

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: APPLICATION FOR MATERIAL ALTERATION, NEW AUTHORITY AND VARIATION OF CONDITIONS

REFERENCE: LC2021/037

APPLICANT: Lucky Saddle Pty Ltd

LICENCE NOUNBER: 80500894

PREMISES: Moorish Café
37 Knuckey Street
DARWIN NT 0800

LEGISLATION: Part 3 Division 4, Part 4 Division 2 and Part 4 Division 5 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 8 November 2021

DATE OF DECISION: 17 November 2021

Decision

1. On 17 November 2021, the Northern Territory Liquor Commission (**the Commission**) issued the following decision notice setting out its decision made and announced to the parties at the conclusion of a hearing conducted on 8 November 2021:
 1. In accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**), the Commission has determined to issue a small bar authority to Lucky Saddle Pty Ltd (**the licensee**) for Liquor Licence 80500894 (**the licence**).
 2. In accordance with section 97 of the Act, the Commission has determined to approve a material alteration to the premises of the licence.
 3. In accordance with section 112 of the Act, the Commission has determined to vary the conditions of the licence.

4. The size of the licensed premises is extended to the area delineated in red on the plan at page 67 of Exhibit One tendered at the hearing of the application.
5. The pre-existing restaurant authority and late night authority, and the prescribed licence conditions set out in Divisions 15 and 10 of Part 4 of the *Liquor Regulations 2019 (the Regulations)* to which the licence is thereby subject, apply only to the area below the yellow line marked on Exhibit Three tendered at the hearing of the application (**Moorish restaurant**).
6. The newly issued small bar authority and the prescribed licence conditions set out in Division 17 of Part 4 of the Regulations to which the licence is thereby subject, apply only to the area above the yellow line marked on Exhibit Three tendered at the hearing of the application (**Poco Bar**).
7. The following additional condition is fixed:

The licensee must at all times trade in accordance with the terms of the Permit to Occupy Outdoor Dining Area (Licensed) issued to the licensee by the City of Darwin in relation to the premises as now in force and as may be varied varied from time to time (**the Permit**), noting that if the terms of the Permit impose conditions more restrictive on the licensee than the conditions prescribed by Division 17 of Part 4 of the *Liquor Regulations 2019 (NT)*, the terms of the permit shall prevail and apply.
8. The following conditions in the existing licence are deleted:
 - a. The special condition titled "Appearance";
 - b. The special condition titled "Consumption of liquor";
 - c. The special condition titled "Kitchen Operations";
 - d. The special condition titled "Snack Foods";
 - e. The special condition titled "Advertising".
9. The application to vary the hours of operation of the licence is refused.
10. No business is to be conducted in the Poco Bar unless the Commission has approved the commencement of trade following provision by the licensee to the Director of Liquor Licensing (**the Director**) of evidence that all required building and safety approvals for the material alterations have been issued. The Commission delegates to any of Commission Members Goldflam, Dwyer or Hart the authority to approve the commencement of business in the Poco Bar.

11. The varied licence will be issued immediately following the publication of this decision notice.

Reasons

2. The Commission notified the parties that it would issue and publish a statement of reasons for its decision, which now follow.

The Application

3. Moorish Café is a well-established venue in a hospitality and entertainment precinct in the Darwin CBD, currently trading as a restaurant with a liquor licence that incorporates a restaurant bar authority, a BYO authority and a late night authority. The rear of the Knuckey Street premises is bounded by Spain Place, a laneway the property of the City of Darwin. In furtherance of its “laneways and small streets activation strategy”, the City of Darwin is encouraging restaurants and bars to extend their premises into selected CBD laneways to provide an outdoor eating and drinking option for patrons. One of those laneways is Spain Place.
4. To avail itself of this opportunity, the licensee applied for a material alteration to enable it to establish a small bar at the rear of its premises, opening out onto Spain Place. Concurrently, the licensee applied for a number of variations to its existing licence, principally for the purpose of removing what it submitted were various unnecessary special licence conditions. The licensee also applied to extend its liquor trading hours by bringing opening time each day forward from 11:30 am to 10:00 am.

Consultation

5. As required by section 57 of the Act, notices of the application were published in the NT News on 11 and 15 September 2021. No objections were received.
6. As required by the Act, the Director notified the Department of Health (**DOH**), NT Police and the City of Darwin. The Director also notified NT Fire and Emergency Services (**NTFRS**).
7. The Director informed the Commission that:
 - DOH responded, stating that it had no adverse comments.
 - NT Police advised that it had visited the site and had no objections.
 - The City of Darwin stated it did not have an objection. The City of Darwin had previously issued a Permit to Occupy Outdoor Dining Area (Licensed) to the licensee dated 1 August 2021, with a term of twelve months.
 - NTFRS confirmed that the proposed alteration would not impede firetrucks from accessing Spain Place, but declined to support the application until a Certificate of Occupancy has been provided following the completion of the proposed material alterations.

The licensee's record of compliance

8. The Director informed the Commission that the licensee has an unblemished record of compliance with its licence conditions and with the Act.

