

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: APPLICATION FOR A LIQUOR LICENCE AND AUTHORITY

REFERENCE: LC2022/034

APPLICANT: Rakno Pty Ltd

PREMISES: Sassyonki
Shop 9 and 10
27 The Mall
DARWIN NT 0800

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

HEARD BEFORE: Richard Coates (Chairperson)
Bernard Dwyer (Health Member)
Christine Hart (Community Member)

DATE OF HEARING: 16 June 2022

DATE OF DECISION: 5 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 Rakno Pty Ltd (**the Applicant**) for premises known as Sassyonki, located at 9 and 10, 27 The Mall, Darwin City.
2. The licence will be issued with a small bar authority subject to those conditions set out in Part 4 Division 1 and 17 of the *Liquor Regulations 2019* (**the Regulations**) together with a catering authority on the terms and conditions prescribed by Part 4 Division 1 and 5 of the Regulations.
3. The licence will be issued immediately following the publication of this decision notice however, the licensee shall not be permitted to sell or supply liquor from the premises until such time as it has provided written proof to the satisfaction of the Director of Licensing (**the Director**) that it has obtained a certificate of occupancy and all the necessary safety approvals in respect of the premises.

REASONS

BACKGROUND

THE APPLICATION

4. On 16 March 2022, an application was lodged by Mr Onkar Sharma on behalf of the Applicant seeking the issue of a new liquor licence with a small bar and catering authority for premises known as Sassyonki, located at 9 and 10, 27 The Mall, Darwin City.

5. The Applicant's proposal is for the issue of a new liquor licence with a small bar and catering authority.

The small bar authority proposed liquor trading hours are:

- 10:00 hours to 24:00 hours, seven (7) days a week

The catering authority proposed liquor trading hours are:

- 11:30 hours to 24:00 hours, seven (7) days a week

6. The hours sought for the small bar and catering authority are in line with the maximum prescribed for these authorities by regulations 85(1) and 34 of the Regulations respectively.

7. An affidavit has been supplied by Onkar Sharma, outlining persons or entities of influence and benefit.

8. The proposed licensee is Rakno Pty Ltd. This is a company registered through ASIC where Onkar Sharma is sole Director.

9. The company has 10 shares and all shares are owned by Onkar Sharma. A copy of the company structure was attached to the application along with copy of registered business name.

10. In relation to the probity requirements, Onkar Sharma has provided the following:

- Photo identification - NT Drivers licence
- National Police Certificate
- Resume
- One personal and one professional reference
- RSA Certificate and NT RSA Refresher Course Certificate.

11. It is proposed that Onkar Sharma will be the nominee on this licence.

12. The Applicant has provided the following documents in support of the application:
 - Declaration of Associates
 - Community Impact Assessment and Public Interest Criteria
 - Accountants Letter, Assets and Liabilities Report
 - Lease and Landlord permission to hold liquor licence at premises
 - Registration of Food Business
 - Copy of proposed liquor licenced area site plan and photos.

PUBLICATION AND CONSULTATION

13. The application was published in the NT News on Saturday, 21 May 2022 and published on the Director's website applications page for the required 14 days advertising period.
14. The Applicant displayed the required "green sign" at the premises.
15. As a result of publication of the application, there were no objections received from any members of the public.
16. 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; and
 - CEO, City of Darwin.
17. Northern Territory Fire and Rescue Service (NTF&RS) were also notified of the application as part of the Director's investigations into the application due to this being a new venue.
18. The Department of Health replied via email that they have no objections to the application.
19. On 27 January 2022, Police advised via email that they support the application.
20. The NTF&RS replied via email dated 30 May 2022, stating a number of fire safety maintenance issues and unapproved building works have been identified. Once compliance has been reached, NTF&RS will support the application and advise Licensing NT.
21. The City of Darwin had not provided a response at the time of referral.

22. The Applicant has never held a liquor licence in the NT before. Shop 9 of these premises was previously licensed and known as Pearl but the licence (liquor licence number 80518698) was cancelled in 2020.
23. This application was referred to the Commission by the Director on 6 June 2022.

THE HEARING

24. On 8 June 2022, the Commission notified the Applicant that this matter would proceed by way of public hearing on 16 June 2022.
25. On that date, Mr Onkar Sharma appeared for the Applicant and Mr Jeff Paull appeared for the Director. The Commission is grateful for the assistance of all those involved in the hearing.
26. The Director's referral brief was tendered into evidence and Mr Paull apologised for not having included within the brief the proposed menu and wine list for the business which had been initially mislaid but was also tendered at the hearing.

ASSESSMENT OF THE APPLICATION

27. 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.
28. 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.

THE APPLICANT

29. 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.

