

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR TRANSFER OF LIQUOR LICENCE

REFERENCE: LC2022/053

APPLICANT: JD Bhullar Pty Ltd

PREMISES: The NT Rock Bar
Shop 2
78 Todd Street
Alice Springs NT 0870

LICENSEE: ROBJO NT Pty Ltd

LICENCE NUMBER: 80818127

LEGISLATION: Part 3 Division 8 of the *Liquor Act 2019* (NT)

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 30 November 2022

DATE OF DECISION: 6 December 2022

Note: In the published version of this decision, the name of the proposed licence nominee has been pseudonymised for privacy reasons.

Decision

1. For the reasons set out below and in accordance with section 73 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has decided to refuse to authorise the transfer of liquor licence 80818127 over The NT Rock Bar at Shop 2, 78 Todd Street, Alice Springs NT 0870 (**the premises**) from ROBJO NT Pty Ltd (**the licensee**) to JD Bhullar Pty Ltd (**the applicant**).

Reasons

The premises

2. The liquor licence attached to the premises operates with a restaurant bar authority and a late night authority in a precinct of the Alice Springs CBD in which four other premises with late night authorities are located. The licence conditions authorise liquor trading from 1130 hours each day until 0200 hours the following morning.

3. In 2009, the principals of the licensee company opened The NT Rock Bar to complement another business that they owned and operated, The Rock Tour. Both enterprises were promoted to a predominantly backpacker clientele, and for many years the premises enjoyed the reputation of being among the most popular nightspots for the backpacker segment of the Central Australian tourism market.
4. More recently, however, the licensee has encountered significant challenges. The Todd Street precinct in which the premises are located has become a focus of anti-social behaviour, as reflected in the publication by the Northern Territory Government of the “Mparntwe/Alice Springs Social Order Response”¹ on 3 November 2022, which listed eight “Identified Problems”, three of which are:
 - Antisocial behaviour by both adults and youth in public places, including shopping centres;
 - Public alcohol consumption;
 - Safety in the CBD related to late night venues.
5. Several incidents of concern on or in the immediate vicinity of the premises have occurred, including:
 - On 28 February 2019, the licensee supplied liquor to an intoxicated patron, and breached its duty to remove an intoxicated patron from the premises, leading to the imposition of a monetary penalty.
 - On 7 December 2019, the licensee supplied liquor to an intoxicated patron, and breached its duty to remove an intoxicated patron from the premises, leading to the imposition of a monetary penalty.
 - Between 1 August and 28 August 2021, police responded to at least 13 incidents at or in the immediate vicinity of the premises that police considered caused breaches of the peace or a threat to public safety.
 - At about 1900 hours on 27 August 2021, following a serious domestic violence incident within the premises, there was a significant disturbance resulting in staff ejecting patrons and closing the premises, the attendance of 20 police and the closure of Todd Street to restore order. Between midnight of that evening and 0200 hours the following day, there were further violent incidents at and around the premises, requiring numerous police to attend, and resulting in the issue by the Commissioner of Police of a 48 hour licence suspension to The NT Rock Bar.
 - Between 29 May 2022 and 9 July 2022, NT Police responded to at least 13 incidents at or in the immediate vicinity of The NT Rock Bar that police considered caused breaches of the peace or a threat to public safety.

¹ Accessed on 4 December 2022 at <https://www.chambernt.com.au/documents/item/1790>

- On 10 July 2022, approximately 270 patrons exited The NT Rock Bar between 0140 hours and 0200 hours. The maximum permissible number of persons allowed in the inside area of the premises is 90 persons. A monetary penalty was subsequently imposed.
 - On the same date, The NT Rock Bar staff served an intoxicated patron and failed to remove that patron from the premises, leading to the imposition of a monetary penalty.
 - Also on 10 July 2022, serious violent assaults were committed by and against patrons of The NT Rock Bar both within and in the immediate vicinity of the premises. As a result, one victim was airlifted to Darwin for facial surgery, and another was stomped on the head, rendering him unconscious. In response, 10 police officers responded to restore public safety. Consequently, on 15 July 2022, the Commissioner of Police suspended trading for a period of 48 hours pursuant to section 258 of the Act.
 - On 14 July 2022, The NT Rock Bar staff served an intoxicated patron and failed to remove that patron from the premises, leading to the imposition of a monetary penalty.
6. Immediately following the suspension of 15 July 2022, the licensee took a significant step by voluntarily restricting its trading to Friday and Saturday nights, an arrangement the Commission has been informed remains in place.
 7. As will be detailed below, the principal of the applicant company, Mr Sandeep Singh (**Mr Singh**), has been employed on a casual basis at the premises since early September 2022. The Commission does not find or suggest that Mr Singh bears any responsibility for the breaches and contraventions of the Act set out above. However, for the reasons that follow, the Commission considers that this recent history is a relevant consideration when determining whether to authorise the transfer of the licence.

