

Delegate of the Director of Liquor Licensing

Amended Decision Notice

MATTER:	Application for the grant of a licence and authority
APPLICANT:	Darwin Brewing Corporation Pty Ltd
PROPOSED PREMISES:	Darwin Brewing Supplies 1/18 Totem Road Coconut Grove NT 0810
OBJECTORS:	Nil
LEGISLATION:	<i>Liquor Act 2019</i> - Part 3 and 4
DECISION OF:	Southern Region Manager - Licensing & Compliance
DATE OF DECISION:	22 August 2024

AMENDED DECISION

1. As a delegate of the Director of Liquor Licensing, I approve the application by Darwin Brewing Corporation Pty Ltd for the grant of a liquor licence with a producers' authority, for the premises known as Darwin Brewing Supplies at the 1/18 Totem Road, Coconut Grove.
2. The grant of the licence is for an expansion of the existing wholesaler registration, allowing for consumption of the products produced at the premises, and for sales for consumption away from the premises.
3. The licence is granted in pursuance of section 60 of the *Liquor Act 2019* (the Act), with reference to section 47(1)(j) of the Act, being a producers' authority.
4. The operating conditions in relation to the producers' authority are in accordance with Part 4, Division 13 of the *Liquor Regulations 2019* (the Regulations) and the following special conditions:
 - a) The hours of operation are to be between 10:00 and 22:00 seven (7) days a week (Good Friday and Christmas Day excluded)¹;

¹ *Liquor Regulations 2019*, r72 prohibiting sales on Good Friday and Christmas Day.

- b) The sale of liquor under this authority is to be conditional upon the matters described in the Enforceable Undertaking agreed to by the Director and the Licensee;
 - c) The licensee is to have available information materials in relation to the National Health and Medical Research Council's "Building a Healthy Australia – Alcohol Guidelines" for all residents;
 - d) The commencement of trade under this authority is conditionally approved contingent upon the licensee providing to the Director written updates of their progress, or further delays in obtaining certification of the premises under the *Building Act 1993*. These updates are to be provided by the 30th day of each quarter commencing 1 September 2024, and until such time the Director advises they are no longer required;
 - e) The licensee must also advise the Director in writing immediately upon being served a notice, order or other document under the *Fire and Emergency Act 1996* or the *Building Act 1993*;
 - f) The email address for service of all notices is to DirectorLiquorLicensing.DITT@nt.gov.au;
 - g) Failure to comply with the abovementioned reporting requirements will be a breach of the conditions of the licence and may be subject to disciplinary action; and
 - h) Pursuant to section 298(1)(b) of the Act, all areas within the licensed premises are prohibited to any child not accompanied by an adult who is the child's parent, step-parent, spouse or guardian.
5. For the avoidance of doubt, this authority only allows the licensee to sell liquor produced by the licensee. No other products may be sold under the licence, notwithstanding the licensee is also registered as a wholesaler of liquor. That is a separate registration.

BACKGROUND

6. Pursuant to section 52 of the Act, Mr Ryan Lucas a director of Darwin Brewing Corporation Pty Ltd, lodged an application for a licence with a **producers' authority** on 20 March 2024.

CURRENT SITUATION

7. The application is for a licence to allow for the sale of liquor produced by the licensee, for consumption on or off the licensed premises.

8. The licensee has a registration allowing for wholesale sales of their products from the premises, that registration however does not allow for on premises sales and consumption, or off-premises sales to the general public.
9. The licence is intended to allow for the opening of a tasting room to complement their small scale, boutique microbrewery, offering artisan beers and other beverages brewed on the premises.
10. The operation is already underway as a wholesaler, and they offer a retail shop which sells brewing supplies and equipment. The licence is a natural expansion of their existing business model.
11. The range on offer by the licensee is varied, including bulk packaged beer and kegs up to 50L for commercial and other use.
12. Their overall production capacity is not expected to exceed 18,000L per annum, which equates to approximately 1,500L per week.
13. The applicant has provided the material prescribed in section 52 of the Act including:
 - an affidavit made under section 54;
 - evidence necessary to satisfy the onus specified in section 51; and
 - the application fee.
14. A menu was provided by the licensee in support of the application, including toasted sandwiches, popcorn and other snacks that will be available for purchase.
15. The Regulations require a light meal to be available, a term defined in regulation 3 as "...a meal that may be eaten with the hands while standing". The items contained in the proposed menu are of that nature.

NOTIFICATIONS, PUBLIC NOTICES AND OBJECTIONS

16. Pursuant to section 57(4) of the Act, the application was published in the NT News on Wednesday, 24 April 2024, with a fulsome publication of the materials on the Director's website for public viewing.
17. Accompanying the publications was signage at the premises in the customary fashion.
18. Following the prescribed publication period no objections were received by the public or any other party in relation to this application.

