

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

LICENCE NUMBER: 80817804

REFERENCE: LC2021/031

LICENSEE: Hoggies Darwin Pty Ltd

PREMISES: Hog's Breath Café
370 / 247 Trower Road
CASUARINA NT 0810

LEGISLATION: Section 110 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Bernie Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 9 September 2021

DATE OF DECISION: 17 September 2021

Decision

1. For the reasons set out below and in accordance with section 110 of the *Liquor Act 2019* (the Act), the Northern Territory Liquor Commission (the Commission) has determined to vary the conditions of licence held by Hoggies Darwin Pty Ltd (the Licensee), at the premises known as Hog's Breath Café, 370/247 Trower Road, Casuarina but now known as "Primal Bar and Grill", 2/18 The Boulevard, Palmerston. The current special condition related to Premises Concept is deleted and replaced with:-

"The concept of the Licensees premises is a licensed restaurant with a predominant emphasis on meals and snacks in a relaxed, fun, family friendly setting. The venue will not operate live music".
2. The licence is further varied by deleting the special conditions relating to "Advertising and Signage" and "Outside Dining Area".

Reasons

Background

3. The Licensee is the holder of liquor licence number 80817804 for premises known as Hog's Breath Café, 370/247 Trower Road, Casuarina.
4. An application was lodged on 20 July 2021 by Mr Cormac MacCarthy on behalf of the Licensee seeking variations to the liquor licence conditions.
5. The Application was not clear and Licensing Officers requested clarification of the application. This was replied to via email dated 10 August 2021.
6. The variation application consists of three parts: The first part of the application relates to the "*Premises Concept*" concept condition which states:

"The concept of the Licensee's premises is a themed Hog's Breath franchise venue with a predominant emphasis on meals and snacks in a relaxed, fun, family friendly setting. The venue will not operate live music".
7. The proposed variation is to remove the words "*themed Hog's Breath franchise venue*" and replace those words with "*licensed restaurant*" so that the condition will now read:

"The concept of the Licensee's premises is a licensed restaurant with a predominant emphasis on meals and snacks in a relaxed, fun, family friendly setting. The venue will not operate live music".
8. The second part of the application is to entirely remove the "*Advertising and Signage*" condition.
9. The third part of the application is to entirely remove the "*Outside Dining Area*" condition.
10. The application was accompanied by:
 - a cover letter explaining the application;
 - an Affidavit in accordance with section 54 of the Act;
 - combined Community Impact Assessment and Public Interest Criteria.

Publication and Consultation

11. A delegate of the Director of Liquor Licensing (the Director) determined there was insufficient public interest to warrant publication of the application. As it was not published, there were no objections.
12. In accordance with the Act, the following were notified of the application.
 - The Chief Executive Officer of the Department of Health
 - The Commissioner of Police

- Chief Executive Officer, City of Darwin.
13. The Department of Health replied via email dated 11 August 2021 stating it had no adverse comments.
 14. The NT Police replied via email dated 13 August 2021 stating it had no objection.
 15. The City of Darwin did not respond.
 16. A check of records held at Licensing NT reveals that there have been no recorded negative compliance issues.
 17. The Commission dealt with an almost identical application for the Hog's Breath Café Palmerston which was heard on 26 May 2021 in relation to the licence held by Macrowe Pty Ltd and the Commission approved a similar change of licence conditions.

Public Hearing

18. On 28 August 2021, the Director referred this matter to the Commission and on 31 August 2021 the Commission wrote to the Licensee setting the matter down for public hearing on 9 September 2021.
19. On 9 September 2021, no one appeared on behalf of the Licensee. Attempts to contact the Licensee by telephone were not successful. Mr Jeff Verinder appeared on behalf of the Director and submitted that the application was not contentious and could proceed, in the absence of any representation by the Licensee and be determined on the basis of the documentation already before the Commission.
20. The Commission determined to hear the matter "on the papers".
21. The hearing brief was tendered and admitted into evidence.

Assessment of the Application

22. As was the case with the Macrowe matter, Mr Cormac MacCarthy the Director of Hoggies Darwin Pty Ltd is proposing to transfer the business he has been operating as part of a "Hog's Breath Café" franchise to his daughter, Keira MacCarthy. The restaurant bar will no longer be a themed "Hog's Breath Café" but will still operate at Casuarina Square under the name "Ravenous" offering meals and liquor in accordance with its Restaurant Bar, BYO and Late Night authorities.
23. This application is not controversial. The conditions in the licence were created prior to the introduction of the Liquor Regulations 2019 (the Regulations) which now prescribe the standard conditions which attach to the various authorities provided for in the Act. Division 16 specifies the conditions for a Restaurant Bar Authority including Regulation 83(6) which provides:

"The consumption of liquor without the purchase of a meal must not be advertised or encouraged".

24. There is also no reason why the Licensee should not be prevented from severing its relationship with the Hog's Breath Café franchise.
25. The current special condition in relation to the Outside Dining Area provides:
- "The outdoor dining area shall always have the appearance of a restaurant.*
- In the event of any complaint placed before and upheld by the Liquor Commission arising from the appearance of the outside area the Liquor Commission will consider the arrangement and appearance of the table and chairs within that area, the availability of meals and/or snack foods, the ready availability of menus and the deployment of the Licensee's staff for the service of that area and any other relevant matters.*
- No standing patrons to the premises will be allowed within one (1) metre of the front fence and entrance".*
26. At the Macrowe hearing, Mr MacCarthy said that this condition was a carry-over from when the Hog's Breath Café had previously been operating from Mitchell Street in Darwin and there was only a small picket fence delineating the boundary of the premises from the footpath. He said that the condition had never been relevant to the operation of the premises in Palmerston.
27. As was the case with the Palmerston licence, the Outside Dining Area special condition has no particular relevance to these premises and should be deleted from the licence conditions
28. It is the Commission's view that unless there are compelling reasons as to why special conditions are required to accommodate the peculiar circumstances of an individual application that the conditions of the licence should be those prescribed by the Regulations for the particular authority. This will create a greater level of consistency across the industry, prevent "licence creep" and should also assist licensees better understand their obligations under the Act. In this matter, apart from the restrictions on live music which the Licensee is content to continue to abide by, there is no reason why the conditions of licence should be other than those prescribed by the Regulations.
29. In the circumstance the Commission has determined that it is in the public interest and that there will be no significant adverse impact to vary the conditions of licence in the terms outlined at the commencement of this Decision Notice

Notice of Rights

30. 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.

31. 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.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
17 September 2021

On behalf of Commissioners Coates, Dwyer and Hart