

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR APPROVAL OF MATERIAL ALTERATION TO LICENSED PREMISES

REFERENCE: LC2021/026

LICENCE NUMBER: FLL1374

LICENSEE/APPLICANT: Air Raid Arcade Pty Ltd

PREMISES: Birth of Venus
Shop 2, 35 Cavenagh Street
DARWIN NT 0850

NOMINEE: Mr Matt Mulga

OBJECTOR/S: Nil

LEGISLATION: Section 96 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 21 July 2021

DATE OF DECISION: 21 July 2021

Decision

1. For the reasons set out below and in accordance with section 97 of the *Liquor Act 2019* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) has determined to approve the application for a material alteration to extend the liquor licensed area to include shop 4 of the Air Raid Arcade Darwin.
2. As these premises have not yet opened for business and the Commission’s Decision Notice, dated 18 January 2021, requires the Licensee to provide written confirmation that it has obtained all the necessary building, planning and safety approvals in respect of Shop 2, that condition now applies to Shop 4 as well. Accordingly, the conditions set out in paragraphs 4 and 5 of that earlier decision now extends to Shop 4.
3. The Licensee is to present a new plan delineating the licensed premises to the Director of Liquor Licensing (“the Director”) and once approved by the Director that will be attached to the Licence FLL1374 instead of the existing plan dated 18 January 2021.

Reasons

Background

4. On 17 August 2020, an application was lodged by Mr Matt Mulga on behalf of the Applicant for a Liquor Licence with a small bar authority allowing for on premises consumption at new premises located at Shop 2 and Shop 4, and a portion of the arcade of the building known as the Air Raid Arcade, located at 35 Cavenagh Street, Darwin.
5. That application was eventually referred to the Commission on 21 October 2020 and the hearing commenced on 2 November 2020. The Application was deficient with regard to the Community Impact and Public Interest Statements and there was insufficient information as to now the proposed licensed area of the arcade would be delineated. The Licensee sought an adjournment of the hearing and that was granted so that the matter resumed on 14 December 2020.
6. On that date, the Licensee confirmed that it intended to ultimately apply for a licence and public bar authority over the whole of the building but in the meantime, it wished to proceed with the application for a small bar in respect of Shop 2 and the arcade area adjacent to Shop 2. Mr Mulga for the Licensee informed the Commission that he no longer wished to include Shop 4 as part of the premises because he would be needing to use Shop 4 with its stairs as the access point for the ongoing renovation work proposed for the upper level of the building.
7. At the conclusion of the hearing, the Commission asked Mr Mulga if he would still proceed with the small bar if the Commission was not prepared to include the adjacent area of the arcade within the licensed footprint. He confirmed that he would be prepared to operate the bar solely within Shop 2. On 18 December 2020, the applicant was advised that the Commission would be granting a 3 year licence over Shop 2 but was not satisfied that it was appropriate to include any part of the arcade within the licensed premises. The Commission's Decision Notice was published on 18 January 2021.
8. On 1 July 2021, an application was lodged by Matt Mulga on behalf of the Licensee seeking a material alteration to the liquor licence. The application is to extend the current licensed area to include shop 4 of 35 Cavenagh Street, Darwin.
9. "The application was accompanied by a covering letter from Matt Mulga dated 1 July 2021, a proposed new site plan, Community Impact Assessment and Public Interest Criteria statements. Mr Mulga's letter sets out the basis of the application and states as follows:

Letter supporting addition of shop 4 to Birth of Venus in application for approval of a material alteration to a licensed premises

*Air Raid Arcade Pty Ltd (ACN 085 411 490) Birth of Venus.
Licence number FLL1374*

I applied for a licence for 35 Cavenagh Street for shops 2 and 4 and the arcade outside of last year. There were no objections from the community. At the 1st hearing the Chairperson Mr Richard Coates suggested he was not comfortable with some aspects of the application mainly granting 2 licences to the same building by the same operator, and hinted that one licence for the whole building would sit better. The hearing was adjourned. At the 2nd hearing we presented a revised application with only shop 2 and the arcade section outside off with shop 4 set aside for lift and toilets required to enable the whole building to obtain the necessary planning approval to become licenced. The Chairperson repeated that he was uncomfortable with the arcade section, he suggested he did not have a problem with shop 4 and he allowed the licence to be granted for shop 2.

