

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR APPROVAL OF MATERIAL ALTERATION TO LICENSED PREMISES

REFERENCE: LC2021/033

LICENCE NUMBER: FLL1037

LICENSEE/APPLICANT: Air Raid Arcade Pty Ltd

PREMISES: **Babylon Berlin**
Shops 16, 17 and 18, 35 Cavenagh Street
DARWIN NT 0800

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: 9 September 2021

DATE OF DECISION: 9 September 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 14 of the Air Raid Arcade Darwin together with the adjacent area of the arcade and that portion of the footpath in Austin Lane adjacent to the premises that the City of Darwin (“Council”) has permitted Air Raid Arcade Pty Ltd (“the Licensee”) to use, on the following conditions:
 - a) The Licensee is not permitted to sell or serve liquor in shop 14 until it provides written confirmation, to the satisfaction of the Director of Liquor Licensing (“the Director”), that it has obtained all the necessary building, planning and safety approvals in respect of shop 14;

- b) The Licensee is to provide the Director for approval, a plan depicting the placement of the tables and chairs in the arcade area of these premises which are positioned so as to provide a sufficient thoroughfare for pedestrians to access other shops in the arcade;
 - c) Liquor may only be consumed in the arcade by patrons whilst seated at the chairs designated in the plan approved by the Director; and
 - d) Liquor may only be consumed on the footpath of Austin Lane by patrons whilst seated at the tables approved by Council and the Licensee must at all times trade in accordance with the terms of the permit or lease upon which it occupies that area, such that if the terms of that permit or lease provide for conditions less than those provided for under the Small Bar authority conditions, it shall be the terms of the permit or lease that shall take precedent and apply.
2. The Licensee is to present a new plan delineating the licensed premises to the Director and once approved by the Director it will be attached to licence FLL1037 instead of the existing plan dated 29 May 2020.

Reasons

Background

3. The Licensee is the holder of liquor licence number FLL1037 for premises known as Babylon Berlin situated at shops 16, 17 and 18 of 35 Cavenagh Street, Darwin.
4. On 29 April 2021, an application was lodged by Mr Matt Mulga on behalf of the Licensee seeking a material alteration (extension of licensed premises) to the liquor licence. The application is to extend the current licensed area to include shop 14 of 35 Cavenagh Street and a portion of the Council footpath area in Austin Lane to establish an alfresco area.
5. The application was provisionally accepted on 30 April 2021 provided that outstanding documentation was provided. Final information and payment of the application fee was made on 15 July 2021.
6. The application was accompanied by:
 - Proposed site plan
 - Community Impact Assessment
 - Public Interest Criteria;
 - Letter of support from Council;
 - Copy of Building Permit and copy of building file indicating Occupancy Permit has been issued for shop 14.
7. It is known via previous recent applications that the Licensee is also the owner of the premises so no lease or other owner permission was required for this application relating to shop 14.

8. Council has made a decision to support various licensees in the Spain Place and Austin Lane area to extend their licensed premises onto Council-owned areas, such as footpaths and loading bays. Council has also completed various streetscape works and road alignments to facilitate the project.
9. Council has provided the Licensee with a letter of support in relation to the proposed use of part of the Austin Lane footpath. Council has however not yet provided the applicant with any formal permit for the use of the public space in Austin Lane nor has it specified the term or conditions upon which the Licensee might be entitled to occupy this area. Nevertheless, the Licensee has determined to proceed with the application at this stage and accepts that if any permit granted by Council imposes conditions of trade more restrictive than those for the rest of the premises, those more restrictive conditions will prevail in respect of the footpath.

