

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: APPLICATION FOR LIQUOR LICENCE AND AUTHORITIES

REFERENCE: LC2022/01

APPLICANT: Gillian Margaret Russell and Sally-Anne Dalglish trading as Jag Rich

PREMISES: The Meeting Place
Katherine Town Square
Part Lot 509, 20 Katherine Terrace
KATHERINE NT 0850

LEGISLATION: Part 3 Division 4 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 24 January 2022

DATE OF DECISION: 24 January 2022

Decision

1. On 24 January 2022 the Northern Territory Liquor Commission (**the Commission**) issued the following decision notice:
 - a. In accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**) the Commission determines to issue a licence to Gillian Margaret Russell and Sally-Anne Dalglish trading as Jag Rich (**the applicant**).
 - b. The Commission approves the appointment of Gillian Margaret Russell and Sally-Anne Dalglish as the joint licence nominees.
 - c. The licence will be issued with a small bar authority authorising the sale of liquor at the licensed premises. The licence will also be issued with a catering authority.

- d. The conditions of the licence will be those authority conditions set out in Part 4 Division 1, Division 17 and Division 5 of the *Liquor Regulations 2019* (**the Regulations**).
 - e. The licensed premises for the small bar authority is The Meeting Place situated at Katherine Town Square and designated by the area bounded in red on page 56 of the plan tendered at the hearing of the application (**the licensed premises**).
 - f. The following additional condition is fixed: trading hours for the small bar authority are Thursdays, Fridays and Saturdays from 17:00 to 21:00 hours.
 - g. The licence will be issued immediately following the publication of this decision notice.
2. The Commission determined to extend time for the making of its decision to 24 January 2022, for reasons set out in the decision notice.
 3. In the decision notice, the Commission indicated that it would publish reasons for its decision to issue a liquor licence. These are those reasons.

Background

4. The Katherine Town Square, a parcel of land owned by the Katherine Town Council in the town's Central Business District, includes "The Meeting Place", an alfresco café constructed in 2020 as part of the Council's Katherine Town Square Revitalisation Project, which is supported by the Northern Territory Government.
5. In October 2021, the café proprietors applied for a liquor licence to authorise the sale and consumption of liquor at The Meeting Place.

The Application

6. The applicant is a partnership comprising local residents Ms Gillian Russell and Ms Sally-Anne Dalglish. They applied for a liquor licence with a small bar authority and a catering authority. The primary concept was to provide boutique tapas and drinks bar service in a relaxing atmosphere predominantly for local office workers to socialise after work. In addition, the applicant plans to work in partnership with the Katherine Town Council to cater for events and functions at the Katherine Town Square.

Consultation

7. As required by section 57 of the Act, notices of the application was published in the Katherine Times on 10 and 17 November 2021, as well as on the Northern Territory Department of Industry, Tourism and Trade online page titled "Advertised liquor licence applications".

8. In accordance with section 56 of the Act, notification was given to Department of Health (**DOH**), NT Police and the Katherine Town Council, as well as the Northern Territory Fire and Rescue Service (**NTFRS**).
9. The Director of Liquor Licensing (**the Director**) informed the Commission that:
 - DOH raised a concern about the proposed trading hours, as will be discussed below.
 - NT Police did not provide a response.
 - The Katherine Town Council supported the application.
 - The NTFRS indicated that it had no objections.
10. No objections were received to the application.

The licensee's record of compliance

11. During the last three months of 2021, the applicant was granted special event authority licences to trade at the premises on five occasions on a Friday from 17:00 to 21:00. In addition, Ms Russell, one of the members of the applicant partnership, held a liquor licence from 2015 to 2020 for The Finch Café, another Katherine eatery. The Director informed the Commission that no compliance issues had been identified in the course of any of these activities.

The referral

12. On 5 January 2022, pursuant to section 59 of the Act, the Director referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 24 January 2022, the earliest date convenient to the Commission and the parties.
13. The Director provided to the Commission a brief including the following documents:
 - a. Application for liquor licence;
 - b. Affidavit and Declaration of Associates pursuant to section 54 of the Act;
 - c. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
 - d. Memorandum of Understanding between applicant and Katherine Town Council concerning use of land at Katherine Town Square;
 - e. Partnership agreement between Gillian Russell and Sally-Anne Dalglish;
 - f. ASIC registration of business name;
 - g. Identification and probity documents for Gillian Russell and Sally-Anne Dalglish;
 - h. Financial records;
 - i. Registration of Food Business Certificate;
 - j. Stakeholder correspondence.

The hearing

14. On 24 January 2022 the application proceeded as a public hearing. Ms Russell and Ms Dalglish appeared on behalf of the applicant. Mr Verinder appeared for the Director. The Commission thanks them all for their attendance and assistance.

15. The brief was tendered and admitted into evidence without objection.

Assessment of the application

16. 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, general reputation and character of the applicant;
- d. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;

17. 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

18. The applicant partners have provided appropriate documentation regarding their qualifications, experience, character, financial circumstances and plans. The Commission assesses the applicant partners to be fit and proper persons to hold a licence.

