

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

LICENCE NUMBER: 80101789

REFERENCE: LC2019/058

LICENSEE: Deemat Pty Ltd

PREMISES: Katherine Hotel
Cnr Giles Street and Katherine Terrace
KATHERINE NT 0850

APPLICANT: Deemat Pty Ltd

LEGISLATION: Section 119(2), Parts I, IV and V of the *Liquor Act 1978*.

HEARD BEFORE: Ms Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 28 May 2019

DATE OF DECISION: 30 May 2019

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act 1978* ("the Act"), the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the Applicant.

Reasons

Background

2. Deemat Pty Ltd ("the applicant") holds a liquor licence authorising it to sell and supply liquor as a public hotel at the Katherine Hotel ("the premises"). The licence authorises the sale, supply and consumption of liquor from three bars located in three discrete areas on the premises: the Garden Bar, Kirby's Sports Bar and the Wine and Cocktail Bar.
3. By application dated 28 February 2019, the licensee's dual nominees, Cassandra and Robert Harney on behalf of Deemat Pty Ltd applied to remove the Wine and Cocktail Bar from the footprint of the licenced premises. An alteration to licensed premises which decreases the area used for the sale or consumption of liquor is a

"material alteration" pursuant to s4 of the *Liquor Act 1978* ("the Act"), and, pursuant to s119(1) of the Act requires the approval of the Liquor Commission ("the Commission").

4. On 23 April 2019, following consultation, together with an assessment by Licensing NT of the application, a Delegate of the Director-General of Licensing referred the application to the Commission for hearing pursuant to sections 119(6A) and 50(d) of the Act.
5. The Director-General provided the Commission with a brief of evidence ("the brief") including:
 - Application for a variation of conditions of liquor licence dated 28 February 2019
 - The applicant's existing liquor licence number 80101789 issued on 4 October 2018
 - Community Impact and Public Interest Assessment statement
 - Diagram of proposed licence area
 - Correspondence between Licensing NT and Katherine Town Council

Consultation

6. Pursuant to s119(3) of the Act, if the Director-General considers it to be in the public interest, she may require an applicant for a material alteration to publish notice of the application. In this instance, the Director-General, in the exercise of her discretion, determined not to require the applicant to publish notice of the application.
7. As required by s119(5) of the Act, on 22 January 2018, the Director-General notified the Chief Executive Officer of the Katherine Town Council of the application. The Council responded that it did not object to the application.

Applicant's submissions

8. Pursuant to s6A of the Act, a s119 applicant is required to satisfy the Commission that the approval of the application meets the public interest and community impact test set out in s6(2). The application is supported by a brief statement that simply asserts, in effect, that because the application is to reduce the licensed area, it follows that there is no adverse public interest or community impact.

Hearing

9. On 13 May 2019, the Commission notified the applicant that the application would be heard at a public hearing on 28 May 2019. On 28 May 2019 Ms Harney appeared on behalf of the applicant, and Ms Chin appeared for Licensing NT. The Commission thanks them both for their attendance and considerable assistance.
10. The brief was tendered and admitted into evidence without objection. No further documentary evidence was adduced.

Assessment of the Application

11. In considering the application, the Commission has had regard to the objects of the Act (s3), the application of the public interest and community impact test (s6), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to s6A, and the onus on the applicants to satisfy the Commission that the approval of the application meets the public interest and community impact test (s6B).
12. The Commission received only limited assistance from the documentary material provided by the applicant in support of the application. The Commission does not consider that a reduction in the licensed area necessarily has no adverse community or public interest impact. For example, a reduction in the footprint may lead to overcrowding of a venue and associated increased risks.
13. However, in the course of the hearing the Commission received uncontested evidence that the Cocktail and Wine Bar area has recently been made available by the licensee for use by a men's hairdresser, who in turn also utilises the space after hours as a youth drop-in facility and safe space. The Katherine Town Council has commented approvingly on this.
14. The licensee informed the Commission that young people using the space after hours do not have direct access to the licensed premises located in the same building, because the door between the former Wine and Cocktail Bar and the adjacent Garden Bar on the premises is kept locked.
15. The Commission considers that the use of this area as a youth drop-in facility and safe space is in the public interest and has a beneficial community impact.
16. The Commission finds 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.
17. The Commission determines that approval of the application satisfies the public interest and community impact test, and accordingly the Commission grants the application.
18. The Commission determines that the licensee's licence number 80101789 dated 4 October 2018 be amended by deleting from the Licence:
 - the heading "**Wine and Cocktail Bar**" on page 11
 - the paragraph under that heading, including the list of trading hours
 - the sub-heading "**Nature Of The Business**" on page 11
 - the paragraph adjacent to that sub-heading commencing with the words "The nature of the business of the Wine and Cocktail Bar" and concluding with the words "other venues within the licensed premises"

- the words “WINE AND COCKTAIL BAR” from the Section 106(1)(a) Certificate of Declaration
19. The Commission also determines that the site plan annexed to the licence be amended to exclude the area identified on it as “Cocktail Bar”, and requests that Licensing NT consult with the licensee with a view to redrafting the site plan so that it more clearly delineates the footprint of the premises.

Notice of Rights

20. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to s119(8) of the Act is specified in the Schedule and is a reviewable decision.
21. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
22. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.



Russell Goldflam

MEMBER, NORTHERN TERRITORY LIQUOR COMMISSION
30 May 2019

On behalf of Commissioners Goldflam, Reynolds and Cannon