

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR MATERIAL ALTERATION
REFERENCE:	LC2018/145
LICENCE NUMBER:	81000258
LICENSEE:	Liquorland (Australia) Pty Ltd
PREMISES:	Vintage Cellars Lot 2334 Cavenagh Street DARWIN NT 0800
APPLICANT:	Liquorland (Australia) Pty Ltd
NOMINEES:	Jonathan Le Bras
OBJECTOR/S:	Nil
LEGISLATION:	Section 119(2), Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Mr Richard Coates (Chairperson) Mr Charles Douglas (Health Member) Ms Sandra Cannon (Community Member)
DATE OF HEARING:	5 December 2018
DATE OF DECISION:	5 December 2018

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* ("the Act") the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the Applicant.
2. The licence including the material alteration will be issued immediately following the publication of this decision and in accordance with section 31(1) of the Act is subject to a condition that the licensee will not commence trade in the sale of liquor under the licence until such time as the extended premises are renovated and a Certificate of Occupancy under the *Building Act* has been issued to the licensee.

3. The licence including the material alteration will become operative once the applicant has presented evidence to the satisfaction of the Commission or the Director-General that the premises have been satisfactorily constructed and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee.
4. The licence is also subject to the following conditions:
 - a) The licensee must retain leasehold tenure over the original premises at 27 Cavenagh Street, Darwin;
 - b) The licensee will not trade from, or store liquor at, 27 Cavenagh Street and the extended premises at 1/44 Cavenagh Street at the same time. Should the licensee recommence operating its business from the original premises at 27 Cavenagh Street the extended licensing footprint will immediately cease;
 - c) The licensee will not commence selling liquor until such time as the Director- General of Licensing (Director-General) has been satisfied that the BDR equipment and other supporting IT requirements have been installed and are operational.

Reasons

Background

5. On 15 October 2018, Ward Keller Solicitors, on behalf of Liquorland (Australia) Pty Ltd (“the Applicant”) applied to the Director-General pursuant to section 119(2) of the Act, for approval to make a material alteration to the licensed premises.
6. The substance of the application is to extend the licensed premises, situated at 27 Cavenagh Street, Darwin to include another separate location being premises situated at 1/44 Cavenagh Street, Darwin.
7. This application has arisen as a result of a fire on 24 June 2018 at the Darwin RSL also located at 27 Cavenagh Street which has caused substantial damage to the entire building resulting in the closure of not only the Darwin RSL but also Vintage Cellars.
8. The destruction of the existing premises is such that it cannot yet be confirmed whether the premises may be re-built or will have to be demolished. Any such action is expected to take several years.
9. The extended premises were previously operated as the Cameo Homewares and Gift Shop. The total floor space of these premises is approximately 70 metres greater than what was available in the RSL premises.
10. The applicant acknowledged that it will not be able to trade from both premises at the same time and that should it determine to relocate permanently to the Cameo building it will need to lodge an application for substitution of premises pursuant to section 46A of the Act.

Advertising and Objections

11. The application was assessed by a Delegate of the Director-General who determined that there was insufficient public interest to warrant the publication of this application.
12. Pursuant to section 119(5) of the Act, the Director-General sought comment from
 - the CEO of the local council areaAdditional comments were sought from the following agencies:
 - the Chief Executive Officer of the Department of Health;
 - the Commissioner of Police; and
 - Northern Territory Fire and Rescue Service.
13. The City of Darwin replied via email on 24 October 2018 with Mr Matt Grassmayr, Executive Manager Leisure & Regulatory Services stating Council has not identified any reason that would be grounds for objection to the application.
14. The Department of Health replied via email dated 17 October 2018 stating they have no adverse comment. However Health asks the Director-General to consider patron and community safety and amenity when determining this application.
15. Northern Territory Police replied via email date 18 October 2018 stating they have concerns in relation to amenity of the area at the rear of the Post Office and that the tenants of the Post Office have not been notified. The NT Police response was forwarded to the Applicant. The Applicant made a response via email dated 19 October 2018 with a range of information addressing the concerns of the NT Police.
16. Northern Territory Fire and Rescue Service (“NTFRS”) replied via email dated 18 October 2018 supporting the application provided that conditions were met. This response was forwarded to the Applicant who replied via email dated 19 October 2018 stating that the Applicant has no issues with the comments of NTFRS and agrees to any conditional approval being provided on the basis that all necessary building permits, approvals, a certificate of occupancy and final NTFRS approval are supplied in writing to the satisfaction of the Director-General prior to trade commencing.
17. Licensing NT has no previous negative compliance history in regards to this particular licence held under the business name of Vintage Cellars. It is further noted that Liquorland (Australia) Pty Ltd holds several other liquor licences in the NT under their Liquorland business name.

