

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR SUBSTITUTION OF PREMISE AND PERMANENT VARIATION

REFERENCE: LC2022/022

APPLICANT: THOMAS CHIN PTY LTD

PREMISES: Liquor Downunder NT
26 Gardens Hill Crescent
The Gardens, NT 0820

LEGISLATION: Section 75 and 110 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Professor Phillip Carson (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 12 May 2022

DATE OF DECISION: 23 May 2022

DECISION

1. For the reasons set out below and in accordance with sections 75 and 110 of the *Liquor Act 2019* (NT) (the Act) the Northern Territory Liquor Commission (the Commission) has determined to approve the Substitution of the Premises for Liquor Licence 81018776 from 26 Gardens Hill Crescent, The Gardens to new premises comprising part of the ground floor of 35 Knuckey Street Darwin with access via Spain Place and depicted in Attachment G within exhibit 1 in these proceedings.
2. The other conditions of licence are varied as follows:
 - a) The trading hours condition is varied by adding the words “sold or” before the word “delivered”;
 - b) The special condition titled “purchasing” is deleted in its entirety;
 - c) The special condition titled “Inspection of Records”: is deleted in its entirety;
 - d) The special condition titled “Restricted Areas” is deleted in its entirety;

- e) The special condition titled “Collector’s Sets/ Special Edition Wines” is deleted in its entirety;
 - f) The special condition titled “Sale of Liquor” is amended to now read “Sales are confined to premium wine, beer, cider, liqueurs and spirits with a minimum purchase of two (2) bottles of wine or one (1) carton of beer or cider. No purchase limits apply to spirits or liqueurs; and
 - g) The condition titled “Hours of Delivery” is amended to remove the words “Delivery of Liquor will not be made within 24 hours of the order being placed”.
3. The Licensee shall not sell liquor from the new premises until such time as it has provided written proof to the satisfaction of the Director of Liquor Licensing (the Director)) that a certificate of occupancy and any requisite fire safety approvals have been issued in respect of the new premises and that the requisite BDR and CCTV Systems have been installed.

REASONS

BACKGROUND

4. Thomas Chin Pty Ltd (the Licensee) is the holder of liquor licence number 81018776 for premises known as Liquor Downunder NT, situated at 26 gardens Hill Crescent, The Gardens.
5. On 16 February 2022 an application was lodged by Andrew Giles of HWL Ebsworth on behalf of the Licensee seeking a substitution of premises and several variations to licence conditions.
6. The first part of the application relates to the substitution of premises from its current location of 26 Gardens Hill Crescent, The Gardens to 35 Knuckey Street, Darwin. The new location is a business owned by the Licensee known as “Attitude for Men” where it is proposed to establish the new licensed premises on the ground floor at the rear of the premises with access via Spain Place. No access will be provided into “Attitude for Men” from the proposed licensed premises.
7. The second part of the application is to vary several existing liquor licence conditions:
 - It is proposed to add the words “sold or” before the word “delivered” in the trading hours special condition. This will alter the concept of the business from a delivery business to include direct liquor sales.
 - Remove the special condition titled “purchasing” in its entirety.
 - Remove the special condition titled “Inspection of Records” in its entirety. This was suggested by Licensing Officers as an addition to the application as this condition is covered under sections 109, 156 and 305 of the Liquor Act and seen to be a duplication.

- Remove the special condition titled “Restricted Areas” in its entirety. This was suggested by Licensing Officers as an addition to the application as it was a duplication of the existing “Liquor Products shall not be supplied to Restricted Areas” condition of the licence, which will remain in the licence.
- Remove the special condition titled “Collector’s Sets/Special Edition Wines” in its entirety.
- Amend the special condition “Sales of Liquor” to now read “Sales are confined to premium wine, beer, cider, liqueurs and spirits with a minimum purchase of two (2) bottles of wine or one (1) carton of beer or one (1) carton of cider. No purchase limits apply to spirits or liqueurs.”
- Amend the condition titled “Hours of Delivery” to remove the words “Delivery of liquor will not be made within 24 hours of the order being placed.”

8. The application was accompanied by:

- A cover letter explaining the application. The cover letter has three (3) annexures. Annexure A – Plans, Annexure B – Permission to occupy documents and Annexure C – Drivers Licence.
- Affidavit in accordance with section 54 of the Act.
- Community Impact Assessment.
- Public Interest Responses.
- Proposed site plan.