19. In pursuance of section 56(4) of the Act the application was notified to the Commissioner of Police and the Chief Executive Officers of the Department of Health (Health) and City of Darwin Council.
20. Although not a statutory requirement, as is practice, notification of the application was sent to the Northern Territory Fire and Rescue Service (NTFRS).
21. Police advised they had no objections to the application, and no responses were received from Health or the City of Darwin.
22. Notwithstanding no response was received from the NTFRS, the premises has already undergone the necessary certifications for its current operations, and will be subject to the condition imposed above in relation to the commencement of trade under this authority.

APPLICATION

23. The applicant has provided a comprehensive suite of materials in support of the application including all materials prescribed by the Act.
24. The authority sought by the applicant is in pursuance of section 47(1)(j) of the Act.
25. The determination of applications under section 60(1) of the Act has been conditionally delegated by the Liquor Commission to the Director of Liquor Licensing. The limitation including the authorities which may be granted under delegation being a catering authority.
26. The Director further delegated these powers to me by instrument.

DISCLOSURE OF PERSONS

27. Section 54 of the Act requires the applicant to make an affidavit disclosing each person who, if the licence is issued, may:
 - (a) be able to influence the applicant; or
 - (b) expect a direct or indirect benefit from the applicant.
28. I am satisfied with the materials provided by the applicant in relation to this requirement and note the applicant is the licensee for a number of other substantial premises.

RESULTS OF INVESTIGATION

29. Section 58 of the Act enables the Director to conduct an investigation into an application as considered appropriate. No materials have been discovered or provided to indicate there are any adverse matters in relation to this application.

30. A fulsome Business Plan was provided detailing the nature of the business.

FINANCIAL STABILITY

31. I am satisfied with the materials provided of the financial stability and business reputation of the applicant.

32. As written previously, the applicant operates from the premises already as a wholesaler of liquor.

FIT AND PROPER PERSON

33. Section 59(3)(g)(i) of the Act requires the decision maker to consider whether the applicant and as the applicant is a body corporate, their nominated licensee, are fit and proper to hold a licence.

34. The applicant provided materials in support of this and Mr Lucas is to be the licensee's nominee in pursuance of section 53(3) of the Act.

35. Having considered the materials provided I am satisfied the applicant and Mr Lucas is a fit and proper person to hold a licence and act as nominee.

PUBLIC INTEREST AND COMMUNITY IMPACT

36. Section 49 of the Act requires the decision maker to be satisfied the applicant is fit and proper, the licence or authority is in the public interest and will not have a significant adverse impact on the community.

37. The first branch of the requirement has already been addressed.

38. It remains to consider whether the application is in the public interest, to do so consideration must be given to the objectives prescribed in section 49(2) of the Act which include:

- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- b. ensuring liquor is to be 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 the practices that encourage irresponsible drinking;
 - j. reducing or limiting increases in anti-social behaviour.
39. In determining whether there would be a “significant adverse impact on the community” section 49(3) of the Act prescribes the decision maker “must consider the following”:
- 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 section 50;
 - j. any other matter prescribed by regulation.
40. The Act is clear in that the applicant bears the onus of satisfying the decision maker of the relevant matters, irrespective of whether no objections were received as is the case in this matter.
41. In relation to the issue of the community impact and public interest, those matters have previously been published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the *Liquor Act 2019*, and are taken to be community impact assessment guidelines issued under section 50 of the Act.
42. Those matters remain as previously published in numerous decisions by the Liquor Commission and I am guided by these decisions.

CONSIDERATION CRITERIA

43. Consideration must be made of the applicant's affidavit, the results of any investigation, objections and responses, the suitability of the premises along with the appropriateness of the applicant to be a licensee.

44. With regards to the matters raised in section 49(2) of the Act, I note the following:

- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised:

I am satisfied the provision of liquor is complementary to the existing facilities being the brewery, and is a natural progression of the business to allow for boutique operation at the premises.

The applicant has consented to entering into an enforceable undertaking requiring them to operate in accordance with the BDR requirements applicable to takeaway authority holders. This is supportive of the licensee in preventing sales for consumption away from the premises to those who are prohibited from purchasing liquor.

- b. ensuring liquor is to be sold, supplied, served and consumed, on or in licensed premises in a responsible manner:

Having considered all the material, it is unlikely any liquor sold, supplied, served and consumed will be done so in an irresponsible 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:

The minimal nature of the premises naturally restricts patronage of the facility, making it improbable that public order and safety are likely to be jeopardised by the operation of the licence, also the licensee has prepared a suitable business plan including processes to safeguard against harm.

- d. protecting the safety, health and welfare of people who use licensed premises:

The policies developed by the applicant applicable to the premises are considered to adequately protect the safety, health and welfare of people who are likely to use the licensed premises during its hours of operation.

