

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: Application for a liquor licence with restaurant bar authority

REFERENCE: LC2022/039

APPLICANT: 2 Fresh Pty Ltd

PREMISES: Café 21
28 Smith Street
Darwin NT 0800

LEGISLATION: Section 52 of the *Liquor Act 2019*

HEARD BEFORE: Richard Coates (Chairperson)
Elizabeth Stephenson (Health Member)
Christine Hart (Community Member)

DATE OF HEARING: 20 July 2022

DATE OF DECISION: 20 July 2022

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (**the Act**), the Northern Territory Liquor Commission has determined to issue a licence to 2 Fresh Pty Ltd (**the Applicant**).
2. The licence will be issued with a restaurant bar authority subject to those conditions set out in Part 4 Division 1 and 16 of the *Liquor Regulations 2019* (**the Regulations**).
3. The licence will be subject to the further special condition:

“Liquor supplied to patrons in the alfresco area of the premises (situated in the Smith Street Mall) must be served by wait staff and consumed in glasses.”
4. The licence will be issued immediately following the publication of this Decision Notice however, the Applicant shall not be permitted to sell or supply liquor pursuant to the new authority until such time as it surrenders liquor licence 80518000.

REASONS

THE APPLICATION

5. On 9 June 2022, an application was lodged by Mr Brian Barnes, on behalf of 2 Fresh Pty Ltd, seeking a new liquor licence with a restaurant bar authority for the premises known as Café 21 located at 28 Smith Street, Darwin.
6. The Applicant is seeking a licence with the proposed liquor trading hours of:
10:00 hours to 24:00 hours seven (7) days a week
7. 2 Fresh Pty Ltd currently holds liquor licence 80518000 for the premises and is seeking to change from the current authority being a restaurant authority with liquor trading hours of 11:30 to 22:00 each day.
8. The hours sought for the restaurant bar authority are in line with the maximum prescribed for these authorities by regulations 82(1) of the Regulations. Although the premises are currently not open during the evening, the Applicant wants the flexibility to extend its trading hours.
9. The City of Darwin has approved an upgrade to the alfresco area used by the Applicant in the Smith Street Mall (**the Mall**). The Applicant wants the option of being able to provide tourists and local customers with an alcoholic beverage without the requirement that they also consume a meal.
10. If a licence with a restaurant bar authority is approved, the Applicant will surrender its existing liquor licence 80518000 and the attached restaurant authority.
11. The Applicant is a company registered through ASIC where Mr Barnes is appointed as Director and Secretary. Fifty percent of the shares are owned by Mr Barnes and 50% are owned by Ms Jenny Um. The Director has advised that both shareholders are regarded as fit and proper persons through their existing licence holdings and that no further probity examination was deemed necessary.
12. The Applicant has provided the following documents in support of the application:
 - Cover Page
 - Community Impact Assessment and Public Interest Criteria
 - Draft Public Notice
 - Food and Beverage Menu
 - Accountant's Letter
 - Lease and Landlord permission to hold liquor licence at premises
 - Copy of proposed liquor licenced area site plan

- City of Darwin – Permit to Occupy Dining Area (draft copy) and permission to hold liquor licence

PUBLICATION AND CONSULTATION

13. The application was published in the NT News on Saturday, 18 June 2022 and published on the Directors website applications page for the required 14 days advertising period.
14. The Applicant displayed the required “green sign” at the premises.
15. Copies of the notices, photographs of the green sign erected at the premises and statement of display have been retained by Licensing Officers.
16. As a result of publication of the application, there were no objections received from any members of the public.

CONSULTATION

17. The following stakeholders were notified of the application in accordance with section 56(4) of the Act and invited to provide comment on the application:
 - The Chief Executive of the Department of Health;
 - Northern Territory Police;
 - CEO, City of Darwin.
18. The City of Darwin replied via email dated 5 July 2022, stating they have no objections to the application and have approved the applicant’s application for an outdoor dining permit.
19. There were no adverse comments received from any of the stakeholders.
20. The Applicant and/or the nominee have not been the subject of any disciplinary proceedings or similar since the date of the initial Commission hearing granting the liquor licence.

