

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR ADDITIONAL AUTHORITY AND VARIATION OF CONDITIONS OF LICENCE
REFERENCE:	LC2021/040
LICENCE NUMBER:	80519004
LICENSEE:	Horizen Café Operations Pty Ltd
PREMISES:	Horizen Café 6 Carey Street DARWIN NT 0800
APPLICANT:	Horizen Café Operations Pty Ltd
NOMINEE:	Ms Michelle Helen Henson
LEGISLATION:	Sections 52 and 110 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Mr Richard Coates (Chairperson) Mr Bernie Dwyer (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	18 November 2021
DATE OF DECISION:	18 November 2021

Decision

1. For the reasons set out below and in accordance with section 60 of the *Liquor Act 2019* (the Act) the Northern Territory Liquor Commission (the Commission) has determined:
 - a) to grant Horizen Cafe Operations Pty Ltd (the Licensee) a small bar authority for that area of the 16th Floor of the premises which excludes those rooms depicted in the original plan attached to the application described as bedrooms 2, 3, 4 and 5 and is delineated in a plan that has been approved by the Director of Liquor Licensing (the Director) and will be appended to the licence.
 - b) the trading hours and general conditions of operation attached to the small bar will be those prescribed in Division 17 of the Liquor Regulations 2019.

- c) the existing restaurant bar authority over the 16th Floor is now extinguished;
- d) the existing late night authority over the 16th Floor will continue, permitting liquor service until 01:00, seven days a week;
- e) the existing lodging authority will continue to apply to the rest of the premises, including the four bedrooms on the 16th Floor which are not covered by the small bar authority;
- f) the existing restaurant bar authority will continue to apply to the Horizen Café on the 3rd Floor;
- g) the current references in the licence describing the 16th Floor as a “function room” are deleted, as is the requirement that liquor only be supplied to persons attending a “pre-booked function”;
- h) the restrictions in relation to “Appearance”, “Consumption of Liquor” and “Advertising and Signage” while continuing to apply to the Restaurant Bar authority in respect of the Horizen Café will not apply to the 16th Floor Small Bar;
- i) The following Entertainment Condition is to be included in the licence:

Entertainment Condition

- (i) Entertainment by way of recorded music and live music may be played within the Small Bar area until 23:30 after which only pre-recorded ambient background music may be played;
- (ii) The Licensee shall not permit the emanation of noise from the licensed premises of such nature or at such level as to cause unreasonable disturbance to the ordinary comfort of neighbouring residents or guests staying at the Licensee’s accommodation;
- (iii) Notwithstanding compliance with (ii) above, the Licensee shall effect such further sound attenuation measures as the Director of Liquor Licensing may require, including a direction that all music be played through an in-house sound system that is regulated so as to restrict the level of sound emanating from the premises.

Reasons

Background

2. The Licensee is the holder of liquor licence number 80519004 for premises known as Horizen Café situated at 6 Carey Street, Darwin. Attached to the licence are a restaurant bar authority, BYO authority, late night authority and lodging authority.
3. On 13 August 2021, Andrew Giles, HWL Ebsworth Lawyers lodged an incomplete application on behalf of the Licensee seeking an additional authority to be attached to the liquor licence, a “small bar authority”, along with changes to licence conditions. The application was assessed as complete on 17 August 2021.

4. In summary, the application seeks:
 - a. a small bar authority to apply solely to the 16th Floor;
 - b. hours of operation for the 16th Floor under the small bar authority from 10:00 hours to 24:00 hours, seven days a week;
 - c. continuation of the existing use of the late night authority on the 16th Floor from 24:00 hours to 01:00 hours;
 - d. hours of operation on the 16th Floor from 10:00 hours to 01:00hours the following day under the small bar and late night authorities, seven days a week.
 - e. should the application for small bar authority be issued, the Licensee seeks that the special conditions of the liquor licence titled “Appearance”, “Consumption of Liquor” and “Advertising and Signage” not apply to the 16th Floor and only apply to other areas of the liquor licence.
5. The application was accompanied by the following supporting documents:
 - Affidavit in accordance with section 54 of the Act (the affidavit is not accepted by Licensing Officers but is the subject of other written submissions by the Licensee’s legal counsel);
 - Community Impact Assessment;
 - Public Interest Responses;
 - Document titled “Application for a new liquor licence or authority” which includes 14 topics and annexures relating to customer reviews, permission to occupy, applications for change of use and food business registration;
 - Letter from the Development Consent Authority indicating zoning for the application is appropriate;
 - Development Permit DP21/0214.

Publication and Consultation

6. The application was published in the NT News on 21 August 2021 and 25 August 2021 and on the Director’s webpage “Advertised liquor licence applications” for a 28-day period.
7. Copies of the NT News notices, photographs of the green sign erected in situ and statement of display were provided.
8. As a result of the public advertising of the application, there were no formal objections received.

9. In accordance with the Act, the following stakeholders were notified of the application:
 - the Chief Executive Officer of the Department of Health;
 - the Commissioner of Police;
 - the Chief Executive Officer of the City of Darwin.
10. The Department of Health replied via email dated 23 August 2021 stating it had no adverse comments.
11. NT Police replied via email dated 3 September 2021 stating it had no objection.
12. The City of Darwin replied via email dated 7 September 2021 stating it supports the due process of the Commission with regard to the application.