The applicant

8. The applicant was registered as an Australian proprietary company limited by shares in 2020. Mr Singh is the company secretary, its sole director and its sole shareholder. The Commission has been provided with an unexecuted copy of a discretionary trust deed dated 3 November 2020 pursuant to which the applicant company is to be appointed as a trustee for a trust, the beneficiaries of which are to be Mr Singh, his wife, their two infant children and the applicant company. Whether or not this trust has in fact been established, the Commission finds that Mr Singh is the sole principal executive officer of and holds a controlling interest in the applicant company.
9. Mr Singh and his wife Ms Rajwinder Kaur currently own and operate two small businesses in Alice Springs: a pizza shop (located a few steps away from The Rock Bar) and a beauty salon. Previously, Mr Singh worked as a taxi driver for 10 years in Alice Springs, and managed a juice bar.

10. In early September 2022, in contemplation of purchasing The NT Rock Bar, Mr Singh commenced work at the premises as a barman on Fridays and Saturdays from about 2100 hours to 2300 hours, and from about 0100 hours to 0200 hours the following morning. By doing so he has gained about 40 hours of bar experience to date, while continuing to manage his nearby pizza shop, which is also open until the early hours of the morning on weekends. Mr Singh, who has recently acquired a Responsible Service of Alcohol (**RSA**) certificate, has no other experience in the liquor industry. Mr Singh stated that if and when his purchase of the business is completed, the licensee has agreed to work with him at the premises for a handover period of several weeks.
11. The licensee has not provided any evidence to the Commission to confirm this, or indeed in relation to any other matters in this application.
12. Mr Singh has provided the Commission with evidence that he is a person of good character. The Director of Liquor Licensing (**the Director**) submits that the Commission should be satisfied of this, and the Commission finds that Mr Singh is a person of good general reputation and character. Mr Singh is a hard-working and enterprising man with a successful record as the owner and manager of various small businesses in Alice Springs.

The applicant's financial circumstances

13. The applicant has provided the Commission with details of its financial circumstances. Although the Commission has decided to refuse to authorise the transfer of the licence, the Commission makes no finding that the applicant does not have the requisite financial stability or business reputation to be fit to be granted a liquor licence.

The sale of the business

14. On 11 August 2022 the applicant entered into a contract to buy The NT Rock Bar business from the licensee for a substantial sum. The contract was expressed to be subject to and conditional upon "the Buyer ascertaining [sic] a Liquor Licence from the Northern Territory Liquor Commission".
15. The premises are occupied pursuant to a commercial lease held by the licensee, a condition of which is that the licensee/lessee must not assign the lease without obtaining the lessor's prior written consent. The contract of sale is subject to a condition precedent that the lease be assigned to the applicant. The applicant has not provided the Commission with any evidence that the lessor has consented to the assignment of the lease to the applicant, or any evidence of any steps taken by the applicant, the licensee or the lessor in relation to the assignment of the lease.

The proposed nominee

16. The applicant proposes that [REDACTED] (**Mr A**) be appointed as the Business Manager of The Rock Bar and the licence nominee. Mr A has twenty years of experience in the tourism and hospitality sector, in India, Singapore, Melbourne, and, from 2016 to 2020 at three Alice Springs venues: Lasseters Hotel

and Casino, Chifley Resort and, from July 2018 to March 2020, at Bojangles Saloon, where he was employed as Bar and Restaurant Manager. Since then, Mr A has remained in Alice Springs and worked in other jobs. Mr A has current RSA certification and holds a Security and Crowd Controller licence. Apart from a drink driving conviction in 2017, he has no criminal record.

The Application

17. On 24 August 2022, the applicant lodged an application with the Director to transfer the liquor licence. The application was deficient. On 26 August, the applicant's solicitors sent a three line email to the Director requesting a "pre-approval" of the transfer of the licence. The Act makes no provision for the "pre-approval" of transfer applications.

18. In a Memorandum to the Commission dated 28 October 2022, a Delegate of the Director, Mr Mark Wood, Manager Licensing – Liquor, Gambling & Racing, (**Mr Wood**) stated:

The materials submitted by the Applicant were lacking detail and indicated a lack of knowledge and experience in relation to liquor licensing and the liquor industry.... On 29 August 2022, Mr Singh attended Licensing NT with his wife Mrs Rajwinder Kaur. During the meeting questions were asked by Licensing NT personnel of the parties around the supporting documentation, and their understanding of the conditions in the liquor licence they were seeking. To assist the parties they were provided with a copy of the licence to refer to. The responses from the applicant again highlighted minimal knowledge in operating licensed premises. These concerns were relayed to the applicant, and they were advised the onus is on them to have a good comprehension of liquor licensing laws, their obligations as a licensee and the provisions of the licence.