The applicant's associates

19. 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.

20. The Commission does not consider that it is appropriate to consider whether any associate of the applicant is a fit and proper person to be an associate of the applicant.

Suitability of the premises

21. The Commission was provided with plans and photographs of the proposed premises, which the Commission assesses as suitable for the supply and consumption of liquor in the manner set out in the application.

22. There is currently no obvious physical demarcation of the boundary of the premises, which are situated in a section of a public plaza. The applicants explained that the area is bounded by the placement of tables and the location of permanent lighting fixtures in the Katherine Town Square. The Commission encourages the licensee to supplement this arrangement with a soft barrier such as rope, strings of lights or planter boxes to delineate the licence area during hours of operation. The Commission considers that it is the responsibility of licensees to ensure that patrons are on notice as to where they are permitted, and not permitted, to consume liquor purchased at licensed premises.

Whether the licensee's nominee is a fit and proper person to hold a licence

23. The applicant has nominated Ms Russell and Ms Dalglish as the joint licence nominees. They both hold current RSA certification and have provided appropriate documentation of their reputation, character and work history, and the Commission assesses them to be fit and proper persons to hold the licence.

Public notice and consultation

24. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

Trading hours

25. As noted above, the Department of Health raised a concern about the proposed trading hours. This was entirely appropriate, as the application was rather unclear on this issue, as can be seen from this passage from the material provided by the applicants in support of the application:

The lights at night in the Katherine CBD are an attractive addition to the town centre and with drinks on a Friday night they can be enjoyed by the local office workers before they head home or out to dinner in one of the local restaurants.

The proposed hours of the Boutique Bar, are from 5pm until 9pm on a Friday evening.

This application is for a Small Bar Authority (Monday to Sunday 10am until 12pm) and a Catering Authority (hours of operation 11.30 to 24.00) as the Katherine Town Council regularly have events in the Town Square and this provides the applicant with the opportunity to remain open and work in partnership with the Katherine Town Council.

26. In the course of the hearing, the applicant clarified that it was not seeking to trade every day from 10:00 to midnight, but only for a four hour "after work" period. Ultimately, it requested the Commission to approve that trading be permitted from 17:00 to 21:00 on three days a week, a course that was supported by Mr Verinder on behalf of the Director. Although initially the licence will only operate on Friday

evenings, if The Meeting Place is successful, this would allow a modest expansion of the business.

27. The Commission would not have been inclined to grant the applicant a small bar authority to trade seven days a week from 10:00 to midnight. However, the Commission accepts that the considerably more restricted hours sought by the applicant are appropriate in all the circumstances.

The catering authority

28. Section 47(1)(m) of the Act provides that a catering authority authorises the sale, supply and service of liquor to patrons, for consumption, in conjunction with food being catered by the licensee, on or in premises with the consent of the owner or occupier of the premises.

29. The issue of a catering authority authorises the applicant to sell, supply and serve liquor outside the area of The Meeting Place, subject to the consent of the owner or occupier of the area where the liquor is supplied and served. The Commission anticipates that the applicants will utilise the catering authority when there are larger scale events being conducted in the entire Katherine Town Square.

30. On such occasions, the applicants will be permitted to supply and serve liquor only to patrons who are also being supplied and served with food catered for by the applicants. However, this does not preclude other persons from also supplying and selling food at such events. The hours applicable to the catering authority are those prescribed by Regulation 34 of the Regulations, namely from 11:30 to 24:00.

Whether issuing the licence is in the public interest

31. To determine whether the issue of the license 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.

32. Having considered each of these objectives, and having particular regard to the limited hours of trade, the recreational and cultural benefits, and the “boutique bar” business model, which the Commission considers to be a low risk form of trading, the Commission is satisfied that it is in the public interest to issue the licence.

Whether the issue of the licence will have a significant adverse impact on the community

33. 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 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;
- (j) any other matter prescribed by regulation.

34. The Commission notes there are no such “other” matters prescribed by regulation.

35. 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.

36. The Commission has considered these matters and, particularly having regard to the fact that there were no objections to this application, which has been generally supported by stakeholders, the Commission is satisfied that the issue of the licence will not have a significant adverse impact on the community.

37. Having considered all of these matters, the Commission is satisfied, in accordance with section 49 of the Act, that:

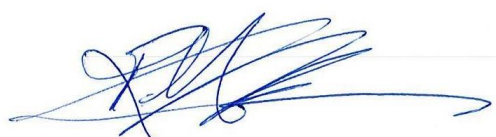
- a. the applicant is a fit and proper person; and
- b. issuing the licence or authority is in the public interest; and
- c. the licence or authority will not have a significant adverse impact on the community.

The objects of the Act

38. Finally, section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.

39. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

40. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of these reasons for decision.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
7 February 2022

On behalf of Commissioners Goldflam, Dwyer and McFarland