

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE: LC2019/088

LICENCE NUMBER: FLL1027

LICENSEE: EFUS Food & Catering Services Pty Ltd

PREMISES: Alfonsino's
19 and 20 / 69 Mitchell Street
DARWIN NT 0800

APPLICANT: EFUS Food & Catering Services Pty Ltd

NOMINEE/S: Benjamin Matthews

OBJECTOR/S: Nil

LEGISLATION: Section 119(2) of the *Liquor Act 1978*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mrs Elizabeth Stephenson (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 3 July 2019

DATE OF DECISION: 3 July 2019

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act 1978* the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the Applicant.
2. Pursuant to section 119 (10) of the Act it is further ordered that the licensee may continue to conduct business on the licensed premises whilst the proposed alteration is being made, provided that no business is conducted from its tenancy known as shop 18/69 Mitchell Street Darwin until such time as a Certificate of Occupancy for the alterations issues and both the Certificate of occupancy and new site plan are lodged with the Director-General of Licensing.

Reasons

Background

3. On 17 March 2019, an application was lodged with the Director-General of Licensing by Susann Regel on behalf of Efus Food & Catering Services Pty Ltd (the licensee) for Alfonsino's (the premises) for the approval of material alteration required at the premises.
4. The premises has a full liquor licence (FLL1027) with the following Trading Hours:

Sunday and Public Holidays 10:00 and Public Holidays 10:00 and 21:59
Monday 12:00 and Monday 23:59
Tuesday 12:00 and Tuesday 23:59
Wednesday 12:00 and Wednesday 23:59
Thursday 12:00 and Thursday 23:59
Friday 12:00 and Friday 23:59
Saturday 12:00 and Saturday 23:59

No Trading on Christmas Day or Good Friday.
5. It is a condition of the licence that the premises shall at all times have the appearance of and shall trade predominantly as a restaurant. Liquor shall only be sold for consumption ancillary to a meal.
6. The Applicant will be extending the existing licensed area to increase their premises taking on tenancy of an additional shop next to the existing licensed premises, which is a space of 8 square metres. This tenancy is known as Shop 18/69 Mitchell Street, Darwin.
7. The additional area will be used to relocate the coffee machine, the original Italian lever machine being of a large size, fridges that store milk, soft drinks, beer and wine. The additional space will also be used to store glasses, an ice machine and a glass washer. Along with using this space for storage it will be used as a preparation area for coffee and drinks including alcoholic drinks.
8. With the extension of this tenancy, this will allow the kitchen area to be increased allowing the staff to work more efficiently.
9. The landlord provided correspondence dated 2 March 2019 confirming the Landlords support for the application and the tenancy of number 18 within the Darwin Transit Centre. At the time of application a lease was currently being drafted for the provisions of the licensed tenancy.

Consultation

10. Within their 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).

11. On 7 May 2019, the A/Deputy Director-General (Operations) reviewed the application and exercised the discretion under Section 119(3) to not require public notice of this material alteration was to increase the store and kitchen area, and not an area which would increase the number of people who will be permitted on the premises (and by extension the amount of liquor that is sold).
12. Pursuant to Section 119(5) of the Act, the following stakeholders were invited to provide comment on the application via email dated 29 May 2019:
 - 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.
13. No Adverse comments were received from those stakeholders.

Compliance History

14. 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

15. The Public Hearing commenced at 12.00am on 3 July 2019. Mr Benjamin Matthews appeared on behalf of the Applicant and Ms Tania Chin as representative for the Director- General of Licensing.

Assessment of the Application

16. The Applicant has grown its business from a modest mobile pizza oven to now incorporate Alfonsino's Restaurant which is a well-run, highly popular food destination in Darwin. Not surprisingly, its business is outgrowing the existing, fairly confined premises, so the Applicant is proposing to relocate some of its plant and stoves out of the kitchen into the adjoining tenancy which has now become available.
17. The excellent food is very much the drawcard for this restaurant and the provision of liquor is ancillary to that. The extension of the licensed footprint is aimed at increasing the space available in the kitchen so that the cooks can operate more efficiently and also extend the menu. Although liquor will be stored in the new area there will be no increase in that area of the premises where liquor may be consumed.
18. The Commission notes that the Act places an onus upon all applicants to satisfy the Commission that the approval of the application meets the public interest and community impact test. With respect to this application, the Commission notes the submissions that have been provided on behalf of the applicant. In fact, despite the limited nature of this application, the Commission notes such submissions were detailed and directly addressed the matters relevant to each of the tests. As a result, the Commission is satisfied that the approval of the material alteration meets the public interest and community impact test.

19. Based on the evidence presented to this Commission, 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.
20. The Commission also finds there is no evidence that would suggest there is likely to be an impact upon law and order, community safety or public amenity by virtue of this material alteration. Further that there is no evidence to suggest that there will be a social impact upon the community to such an extent that it would merit a finding against this application.
21. As earlier noted, the applicant does not intend to do anything to change the manner in which it provides liquor to its customers. The evidence before the Commission is clear that to date the Applicant has provided liquor in a manner which is safe and minimises any adverse impact and has ensured its staff are properly trained to do so. The Applicant has in the past demonstrated a good track record in respect of the operation of its business activities.
22. It is as a result of the matters outlined above that this Commission is, on balance, 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 alteration to the licensee's licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights:

23. 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 section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
24. 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.
25. 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.



RICHARD COATES

Deputy Chairperson
5 July 2019