

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION TO LICENCE CONDITIONS

REFERENCE: LC2022/14

APPLICANT: FANNIE BAY COOL SPOT PTY LTD

PREMISES: Foreshore Café & Restaurant
259 Casuarina Drive,
Nightcliff NT 0810

LEGISLATION: Section 96 and 110 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Elizabeth Stephenson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 31 March 2022

DATE OF DECISION: 03 May 2022

DECISION

1. For the reasons set out below and in accordance with section 110 of the *Liquor Act 2019* (NT) (the Act) the Northern Territory Liquor Commission (the Commission) has determined to vary the condition of Liquor Licence 80519020 held by Fannie Bay Cool Spot Pty Ltd (the Licensee). The current condition in relation to trading hours is deleted and replaced with: “the trading hours will be those prescribed for a Restaurant Authority by “Regulation 79” of the Liquor Regulations 2019 (namely 10:00 to 24:00, 7 days a week, apart from Good Friday, Christmas Day and New Year’s Day)”.
2. In accordance with section 96 of the Act the Commission has also determined to approve the application by the licensee to make a material alteration to the premises known as Foreshore café and Restaurant located at 259 Casuarina Drive Nightcliff in the terms sought by the Licensee being the extension of the existing licensed footprint in accordance with the plan submitted as part of this application and included within exhibit 1 (page 18) that was tendered in evidence in these proceedings.
3. The extension of the premises will not come into effect until such time as the Licensee provides written proof, to the satisfaction of the Director of Liquor Licensing (the Director) that it holds a lease to occupy the subject land and that a certificate of occupancy has been issued in respect of the deck and shade structure that is being erected on that land.

4. In accordance with section 97(5) of the Act, the Licensee is permitted to continue to conduct business within the original licensed footprint, provided that the area which is to become the extended premises is securely fenced off to prevent access by the public until such time as the Licensee is able to satisfy the requirements stipulated in paragraph 3

REASONS

BACKGROUND

5. Fannie Bay Cool Spot Pty Ltd (the Licensee) is the holder of liquor licence number 80519020 for premises known as Foreshore Café & Restaurant, 259 Casuarina Drive, Nightcliff.
6. An application was lodged by Mr Alan Sprigg on behalf of the Licensee seeking a variation of current licence conditions and two material alterations.
7. The application for variation to the licence is to amend the liquor trading hours:
 - Current liquor trading hours are 10:00 hours to 22:00 hours, 7 days per week; and
 - Proposed trading hours are 10:00 hours to 24:00 hours 7 days per week.
8. The two applications for material applications were described as firstly an application to extend the licensed footprint to incorporate an area between the front of the premises and the public path along the shoreline and secondly to permit the construction of a dining deck on that extended area.
9. The proposed deck area is currently not within a liquor-licensed area and a formal application was not technically required under the Liquor Act at the time the applications were lodged and advertised but is included in the application in the event that the licensed area is approved to be extended prior to the deck being built and/or completed. As work has already commenced on the construction of the deck and there is no intention by the Licensee to use any part of the new land until all the building work is completed. The Commission will deal with this as the one application for a material alteration.
10. The application was accompanied by;
 - An affidavit in accordance with Section 54 of the Liquor Act;
 - Community Interest Assessment Summary;
 - Proposed extended liquor licensed area site plan;
 - Development Consent Authority minutes of meeting 18 June 2021, outlining reasons and submissions from Plan: Planning Action Network Inc.;
 - Development Consent Authority “Notice of Consent” for alfresco deck;
 - Development Consent Authority Development Permit and approved plans; and

- Building Permit and range of detailed building plans.