THE REFERRAL

21. The Application was referred to the Commission on 11 July 2022.

THE HEARING

22. On 13 July 2022, the Commission wrote to the Applicant advising that the matter would be dealt with by public hearing on 20 July 2022. On that date, the Applicant was represented by Mr Barnes and also present was Ms Um. Mr Jeff Paull appeared on behalf of the Director.
23. The Director’s referral brief was admitted into evidence as Exhibit 1 and both Mr Barnes and Ms Um gave additional evidence. The Commission is grateful for the assistance provided by all those present at the hearing.

ASSESSMENT OF THE APPLICATION

24. Pursuant to section 23 of the Act, the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No submissions were made to the Commission to this effect.
25. In accordance with section 59 of the Act, the Commission has considered:
 - (a) The applicant's affidavit required by section 54;
 - (b) The suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
 - (c) The financial stability and business reputation of the applicant body corporate;
 - (d) The general reputation and character of the secretary and executive officers of the applicant body corporate;
 - (e) Whether the applicant is a fit and proper person to hold a licence; and
 - (f) Whether the nominees designated by the applicant are fit and proper persons to hold a licence.
26. In accordance with section 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

THE APPLICANT

27. The Commission finds that the Applicant complies with section 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
28. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

THE APPLICANT'S ASSOCIATIONS

29. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the Applicant has complied with the disclosure requirements of section 54.

THE SUITABILITY OF THE APPLICANT'S PREMISES

30. The premises have been operating as a licensed restaurant/café serving a variety of snacks as well as main meals such as pastas, schnitzels and desserts for several years. It has a limited range of wines and beer that can be purchased

by diners. By arrangement with the Darwin City Council the Applicant has exclusive use of an outside dining area within the Darwin mall. The Applicant conceded that there was occasional trouble with itinerants “humberging” patrons that were seated in the alfresco area but it was dealing with this problem by ensuring a greater presence of staff in the Mall. The Commission is satisfied that, provided the Applicant maintains its current practices in relation to oversight of the alfresco area , that these premises are suitable to be used as a restaurant bar.

THE FINANCIAL STABILITY, GENERAL REPUTATION AND CHARACTER OF THE BODY CORPORATE

31. The Commission notes that the Applicant has established a strong business reputation and already holds a licence. Furthermore no issues have been raised by the Director in relation to the Applicant’s compliance with its obligations under its existing licence. The Commission assesses the Applicant be a fit and proper person to hold a restaurant bar licence.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

32. To determine whether the issue of the licence is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:
- (a) Minimising the harm or ill health caused to people, or a group of people, by the consumption of liquor;
 - (b) Ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
 - (c) Safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
 - (d) Protecting the safety, health and welfare of people who use licensed premises;
 - (e) Increasing cultural, recreational, employment or tourism benefits for the local community area;
 - (f) Promoting compliance with this Act and other relevant laws of the Territory;
 - (g) Ensuring each person involved in the business conducted at licensed premises receives training suitable to the person’s role in the business;
 - (h) Preventing the giving of credit in sales of liquor to people;
 - (i) Preventing practices that encourage irresponsible drinking;
 - (j) Reducing or limiting increases in anti-social behaviour.

33. Section 51 of the Act clearly imposes an onus on an applicant to satisfy the Commission that issuing the licence or authority, is in the public interest and will not have a significant adverse impact on the community. Section 50 (3) of the Act also provides that “The mere addition of a new licence or licence premises in a community is not taken to be a benefit to the community.”
34. During the course of this hearing, the Commission reminded the Applicant of these provisions and noted what it regarded as a wholly inadequate public interest and community impact assessment statement. The only real justification advanced in respect of the new licence application was the following entry in the standard departmental form:

