

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE AND AUTHORITIES

REFERENCE: LC2021/029

APPLICANT: Fleurieu Holdings Pty Ltd

PREMISES: Ruby G's Canteen
Shop 14/69 Mitchell Street
DARWIN NT 0801

LEGISLATION: Section 47 and 52 of the *Liquor Act 2019*

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 20 August and 30 September 2021

DATE OF DECISION: 12 October 2021

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (NT) (the Act) the Northern Territory Liquor Commission (the Commission) has determined to refuse to issue a licence to Fleurieu Holdings Pty Ltd (the Applicant).

REASONS

BACKGROUND
THE APPLICATION

2. An application was lodged by Mr Shane Ortis on behalf of Fleurieu Holdings Pty Ltd (the Applicant) seeking a new liquor licence with a Restaurant Bar authority and Late-Night authority. Payment of the application fee was made at the time of lodgement.
3. The Applicant is seeking a licence with proposed trading hours of:
 - a. 10:00 hours to 24:00 hours Thursday to Sunday
 - b. 10:00 hours to 02:00 hours Friday and Saturday
 - c. All other trading conditions as per the *Liquor Act 2019* (the Act) and *Liquor Regulations 2019* (the Regulations).

4. The Applicant is Fleurieu Holdings Pty Ltd. This company is registered with ASIC where Mr Shane Ortis and Ms Melissa Pritchard is listed as Directors and Mr Ortis listed as Secretary. This company has 20 shares all of which are owned by Mr Ortis and Ms Pritchard.
5. In relation to both Mr Ortis and Ms Pritchard, each have provided the following probity documents:
 - a. Copy of photo identification by way of NT Drivers Licence
 - a. Copy of National Police Certificate based on name and fingerprint check
 - b. Resume
 - c. Two personal and two professional references
 - d. Copy of RSA Certificate
6. Neither Mr Ortis or Ms Pritchard have held a liquor licence in the NT and therefore they are not known to the Director and have no compliance history. It is proposed that both Mr Ortis and Ms Pritchard will be joint nominees. Both Mr Ortis and Ms Pritchard have an extensive history in hospitality and other licensed venues interstate and overseas.
7. The application was accompanied by;
 - a. Affidavit in accordance with Section 54 of the Act
 - b. Declaration of Associates
 - c. Financial Report
 - d. Copy of lease of the premises
 - e. Community Impact Assessment Summary
 - f. Amended Community Impact Assessment Summary
 - g. Operational manual
 - h. Copy of proposed liquor licensed area
 - i. Registration of food business
 - j. "Business Plan and Vision"
 - k. Various photographs
 - l. Notice from NT Fire and Rescue Services.

PUBLICATION AND CONSULTATION

8. The application was published by way of two notices in the NT News on the 23 June 2021 and 26 June 2021. The application was also published on the Director's webpage during the advertising period. A green advertising sign was erected at the premises for the course of the advertising period.

9. During this period there was a COVID-19 “lockdown”. As a result, the Senior Director of Liquor extended the closing date for objections by one week to 2 August 2021. No objections were received.
10. 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
 - CEO, City of Darwin.
11. Being a new liquor licence application, the NT Fire & Rescue Service (NTFRS) was also notified.
12. The Department of Health replied via email dated 6 July 2021 stating it had no adverse comments.
13. The NT Police replied via email dated 8 July 2021 stating it had no objection.
14. The City of Darwin replied via email dated 19 July 2021 stating it had “not received comment from Elected Members or City of Darwin management” and therefore “supports due process of the Liquor Commission”.
15. The NTFRS via its notice dated 26 August 2021 stated the “site/premises complies with the requirements of this Department”.

COMPLIANCE HISTORY

16. As earlier noted, the Applicant has never held a licence before in the Northern Territory and has no compliance history.

THE REFERRAL

17. On 5 August 2021, pursuant to section 59 of the Act, the Director referred this application to the Commission. On 6 August 2021, the Applicant was notified that the matter was listed for public hearing on 20 August 2021.

THE HEARING

18. 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.
19. On 20 August 2021, the application proceeded as a public hearing. Mr Richardson of De Silva Hebron appeared on behalf of the Applicant accompanied by Mr Ortis. Mr Verinder appeared for the Director. The Commission thanks them all for their attendance and assistance.