Publication and Consultation

10. The application was published in the NT News on 17 and 21 July 2021 and was also published on the Director's webpage for a 28 day period. A green advertising sign was also displayed at the premises.
11. As a result of the advertising, no objections were received from the public.
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 Council
13. The Department of Health replied via email dated 14 July 2021 stating it had no adverse comments.
14. As at the date of hearing, the Police had not responded.
15. Council responded to the effect that it would be offering the Licensee a permit for an initial trial period of six months to use the footpath adjacent to Babylon Bar on condition:

During the trial, conditions will include, but not be limited to:

- a) alcohol can only be consumed while seated at a table*
- b) the number of patrons in the licensed area is limited to the number of chairs approved in the plans*
- c) a management plan on how the licensed area will be managed, which includes how the business will maintain the public amenity of the area*
- d) that a minimum one metre pedestrian access from the building line adjacent the business premises be provided.*

The hearing

16. This application was referred to the Commission on 26 August 2021. On 31 August 2021, the Licensee was advised that the public hearing of this matter would take place on 9 September 2021.
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. At the outset of the hearing the Commission reiterated the concerns it had expressed previously, both in the original licence application for these premises and more recently in respect of the licensee's other premises in this arcade, Birth of Venus Bar: namely that members of the public wishing to gain access to other shops in the arcade should be able to do so without having to push their way through drinkers congregating at either end of the arcade.
19. Mr Mulga told the Commission that he would be prepared to abide by a condition that liquor could only be consumed by patrons within the arcade whilst they were seated at a designated table. He also said that he was considering the introduction of an "App" that would enable his patrons to order and pay for drinks "on-line" from the table which means they would not have to leave their table and their drinks would be served by wait staff.

ASSESSMENT OF THE APPLICATION

20. The Commission is aware that Council has conducted extensive consultation amongst local businesses and other stakeholders over the merits of alfresco dining and liquor consumption associated with existing premises in the Austin Lane and Spain Place neighbourhood. Council has made an investment to improve the amenity of what was previously a run-down unattractive part of Darwin City with the intention of nurturing the emergence of a new entertainment precinct.
21. Whether this precinct achieves the popularity of similar initiatives in the laneways of Melbourne and Adelaide remains to be seen. However, Council and the participating small bars and restaurants are to be commended for their initiative in this co-operative endeavour to provide the citizens of Darwin and our visitors with a range of new low impact hospitality options.
22. The application to extend the licensed footprint on to the footpath of Austin Lane is in line with the objective articulated by section 49(2)(f) of the Act, namely "increasing cultural, recreational, employment or tourism benefits for the local community area". The conditions for use of the footpath, as foreshadowed by Council will ensure that only a small number of people will be able to use that area. They will also need to be seated whilst consuming liquor such that public access to the footpath is not compromised. It is clear that the Licensee will be required to satisfy Council that it will maintain the public amenity of the area.

23. The Licensee has been operating these premises without adverse incident for over 12 months now. The application to extend the licensed area into shop 14 and the adjacent arcade area will not significantly increase the number of patrons using the premises which in any event are limited to no more than 100 being the maximum number of patrons permitted by a Small Bar authority.
24. When the Commission granted a licence over the arcade area in its original decision it did so on the misunderstanding that none of the arcade's other shops would be open during the time when the small bar was operating. This present application has provided the Commission with an opportunity to revisit that decision and ensure as far as possible that these licensed premises can continue to co-exist with the other businesses in the arcade.
25. The existing tables in the arcade are currently positioned against the north wall and if patrons can be confined to the seats at those tables there will be sufficient space for members of the public to traverse the arcade and enter the other shops without any hindrance from the bar's clientele.
26. Having regard to the purposes of the Act (section 3), the application of the public interest and community impact test (section 49) and the Community Impact Assessment Guidelines, the Commission is satisfied that the application for a material alteration is in the public interest and will not have a significant adverse impact on the community.
27. Accordingly, for the reasons outlined in this Decision Notice, the Commission has determined to approve the application for a material alteration in the terms and conditions outlined at the commencement of this Decision Notice.
28. The Licensee was advised of this decision at the conclusion of the hearing.

Notice of Rights:

29. 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.
30. 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 the Director.



RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
17 September 2021

On behalf of Commissioners Coates, Dwyer and Hart