

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: SSP AUSTRALIA CATERING PTY LTD APPLICATION FOR MATERIAL ALTERATION [2023] NTLiqComm 26

REFERENCE: LC2023/026

LICENCE NO: 80816020

APPLICANT: SSP Australia Catering Pty Ltd

PREMISES: Darwin Airport Terminal – Northern Common
1 Henry Wrigley Drive
MARRARA NT 0812

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

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

DATE OF HEARING: 6 September 2023

DATE OF DECISION: 6 September 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 SSP Australia Catering Pty Ltd (**the licensee**) for a material alteration to premises described as Northern Common at the Darwin Airport Terminal at 1 Henry Wrigley Drive, Marrara NT 0812 (**the licensed premises**) by altering the licensed premises in accordance with the plan by way of a significant change to the premises facilities related to the sale, supply and service of liquor, namely removal of the pre-existing bar service area and replacement with a three (3) sided island bar.
2. The Licensee shall not sell liquor from the new premises until such time as it has provided written proof to the satisfaction of the Director of Liquor Licensing (**the Director**) that a certificate of occupancy has been issued in respect of the premises and a summary of any notice given under the *Fire and Emergency Act 1996* in relation to the premises.

Reasons

Background

3. The licensee has held this licence since approximately May 2023 after taking over from the previous licensee. Shortly after that time, the licensee boarded the premises and commenced refurbishments. The premises have therefore not been operational in that time.
4. As part of the refurbishments, the licensee commenced work to remove the counter and replace it with a three (3) sided island bar, more than doubling the size of its counter and therefore more than doubling the potential area related to the sale, supply and service of liquor. Pursuant to section 95(1)(e) of the Act a material alteration which results in a significant change to the premises facilities related to the sale, supply and service of liquor requires the approval of the Commission.
5. It is apparent on the materials however that there was some confusion for a period as to whether an application was required to be made for such refurbishments. Unfortunately, before that was made clear; work began on the refurbishments and were well underway when the application for a material alteration was lodged with the Director on 12 July 2023.
6. Whilst the bar service area has been over doubled in size, the proposed alteration does not involve an increase in the licensed area and the Commission accepts that the commencements of the refurbishments was not done with the intention to ignore the Act.

The application

7. On 12 July 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 24 August 2023, the Director referred the application to the Commission, which fixed the application for hearing on 6 September 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. Architects plans for fit out.
 - d. Building Permit.
 - e. Public interest and community impact assessment submissions.

The hearing

9. On 6 September 2023, the application proceeded as a public hearing. Dr Cameron Ford appeared as counsel on instructions of Ms Raut of De Silva Hebron on behalf the licensee, together with Mr Dominic Cain (General

Manager of the applicant). Ms Kimber appeared for the Director. The Commission thanks them all for their attendance and assistance. Mr Cain's brief evidence was helpful in explaining the circumstances leading to the delay in the application.

10. The brief was tendered and admitted into evidence without objection.

Assessment

11. In accordance with section 97 of the Act, the Commission has considered the public interest and community impact requirements. The Commission notes that there is no change to the licensed footprint by this application. It will of course likely make sale and supply arguably more prompt however given the fact that the premises are located at the airport, the Commission does not consider it likely this will result in a significant increase in the amount of liquor sold.
12. The Commission accepts the alteration will enhance the premises which provides amenity to patrons at the airport. The Commission considers that the alteration will not result in any difference in the type of liquor sold by the licensee.
13. 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.
14. 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. The Commission also notes the requirements upon the licensee to provide written proof to the satisfaction of the Director that a certificate of has been issued in respect of the premises. The Commission was advised during the hearing that this had been issued but no copy was provided therefore the licensee must provide that certificate before commencing trade under this licence.
15. The Director notified the local government council, the Department of Health and NT Police of the application. No objections were received.
16. The licensee's application was not however accompanied by a copy of a summary of a notice given under the *Fire and Emergency Act 1996*.¹ In these respects, the application and referral to the Commission were non-compliant with s 96(3)(c) of the Act.
17. While the Commission does not encourage such non-compliance, in the circumstances of this uncontentious and relatively 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

¹As noted above, the Commission was informed during the hearing that in fact a Certificate of Occupancy had been issued to the licensee.

of this type would invalidate an application in circumstances such as this. If 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.

18. 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.

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

NOTICE OF RIGHTS

20. 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.

21. 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.



JODI TRUMAN

DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
6 September 2023

On behalf of Commissioners Truman, Stephenson and Fong Lim