20. The Director's referral brief was tendered into evidence. On the first date of the hearing, the Commission identified to the Applicant a number of matters that had not been addressed sufficiently. The Applicant sought an adjournment. As a result, the matter was adjourned for further hearing to 30 September 2021, which was the next available date suitable to the Commission and the Applicant.
21. On the 30 September 2021, a number of additional documents were tendered into evidence on behalf of the Applicant. These were exhibited and formed part of the evidence the Commission considered in determining the application.
22. Both Mr Ortis and Ms Pritchard each have long and extensive histories in the hospitality industry both nationally and internationally. They operate the premises known as Ruby Gs Canteen and Bakery on Tang Street and have been operating that since March 2016 initially starting at a local bowls club, the markets and then to their Tang Street premises. They have been at the current premises on Mitchell Street under their current lease since 2019.
23. The Applicant stated that it:

“... wishes to establish the venue as a full-service tapas-style restaurant with a focus on quality ingredients and premium alcohol that pairs with the food. The concept of the venue is to provide a late-night restaurant that allows patrons to engage with a wide range of small dishes offered to diversify and expand their palates. The venue will be primarily a place for patrons to have a quality meal in the CBD after the hours of 9:30pm – 10:00pm, which is when the other restaurants in the area have ceased serving food and begun to transition to more bar/nightclub style entertainment”.
24. The Applicant:

“... intends to fill a "gap in the market" by providing an alternative to the usual fast-food offerings in the CBD for patrons looking to have a meal later in the night, especially for those patrons who have attended shows at the Darwin Entertainment Centre. The Applicant does not intend to market or promote the premises as a venue where irresponsible drinking practices will take place and all patrons will be strongly encouraged to indulge in the unique menu offered at the Premises.”
25. The Applicant further stated:

“... there are currently no restaurants that offer full food service beyond 9:30pm – 10:00pm in the Darwin CBD. The only hospitality venues open beyond that time are fast-food style establishments and the bars/nightclubs along Mitchell Street. The Applicant's intention is to provide a late-night "supper club" style venue that offers unique menu options, made with quality ingredients. It is intended for patrons who have seen shows at the Darwin Entertainment Centre, those may have arrived in the CBD on a late flight, or finished work for the evening and to offer the Darwin locals a full-service restaurant that trades beyond anything currently offered.”

ASSESSMENT OF THE APPLICATION

26. 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.
27. 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

28. 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.
29. The Applicant has provided appropriate documentation regarding its operations, activities and financial circumstances.
30. 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

31. The Commission was not presented with any evidence to suggest these premises have previously operated as licensed premises. Whilst the Applicant stated on numerous occasions that it did not intend to open yet another public bar on Mitchell Street, Darwin's busiest late-night strip, the Commission was not satisfied by such statements. This is of concern to the Commission given such close proximity to hostels, hotels and private accommodation of which there are many in the immediate area.
32. Whilst the Applicant states it intends to open a "supper club" style venue which "will provide something not previously offered to the community", the Commission is not satisfied that there would be any increase in benefit to the community of such a supper club. There was no evidence provided to the Commission that suggested, there was a market for such premises and the Commission is well aware that many restaurants in fact shut their kitchens for the very reason that there is insufficient clientele and therefore unviable for it to continue to operate a full kitchen late at night and instead

they continue to operate as a bar. Without evidence to suggest the contrary, the Commission is not satisfied that these premises would not likewise shut their own kitchen and become yet another bar in an already overserviced area of the CBD that continues to have challenges with harm or ill health caused by the consumption of liquor.

33. The Commission notes that there is indeed no suggestion in the evidence that the Applicant will do anything more than stock liquor at its premises if this licence were to be granted. There are no plans for improvements at the premises. Indeed, no plans were given at all to describe how it was proposed these premises would be established differently from how they already are other than alcohol would be sold. The Commission was also given no evidence whatsoever in relation to CCTV system at the premises which is significant given the location.
34. There is not even a dedicated toilet for the premises. This would result in patrons leaving the premises to travel around several other venues in order to access the toilets, which they would access via a key that they would obtain from staff. The Commission considers it highly likely that this significantly increases the likelihood of patrons leaving the premises with liquor and thus increase the risk of harm. Further, the entry to these toilets is not within eyesight of the entry to the premises but located some distance away. It is difficult to see how the Applicant will be able to ensure that the toilets are kept in a hygienic condition and/or are for its patrons (given its location) as part of its obligations for their health and safety.
35. In addition, although referenced in the materials, when sought by the Commission, the Applicant admitted it had not provided any evidence of "internal policies and security strategies" to address the criteria to minimise harm.
36. As a result, the Commission is not satisfied that these premises are suitable for the supply and consumption of liquor in the manner set out in the application. In fact, the Commission finds that very little thought has been put into this application whatsoever.