PUBLICATION AND CONSULTATION

11. The application was published in the NT News on the 26 February 2022, and was also published on the Director of Liquor Licensing Applicants web page for a 14-day period. A green advertising sign was also displayed at the premises. Copies of the NT News, photographs of the green sign erected in situ and Statement of Display have been retained by Licensing Officers.
12. As a result of the advertising, no objections were received from the public.
13. 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; and
 - The Chief Executive Officer of City of Darwin.
14. NT Fire and Rescue Service were also notified for their information and to arrange updated maximum patron numbers, if required, for the extended area, if approved.
15. On 11 March 2022, the Department of Health replied via email stating the amendment was quite reasonable. It further stated that “from a health policy perspective, there is potential for increased cumulative harm as more and more venues seek to open for longer hours. Prevailing social norm linking socialising with alcohol consumption are reinforced”.
16. On 22 February 2022, the NT Police replied via email stating they have no objections.
17. The City of Darwin did not provide any response.
18. On 23 February 2022, NT Fire and Rescue Service replied via email stating it supports the application providing the Applicant goes through an NT building certifier and all works follow the proper NT Building Act process. They will inspect the premises when an occupancy certificate is issued depending on the extent of the works done.
19. A check of the records held show there are no negative compliance issues recorded against the licensee or venue location.

PUBLIC HEARING

20. The Director referred this matter to the Commission on 18 March 2022. On 23 March, the Licensee was notified that the matter would be determined at a public hearing on 31 March 2022.
21. The Hearing took place on the designated date when Ms Seonaid Gallacher the nominee appeared on behalf of the Licensee and Mr Jeff Verinder appeared for the Director. The Commission thanks them both for the assistance they provided.

22. The Hearing Brief was tendered at the hearing without objection and marked as Exhibit 1.
23. Included within the Director's referral (exhibit 1) is documentation, which evidences the fact that the proposed use and development of the subject land by adding a new alfresco dining deck to the existing Foreshore Restaurant and Café has been approved by the Development Consent Authority (DCA).
24. In considering, the potential impact of the proposed development on the existence and future amenities of the area the DCA determined: "*the assessment found that the built form of the dining deck will replicate features of the existing Foreshore Restaurant and Café, which was previously deemed a positive contribution to the locality*". The height of the shade sails is lower than the height of the existing building and is also sympathetic to the design and style of existing buildings and structures on site. The proposed deck addition with shade sails is not assessed as being out of character with existing development in the immediate vicinity. The siting of the dining deck is likely to have minimal noise impacts given it faces away from nearby residences.
25. At the DCA hearing, it was confirmed by the Licensee that the closest point of the proposed dining deck was approximately 2 metres from the Foreshore walking track and that there would be no access to the dining deck from the walking path. Patrons wishing to use the deck would have to first enter through the existing restaurant.
26. The Commission accepts that although the original development of these premises drew criticism from some sectors of the community. It has had a relatively low impact on the local area and has become a popular recreational venue.
27. It is important to remember that this licence is operated under a Restaurant Authority, which only permits the consumption of liquor ancillary to the provision of a meal. Furthermore, given the nature of this particular business with its focus on coffee, most of its patrons will not be consuming liquor during a visit to the premises. The Commission is satisfied that given the nature of this authority and the way these premises are operating there is a low risk of any adverse impact on the community through the extension of the area within which liquor can be served to patrons.
28. In this matter, the Commission has also had particular regard to the findings of the DCA that the amenity of local community will not be adversely affected by the proposed development. In all the circumstances, the Commission is satisfied that the proposed material alteration is in the public interest and will not have any significant adverse impact on the local community. Accordingly, the material alteration has been approved in the terms outlined in paragraphs 2 to 4 of this Decision Notice.
29. The application to vary the hours of operation aims to bring the hours of operation of the premises in line with those that are now prescribed by the Liquor Regulations 2019 (the Regulations) for a restaurant authority. The Licensee intends to keep the advertised trading hours at 10:00 to 22:00 hours but wants additional flexibility to trade until midnight if it hosting a special event. It has in the past obtained a special

event authority on occasions and these have not resulted in any noise complaints from residents in the vicinity of the premises.

30. The Commission can discern no particular reason why the permissible hours of operation for this restaurant should be any different from those provided for in the Regulations. Accordingly, the Commission has also determined to vary the trading hours as set out in paragraph 1 of this decision. The Licensee was advised of these decisions at the conclusion of the hearing.

NOTICE OF RIGHTS

31. Section 31(1) read with section 60(3) 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.
32. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the applicant and the Director.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
03 May 2022

On behalf of Commissioners Coates, Stephenson and Cannon