PUBLICATION AND CONSULTATION

9. Notice of the application was published in the NT News on 19 March 2022 and also published on the Directors website applications page for the required 14 days advertising period. A green advertising sign was also displayed at two locations, one being at the rear entry of 35 Knuckey Street (which is located in Spain Place) and the other at the front of the premises. Photographs were also provided showing both greens signs erected in situ. A Statement of Display was provided at the end of the advertising period. Licensing Officers have retained copies of all documents. As a result of the advertising no objections were received

10. 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
- The Chief Executive Officer, City of Darwin

11. Being a new-licensed premises, the NT Fire and Rescue Service was also notified. Development Consent Authority were also notified to clarify zoning requirements.
12. The Department of Health did not respond.
13. The NT Police replied via email dated 24 March 2022 stating it supports the application.
14. The City of Darwin did not object to the application.
15. NT Fire and Rescue replied via email dated 18 March 2022 stating it has no objection provided that any buildings works are to go through the building approval process and on completion of building works and occupancy permit being issued, it will inspect the premises to ensure compliance and assess for maximum patron numbers.
16. Development Consent Authority replied via email dated 31 March 2022 outlining that a takeaway bottle shop is a shop under the NT Planning Scheme and that appropriate planning approval has been granted for the development and use of the premises and that it has no town planning concerns in relation to the application.

COMPLIANCE HISTORY

17. A check of records held at Licensing NT reveals that there have been no recorded negative compliance issues.

THE HEARING

18. The Director referred this matter to the Commission on 7 April 2022. On 3 May, the Licensee was notified that the matter would be determined by public hearing on 12 May 2022.
19. The hearing took place on the designated date when Mr Giles, Legal Practitioner appeared for the Licensee together with Mr Darryl Thomas one of the directors of Thomas Chin Pty Ltd. Mr Verinder appeared for the Director. The Commission is grateful for the assistance provided by all those present at the hearing.
20. The Director's referral was tendered and marked as Exhibit 1.
21. At the commencement of the hearing, the Commission raised a number of queries with the Licensee over the extent of the application. In its "Synopsis" attached to the application ¹ it was stated "The Applicant envisages providing its clientele with designer clothing brands, fashion advice and fine wine, spirits, liqueur, beer and cider tastings simultaneously.
22. That statement appeared at odds with other aspects of the documentation, which makes it clear that there will be no public access from the Attitude for Men clothing store to the new licensed premises, which will only be accessible from Spain Place at the rear of the building.

¹ Exhibit 1

23. A further reference (at page 7 of the synopsis - Exhibit 1) “the drinks consumed on the New Premises will be predominantly by way of tasting, sampling and education with food pairings”, together with the architects “Concept” drawings raised the impression that the premises might also be used as a “Small bar”.
24. The Commission reminded the Licensee that the application before it was confined to the use of these premises solely as a take away outlet and that would not permit the sale of liquor for consumption on the premises. The Licensee confirmed that it accepted that limitation in relation to its take away authority and the hearing proceeded on that basis.

ASSESSMENT OF THE MATTER

25. 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:

Section 75 Substitution of 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 k substitution; and*

(b) *substitute premises that are not yet constructed or are still under construction.*

26. As section 84 (3) of the Act precludes the issue of any new takeaway authority prior to 31 August 2023 the Licensee needs to satisfy the Commission that a substitution of premises in relation to the existing Licence meets the public interest and community impact requirements of section 49 of the Act. When considering whether to proceed under section 75 (2) of the Act the Commission must have regard to the primary and secondary purposes of the Act set out in section 3. In that regard the task to be undertaken by the Commission has been helpfully outlined in the Commission’s decision of Jumian Pty Ltd and Thedugies Pty Ltd (see paragraphs 57 to 70)². The Commission respectfully adopts the relevant aspects of the Decision and has embarked upon a similar process in determining this application.
27. Prior to the hearing the Commission had sought from the Director’s representative a copy of the decision granting the original Licence in 2015. However we were advised that there was no formal reasons for decision published in respect of that application. Accordingly there is no explanation from the decision maker as to why it was considered necessary to impose conditions setting minimum product limits and prohibiting immediate liquor sales.