Public Hearing

13. The Director referred this matter to the Commission on 8 November 2021.
14. On 11 November 2021, the Commission notified HWL Ebsworth Lawyers that this matter would be determined by way of public hearing on 18 November 2021 at 1:00pm.
15. At the hearing, Mr Ryan Sanders and Mr Michael Anthony appeared for the Licensee and Mr Jeff Verinder appeared for the Director of Liquor Licensing (the Director). The Commission thanks them for their attendance and assistance.
16. The Hearing Brief was tendered at the hearing without objection and marked as Exhibit 1.

Preliminary Issues

17. On 27 October 2021, the Licensee's solicitor, HWL Ebsworth Lawyers wrote to the Commission addressing two probity issues in relation to the applicant and its Director, Mr Michael Anthony.
18. The first of those issues involved a change within the corporate structure of the Licensee on 27 September 2019. On that date, Mr Anthony who was the sole director and company secretary of the Licensee transferred his shares to Milo Properties Pty Ltd, a company in which he and his wife Loretta Anthony each held 50% of the share capital. Although the solicitor argued that because of the Trust structure that existed there was no effective change in relation to control of the licence it was conceded that the Licensee had erred by not notifying the Director General of Licensing when the change occurred.
19. It will be a matter for the Director to determine whether to take disciplinary action in relation to this breach however, there was no suggestion by the Director's representative that this breach was of such significance as to raise doubt over the Applicant's suitability to hold a liquor licence.

20. The other issue that was addressed in the letter of 27 October 2021 was the fact that Mr Anthony and DWD Projects Pty Ltd, another company of which he was a director, had been charged with offences under the *Waste Management and Pollution Control Act 1998 (NT)*. Although the letter stated “Both have had a finding of guilt made against them and await the outcome of a further hearing which may lead to a conviction and sentence”¹, Mr Ryan was unable to provide a clear explanation as to the current status and likely resolution date of those proceedings.
21. Once again, there was no suggestion by the Director’s representative that there were currently sufficient grounds arising from the Environmental proceedings to warrant any consideration of the applicant’s fitness to hold a liquor licence.
22. On the evidence currently before it the Commission has determined that there is not sufficient grounds to embark upon any collateral inquiry in relation to the Licensee’s continuing fitness to hold the licence it has held for 6 years. Accordingly, the hearing was confined to an assessment of the merits of the application for the new small bar authority in respect of what had been the 16th Floor Function Room.

Assessment of the Application

23. This 16-storey property has been operating as “Ramada Suites Darwin” for approximately 7 years as a self-contained serviced apartment hotel targeted at both the corporate and leisure travel markets. There was originally a 6- bedroom “penthouse” apartment on the 16th Floor which was surrounded by a significant outdoor terrace area which had been used to host private functions by the owner of the apartment.
24. In June 2017, the Restaurant /Bar licence for the premises’ Horizen Café was extended to cover the 16th Floor balcony and Function Room for pre-booked functions. These functions proved popular and the Licensee has provided evidence of numerous requests by in-house guests and members of the public for bookings at the 16th Floor Function Room and Terrace.
25. It is not surprising that both tourists and locals alike would be attracted to the prospect of attending an open-air restaurant bar with a spectacular view over the Darwin Harbour and skyline. There is currently no other licensed venue in Darwin with such an outlook, so the Commission has no doubt that there are significant cultural, recreational and tourism benefits associated with this proposal. (See section 49(2)(e) of the Act).
26. The Commission has considered the other objectives listed in section 49(2) of the Act and is satisfied that none of them would preclude the grant of the authority sought. This is particularly so as this rooftop bar restaurant has been operating albeit irregularly for the same hours of trade over several years now without complaint or adverse incident.

¹ Exhibit 1, page 137

27. There were however two issues of concern that the Commission raised with the Licensee. The first related to the risk of noise disturbance as a result of a band or a DJ playing from the rooftop terrace. Mr Anthony gave evidence that at 16 storeys the building is significantly higher than any of the surrounding apartment blocks so that will create some considerable distance between neighbouring residents and any music from his 16th Floor bar. He also convincingly claimed that he had more to lose than anyone else through noise disturbance. The Licensee's main source of income from his property was through the room rentals. He said that a bad review complaining of noise disturbance posted on one of the travel booking websites would cost him at least \$20,000 in lost room rental. The Commission is satisfied that by requiring music other than ambient background music to cease at 23:30 hours as well as imposing a condition which allows the Director to take timely remedial action to curtail undue noise, the risk of noise disturbance can be satisfactorily managed.
28. The other concern the Commission had with the application was the fact that it proposed extending the licensed footprint over the whole of the 16th Floor including a number of rooms that were still fitted out as bedrooms. On hearing the Commission's concerns, the Licensee agreed to submit a revised plan excising those areas that might potentially continue to be used as bedrooms from the Small Bar's licensed footprint.
29. Although the Licensee has not foreshadowed any intention to make any "structural alterations" or "significant changes" to the external appearance or facilities on the 16th Floor, it would be well advised to keep in mind the requirements of section 95 of the Act. That obliges a licensee to submit an application to the Commission for prior approval of a material alteration before any significant change is made to any part of the premises.
30. Having regard to the purposes of the Act (section 3), the application of the public interest and community impact test (section 49) and community impact assessment guidelines, the Commission is satisfied that this application for a small bar authority and consequent change in licence conditions is in the public interest and will not have a significant adverse impact on the community.
31. Accordingly, for the reasons outlined in this Decision Notice, the Commission has determined to approve the application for a small bar authority on the terms outlined at the commencement of this Decision Notice.
32. The Licensee was advised of this decision at the conclusion of this hearing.

Notice of Rights:

33. Section 31(1) read with section 60(3) 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.

34. 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 and the Licensee.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
30 November 2021

On behalf of Commissioners Coates, Dwyer and Corcoran