

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR MATERIAL ALTERATION
REFERENCE:	LC2021/039
LICENCE NUMBER:	80505105
LICENSEE:	Sea Breeze Nightcliff Pty Ltd
PREMISES:	Sea Bees Nightcliff 2A Progress Drive NIGHTCLIFF NT 0810
APPLICANT:	Sea Breeze Nightcliff Pty Ltd
NOMINEE:	Mr David Woodrow
LEGISLATION:	Section 96 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Mr Richard Coates (Chairperson) Mr Bernie Dwyer (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	18 November 2021
DATE OF DECISION:	18 November 2021

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 application by Sea Breeze Nightcliff Pty Ltd (the Licensee) to make a material alteration to the premises known as Sea Bees Nightcliff located at Shop 2A/40 Progress Drive, Nightcliff in the terms sought by the Licensee being the extension of the existing licensed footprint to include shop 2B as part of these premises. The Commission further directs that a new plan of the licensed premises be prepared and attached to the licence, which correctly portrays the boundaries of these licensed premises.

Reasons

Background

2. The Licensee is the holder of liquor licence number 80505105 for premises known as Sea Bees Nightcliff situated at Shop 2A, 40 Progress Drive, Nightcliff. Attached to the licence are a restaurant bar authority, BYO authority and late night authority.
3. On 30 September 2021, David Woodrow, Nominee, lodged an application on behalf of the Licensee for approval of a material alteration to the licenced premises.
4. The application is to extend the current licensed area to include Shop 2B in the licensed footprint.
5. Shops 2A and 2B have been co-joined into one room for many years where there is no physical wall, barrier or similar to delineate the two areas. Most recently, the premises has traded as Groove Café with Shop 2B being used as a space for community artists. For all practical purposes, the area has the appearance of one room.
6. The application was accompanied by the following supporting documents:
 - Proposed site plan;
 - Community Impact Assessment;
 - Public Interest Responses;
 - Email dated 5 October 2021 from Development Assessment Services confirming appropriate zoning requirements;
 - Document from Licensee outlining the application and photographs of Shops 2A and 2B;
 - Receipt of application fee.

Publication and Consultation

7. Based on a range of considerations, the delegate of the Director of Liquor Licensing (the Director) abridged the advertising time period for the application from 28 days to 14 days.
8. The application was published in the NT News on 13 October 2021 and 16 October 2021 and on the Director's webpage "Advertised liquor licence applications" for a 14 day period.
9. Copies of the NT News notices, photographs of the green sign erected in situ and statement of display were provided.
10. As a result of the public advertising of the application, there were no formal objections received.

11. In accordance with the Act, the following stakeholders were notified of the application:
 - the Chief Executive Officer of the Department of Health;
 - the Commissioner of Police;
 - the Chief Executive Officer of the City of Darwin.
12. The Department of Health replied via email dated 21 October 2021 stating it had no adverse comments.
13. NT Police replied via email dated 14 October 2021 stating it had no objection.
14. The City of Darwin did not reply.

Public Hearing

15. The Director referred this matter to the Commission on 1 November 2021.
16. On 11 November 2021, the Commission notified the Licensee that this matter would be determined by way of public hearing on 18 November 2021 at 11:30am.
17. As Mr David Woodrow was unable to appear in person at the hearing, the Commission proceeded to determine the application with Mr Woodrow appearing by telephone link. Mr Jeff Verinder appeared for the Director.
18. The Hearing Brief was tendered at the hearing without objection and marked as Exhibit 1.

Assessment of the Application

19. The application to extend the premises to include the adjoining Shop 2 is not particularly contentious.
20. The Licensee has a 10-year lease over the two shop fronts and a 3-year permit from the council to use the raised area in the pedestrian mall that faces the shops. The Commission raised concerns with both the Licensee and Mr Verinder as to whether the licensed footprint attached to the licence is correct because it purports to include the public walkway between the shops and the terrace area as part of these licensed premises. However, it would appear that the Licensee does not hold any permission for exclusive use of that walkway so the Commission expressed the view that it could not form part of the licensed premises. Mr Verinder, on behalf of the Director, agreed to investigate the issue and, if appropriate, to have the plan attached to the licence amended.
21. On 24 November 2021, the Commission received written advice from Mr Verinder to the effect that the current plan of the licensed area has been unchanged since at least 1999. However, as that plan purports to include the council owned walkway between shop 2A and the raised terrace area it does not accord with the “thrust and intent” of the current Act, nor with the Director’s current practice in relation to licensed area plans.

22. As this Licensee has no right to sell or allow the consumption of liquor in the area between the shops 2A and 2B and the terrace, the current plan of the licensed area is misleading. Accordingly, the Commission directs that a new plan of the licensed area be produced and attached to the licence, which correctly depicts that area comprising shops 2A and 2B together with the raised terrace area as these licensed premises.
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 and the Licensee.



RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
26 November 2021

On behalf of Commissioners Coates, Dwyer and Corcoran