

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR SUBSTITUTION OF PREMISES

REFERENCE: 2020/033

LICENCE NUMBER: 81000258

LICENSEE: Liquorland (Australia) Pty Ltd

PREMISES: Vintage Cellars
1 / 44 Cavenagh Street
DARWIN NT 0800

LEGISLATION: Section 75 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Dr Phillip Carson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 11 August 2020

DATE OF DECISION: 11 August 2020

Decision

1. For the reasons set out below and in accordance with Section 75 of the *Liquor Act 2019* ("the Act"), the Commission has determined to amend the licence of Liquorland (Australia) Pty Ltd (Liquorland) to substitute other premises for the licensed premises, being Unit 1, 44 Cavenagh Street, Darwin, known as Vintage Cellars.
2. Those special conditions of the existing licence which were imposed by paragraph 4 of the Commission's Decision Notice of 5 December 2018 relate only to the material alteration of premises. As those conditions requiring the licensee to retain leasehold tenure over the original premises are no longer relevant they will be deleted from the new licence. All other conditions of the licence continue to apply.

Reasons

Background

3. On 30 June 2020, an application was lodged by Ward Keller on behalf of its client Liquorland (the Applicant) for a substitution of premises.

4. The Applicant is the holder of liquor licence 81000258 relating to Vintage Cellars in Cavenagh Street, Darwin.
5. The Applicant is in a unique situation where it was an inadvertent victim of a fire at the Darwin RSL which damaged its premises. As a result of the premises being gutted by fire, an application was made to the Commission to approve a material alteration to extend the licensed area to the premises at 1/44 Cavenagh Street, Darwin, provided that the original lease of premises at 27 Cavenagh Street was maintained.
6. The Applicant has since moved its business to 1/44 Cavenagh Street and has complied with the conditions of the 5 December 2018 Decision Notice:
 - has retained leasehold tenure over the original premises at 27 Cavenagh Street;
 - has not traded or store liquor at both premises at the same time; and
 - did not commence selling liquor until the Director of Liquor Licensing was satisfied that the BDR equipment and other supporting IT requirements were installed and operational.
7. The Applicant now wishes to terminate the lease at the original location and substitute the premises on a permanent basis to 1/44 Cavenagh Street, Darwin.
8. The application does not seek to change any conditions of licence.
9. The Applicant provided the following documents in support of the application:
 - Application covering letter;
 - Affidavit signed by Tim O'Meara;
 - Community Impact Assessment;
 - Public Interest Criteria responses.

Publishing of application and consultation

10. The Director of Liquor Licensing determined there was insufficient public interest to publish the application.
11. As the application was not published, there were no objections from the public.
12. The following stakeholders were invited to provide comment on the application:
 - CEO of Department of Health
 - Commissioner Northern Territory Police
 - City of Darwin
13. The Department of Health advised via email dated 2 July 2020 that it had no adverse comment in respect of the application.

14. The Northern Territory Police advised via email dated 3 July 2020 that they had no objections to the application.
15. The City of Darwin replied via email dated 3 July 2020 stating it had no objections to the application.
16. A check of the records held at Licensing NT reveals no negative compliance history at the previous licensed premises and records the extended closure of the store due to fire at the premises. There is no negative compliance history at the new location since re-commencement of trade.

The Hearing

17. The application for substitution of premises was referred to the Commission by the Director on 14 July 2020.
18. On 11 August 2020 the Commission convened to conduct the public hearing. Ms Kaliopi Hourdas appeared for the Applicant and Messrs Tim O'Meara and William Fenton also attended the meeting by teleconference. Mr Jeff Verinder appeared for the Director of Liquor Licensing. The Commission thanks them all for their attendance and assistance.

Assessment of the Application

19. Section 75 of the Act provides as follows:

75 Substitution of premises

- (1) If a licensee wishes to substitute other premises for the licensed premises, the licensee must apply for a new licence for those new premises.
- (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.

- (2A) To avoid doubt, the Commission may, under subsection (2):

- (a) impose conditions on the substitution; and
- (b) substitute premises that are not yet constructed or are still under construction.

- (3) An application to substitute premises is to be made in the same manner as an application to vary conditions of the licence under Part 4, Division 5.

20. The Commission was advised by the Applicant that it has now become clear that the old premises are not going to be rebuilt in the foreseeable future. It is therefore proposing to terminate its lease on those premises and operate permanently from the extended premises at 1/44 Cavenagh Street.

21. Although the Commission's December 2018 decision approving an extension of the licensed footprint to encompass another distinct building was aimed at accommodating the applicant's aim to resume trading within a matter of months it was not until June 2020 that Vintage Cellars actually began trading again. Ms Hourdas detailed the many unforeseen complications that bedevilled the redevelopment of the building at 1/44 Cavenagh Street. However the premises have now been refurbished to a high standard and present as a high quality bottleship, promoting quality wines and liquor, consistent with its licence concept.
22. The Commission had to consider the public interest and community impact requirements when it approved the licensed operation being moved to these new premises in December 2018. There has been nothing placed before us to suggest that circumstances have now changed such that it would no longer be in the public interest for the applicant to be permitted to operate from these new premises. We have had regard to the Community Impact Assessment Statement filed by the applicant, the relevant provisions of section 49 of the Act and to the Community Impact Assessment Guidelines and are satisfied that the Applicant has established that the substitution of premises is in the public interest and will not have a significant adverse impact on the community.
23. Accordingly the Commission has determined to amend the conditions of the Applicant's licence in the terms set out at the commencement of this Decision Notice.

Notice of Rights

24. Section 31 of the Act provides for any decision of the Commission for which a decision notice is required under the Act is reviewable by Northern Territory Civil and Administrative Tribunal.
25. Section 112(3) of the Act requires the Commission to give a decision notice, after making a decision under subsection (2), to the Applicant.



RICHARD COATES
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
20 August 2020
On behalf of Commissioners Coates, Carson and Cannon