

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR MATERIAL ALTERATION

LICENCE NUMBER: 80516420

REFERENCE: LC2019/025

LICENSEE: **Phe Thi Boyle**

PREMISES: **Ruby Darwin**
Shop M1 Paspalis Centrepoint Building
48-50 Smith Street
DARWIN NT 0800

OBJECTOR/S: Nil

LEGISLATION: s.119(2) of the *Liquor Act*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 10 April 2019

DATE OF DECISION: 10 April 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. On 26 October 2018, an application was lodged with the Director-General of Licensing (Director-General) by Peter Boyle on behalf Phe Thi Boyle (the Licensee") for Ruby Darwin (the Premises) for the approval of material alterations required at the premises.

3. The premises has a full liquor licence (80516420) trading 7 days a week, from 11:30 hours to 23:59 hours. The premises trades as a Restaurant with seating at a table and consumption of liquor ancillary to a meal.
4. The substance of the material application before the Commission is to extend the existing liquor licensed premises to incorporate additional floor area which has been altered within their tenancy agreement with the landlord, Paspalis Property Trust. The Licensee is required to utilise part of their existing licensed area for conversion to internal toilet facilities within their current licensed area. The licensee has been granted additional area by the landlord to accommodate the loss of this area within the new tenancy agreement and Restaurant floor plan.
5. The landlord provided correspondence undated at the time of the application informing the Licensee of the requirement of the upgrade to the premises that must be undertaken on the ground floor in order to comply with their lease. The Licensee provided plans to Licensing NT at the time of lodging the application for the material alteration. This was inclusive of the proposed changes to the floor plan required of them as well as the existing liquor licensed area.
6. On 17 December 2018, Licensing NT emailed the licensee advising that upon further assessment of the application that a Public Interest and Community Impact Assessment had not been lodged and requested that this be undertaken and supplied to Licensing NT at their earliest convenience.
7. The Licensee emailed Licensing NT on 20 December 2018 and supplied the required Public Interest Statement and Community Impact Assessment for inclusion in the application.

Publishing of Application and Consultation

8. Within the application the Licensee requested that the matter be referred to the Director-General for consideration that the necessity for publishing was not required pursuant to section 119(3) pertaining to the imposed renovations by the landlord that would affect the premises licensed area resulting in the material alteration application.
9. On 2 November 2018, the Director of Liquor, Gambling & Racing reviewed the application and exercised the discretion under section 119(3) of the Act to not require public notice of this material alteration given the nature of the works and that the change in the licensed area is required under the impending new tenancy agreement.

10. Pursuant to Section 119(5) of the Act, the following stakeholders were invited to provide comment on the application via email dated 17 December 2018:
 - the Chief Executive Officer of the Department of Health;
 - Northern Territory Police, Fire and Emergency Services;
 - Northern Territory Fire and Rescue Service;
 - Darwin City Council.
11. The Department of Health advised on 17 December 2018 that they have “*no adverse comment*” to the application and asked that the Director-General to consider patron and community safety and amenity when determining the application and that the applicant acknowledges the venue is a smoke free venue.
12. The Northern Territory Police advised on 18 December 2018 that they have “*no objections*” in response to the application lodged.
13. The Northern Territory Fire and Rescue Service advised on 20 December 2018 that “*no objections*” in response to the application lodged in line with following conditions:
 - The material alterations are to go through the building approvals process as per the Building Act (NT).
 - Once the material alterations have been completed (occupancy permit issued) NTFRS will reassess maximum patron numbers.

Licensing NT responded via email dated 20 December 2018 confirming receipt of their advice and that Licensing were of the understanding that Paspalis Property Trust were affecting the required Building Permit and Occupancy Permit requirements with the changes for their overall floor plan of the ground level of Paspalis Centrepoint Building in early 2019.

14. On 19 February 2019, Northern Territory Fire and Rescue provided further notification via email to Licensing NT stating that they had issued the premises with a new Maximum Patron Number sticker of 70.
15. The Darwin City Council advised on 20 December 2018 that applications for Material Alterations to Liquor Licences were required to be presented to Council at a Council Meeting and that this application would not be able to be considered until the next Council sitting of 24 January 2019. On 5 February 2019 Licensing NT emailed Darwin City Council with the inclusion of the Certificate of Compliance and Building Permits as supplied by the Applicant on 1 February 2019 and requested a status update on whether the matter had been considered by Council in January 2019 as advised. Darwin City Council advised via email on 5 February 2019 advising that after further review of the requested material alteration that it did not in fact need to go to Council for decision as it did not affect the outside Council owned Alfresco dining area but only the inside premises footprint.

16. A check of the records held at Licensing NT indicate that there is no previous adverse history on the licensee or associated persons.

Public Hearing:

17. Pursuant to section 50 of the Act, the Director-General must refer inter-alia applications under section 119 of the Act to the Commission. Therefore this application must be heard and determined by this Commission.
18. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10 April 2019 and Mr Boyle appeared on behalf of the applicant and Ms Tania Chin represented the Director-General.

Assessment of the Matter

19. There was nothing contentious about this application although the plans submitted with the application were somewhat difficult to interpret, Mr Boyle was able to clarify the alterations that were “proposed”. These changes to the licensed footprint had been imposed upon the Licensee by the landlord which was intending to block off the licensee’s existing access to toilets within the Paspalis Centre. This meant that the licensee had to convert part of its existing restaurant seating area into an internal toilet. In return its landlord was providing additional space from an adjoining tenancy to make up for the licensed area lost through the installation of the toilet.
20. The material alterations do not effectively increase the licensed footprint of the restaurant but will provide better facilities for its patrons who previously had to walk some distance to gain access to the external toilets.
21. The Commission is satisfied that the approval of the material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined, decided to approve the material alterations to the licensee’s licensed premises as sought and as outlined at the start of this Decision Notice.
22. Prior to announcing that the material alteration would be approved, the Commission enquired of Mr Boyle as to when he expected the work on the material alterations would commence. He responded frankly that the alterations had in fact already commenced and been completed in January 2019. Although these works may have been carried out prior to the Commission’s approval at the behest of the landlord, Mr Boyle acknowledged that the Licensee may be in breach of section 119(i) of the Act.

23. There may be mitigating circumstances in relation to the licensee's involvement in the unauthorised alterations due to what appears to be unnecessary bureaucratic delay by some authorities. On the other hand Mr Boyle frankly admitted that he was aware of his obligations under the Act. The Commission refers this matter back to the Director-General to investigate the circumstances surrounding the apparent unauthorised work and to determine whether any and what disciplinary action should be taken against the licensee.

Notice of Rights:

24. 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 vary the conditions of a liquor licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision.

31. 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.

32. 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.

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

RICHARD COATES

Chairperson
Northern Territory Liquor Commission

24 April 2019