
- the beer brewed and sold by the licensee will be more expensive than major beer brands, and the grant of a producers' authority to the licensee is therefore unlikely to lead to additional harm to at-risk residents of nearby communities

37. At the request of the Commission, on 12 November 2024 two Licensing NT senior compliance officers made an unannounced visit to Dunmarra to conduct an audit of the premises. The ensuing audit report stated that "the licensee retains a register with all names and address of all patrons who purchase takeaway alcohol, not just residents of the Elliott and Marlinja as required in the licence conditions". The audit report further stated that the licensee was operating in a substantially compliant manner, and that any non-compliance was minor, easily rectifiable and low-risk. The Commission accepts the findings of the audit report.

38. At the hearing, Principal Compliance Officer Verity, who authored the audit report, stated that the licensee has always been conscientious with compliance issues, has addressed the minor administrative issues that have arisen in the past, and has not been the subject of complaints. The Commission accepts Mr Verity's evidence.

39. Also at the hearing, Mr Frost stated that “less than dozens” of Elliott and Marlinja residents patronise the Dunmarra Wayside Inn, and that community members who wish to do so can purchase unrestricted quantities of takeaway liquor from the Daly Waters Hi-Way Inn. The Daly Waters premises are just off the Stuart Highway, approximately 50 km north of Dunmarra. The Commission accepts Mr Frost’s evidence.
40. Having considered all of these matters, in the view of the Commission, the risk that the granting of the licensee’s applications will result in an increase in harm or ill-health to people or a group of people by the consumption of liquor is low.
41. On the other hand, the Commission considers that the establishment of a micro-brewery by the licensee is likely to modestly increase cultural, recreational, employment and tourism benefits for the local community area.
42. Having considered all of the public interest objectives set out at s 49(2) of the Act, the Commission is satisfied that it is in the public interest to issue the licence.

Whether the issue of the licence will have a significant adverse impact on the community

43. To determine whether it is satisfied that the issue of the producers’ authority and the making of the material alteration will not have a significant adverse impact on the community, the Commission must consider the matters set out at s 49(3) of the Act:
- (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 s 50;¹

¹ In the view of the Commission, no such guidelines are currently in force.

(j) any other matter prescribed by regulation.²

44. In relation to the matter at s 49(3)(d), although Marlinja and Elliott are 80 km and 100 km respectively from Dunmarra, the Commission considers that their residents are “people or community who would be affected” by changes to the licence. However, having regard to the matters set out in the Commission’s consideration of the public interest objectives, the Commission is satisfied that the granting of these applications will not have a significant adverse effect on the Marlinja or Elliott communities. The people who will be most affected by the granting of these applications will be people driving along the Stuart Highway who are attracted by the existence of locally brewed beer to stay the night at Dunmarra. The Commission does not consider that these people constitute a “community” for the purpose of s 49(3) of the Act. Whether or not this view is correct, the Commission considers that in any event, if these people are affected, the effect of being overnight guests at this outback location is more likely to be beneficial than harmful.
45. Having considered all of the community impact matters set out at s 49(3) of the Act, the Commission is satisfied that approving the applications will not have a significant adverse effect on the community.
46. Having had regard to the comments by NT Health, the Commission has also considered whether to delay approving the applications until the Elliott CAPs have been completed. In deciding not to delay its decision, the Commission has taken into account the following matters:
- a. NT Health is unable to provide a timeframe for the completion of the CAPs;
 - b. The licensee has demonstrated a constructive and co-operative attitude to the development of the CAPs;
 - c. The Commission has received no evidence indicative of prior harm to the community arising from the operation of the licence; and
 - d. The Commission is satisfied that trading with a producers’ authority in the enlarged premises will not have a significant adverse impact on communities in the region.

Conditions

47. The Commission does not consider that is necessary to fix any licence conditions beyond those that are prescribed by the Regulations.

² No such matters have been prescribed by regulation.

Operating hours

48. The applicant's current liquor licence number 81200366 is issued with a takeaway authority and a wayside inn authority. The current licence conditions also include the following:

Takeaway Hours

Liquor shall be sold only for consumption away from the premises during the following hours:

- (iii) Sunday to Friday inclusive between the hours of 10:00 and 22:00; and
- (iv) Saturday and Public Holidays between the hours of 09:00 and 22:00.

49. The premises are located within the Katherine region as defined in the *Liquor Regulations 2019 (the Regulations)*. The Regulations prescribe more restrictive hours for takeaway authorities in the Katherine region than those in the licence conditions. However, by operation of reg 20 of the Regulations, the licence conditions, which existed prior to the conversion of the licence by the Director from a *Liquor Act 1978* licence to a licence under the *Liquor Act 2019*, prevail over the prescribed conditions to the extent of the inconsistency.

50. Regulation 72 prescribes that the hours of operation for a producer's authority are from 10:00 to 22:00 every day except Good Friday and Christmas Day. The Commission can fix hours of operation for the producers' authority that are more, but not less, restrictive than the prescribed hours.

51. In the view of the Commission, for convenience, clarity, consistency and certainty the preferable course is to fix the hours of operation for the producers' authority to align with the current takeaway authority hours.

The objects of the Act

52. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.

53. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

54. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

Extension of time

55. Section 60(2)(b) of the Act provides that the Commission must make a decision whether to issue an authority within 28 days of the expiry of the 14 day period allowed for an objection to be lodged with the Director after public notification

of the application. In this case, the objection period expired on 21 September 2024. However, the Commission was unable to make a decision within 28 days of that date because the Director did not refer the application to the Commission until 25 October 2024. The Commission scheduled the application for hearing at the first reasonably available opportunity.

56. The publication of this decision notice was further delayed by the Christmas break, and the Commission's subsequent decision to invite the parties to make submissions in relation to the issues discussed at paragraphs [48] to [51] above.

57. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision until the date of this decision notice.

NOTICE OF RIGHTS

58. Section 31(1) read with s 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. 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.

59. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director and the licensee.



Russell Goldflam

DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
20 February 2024

On behalf of Commissioners Goldflam, Abbott-McCormack and R Shanahan