We are getting close to open and once these lockdown restrictions are removed will get the final inspections to be forwarded to licencing to obtain approval to open. The Building permit is for shops 2 and 4 and the CofO will be for shops 2 and 4 change of use from shop to small bar. We have had advice from various people that shop 4 is not required for lift and disabled toilets, that both are better placed in different locations so I am requesting can we get the red line altered on the licence to include shop 4. I ask this for the application was for shops 2 and 4, the chairman had no issue with shop 4, the number of patrons will increase by approx. 25 but will not take our numbers anywhere near the 100 patrons max.

There will be 3 serving Counters. The first one is located inside shop 2, the second in the arcade and the 3rd in shop 2 but facing shop 4. We plan to open from 7.30 in the morning to serve coffee and provide a light breakfast. We will serve out of all 3 counters. After 10am will can provide alcohol but will only allow this from either of the counters inside shop 2 and patrons will not be permitted to take drinks into the arcade area and can only consume their drinks from the areas they were purchased from.

*Yours Sincerely
Matt Mulga
AirRaid Arcade
1st July 2021*

10. In discussions between Licensing Officers and the Department of Health, questions were raised about the stairs in the proposed site plan and how that affects the application. An email was sent to the Licensee requesting clarification. The Licensee replied via email dated 13 July 2021, clarifying that the stairs are part of shop 2 and will be “roped off” to prevent public access.

Publication and Consultation

11. The Director of Liquor Licensing determined that there was insufficient public interest to warrant this application being published. This was based on the grounds that an application of the same nature was previously advertised in September 2020 in the original liquor licence application that included shop 4 and that no public objections were received and relevant stakeholders had no objections.

12. 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
 - Chief Executive Officer of the City of Darwin
13. The Department of Health replied via email dated 14 July 2021 stating it had no adverse comments.
14. The NT Police replied via email dated 13 July 2021 stating that it had no objection.
15. The City of Darwin did not reply but it is also noted that they made no objection to the previous application.

The hearing

16. This matter was referred to the Commission on 15 July 2021 and was listed for hearing on 21 July 2021 before those Commissioners who had dealt with the original application.
17. At the hearing Mr Mulga with Ms Draude appeared for the Licensee and Mr Verinder appeared as representative of the Director. The Commission is grateful for the assistance provided by all those present at the hearing.
18. The Licensee is correct in its assertion that the Commission would have been disposed toward including Shop 4 as part of the small bar if the applicant had not decided to withdraw that aspect of the application.
19. At the hearing, Mr Mulga confirmed that he was not intending to use any part of the stairway as part of the licensed premises. He said that he intended to put a rope across the entrance to the stairway with a sign which made it clear that patrons were not to enter on to the stairs. He was content to have this area excised from the licensed footprint and also agreed that the site plan needed amending to better reflect the property's Cavenagh street boundary.

Assessment of the matter

20. The Commission dealt with the merits of the application to open a small bar at this site in its decision of 18 January 2021. The concerns expressed by the Commission in relation to aspects of the earlier application focussed on the use of the arcade by patrons of the bar when it was also being used as a thoroughfare by members of the public. The Licensee has made it clear in both the documentation submitted in support of this material alteration application and its evidence at this hearing that it is aware that liquor must only be consumed within the confines of shop 2 or shop 4.
21. On the evidence now before it and having regard to the considerations set out in section 49 of the Act, the Commission is satisfied that allowing the licensee to increase the maximum number of patrons by approximately 25 people will not have any significant adverse impact on the community and is also in the public interest.

Accordingly, the application is approved on the conditions set out at the commencement of this Decision Notice.

22. The Licensee was notified that its application had been approved at the conclusion of the hearing.

Notice of Rights:

23. Section 31(1) read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by 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.
24. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the Licensee.



RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
22 July 2021

On behalf of Commissioners Coates, Dwyer and Hart