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

37. The Commission notes that the Applicant has been incorporated for several years and has established a strong business reputation. In addition, both of the Applicant's principals have a good general business reputation, are of good character, and are financially stable.
38. The Commission assesses the Applicant to be a fit and proper person to hold a licence.
39. The Commission notes that both Mr Ortis and Ms Pritchard hold current RSA certification and based on their history within the hospitality industry are assessed to be a fit and proper person to be joint licence nominees.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

40. 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.

41. Having considered each of these objectives and having regard to the location of these premises on Mitchell Street, well known as one of Darwin's most high-risk locations when it comes to public health and safety, and also safeguarding public order, the Commission is not satisfied that it is in the public interest to issue the licence and authorities sought.
42. The Commission is also not satisfied on the evidence that the Applicant has given any proper consideration to the objective of ensuring liquor is not just "sold, supplied, served on or in licensed premises in a responsible manner" but that it also must be "**consumed** on or in licensed premises in a responsible manner". No thought appears to have been given by the Applicant to this objective and the Commission has already noted its concerns of the risk of patrons leaving the premises with liquor given the regular movement that would be required to enable patrons to utilise the toilets separate to the premises.
43. The Commission has already noted its concerns relating to protecting the safety and health of its patrons and does not propose to repeat these here. The Commission is not satisfied the Applicant has properly addressed this objective.
44. The Commission is also not satisfied on the evidence provided that these premises will increase the cultural, recreational, employment or tourism benefits for the local community area.
45. The Commission also does not consider that granting the licence sought would advance the objective of reducing or limiting increases in anti-social behaviour particularly given the location of these premises.

46. Having found that it is not satisfied that it would be in the public interest for a licence to issue a restaurant bar authority licence, the Commission is not satisfied that it would be in the public interest to issue a liquor licence to the Applicant.
47. It is noted that during the course of the hearing the Applicant stated that it would be content to have a restaurant authority licence if the Commission were not satisfied to grant a restaurant bar authority licence. This was carefully considered by the Commission, however on the state of the evidence presently before the Commission it is clear that the Applicant is not proposing a restaurant in its "vision" for the premises but in fact a restaurant bar. The Commission is concerned that this was only suggested by the Applicant as an attempt to gain a licence rather than any real consideration of what was being proposed.
48. Given the evidence before the Commission, a restaurant licence would be refused for the same reasons concerning the inadequate consideration of the matters to be addressed by any applicant particularly for premises in the location proposed here.

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

49. 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 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.
50. 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 –</p> <ul style="list-style-type: none"> • children and young people; • 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.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p>

This includes information about the density of licensed premises within the community area.	This could also include traffic and pedestrian impact and any plans developed to address these potential issues.
Volume	<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).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<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?

51. 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.
52. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state however that:

"...the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits".

53. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.
54. In considering these issues, it is also important to keep in mind that the onus is on the Applicant. With respect to this application it is particularly important to recall that section 50(3) states very clearly that:
- "The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community".
55. In terms of this applicaiton the Commission considers this to be particularly relevant. The Commission is not satisfied on the evidence before it that the Applicant has properly proposed anything other than the additions of a new licence or licensed premises.
56. The Commission considers that the issue of the licence and authorities is unlikely to enhance the amenity of this area and that it will not have any benefit to the community. Accordingly the Commission is obliged to refuse to issue the licence.

EXTENSION OF TIME

57. Section 62 of the Act requires the Commission to make its decision in this matter by 30 August 2021, the date 28 days after the expiration of the objection period that commenced with public notification of the application. It was impracticable for the Commission to comply with this requirement, as is often the case, particularly with the applicaiton for an adjournment by the Applicant. Section 318 of the Act permits the Commission to extend time for the making of this decision. The Commission has determined to extend time to 11 October 2021.

NOTICE OF RIGHTS

58. 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* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
59. 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.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
12 October 2021

On behalf of Commissioners Truman, Dwyer, and Corcoran