

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR SUBSTITUTION OF PREMISES

REFERENCE: 2020/008

LICENCE NUMBER: 80917513

LICENSEE: Endeavour Group Limited

PREMISES: **BWS – Beer Wine Spirits**
47 Cavenagh Street
DARWIN NT 0800

APPLICANT: Endeavour Group Limited

LEGISLATION: Section 75 and Part 4, Division 5 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Liz Stephenson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 18 February 2020

DATE OF DECISION: 4 March 2020

Decision

1. For the reasons set out below and in accordance with sections 75 and 112 of the *Liquor Act 2019* (“the Act”), the Commission has determined to amend the conditions of the licence of Endeavour Group Limited (“the Licensee”) by substituting the current premises at Shop 1, 47 Cavenagh Street, Darwin City to new premises immediately adjacent to the current premises, Shops 4 and 5, 47 Cavenagh Street, Darwin City.
2. This condition amending the licence by substituting the new premises will take effect on the date that the Licensee provides written proof to the satisfaction of the Director of Liquor Licensing (“Director”) that it has obtained a Fire Safety certificate and a certificate of occupancy in relation to the new premises.

Reasons

Background

3. On 8 January 2020, an application was lodged by King & Wood Mallesons, legal counsel on behalf of Woolworths Group Limited for the BWS – Beer Wine Spirits store located at Shop 1, 47 Cavenagh Street, Darwin. The application is to substitute the premises from Shop 1, 47 Cavenagh Street, Darwin to the adjacent shops at 4 and 5, Cavenagh Street, Darwin.
4. On 3 February 2020, the liquor licence was transferred from Woolworths Group Limited to the Licensee. Written advice has been received stating that the Licensee wishes to continue with the application as the new Licensee with King & Wood Mallesons representing them.
5. The Licensee is the holder of liquor licence number 80917513 for premises known as BWS – Beer Wine Spirits situated at Shop 1, 47 Cavenagh Street.
6. The application is to substitute the liquor licence to shops directly adjacent to the current premises. Being a liquor licence with a takeaway authority, BDR scanning equipment will be required to be installed and operated within the new premises prior to the commencement of trade.
7. In support of the application, the Licensee provided the following documentation:
 - a. Cover letter;
 - b. An affidavit in accordance with section 54 of the Act which did not in fact reflect the Licensee's current details;
 - c. Submission in relation to the Community Impact and Public Interest requirements in accordance with section 110(2) of the Act;
 - d. Plans of the proposed premises' licensed liquor area footprint which was Attachment G to the Director's Referral;
 - e. Letter from the landlord advising of the intent to lease premises to the Licensee;
 - f. Updated Technical Assessment and plan of proposed premises.

Publishing of application and consultation

8. By way of email dated 9 January 2020, the Director, in accordance with section 111 of the Act, determined that this application was required to be advertised for 14 days.

9. The application was advertised in the NT News on Wednesday, 15 January 2020 and Saturday, 18 January 2020. A green sign was also erected at the proposed premises for the 14 day advertising period. A signed Statement of Display that the “Green Sign” notice had been erected at a prominent area of the proposed premises and had been displayed for a 14 day period coinciding with the advertisements has been supplied.
10. As a result of the publication of the application, no objections were received.
11. Notification and comments were sought from:
 - CEO of Department of Health;
 - Commissioner of Northern Territory Police
 - CEO of City of Darwin
 - Development Consent Authority
 - NT Fire and Rescue Service
12. The Department of Health advised via email dated 10 January 2020 that it had no adverse comments on the understanding that smoking is not permitted in the premises.
13. The Northern Territory Police advised via email dated 20 January 2020 that it has no objections.
14. The City of Darwin did not reply.
15. The Development Consent Authority replied via email dated 10 January 2020 that the premise is still considered a shop, that the use and purposes has not changed and is not likely to warrant further planning approval.
16. NT Fire and Rescue replied via email dated 13 January 2020 indicating they support the application provided that relevant building conditions and certifications are provided.
17. A check of records held at Licensing NT reveal no negative compliance history at the current premises.

