

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *DARWIN AIRPORT RESORT OPERATING COMPANY PTY LTD: APPLICATION FOR EXTENSION OF TIME [2024] NTLiqComm 16*

FILE NUMBER: LC2024/009

APPLICANT: Darwin Airport Resort Operating Company Pty Ltd

PREMISES: Darwin Airport Resort
1 Sir Norman Brearley Drive
MARRARA NT 0812

Liquor licence number: 80117466

LEGISLATION: Section 6(3) of the *Liquor Commission Act 2018*
Sections 3(4) and 19(g) of the *Liquor Act 2019*

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

DATE OF DECISION: 27 March 2024

DECISION

1. Pursuant to section 6(3) of the *Liquor Commission Act 2018* (**the LC Act**), the Commission has determined to grant the application by Darwin Airport Resort Operating Company Pty Ltd (**the Applicant**) to extend the time fixed by the Commission at paragraph 5(b) of its decision issued on 21 April 2023¹ (**the 2023 decision**) within which certain works must be carried out and completed.
2. The Commission has determined to extend the time for completion to 30 April 2025 or such further date as the Commission approves.

¹ *Darwin Airport Resort Operating Company Pty Ltd: Joint Application for Material Alteration and Substitution of Licence [2023] NTLiqComm 10*

REASONS

Background

3. 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.
4. Publication and consultation in accordance with the *Liquor Act 2019* (**the Act**) occurred and no objections were received.
5. The application was referred to the Commission and the matter proceeded as a hearing on 21 March and 12 April 2023. A significant aspect of that hearing related to the proposal concerning the licensing of the “to be established” RV Park. A great deal of evidence was provided to the Commission concerning the RV Park and what was proposed. In fact, it was the proposals surrounding the RV Park that were a significant reason for the hearing being adjourned part heard to 12 April 2023.
6. The various matters raised by the applicant before the Commission in relation to the RV park are set out in the 2023 decision. The Commission does not propose to repeat those matters here.

The Application

7. On 13 March 2024, Mr. Andrew Giles (**Mr. Giles**) solicitor for the applicant sent a 2½ page letter to the Director of Liquor Licensing (**the Director**). Mr. Giles stated that there were certain outstanding works with respect to the construction of the RV park. It was noted on behalf of the applicant that over \$21 million worth of construction had already been completed and that the further estimated cost of works yet to be completed were approximately \$10 million; with approximately \$6 million of that to be spent on the RV park.
8. On behalf of the applicant it was noted that there had been delays incurred due to unforeseen circumstances, particularly relating to the requirement for significant consultation during the design phase and an inability to access the site whilst construction was being undertaken to stage 3 of the work.
9. Despite these delays it was submitted that it was believed construction could be completed by April 2025. As a result an application was made for an extension of time to that date.
10. It is noted by the Commission that although s 19 of the Act provides that the Commission is responsible for deciding any matter the Director refers to it, the

Act does not prescribe a procedure for dealing with an application to extend a time period that forms part of a licence condition fixed by the Commission.

11. There is accordingly no prescribed application fee, no requirement to notify the public of the application or consult with stakeholders, no prescribed procedure for the referral of the application by the Director to the Commission, and no provision setting out the matters the Commission must consider when determining the application.
12. Pursuant to Part 2 Division 3 of the LC Act, in order to deal with a matter such as this, the Commission is required to convene by three or more members. In accordance with this requirement the same panel that determined the 2023 decision convened for a hearing on 27 March 2024. Due to the nature and circumstances of the application, the Commission determined that a public hearing would not be worthwhile and pursuant to section 21(d) of the Act considered the application on the papers.

Assessment of the application

13. It was submitted on behalf of the applicant that the source of the Commission's power to grant this extension lay in its original power to make conditions under section 87 of the Act and the implied powers that are incidental or consequential to the express powers. Particular reference was made to *Cavanagh v CEO of Housing* [2018] NTSC 52.
14. In the alternative it was argued that a further source of power "if required" was section 113 of the Act empowering the Commission to vary conditions on its own initiative.
15. The Commission does not consider section 113 to be appropriate in this matter. This is not a "variation ... a formality or a clerical reason". The Commission therefore does not propose to rely upon this section to exercise its power.
16. The Commission also does not consider it necessary to rely on the principles referred to in *Cavanagh v CEO of Housing*².
17. In this matter the Commission considers that the power to grant the extension of time being sought arises by operation of section 6(3) of the LC Act together with sections 3(4) and 19(g) of the Act.
18. In the 2023 decision the Commission made clear that time could be extended to "such later date as the Commission approves". The applicant has applied for this extension before the expiry of the time granted and therefore the Commission is empowered under section 6(3) of the LC Act "to do all things that are necessary or convenient to be done for, or incidental too, the performance of its functions".

² [2018] NTSC 52

19. The Commission has determined that this application for extension of time falls within that power and as a result has determined to extend time as sought by the applicant to 30 April 2025 or such further date as the Commission approves.
20. Although the Commission has included within its decision the potential for the applicant to seek additional time if the completion date of 30 April 2025 cannot be met, the Commission wishes to make clear to the applicant that it should do everything within its power to complete the works required by 30 April 2025 as any additional extension may require much more scrutiny than has been considered necessary on this occasion.

NOTICE OF RIGHTS

21. 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.
22. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the applicant and Director.



JODI TRUMAN
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
3 April 2024

On behalf of Commissioners Carson and Fong Lim