“In fact, we only see positive effects coming from the change in licence, especially given the mall sees a lot of tourists throughout the year, many who just want to sit and relax with a glass of wine or beer. The change in licence, along with our planned upgrade of alfresco area will add more vibrancy to that end of the mall which in turn will be positive for businesses in the vicinity.”
35. In the Commission’s view, such a bland statement goes nowhere near to meeting the onus that the Act places on an applicant. Mr Paull was asked why licensing officers had not alerted the Applicant to the fact that much more would be required. He responded to the effect that he did suggest that a copy of the menu be included within the application however, it was ultimately a matter for the Applicant as to how it framed its application.
36. The Commission told the Applicant that it was not suggesting that it should have engaged a lawyer or specialist consultant to assist it with the application however, it does have an expectation that applicants will submit documentation that complies with the requirements of the Act and clearly advances the merits of the proposed licence or new authority. The Commission has observed that since the introduction of time limits for the processing of licence applications in the new Act that applicants should not expect the level of guidance and assistance from departmental officers that might have been provided previously.
37. On being confronted with the real prospect of the application being dismissed Mr Barnes and Ms Um set about expanding on the merits of the proposed new licence. Ms Um explained that her family had been involved in the Darwin hospitality industry for over 40 years. Their restaurant in the Mall had suffered through the Covid pandemic as well as from the general downturn in activity in the CBD. They currently close after lunch but were hopeful that if they could offer drinks without the requirement of a meal, the premises could become attractive to city workers who wanted to gather with friends for a wine or beer after work. They were planning to offer pizza and other snack foods to encourage this new custom. They ultimately hoped that if this proved successful, patrons may be prepared to stay on for the evening mail which would justify the restaurant remaining open for a dinner service.
38. The Applicant has significantly improved the ambience of the alfresco area in the Mall. Ms Um gave evidence that they received regular requests from elderly tourists to have a beer or glass of wine while they relaxed in what is now a pleasant outdoor area. When asked why these people could not attend one of

the nearby licensed bars, Ms Um said that her premises were a more low-key relaxed option for that type of clientele. She conceded that there was a problem with itinerants in the Mall but given her long time experience within this industry in Darwin she knew how to deal with people respectfully and effectively. She agreed with the Commission that the licensee would be prepared to abide by condition that all liquor supplied in the alfresco area would be served by wait staff and that all liquor must be consumed from a glass.

39. Having heard this further evidence from the Applicant, the Commission is persuaded that it has a realistic commitment to not only improving the quality of the hospitality service it currently provides but to also making a contribution to revitalising this important part of the city centre. Having also considered all the matters required by section 49 (2) of the Act, the Commission is satisfied that it is in the public interest to issue the license and authority sought.

WHETHER THE ISSUE OF THE LICENCE WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON THE COMMUNITY

40. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must have consider the following matters set out at section 49(3) of the Act:
- (a) The risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
 - (b) The geographic area that would be affected;
 - (c) The risk of harm from the excessive or inappropriate consumption of liquor;
 - (d) The people or community who would be affected;
 - (e) The effect on culture, recreation, employment and tourism;
 - (f) The effect on social amenities and public health;
 - (g) The ratio of existing liquor licences and authorities in the community to the population of the community;
 - (h) The effect of the volume of liquor sales on the community;
 - (i) The community impact assessment guidelines issued under section 50.

41. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50, which are as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any 'at-risk' groups or sub-communities within the locality? This may include – children and young people;</p> <ul style="list-style-type: none"> • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • Migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to.

	<p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales). The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

42. As previously indicated, the Applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the Applicant must still satisfy this Commission of those matters.
43. Having considered all of these matters, the Commission is satisfied, in accordance with section 49 of the Act, that:
 - (a) The Applicant is a fit and proper person; and
 - (b) Issuing the licence or authority is in the public interest; and
 - (c) The licence or authority will not have a significant adverse impact on the community.
44. At the conclusion of the hearing, the Applicant was advised that its application would be approved.

NOTICE OF RIGHTS

45. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
46. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Applicant and Director.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
29 July 2022

On behalf of Commissioners Coates, Stephenson and Hart