

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

**LICENCE NUMBER:** 80818261

**REFERENCE:** LC2021/018

**LICENSEE:** Macrowe Pty Ltd

**PREMISES:** Hog's Breath Café  
2/18 The Boulevard  
PALMERSTON NT 0830

**LEGISLATION:** Section 110 of the *Liquor Act 2019*

**HEARD BEFORE:** Mr Richard Coates (Chairperson)  
Professor Phillip Carson (Health Member)  
Ms Amy Corcoran (Community Member)

**DATE OF HEARING:** 26 May 2021

**DATE OF DECISION:** 26 May 2021

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**Decision**

1. For the reasons set out below and in accordance with section 110 of the *Liquor Act 2019* (the Act), the Northern Territory Liquor Commission (the Commission) has determined to vary the conditions of licence held by Macrowe Pty Ltd (the Licensee), at the premises formerly known as Hog's Breath Café but now known as "Primal Bar and Grill", 2/18 The Boulevard, Palmerston. The current special condition related to Premises Concept is deleted and replaced with:-  
  
"The concept of the Licensees premises is a licensed restaurant with a predominant emphasis on meals and snacks in a relaxed, fun, family friendly setting. The venue will not operate live music".
2. The licence is further varied by deleting the special conditions relating to "Advertising and Signage" and "Outside Dining Area".

## Reasons

### Background

3. The Licensee is the holder of liquor licence number 80818261 for premises known as Hog's Breath Café, 2/18 The Boulevard, Palmerston. The licence includes a Restaurant Bar authority, a BYO authority and a Late Night authority permitting trade until 2:00am.
4. The licence was originally issued when the premises operated under a franchise agreement with Hog's Breath Café but this franchise agreement was recently not renewed. On the expiration of the franchise agreement, a corporate re-structure of the Licensee took place where Mr Cormac MacCarthy sold the entire shareholding to his daughter, Ms Kiera MacCarthy.
5. Subsequently, Ms MacCarthy has been appointed as the permanent nominee and the premises re-branded and named Primal Bar and Grill. As a result of notification of the change of business name to the Director of Liquor Licensing (the Director), Licensing Officers raised concerns that the Licensee was in breach of the licence conditions by using the term "Bar" in its signage and promotional material. The Director undertook not to take disciplinary action or change the business name on the licence whilst the Licensee made an application for a variation of the licence conditions.
6. An application was lodged by Ms MacCarthy on behalf of the Licensee seeking two permanent variations to the liquor licence conditions. The application is to amend one condition relating to "*Premises Concept*" condition and to remove the "*Advertising and Signage*" condition.
7. The first part of the application relates to the current "*Premises Concept*" concept which states:

*"The concept of the Licensee's premises is a themed Hog's Breath franchise venue with a predominant emphasis on meals and snacks in a relaxed, fun, family friendly setting. The venue will not operate live music".*
8. The proposed variation is to remove the words "*themed Hog's Breath franchise venue*" and replace those words with "*licensed restaurant* so that the condition will now read:

*"The concept of the Licensee's premises is a licensed restaurant with a predominant emphasis on meals and snacks in a relaxed, fun, family friendly setting. The venue will not operate live music".*
9. The second part of the application is to entirely remove the "*Advertising and Signage*" condition which states:

*"The Licensee shall not use nor permit to be used any of the words Hotel, Pub or Bar in any description of the premises or in any advertising, promotional material or signage.*

*Consumption of liquor without a meal will not be advertised or promoted".*

10. The application was accompanied by:
- A cover letter explaining the application;
  - Affidavit in accordance with section 54 of the Liquor Act 2019;
  - Combined Community Impact Assessment and Public Interest Criteria;
  - Copy of ASIC Company extract;
  - Copy of ASIC Record of Registration for Business Name;
  - Copy of Lease.

## **Publication and Consultation**

11. The Director determined there was insufficient public interest to warrant publication of the application. As it was not published, there were 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, City of Palmerston
13. The Department of Health replied via email dated 7 April 201 stating it had no adverse comments.
14. The NT Police replied via email dated 12 April 2021 stating it had no objection.
15. The City of Palmerston replied via email dated 15 April 2021 stating it will not be submitting any objections or comment.

## **Compliance**

16. A check of records held at Licensing NT reveals that there have been no recorded negative compliance issues.

## **Public Hearing**

17. On 19 April 2021, the Director referred this application to the Commission. The matter was originally set down for hearing on 12 May 2021 however that date did not suit the Licensee so it was relisted to proceed with another matter on 26 May 2021.
18. On 26 May 2021, the matter proceeded as a public hearing where Ms MacCarthy and her father Mr MacCarthy appeared for the Licensee. Mr Jeff Verinder appeared on behalf of the Director. The Commission thanks them both for their assistance.
19. The Hearing Brief was tendered and admitted into evidence without objection. No further documentary evidence was adduced.

## Assessment of the Application

20. The Licensee's premises are located in the same building as the Quest Hotel and the Licensee provides room catering services as well as other food and beverage facilities for in-house guests. It has a strong business relationship with the hotel but has also proved a popular dining destination for the residents of Palmerston for over 10 years. The Licensee stressed that it was not proposing to change the nature of the business only its name, given that the franchise agreement was no longer in place.

21. This application is not controversial. The conditions in the licence were created prior to the introduction of the Liquor Regulations 2019 (the Regulations) which now prescribe the standard conditions which attach to the various authorities provided for in the Act. Division 16 specifies the conditions for a Restaurant Bar Authority including Regulation 83(6) which provides:

*"The consumption of liquor without the purchase of a meal must not be advertised or encouraged".*

22. Although it had not been part of the application, during the course of the hearing, the Licensee raised the incongruity of the special condition in relation to the Outside Dining Area which provides:

*"The outdoor dining area shall always have the appearance of a restaurant.*

*In the event of any complaint placed before and upheld by the Liquor Commission arising from the appearance of the outside area the Liquor Commission will consider the arrangement and appearance of the table and chairs within that area, the availability of meals and/or snack foods, the ready availability of menus and the deployment of the Licensee's staff for the service of that area and any other relevant matters.*

*No standing patrons to the premises will be allowed within one (1) metre of the front fence and entrance".*

23. Mr MacCarthy said that this condition was a carry-over from when the Hog's Breath Café had previously been operating from Mitchell Street in Darwin and there was only a small picket fence delineating the boundary of the premises from the footpath. He said that the condition had never been relevant to the operation of the premises in Palmerston. Mr Verinder took no issue with that assertion. On that basis the Commission has determined that the Outside Dining Area special condition should be deleted from the licence conditions.

24. It is the Commission's view that unless there are compelling reasons as to why special conditions are required to accommodate the peculiar circumstances of an individual application that the conditions of the licence should be those prescribed by the Regulations for the particular authority. This will create a greater level of consistency across the industry, prevent "licence creep" and should also assist licensees better understand their obligations under the Act. In this matter, apart from the restrictions on live music and the trading hours which the Licensee is content to continue to abide

by, there is no reason why the conditions of licence should be other than those prescribed by the Regulations.

25. In the circumstance the Commission has determined that it is in the public interest and that there will be no significant adverse impact to vary the conditions of licence in the terms outlined at the commencement of this Decision Notice.

## **Notice of Rights**

26. 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.
27. 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.



RICHARD COATES  
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION  
10 June 2021

On behalf of Commissioners Coates, Carson and Corcoran