

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR APPROVAL OF MATERIAL ALTERATION

LICENCE NUMBER: 80316501

LICENSEE: Aspen Living Villages Pty Ltd

PREMISES: Darwin FreeSpirit Resort
901 Stuart Highway
BERRIMAH NT

APPLICANT: Aspen Living Villages Pty Ltd

LEGISLATION: Section 96 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Dr Robert Parker (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 20 February 2020

DATE OF DECISION: 27 February 2020

Decision

1. For the reasons set out below and in accordance with section 97(2) of the *Liquor Act 2019* (“the Act”), the Commission has determined to approve the material alteration to the licensee’s licensed premises as sought by the Applicant.
2. In accordance with the approval given, the licensee may continue to conduct business on the licensed premises apart from the current function room, the area the subject of this application, whilst it is being converted to a gaming room.
3. Aspen Living Villages Pty Ltd (“the Licensee”) must not permit the sale or consumption of liquor in the proposed gaming room until evidence has been provided to the satisfaction of the Director of Liquor Licensing (“the Director”) of relevant statutory building and fire safety approvals.

Reasons

Background

4. The Licensee is the holder of a liquor licence number 80316501 for the premises known as Darwin FreeSpirit Resort, located at 901 Stuart Highway, Berrimah.

5. On 7 January 2020, the Licensee lodged an application for approval of a material alteration to its licensed premises and paid the application fee.
6. The basis of this material alteration application is to make alterations to the internal function room and convert it into a gaming room. The Licensee is the holder of a gaming machine licence but has not installed any gaming machines since the licence was approved.
7. The application for the gaming machine licence was approved on 20 April 2017 on the basis that the function room would be the approved gaming area and this has not changed. There is no requirement for any further applications under the *Gaming Machine Act 1995*. At the time of the gaming machine licence application it was publicly advertised including the change of use of the function room and conversion to a gaming room. The fact that this application has not been applied for until now has no bearing of the gaming machine licence. It is also noted that at the time of the gaming machine licence application, an extensive Community Impact Analysis was submitted for consideration by the Director-General of Licensing.
8. In support of the application the Licensee has provided the following documents:
 - Copy of plans of the proposed changes;
 - Copy of the Development Consent Authority Development Permit;
 - Copy of the Building Permit.

Consultation

9. The application was not advertised as Mr Mark Wood, in his capacity as delegate of the Director, determined that there was insufficient public interest to advertise this application.
10. Because it was not advertised, there were no objections from the public.
11. In accordance with section 96(6) of the Act, notification of the application was sent to the Chief Executive Officer, Litchfield Council. The Council replied via letter dated 15 January 2020 stating it had no comments on the proposed material alteration.
12. Whilst not legislatively required, notification was also sent to:
 - NT Police;
 - Department of Health;
 - NT Fire and Rescue.
13. NT Police replied via email dated 15 January 2020 stating it has no objections.
14. The Department of Health replied via email dated 15 January 2020 stating it has no adverse comments.

15. NT Fire and Rescue replied via email dated 17 January 2020 stating that it supports the application conditional to building works to go through the approval process and that they will re-inspect the premises for maximum patron numbers.

Compliance History

16. A check of the records held at Licensing NT indicates that there is no previous adverse history against the Licensee for liquor or gaming machine licence matters.

Public Hearing

17. On 20 February 2020, the application proceeded as a public hearing. Mr Emmanuel Couch and Ms Laura McArthur appeared on behalf of the Licensee and Mr Jeff Verinder appeared for the Licensing NT. The Commission thanks them for their attendance and assistance.
18. The brief was tendered and admitted into evidence without objection and was marked as Exhibit 1. The June 2016 Community Impact Assessment for the new gaming machine licence was admitted and marked Exhibit 2, a Public Interest and Community Impact Assessment summary form dated 19 February 2020 was also admitted and marked as Exhibit 3. No further documentary evidence was adduced.

Assessment of the Application

19. In considering the application, the Commission has had regards to the purposes of the Act (section 3), the application of the public interest and community impact test (section 49), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018, pursuant to section 50, and the onus on an applicant to satisfy the Commission that the approval of the application is in the public interest and will not have a significant adverse impact on the community (section 51).
20. It is relevant that this application is not related to any increase in the area available for the sale and consumption of liquor. The Licensee has rather sought to change the purpose for which one section of its licensed premises will now be used.
21. A decision has already been made by the appropriate regulator to grant the Licensee a licence to install ten electronic gaming machines on the premises. The Licensee is seeking to convert its rarely used function centre into a gaming room which will be patronised, in the main, by those tourists and visitors that reside within the resort.
22. The Commission accepts the evidence from Mr Couch that there is unlikely to be any significant increase in liquor consumption through the introduction of a gaming room. Rather, the applicant is seeking to broaden its revenue base by catering to those patrons who have a desire to use its gaming machines.

23. The Commission also accepts that there are public safety benefits in providing gaming machines at the resort rather than guests travel to other gaming venues with the attendant risks of drink-driving.
24. Based on the evidence presented, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people, within the local community area, due to the availability and accessibility of liquor as a consequence of the material alteration sought.
25. It is as a result of the matters outlined above that the Commission has decided to approve the material alteration to the Licensee's licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights

26. Section 31 of the Act provides for any decision of the Commission for which a decision notice is required under the Act is reviewable by Northern Territory Civil and Administrative Tribunal.
27. Section 97(4) of the Act requires the Commission to give a decision notice, after making a decision under subsection (2) to the applicant and each person who lodged an objection to the application under section 61.

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

RICHARD COATES
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
27 February 2020

On behalf of Commissioners Coates, Parker and Hart