

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATIONS FOR MATERIAL ALTERATION

REFERENCE: LC2022/006

LICENCE NUMBER: 80515140

LICENSEE: Saltwater @ Bundilla Pty Ltd

PREMISES: Saltwater @ Bundilla
19 Conacher Street
THE GARDENS NT 0820

LEGISLATION: Sections 96 of the *Liquor Act 2019*

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Ms Elizabeth Stephenson (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 9 March 2022

DATE OF DECISION: 9 March 2022

Decision

1. For the reasons set out below and in accordance with section 97 of the *Liquor Act 2019* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) has determined to approve the material alteration to the premises known as Saltwater @ Bundilla in the terms sought by the Licensee being the extension of the existing licensed footprint in the manner depicted at page 25 of Exhibit 1 in these proceedings together with those measurements set out at page 35 of Exhibit 1.
2. The Licensee is required to provide to the Director of Liquor Licensing (the Director) a map of the new licensed area to the Director’s satisfaction within 14 days of the date of this decision with such map to be used for the purposes of attaching to the licence.

Reasons

Background

3. Saltwater @ Bundilla Pty Ltd (the Licensee) is the holder of liquor licence number 80515140 for premises known as Saltwater @ Bundilla, situated at 19 Conacher Street, The Gardens.

4. On 14 December 2021, an application for a material alteration was lodged by Mr Gavan Keane on behalf of the Licensee. Further clarification was sought by Licensing NT in relation to the proposed area being extended. The application was then advertised after the Christmas period.
5. The application is to extend the licensed footprint to include the outdoor lawn area adjacent to the café entrance. The total area would be approximately 750 m² including the roadway down to the waterfront area. The area referred to as “the roadway” is in fact a service road between the café and the proposed additional licensed area and is not used generally by the public as a regular access point. For the purposes of this application, the roadway will only be used on occasion for special events. The additional area would be utilised for function and events. Barriers would be in place for each event and the nature of the barriers would be dependent on the event and hirer for the type of function.
6. The following supporting documents were supplied:
 - Cover letter and additional correspondence from the nominee, Mr Gavan Keane
 - Affidavit from Gavan Keane
 - Letter granting permission to utilise the area from Museum and Art Gallery of the Northern Territory (MAGNT) who is the landlord
 - Additional supporting documents

Publication and Consultation

7. The application was published by way of a notice in the NT News on Saturday 15 January 2022. It was also electronically published on the business pages of the Department of Industry, Tourism and Trade. Amendments made to the Act now require only one public notice. A green advertising sign was also erected at the premises for the course of the advertising period. Copies of the various advertisements were provided.
8. As a result of the public advertising of the application, there were no formal objections received.
9. 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
10. Due to the nature of the application the Northern Territory Fire & Rescue Service (NTFS) were also notified of the application.
11. The Department of Health replied via email dated 24 January 2022 stating it had no objection “although the area of any expansion should be for special events/functions only”.

12. The NT Police replied via email dated 25 January 2022 advising that they had no objections.
13. NTFS responded via email dated 24 January 2022 advising they “support this application”.

Compliance

14. There have been no reported matters or any outstanding issues reported.

Public Hearing

15. The Director referred this matter to the Commission on 31 January 2022. On 7 February 2022 the Commission notified the Licensee that this matter would be determined by way of a public hearing which could be attended via tele-conference on 9 March 2022.
16. At the hearing Mr Gavan Keane and Mr Peter Reichlmeier appeared for the Licensee and Mr Jeff Verinder appeared for the Director.
17. The hearing brief was tendered at the hearing without objection and marked Exhibit 1.

Assessment of the Application

18. Section 97(1) of the Act provides:

97 Decision on material alteration of licensed premises

- (1) In considering an application to make a material alteration to licensed premises, the Commission must consider the following:
 - (a) Any objection to the application made under section 61;
 - (b) Any response provided by the applicant under section 62;
 - (c) The public interest and community impact requirements.
19. It is important to repeat there have been no objections to this application. It is the Commission’s view that the application to extend the licensed footprint in the manner proposed is not particularly contentious. This is particularly so in light of the circumstance that the proposed area has in fact been used for functions since the inception of the MAGNT in the mid 1980’s.
20. The Licensee noted that they were “relatively isolated” from “any residential housing” with the “closest residences ... approximately 400 metres away from our site and are shielded from our site by the Museum itself”. Despite this, the Licensee stated it was willing to have noise conditions imposed into the licence if required. The Licensee did note however that it would comply with “guidelines” that formed part of an agreement with the Fannie Bay Residents Association, the Ski Club and MAGNT; that preclude music “at a level that is audible by residents after ... 11:00 pm weekdays and 11:30pm on Friday and Saturday nights”.

21. The Licensee highlighted the “unique location” of the premises and its strong focus “on promotion of the NT and tourism in general” and that MAGNT draws 200,000 to 300,000 visitors each year. The types of functions sought to be held in the area were to be “generally collaborative with either government, MAGNT, Private Enterprise or Weddings”. Examples of such partnerships were provided as part of the evidence.
22. It is noteworthy that the licence held by the Licensee is Restaurant authority with BYO and late-night authority, the relevant condition being that “liquor shall only be sold for consumption ancillary to a meal”. There is no application to change that condition. In addition, both Mr Keane and Mr Reichlmeier confirmed that for events held in the additional area either one or both of them would be in attendance.
23. On the evidence now before it and having regard to the considerations set out in section 49 of the Act, the Commission is satisfied that approving the material alteration to the licensed premises will not have any significant adverse impact on the community and is also in the public interest. Accordingly the application is approved as set out at the commencement of this Decision Notice.
24. The Licensee was notified that its application had been approved at the conclusion of the hearing.

Notice of Rights:

25. 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.
26. 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, the Licensee.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
16 March 2022

On behalf of Commissioners Truman, Stephenson, and Fong Lim