30. At Attachment G of the application was a letter from the Applicant's accountant which stated inter alia:
- "Due to the limited trading history and limited financial data we are unable to express an opinion regarding financial profitability".
31. Mr Sharma also provided a document entitled "Balance Sheet Rakno P/L as at 31 March 2022" which purported to show that the Applicant held net assets of \$36,040.32. However, during questioning from Commissioners', Mr Sharma conceded that there were discrepancies within the balance sheet whereby certain entries that we listed as assets were in fact liabilities. He stressed that the principal assets of the business were his plant and equipment which he owned outright and that he had a guarantee of additional unsecured funding from his mother who operated successful medical businesses in India.
32. Mr Sharma undertook to provide documentary proof of his mother's willingness to assist him with financial support and this was subsequently forwarded to the Commission in the form of a notarised letter from Dr Komal Sharma (Eye Micro Surgery Specialist), Kolkata dated 23 June 2022. In that letter, Dr Sharma stated that she would provide her son money from "his Trust Fund" if needed to support his bar and new business.
33. In his evidence before the Commission, Mr Sharma outlined his extensive experience working within the hospitality industry in Darwin and his plans for reactivating this part of the iconic Vic Arcade.
34. On the basis of Mr Sharma's evidence and the documented proof of his mother's financial support for the business, the Commission finds that the applicant is financially stable and is a fit and proper person to hold a licence.
35. The Commission notes that Mr Sharma holds a current RSA certification and based on his history within the hospitality industry is assessed to be a fit and proper person to be the Nominee of the licence.
36. 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

37. The premises are situated in the old Vic Arcade which was extensively renovated over a decade ago by the Paspaley Group. The arcade abuts Darwin's historic Vic Hotel building and sensitively preserves an important part of the Territory's heritage. The main part of the premises has previously operated as a licensed restaurant bar and the adjacent Vic Hotel, although currently not open, was at one stage the oldest licensed hotel in the Northern Territory.
38. Apart from some minor technical issues that have been raised by the fire service and which the Applicant has agreed to resolve, no concerns have been advanced

by the Director as to the fitness of these premises to operate as a licensed restaurant bar.

39. The Commission is satisfied that, provided the Applicant obtains all the necessary safety approvals, these premises are suitable to be used as a small bar.

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. The Commission has considered these objectives and also had regard to section 57 of the Act which clearly imposes an onus on an applicant to satisfy that issuing the licence is in the public interest.

42. Although the Commission is not suggesting that all licence applicants require legal or other expert assistance to properly pursue an application, originally the documentation submitted in support of this matter was not sufficient to meet the onus required by the Act. Particularly as the menu had not been included in the referral due to an oversight by Licensing Officers and there was no explanation of the concept for the small bar nor the benefits, other than the provision of liquor that would be associated with the proposed new licence.

43. Applicants for a small bar authority should pay particular attention to section 50(3) of the Act which provides:

The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community.

44. It was only after probing questions from Commissioners' that Mr Sharma explained that an innovative food menu together with specially selected wine pairings would be a feature of his operation. He also said that he was confident he would be able to overcome the problems the previous licensee had experienced with itinerants, through new security measures including the installation of gates at either end of the arcade. He expressed a commitment to revitalising this part of The Mall by drawing patrons into a boutique wine bar located in one of Darwin's few architecturally historic locations, with quality meals always on offer. The Commission was prepared to accept that if he could attract the type of clientele he envisaged to an area where there are currently no other night time hospitality venues, that this could have a positive impact on reducing the prevalence of anti-social behaviour that is presently occurring after dark in The Mall.
45. Mr Sharma also gave evidence of his extensive experience in the food industry, including as a head pastry chef at Charles Darwin University. He has been operating for some time as a caterer for functions and special events. Where liquor is required for the particular function he has been obtaining "one off" special event licences. In those circumstances the application for a catering authority is not particularly contentious and would reduce the cost and effort for both the Applicant and NT Licensing that would be involved in processing the continuing special event applications.
46. Having 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 licence and authorities sought.

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

47. 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.

48. 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;

	<ul style="list-style-type: none"> • 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?

	<ul style="list-style-type: none"> • 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?
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49. 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.
50. 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.

EXTENSION OF TIME

51. Section 60(1) and (2) of the Act provides as follows:
- (1) *After considering the application, the Commission must, in accordance with section 49, decide whether to:*
 - (a) *issue the licence or authority, with or without additional conditions; or*
 - (b) *refuse to issue the licence or authority.*
 - (2) *The Commission must make a decision under subsection (1) within 28 days after the later of the following:*
 - (a) *if the application was exempted from public notice by the Director under section 57(2) – the day the application was accepted;*
 - (b) *if no objection is made to the application within the time allowed under section 61 – the day the time allowed under that section expires;*
 - (c) *if an objection to the application is made within the time allowed under section 61 – the day the period allowed for the applicant's response to the complaint under section 62 expires.*
52. This application was referred to the Commission on 6 June 2022, and time for objections had expired on 4 June. So the Commission was required by section 60(2)(b) to make a decision on the application by 4 July (the first business day after 2 July).

53. If the Commission had not adjourned the hearing on 16 June to allow the Applicant to file further financial documentation and instead refused the application it would have clearly complied with the requirements of section 60. It would have been open to the Applicant to lodge and advertise a further application once all the requisite documentation had been obtained. At which time Licensing Officers might also have considered alerting Mr Sharma to the fact that his community impact and public interest statements were woefully inadequate. If this had been attended to, it might have enabled the Commission to announce its decision on the day of the hearing.
54. As the Commission has noted on a number of occasions in the past, the artificial time constraints imposed by section 60 do not necessarily result in a more efficient decision making process.
55. This application has only barely scraped across the line. Applicants should not assume in future that the Commission will afford them the degree of assistance that was provided in this case to sort out a deficient application on the day of hearing.
56. Pursuant to section 318 of the Act, the Commission extends the time within which to make a decision in accordance with section 60 until the date of this decision.

NOTICE OF RIGHTS

57. 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.
58. 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
6 July 2022

On behalf of Commissioners Dwyer and Hart