The Hearing

18. This application was referred to the Commission by the Director on 10 February 2020.
19. On 13 February 2020, the Licensee filed a further affidavit in compliance with section 54 of the Act. No issues have been raised with the Commission arising from this affidavit.

20. On 18 February 2020, the Commission convened and determined pursuant to section 21(2)(d) of the Act that conducting a public hearing would not be worthwhile and, in accordance with section 21(3) of the Act, it was appropriate to conduct the hearing in private by way of written submissions.
21. The Commission subsequently invited the Licensee to amend its application which it did by letter of 21 February 2020, requesting “that a condition be imposed on the licence requiring it to obtain Fire Safety Certification prior to commencing trade from the new premises”.

Assessment of the Application

22. Section 75 of the Act provides as follows:

75 Substitution of premises

- (1) If a licensee wishes to substitute other premises for the licensed premises, the licensee must apply for a new licence for those new 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:
 - (a) no significant change in the operation of the business will occur as a result of the substitution; and
 - (b) the substitution satisfies the public interest and community impact requirements.
 - (3) An application to substitute premises is to be made in the same manner as an application to vary conditions of the licence under Part 4, Division 5.
23. The Licensee is proposing to move to adjacent premises within the current Woolworths Supermarket complex. There will be minimal increase in the trading space available for the sale of liquor and the nature of the business will remain the same. On the evidence before the Commission it is satisfied that no significant change in the operation of the business will occur and that a substitution is therefore permissible in accordance with section 75(2)(a) of the Act .
 24. The Licensee lodged a submission in accordance with section 110(2) of the Act in support of its contention that the application was in the public interest and would not have a significant adverse impact on the community. It relied heavily on the fact that it would be operating from new premises in close proximity to the old store such that there would be no chance of increase in harm as a result of the new location.
 25. The Licensee also relied on the recommendations of the Riley Review that there be separation of liquor outlets from grocery stores. The proposed substitution is in accordance with that harm minimisation recommendation.

26. Although the new premises are slightly larger than the original store, most of that increase, (approximately 10m²) is storage space which will not be accessible by the public. The Licensee has pointed out that it has had to make provision for storage space within the new premises because it is no longer able to store any products within the Woolworths store because of the transfer in ownership of BWS from Woolworths to Endeavour Drinks.
27. The Commission is satisfied that the Licensee has satisfied the public interest and community impact requirements and applying the matters set out in section 49 and the community impact assessment guidelines made under section 50 the grant of the application will advance the public interest by advancing the purposes in sections 3(1) and (2) of the Act. Accordingly, the Commission has determined to approve the application in the terms set out in paragraph 1 of this Decision Notice.
28. As the Act is currently constructed there is no specific power for the Commission to approve a substitution of premises subject to additional conditions such as trade not commence until a certificate of occupancy is obtained in respect of the new premises. The Commission has this power under section 60 of the Act when it issues a new licence or authority.
29. The apparent lack of power to impose additional conditions when approving a substitution creates practical problems such as setting the exact time at which the Licensee will cease to operate at the old premises and commence in respect of the substituted premises.
30. As this application for substitution of premises is being made as an application to vary conditions under Part 4, Division 5 of the Act, the Commission is prepared to accede to the Licensee's request, as outlined in paragraph 2, and vary other conditions of the licence to properly give effect to its approval of the substitution, although the amendment will not be in the exact terms sought.
31. Accordingly the Commission has determined to further amend the conditions of this licence in the terms set out in paragraph 2 of this Decision Notice.

Notice of Rights

32. 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.

33. Section 112(3)(a) of the Act requires the Commission to give a decision notice, after making a decision on an application to vary the conditions of a licence 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
4 March 2020
On behalf of Commissioners Coates, Stephenson and Cannon