Public Hearing

18. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 119 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
19. On 9 November 2018, the Director General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10:00 hours on 5 December 2018 and notice was given to the applicant on 22 November 2018.
20. The public hearing took place on 5 December 2018. The Applicant was represented by Ms Kaliopi Hourdas, Solicitor from Ward Keller together with in-house counsel Mr Tim O'Meara who appeared by conference phone. Ms Monck appeared for the Director-General. The Commission thanks Ms Hourdas, Mr O'Meara and Ms Monck for their attendance and assistance.

Assessment of the Application

21. As earlier noted, there were no objections to this application. Despite there being no objections, it is important to recall at all times that the Act makes clear under section 6B that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
22. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;

- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the Local Government Act; and
 - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;

- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

23. In addition, pursuant to section 6(3), the Commission must:

- p. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- q. apply the community impact assessment guidelines.”

24. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

25. Those matters are identified as follows:

Criteria	Matters to be considered
The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability	Are there any 'at-risk' groups or sub-communities within the locality? This may include –

<p>and accessibility of an additional liquor outlet.</p>	<ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers.
	<p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to.
	<p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>

<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

26. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

“... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

27. It is significant that this is not an application for a new liquor licence. Vintage Cellars has been trading in Cavenagh Street for more than a decade and has operated a well-managed, high end liquor store offering specialist wines and spirits. The application is not motivated by a desire on the part of Vintage Cellars to increase its scale of operation in Darwin, but is borne of necessity. The existing premises were destroyed by fire and ongoing uncertainty over the ultimate fate of the building has forced the applicant to look at other alternatives. The current licence has not been operational for almost 6 months and on present indications it is unlikely to commence trading until at least March 2019. Although the total floor space is approximately 20 percent greater than the RSL site, the proposed "selling area" of 234 square metres is not significantly different.

28. The applicant has included a detailed Community Impact Analysis statement in support of the application which includes the observation:

“The Vintage Cellars Darwin provides a different offering to most other liquor stores in Darwin. It is very popular and well patronized. Locally the average sale for Vintage Cellars Darwin is almost double that of the average of the 6 Liquorland Stores within the Darwin metropolitan area. The average sale is comprised of a smaller number of items but overall higher total cost at over \$69. The store has 5,018 registered wine club members, 4,403 of whom are based in the Northern Territory, dispersed across 43 postcode areas, with approximately half living within the Greater Darwin region. In the 3 months prior to Store closure 4,886 members had shopped instore. The store registered over 53,000 transactions last financial year. According to Coles internal customer satisfaction research, shoppers are pleased with the service offered by the Store having rated the Store 9.75/10.”

29. Although Police made comment about itinerants congregating in the area behind the Post Office, the applicant assured the Commission that the property would be well secured against theft. The Commission is also satisfied that given the way the store has been managed in the past, moving its operations to the proposed site is unlikely to lead to any associated increase in anti-social behaviour. In all the circumstances, having regards to the material submitted in support of the application, the Commission is satisfied that the Applicant has established the application meets the community impact and public interest tests.

30. The proposed material alteration is granted to enable the licensee to temporarily extend the licensed premises to the building situated at 1/44 Cavenagh Street Darwin whilst the current premises at 27 Cavenagh Street are not being used by the licensee. The granting of this material alteration is subject to the conditions set out at the commencement of this decision.

Notice of Rights:

31. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.

32. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.

33. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the Applicant.



RICHARD COATES
Presiding Member
Chairperson

14 December 2018