

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *ZUCCOLI IGA CELLARBRATIONS APPLICATION FOR MATERIAL ALTERATION [2023] NTLiqComm 21*

REFERENCE: LC2023/020

LICENCE NO: FLL1023

APPLICANT: North Oz Trading Pty Ltd

PREMISES: Zuccoli IGA Cellarbrations
Zuccoli Parade and Crosby Street
PALMERSTON NT 0830

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

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Mr Bernard Dwyer (Health Member)
Mr Denys Stedman (Community Member)

DATE OF HEARING: 19 July 2023

DATE OF DECISION: 27 July 2023

Decision

1. For the reasons set out below and in accordance with section 97 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) approves an application by North Oz Trading Pty Ltd (**the licensee**) for a material alteration to Zuccoli IGA Cellarbrations at the intersection of Zuccoli Parade and Crosby Street, Palmerston NT 0830 (**the licensed premises**) by altering the licensed premises in accordance with the plan, including the area bounded in red to designate the boundary of the licensed premises, marked as Exhibit Two at the hearing of the application.
2. The Commission attaches a condition to the approval that before the commencement of the works required to effect the material alteration, the licensee provide to the Director of Liquor Licensing (**the Director**):
 - a. a copy of any permit required under the *Building Act 1993* to carry out the alteration; and

- b. a summary of any notice given under the *Fire and Emergency Act 1996* in relation to the premises.
3. No business comprising the sale of liquor is to be conducted on the altered premises except in accordance with arrangements, including transitional arrangements while the works are in progress, that have been approved in writing by the Director.

Reasons

Background

4. Since 2017, the licensee has been the proprietor and operator of a supermarket trading with a liquor licence and a grocery store authority in Zuccoli, a new and growing suburb in south Palmerston. The licensee proposes to reconfigure the premises so as to reduce the overall footprint of the business, which will result in a reduction of the rent the licensee pays.
5. The proposed alteration will also reduce the glassed frontage of the premises from the current 14.5m to 4.5m, and the licensee proposes to fit roller shutters to the altered frontage. Not only will this improve security of the premises, but it will save the considerable current cost of engaging security staff to patrol and guard the premises every night.
6. The proposed alteration does not involve an increase in the area of the premises used for the sale of liquor. It will however entail a change to an entrance to or an exit from the premises, and accordingly constitutes, pursuant to s 95(1)(c) of the Act, a material alteration requiring the approval of the Commission.

The application

7. On 16 June 2023, the licensee lodged an application with the Director for a material alteration of the licensed premises. The Director, in the exercise of his discretion pursuant to s 96(4) of the Act, did not require the licensee to publish notice of the application. On 27 June 2023, the Director referred the application to the Commission, which fixed the application for hearing on 18 July 2023.
8. The Director provided the following documents to the Commission with the referral (**the brief**):
 - a. Application for approval of a material alteration.
 - b. Correspondence between licensee and Director.
 - c. Current and proposed site plans.

The hearing

9. On 18 July 2023, the application proceeded as a public hearing. Mr Morris, a principal of the licensee, together with Mr Lay, the licence nominee, and Ms Lay, who is also a manager of the business, appeared on behalf of the

applicant. Ms Kimber appeared for the Director. The Commission thanks them all for their attendance and assistance.

10. The brief was tendered and admitted into evidence without objection, as was a site plan depicting the proposed new boundary of the licensed premises.

Assessment

11. In accordance with section 97 of the Act, the Commission has considered the public interest and community impact requirements. In its correspondence with the Director, the licensee provided details of the rationale for the proposed alteration. The Commission finds that the alteration will substantially enhance the viability of this small family business, which provides a significant amenity to the local community. An improvement to the viability of the local supermarket in this outlying and still developing Palmerston suburb is not only good for the business, but also good for the community. The Commission considers that the alteration will not result in any difference in the amount or type of liquor sold by the licensee. The only noticeable changes effected by the alteration from the point of view of the customer will be a re-alignment of the store's shelves and aisles, a new entrance door, and the relocation of the liquor section from one side of the store to the other.
12. The Commission is therefore satisfied that the alteration will be in the public interest, and that it will not have any adverse impact, let alone a significant adverse impact, on the community.
13. The Commission is also satisfied, having regard to s 95(2) of the Act, that the alteration will not result in a contravention of any law of the Territory that regulates the sale of liquor or the construction of facilities used for the sale of liquor. In particular, the Commission notes the licensee's initiative in designing the proposed alteration after extensive consultation with fire certifiers and roller shutter specialists, which disclosed that installation of roller shutters over the existing glass frontage of the premises would be both prohibitive and prohibited.
14. The licensee's application was not accompanied by a copy of a *Building Act 1993* permit or a summary of a notice given under the *Fire and Emergency Act 1996*.¹ The Director does not appear to have notified the local government council, the Department of Health or NT Police of the application. In these respects, the application and referral to the Commission were non-compliant with s 96 of the Act.
15. While the Commission does not encourage such non-compliance, in the circumstances of this unusually uncontentious and straightforward matter, the Commission considers that this non-compliance is not fatal to the application: in the view of the Commission, parliament did not intend that non-compliance of this type would invalidate an application in circumstances such as these. If

¹The Commission notes that by its letter of 7 June 2023 the licensee informed the Director that it was in the process of obtaining a building permit and preparing a notice under the *Fire and Emergency Act 1996*, and undertook to provide copies of these once received.

the Commission had had concerns about the merits of the application, it would have adjourned the hearing and directed the parties to provide further information.

16. As required by s 3(4) of the Act, the Commission has had regard to the purposes of the Act, and considers that its decision has been made in a way consistent with those purposes.

17. For these reasons, the Commission approves the material alteration.

NOTICE OF RIGHTS

18. Section 31(1) read with section 97(4) 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* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

19. In accordance with section 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

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
27 July 2023

On behalf of Commissioners Goldflam, Dwyer and Stedman