- e. increasing cultural, recreational, employment or tourism benefits for the local community area:

The primary intention of the licence is the natural growth of their premises and business, including the promotion of Territory made products.

- f. promoting compliance with this Act and other relevant laws of the Territory:

There are no materials provided which would suggest the applicant will not comply with the Act and any other relevant laws.

- g. ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business:

I am satisfied the applicant will appropriately manage and supervise service staff.

- h. preventing the giving of credit in sales of liquor to people:

No issues have been raised to suggest there is any concern in relation to this objective.

- i. preventing the practices that encourage irresponsible drinking:

No issues have been raised to suggest there is any concern in relation to this objective.

- j. reducing or limiting increases in anti-social behaviour:

No issues have been raised to suggest there is any concern in relation to this objective.

45. Turning to the matters under section 49(3):

- 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:

There are no materials to suggest there is a significant risk of undue offence, annoyance, disturbance or inconvenience likely to be caused by the granting of these authorities.

- b. the geographic area that would be affected:

The premises is pre-existing, and there has been no issues to date concerning the wholesale aspect of their operation. The premises is within a commercial lot, with a number of other commercial operations nearby.

- c. the risk of harm from the excessive or inappropriate consumption of liquor:

As previously indicated, there are no materials to suggest there will be excessive consumption of liquor. The installation of the BDR system will ensure the licensee does not inadvertently sell liquor for consumption away from the premises, to persons who are prohibited.

- d. the people or community who would be affected:

Given the remote location of the premises it is unlikely there will be significant adverse impact on the community by the granting of this licence.

- e. the effect on culture, recreation, employment and tourism:

The promotion of Territory made products is a benefit to the local tourism industry and the consequential flow-on to employment and the economy.

- f. the effect on social amenities and public health:

It is unlikely there will be any significant adverse impact on the social amenities and public health by the granting of this licence to the applicant.

- g. the ratio of existing liquor licences and authorities in the community to the population of the community:

There is nothing to suggest there will be a significant change in the ratio of this type of authority in the immediate area. The industry itself is a growth industry, and it is likely similar applications will be a natural part of that growth. These will need to be considered on a case-by-case basis.

- h. the effect of the volume of liquor sales on the community:

The minimal nature of the operation is unlikely to significantly increase the volume of liquor sales in the wider Katherine regional area.

- i. the community impact assessment guidelines issued under section 50:

These have been considered and referred to earlier in this notice.

46. Having regards to the foregoing, I am satisfied that the issuing of the licence as sought is in the public interest and will not have an adverse effect on the community.

AMENDMENT OF ORIGINAL DECISION OF 15 JULY 2024

47. The commencement of trade was prohibited in the original decision until such time as the licensee has provided to the Director materials confirming they have the necessary certifications, and approvals from the NTFRS (including maximum patron numbers), and has received confirmation in writing they may commence trade from the Director or her delegate pursuant to section 60(5)(a) of the Act.
48. On 22 August 2024 the Licensee advised the Director in writing of their significant delays in obtaining certification for the premises, an issue which is outside of their control as they are a tenant, and it is pre-existing premises that have not previously been certified.
49. This is a similar situation regrettably with many commercial and domestic premises within the Territory, including long-existing licensed premises.
50. It was submitted a continuation of the prohibition at this time, for issues outside of their control is overly burdensome, and detrimental to their operation and significant investment.
51. It is accepted the licensee is pursuing all avenues and is undertaking their best efforts to comply with the certification requirements, and will continue to do so.
52. It is therefore accepted there is not sufficient material to suggest the premises are not suitable with reference to section 59(3)(e) of the Act, and it would be an abuse of process to continue to restrict trade at premises the licensee already operates their wholesaler registration business from.

53. For the avoidance of doubt, this approval to commence trade does not in any way remove the obligations on the licensee under the *Fire and Emergency Act 1996*, the *Building Act 1993*, or any other law in Australia or the Territory relating to the use of a building or safety matters.
54. For completeness the amendment of the original decision is done with reference to section 43 of the *Interpretation Act 1978*.

REVIEW OF DECISION

55. Section 27 of the Act provides for the applicant or a person who made a submission the subject of the decision, to seek a review of a decision made by the delegate of the Director.
56. The Director delegated the determination of applications made under section 52 of the Act by instrument to the person from time to time holding, acting in or performing the duties of the position listed in the Schedule of that instrument. This decision was made by a person referred to in that schedule.
57. An application for review must be lodged with the Director within 28 days after written notice of the decision is given to the person and must be in the form approved by the Director, stating the grounds for the review and the facts relied on to establish the grounds.
58. Accordingly, the affected persons in relation to this decision are Darwin Brewing Corporation Pty Ltd and Police.



Mark Wood
Southern Region Manager – Licensing & Compliance
Delegate of the Director of Liquor Licensing

22 August 2024