² Decision Details

28. In the absence of any record of that decision maker's reasons it is reasonable to assume that the location of the original premises, in a back street close to vacant land frequented by itinerants, may have raised concern that the venue could become an attractive source of liquor for problem drinkers without adequate controls to prevent across the counter sales.
29. Mr Thomas told the Commission that the overwhelming majority of business transacted from the Gardens Hill Premises was wholesale supply of liquor to licensed retailers across the Northern Territory. The location and set up of the premises would not have been conducive to "walk in" custom so the take away licence which enabled sales direct to the public was operated on a pre-order, delivery basis along the same lines as the wholesale business.
30. Darlene Chin and Darryl Thomas, the Directors of the licensee Company through another corporate entity have long operated the popular "Attitude for Men" clothing store in Darwin. That business has recently transferred to purpose built two story premises at 35 Knuckey street Darwin. The quality of the design and fit out of the new store has been widely applauded by the community as one of Darwin's preeminent retail outlets. As the Commission observed during the hearing, Ms Chin and Mr Thomas deserve credit for the significant investment they have made to improve the quality of the built environment in Darwin.
31. With the support of the Darwin City Council and the Northern Territory Government this part of Knuckey Street, together with Austin Lane and Spain Place are being promoted as a cultural precinct with street art, outdoor dining and an eclectic range of small bars and retail outlets.
32. The rear of 35 Knuckey Street abuts Spain Place, once a grimy service lane used by taxi drivers as a short cut to avoid the Cavenagh Street lights, with overflowing rubbish bins, which has undergone a significant transformation with new paving, garden beds and seating. Council has provided permits for licenses to set up tables and chairs on the pathway in Spain Place on either side of the rear of the licensee's Knuckey Street store. The rear aspect of that building comprises three roller doors which have hitherto been used for deliveries, storage and car parks.
33. In order that it might benefit from the revitalization of Spain Place the Licensee is proposing to transform what was a carpark behind the north eastern roller door into a small upmarket retail liquor outlet. There is only an 18 square meter space that is proposed for the new store, which will only be accessible by the public from Spain Place. Mr Thomas told the Commission that he would be using his knowledge of wine to assist customers make informed choices about the types and styles of wine they might prefer to purchase. He would also stock a range of high end spirits and liqueurs together with a very limited selection of beer and cider. He is seeking a reduction of the existing minimum limit on spirit sales. However the main difference in the condition of licence would be that prior orders would no longer be required and over the counter sales would now be permitted.

34. While the substitution of premises and proposed change in licence conditions would provide the licensee with a take away outlet in the city centre it seems clear that the new business model would still be aimed at encouraging in store customers to make on line delivery orders of product in future. So having regard to the very limited space available to store product within the proposed shop and the lack of parking in close proximity, it is likely that these premises will be used primarily to showcase the licensee's extensive range of quality wines and spirits, the bulk of which will continue to be stored elsewhere. Although the licensee envisages that customers who have browsed the collection of liquor on display, may purchase two bottles of wine to consume at home or at one of the nearby BYO restaurants, the price of its wine and spirits will not be as competitive as that which is offered by the nearby licensed supermarkets in respect of the widely available popular brands.
35. The Licensee has planning permission to use the proposed premises as a packaged liquor outlet and the Commission is satisfied on the evidence before it that it will enhance the amenity of this emerging tourism and hospitality precinct. The substituted premises are significantly smaller than the original store in Gardens Hill and business conducted there will be more open to public scrutiny. If the Licensee had sought these license condition changes in respect of the original premises the Commission would have had concerns that the location of those premises might have proved attractive to problem drinkers and contributed to an increase in anti-social behavior within that local community.
36. From the documentation filed in the public interest and community impact statements, together with the Commissioners own knowledge, Darlene Chin and Darryl Thomas have made a positive contribution to improving the quality and range of retail options in the city centre. Their enthusiasm and attention to detail in relation to this latest project has persuaded us that this small boutique wine store will be a welcome addition to this emerging cultural and recreational precinct within the Darwin CBD.
37. Having considered the objectives set out in section 49 (2) of the Act, the Commission is satisfied that the proposed substitution of premises and variation of conditions will provide "increased cultural, recreational, employment and tourism benefits for the local community area". Overall, the Commission is satisfied that these applications are in the public interest.
38. Furthermore, having had regard to the considerations listed in section 49(3) of the Act, the Commission is satisfied on the evidence that approving this substitution of premises and variation of conditions will not have a significant adverse impact on the community.
39. Accordingly, for the reasons outlined in this Decision Notice, the Commission has determined to grant this application subject to the conditions outlined.

NOTICE OF RIGHTS

40. 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.
41. 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
23 May 2022

On behalf of Commissioners Coates, Hart and Carson