The referral

9. On 18 October 2021, the Director referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 8 November 2021.
10. The Director provided the following documents to the Commission with the referral (**the brief**):
 - a. Licensee's application for issue of small bar authority, material alteration and variation of conditions;
 - b. An affidavit for the purpose of compliance with section 54 of the Act;
 - c. Public Interest and Community Impact Assessment statement;
 - d. ASIC extracts for licensee and registered name "Poco Bar";
 - e. Financial report;
 - f. Landlord consent for liquor licence;
 - g. Lease;
 - h. City of Darwin Permit to Occupy Dining Area (Licensed);
 - i. Site plans;
 - j. Development Permit;
 - k. Food Registration Certificate;
 - l. Management Plan;
 - m. Staff training manual;
 - n. References in support of the licensee.

The hearing

11. On 8 November 2021, the application proceeded as a public hearing. Ms Knight appeared on behalf of the applicant. Mr Verinder appeared for the Director. The Commission thanks them both for their attendance and assistance.
12. The brief was tendered and admitted into evidence without objection. In addition and also without objection the Commission received into evidence a letter from the City of Darwin dated 15 October 2021.

ASSESSMENT OF THE APPLICATION

13. In relation to the application for a small bar authority, in accordance with section 59 of the Act, the Commission has considered:

- a. the applicant's affidavit required by section 54;
- b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
- c. the financial stability and business reputation of the body corporate;
- d. the general reputation and character of the secretary and executive officers of the body corporate; and
- e. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

14. In accordance with section 49 of the Act, the Commission has also considered whether issuing the proposed authority, approving the proposed material alteration and approving the proposed variation of conditions would be in the public interest, and whether this would have a significant adverse impact on the community.

The applicant

15. The applicant has provided satisfactory documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

16. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of section 54.

17. The Commission considers that it is appropriate to consider whether each of the following persons, each of whom is an associate of the applicant for the purpose of section 55, is a fit and proper person to be an associate of the applicant:

- Ms Gertude Jayne Knight (director of the applicant and licence nominee)
- Mr Marc Didier Wagnon (a director of the applicant)

18. Ms Knight and Mr Wagnon between them own all the shares of the applicant company and are its only directors. They have owned, managed and operated Moorish Café with success for a considerable period. The Commission finds that each of them is a fit and proper person to be an associate of the applicant.

19. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the applicant.

The suitability of the applicant's premises

20. The Commission has been provided with detailed plans for the proposed Poco Bar and assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

The financial stability, general reputation and character of the body corporate

21. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

The general reputation and character of the applicant's secretary and executive officers

22. The Commission assesses the general reputation and character of the applicant's executive officers and secretary, Gertude Jayne Knight and Marc Didier Wagnon, to be satisfactory.

Whether the applicant is a fit and proper person to hold a licence

23. The Commission assesses the applicant to be a fit and proper person to be issued the authority.

Whether the licensee's nominee is a fit and proper person to hold a licence

24. The licence nominee is Gertude Jayne Knight. The Commission consider that she is a fit and proper person to continue to hold the licence.

Public notice and consultation

25. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

The public interest

26. To determine whether the issue of the authority, approving the material alterations and varying the licence conditions is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:

- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;

- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) preventing the giving of credit in sales of liquor to people;
- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

27. Having considered each of these objectives, and having particular regard to the increased recreational, employment and tourism benefits for the local community area that can be expected, the Commission is satisfied that it is in the public interest to issue the small bar authority and to approve the proposed material alterations.

28. In the course of the hearing of the application, the Commission reminded the licensee that in order to approve the proposed increase in the hours of trading, the Commission would need to be satisfied that this change would be in the public interest. Following further discussion, the licensee withdrew this particular aspect of its application, and accordingly, the Commission determined not to amend the existing trading hours.

Whether the issue of the licence will have a significant adverse impact on the community

29. To determine whether it is satisfied that the granting of the application would not have a significant adverse impact on the community, the Commission must consider the matters set out at section 49(3) of the Act:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;

- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50;
- (j) any other matter prescribed by regulation.

30. The Commission notes there are no such “other” matters prescribed by regulation.
31. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50.
32. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.
33. Having considered these matters, the Commission is satisfied that the issue of a small bar authority to the licensee and the approval of the proposed material alterations will not have a significant adverse impact on the community.

Variation of conditions

34. The licensee applied to vary its conditions by removing a number of special conditions contained in the current licence, which were originally imposed when the licence was initially granted, many years before the commencement of the Regulations, which now prescribe conditions that, in effect, replicate or duplicate those special conditions.
35. Section 110(2) of the Act requires the Commission to be satisfied that varying the licence conditions is in the public interest and would not have a significant adverse impact on the community. The Commission is so satisfied. The proposed variations to licence conditions will have no effect on the community, as they will result in no substantive alteration to the existing licence conditions. The proposed variation will simplify the licence, which the Commission

considers will promote compliance with the Act, one of the public interest objectives noted above.

The objects of the Act

36. Finally, section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.
37. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
38. For these reasons, the Commission has determined that the application should be granted, and that the small bar authority be issued, the material alteration be approved and the conditions varied as set out at the commencement of these Reasons for Decision.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
6 December 2021

On behalf of Commissioners Goldflam, Dwyer and Hart