

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

CITATION: *APPLICATION OF LP CREATIONS PTY LTD ATF L.A. PERRY FAMILY TRUST TRADING AS REALITY BITES CATERING [2023] NTLiqComm 27*

REFERENCE: LC2023/023

LICENCE NO: FLL1365

APPLICANT: LP Creations Pty Ltd as Trustee for L.A. Perry Family Trust Trading As Reality Bites Catering

PREMISES: Coolamon Café & Madigan's Function Room
Alice Springs Desert Park
Lot 8212, 5329 Larapinta Drive
ALICE SPRINGS NT 0875

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 75 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to substitute other premises for Liquor Licence FLL1365 (**the licence**).
2. The substituted premises are situated at Coolamon Café & Madigan's Function Room located within the Alice Springs Desert Park, Lot 8212, 5329 Larapinta Drive, Alice Springs, NT 0875, as designated by the area bounded in red on the plan set out at page 88 of Exhibit 1 at the hearing of the application (**the substituted licensed premises**).

3. The Commission notes there will remain reference to “Reality Bites Café” upon the licence which is the business name under which the licensee will operate its licence and in particular the catering authority of the licence.
4. In accordance with s 75(2A)(a) of the Act, the Commission has determined to impose the following conditions on the substitution:
 - a. The “Trading Hours” listed as “Special Conditions” upon the licence will be deleted.
 - b. The licence will be subject to the “Restaurant bar authority conditions” set out in Division 16 of the *Liquor Regulations 2019* (**the Regulations**).
 - c. All other conditions will remain.

REASONS

Background

5. On 23 June 2023, application was lodged by Ms Joy Taylor on behalf of LP Creations Pty Ltd as Trustee for L.A. Perry Family Trust trading as Reality Bites Catering (**the licensee**) seeking substitution of premises involving the licence with respect to the premises known as “The Base Café 0870”.
6. The Base Café 0870 is located at 8-10 Simpson Street, Alice Springs. Its licensed area is approximately 2,130 sqm. The premises that the licensee is proposing be substituted are known as Coolamon Café & Madigan’s Function Room and are located at Alice Springs Desert Park on Larapinta Drive. The licensed area of those premises at that location is approximately 487.5 sqm.
7. Ms Lisa Perry (Ms Perry), Director of the licensee stated that whilst she had been located at The Base Café 0870 for some time, she had not operated the license there and instead had predominantly utilised her license pursuant to the catering authority.
8. During evidence before the Commission, Ms Perry stated she was relocating premises due to issues faced in Alice Springs and an intention to grow the business at the proposed premises whilst continuing to operate her catering authority for larger functions.

Consultation

9. The applications were published by way of a combined notice in the NT News on 8 July 2023. The application and supporting documents were also published on the Director of Liquor Licensing's (**the Director**) advertising web page for the 14-day advertising period. Green advertising sign was erected at the premises during that period. No objections were received.

10. In accordance with the Act, the following were notified of the application:
 - a. The Chief Executive Officer of the Department of Health.
 - b. The Commissioner of Police.
 - c. CEO Alice Springs Town Council.
11. The Department of Health, NT Police and the Alice Springs Town Council responded stating they had no objection.
12. The Northern Territory Fire and Rescue Service (**NTFRS**) were also informed of the application. There is no requirement for that to occur, however it is usually a practise of Licencing NT. The NTFRS responded stating they had “no concerns”.

Referral to the Commission

13. On 22 August 2023, the Director referred the application to the Commission, which fixed the application for hearing on 6 September 2023.
14. The Director provided a number of documents to the Commission with the referral (**the brief**), including:
 - a. Affidavit in accordance with Section 54 of the Act.
 - b. Various ASIC documents.
 - c. Community Impact Assessment.
 - d. Public Interest Criteria.
 - e. Assets and Liabilities report.
 - f. Permit issued by Territory Parks and Wildlife to trade within the Alice Springs Desert Park.
 - g. Operations manual.
15. The Commission was also provided with the following documents:
 - a. Description of measurements of the proposed premises.

Compliance History

16. A check of records held at Licencing NT show that there is no adverse compliance history on file.

The hearing

17. On 6 September 2023, the application proceeded as a public hearing. Ms Perry and Ms Taylor appeared on behalf the licensee. Ms Kimber appeared for the Director.
18. The brief and additional document referred to above was tendered and admitted into evidence without objection.

Assessment

19. In accordance with section 75(1) of the Act, if a licensee wishes to substitute other premises for the licensed premises, the licensee “must apply for a new licence for those premises”. That section does however go on to provide as follows:
 - (2) *Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that the substitution satisfies the public interest and community impact requirements.*
20. The licensee has sought that the Commission amend the licence to substitute other premises and therefore exercise its discretion under section 75(2) of the Act. Pursuant to section 75(2), in order to amend a licence to substitute other premises the Commission must be satisfied that the substitution satisfies the public interest and community impact requirements.
21. Section 49 of the Act addresses public interest and community impact, in particular section 49(2) lists the objectives the Commission must consider in determining the question of public interest and section 49(3) lists the matters the Commission must consider in determining whether there would be a significant adverse impact on the community.
22. Further, when considering this application (and therefore exercising its power or performing its function under the Act), the Commission must have regard to the primary and secondary purposes of the Act set out in section 3 and exercise its power in a way consistent with those purposes. At all times, section 51 makes it clear that the onus is upon the Applicant to satisfy the Commission that issuing the licence or authority “is in the public interest” and further that issuing the licence “will not have a significant adverse impact on the community”.
23. In relation to the question of “significant adverse impact”, the Commission notes this term is not defined in the Act. The Commission has considered the previous discussion in an earlier ruling on the meaning of this term¹ and in accordance

¹ See Northern Territory Liquor Commission Decision Notice – Application for Substitution of Premises and Application for Variation of Conditions of Licence – Liquorland (Australia) Pty Ltd (“Palmerston Liquorland Decision Notice”), 3 July 2020, para. 103

with that earlier ruling the Commission will proceed on the basis that the term “significant adverse impact” means an adverse impact that is important or of consequence but not necessarily substantial.

24. The Commission has considered the public interest and community impact requirements. In doing so, the Commission has noted in particular the following:
- a. The applicant’s clear statement of her practice that liquor is never served on its own, it is always with food.
 - b. The premises at the Alice Springs Desert Park is over 1.5kms from the “main road” being Larapinta Drive and that when the park is closed the venue is locked behind gates.
 - c. The focus of the venue will be to reinvigorate the local tourist attraction, increase visitation to the park by tourists and locals by promoting the added attraction of a café and function centre, together with opportunities for functions at locations within the park itself.
 - d. Improvements will be carried out to facilities.
 - e. It is anticipated that as a result, there will be an increase in recreational, employment, tourism and business benefits for the local area and community.
25. The Commission is comfortably satisfied that the substitution will be in the public interest, and that it will not have any adverse impact, let alone a significant adverse impact, on the community. As a result, the Commission has determined to amend the licence to substitute Coolamon Café & Madigan’s Function Room located within the Alice Springs Desert Park, Lot 8212, 5329 Larapinta Drive, Alice Springs, NT 0875 for the licensed premises in the terms outlined at the commencement of this Decision Notice. The licensee was advised of this decision at the conclusion of the hearing.

NOTICE OF RIGHTS

26. 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 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

27. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Licensee and Director.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN
DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
11 September 2023

On behalf of Commissioners Truman, Stephenson and Fong Lim