19. On 27 October 2022, the applicant provided the Director with sufficient documentation in support of its application to enable the Director to progress the application. In the meantime, on 25 August 2022, the Director had notified the Commissioner of Police of the application, as is required by section 72(6) of the Act. Police did not respond to this notification.

20. The Director has been delegated by the Commission to decide whether to authorise or refuse to authorise the transfer of a liquor licence. However, in this instance the Director declined to exercise his delegated power because he considered that the application was "potentially contentious", and on 28 October 2022, Mr Wood referred the application to the Commission.

21. In its initial application, the applicant identified Mr Singh as the proposed licence nominee.² However, on 28 November 2022, the day before the hearing of the application, the applicant informed the Director and the Commission that it now intended to engage Mr A to manage the restaurant and bar, and to seek his appointment as licence nominee.

The hearing

22. 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 that it is not appropriate to do so.

23. On 30 November 2022, the application proceeded as a hearing before the Commission. Mr Fincher appeared on behalf of the applicant, and Mr Wood appeared for the Director. Mr Singh, his wife and Mr A attended the hearing, as did several members of the public. The Commission thanks them for their attendance and assistance. With the consent of the parties, the Commission determined to hold part of the hearing in private, in order to protect commercial-in-confidence information.

24. At the hearing, the Commission received various documents into evidence, including:

- Memorandum of Mr Wood dated 28 October 2022
- Liquor licence 80818127
- Application for transfer of liquor licence dated 24 August 2022
- Affidavit and declaration of associates by Mr Singh dated 25 August 2022
- Affidavit and declaration of associates by Mr A dated 29 November 2022
- Applicant's request for "pre-approval" dated 26 August 2022
- ASIC company extract for JD Bhullar Pty Ltd
- Unexecuted deed to establish Bhullar Family Trust
- Documents to establish good character and experience of Mr Singh
- Documents to establish good character and experience of Mr A
- Documents to establish applicant's financial stability
- Public Interest and Community Impact Assessment
- Agreement for sale of business dated 11 August 2022
- Lease over premises to licensee
- Applicant's business plan

² See, for example, applicant's written submissions dated 17 October 2022, signed by Mr Singh: Exhibit One, p. 240

- RSA certification for Mr Singh, Mr A and current staff of the premises
- Licensee's security plan
- Licensee's employee handbook
- Licensee's "General Conduct Policy"
- Two notices of decisions on 2 November 2022 by Director's Delegate to issue a total of 5 infringement notices to licensee

25. The Commission has also had regard to notifications dated 28 August 2021 and 15 July 2022 of 48 hour suspensions of the licence to the Commission imposed by the Commissioner of Police pursuant to section 258 of the Act.

26. At the hearing, sworn evidence was given by Mr Singh and Mr A. At the conclusion of the hearing, the Commission reserved its decision.

Are the public interest and community impact tests applicable?

27. The transfer of liquor licences is regulated by Part 3 Division 8 of the Act, comprising sections 71 to 75. It is convenient to set out sections 72 and 73 in full:

72 Application for transfer

- (1) The proposed transferee may apply to the Commission to authorise the transfer of the licence.
- (2) Subject to this section, the application is to be made as if the proposed transferee is applying for a new licence and sections 52(1), (2), (3)(e) and (4), 53 to 55 and 56(1), (2), (3) and (4)(b) apply to the application.
- (3) An application to transfer a licence must be lodged with the Director in the approved form.
- (4) The application must be accompanied by the following:
 - (a) an affidavit made under section 54;
 - (c) the application fee prescribed by regulation.
- (5) The applicant is not required to provide the following:
 - (a) the evidence necessary to satisfy the onus specified in section 51;
 - (b) a summary of the evidence referred to in section 52(3)(d).
- (6) The Director must inform the following of the application, as soon as reasonably practicable after receiving it:
 - (b) [sic] the Commissioner of Police;

73 Decision on transfer

- (1) As soon as reasonably practicable after receiving the application, the Commission must consider it and decide whether to:
 - (a) authorise the transfer of the licence, with or without conditions; or
 - (b) refuse to authorise the transfer of the licence.
- (1A) The Commission may only authorise the transfer of the licence if satisfied that the proposed transferee is a fit and proper person.
- (2) If the Commission refuses to authorise the transfer of the licence, the Commission must, as soon as practicable, give a decision notice to:
 - (a) the licensee; and
 - (b) the proposed transferee.

28. As indicated above, the applicant included a public interest and community impact assessment with its application. At the outset of the hearing, the Commission suggested that the public interest and community impact tests might not be applicable to transfer applications, a suggestion Mr Fincher readily adopted. On behalf of the Director, Mr Wood submitted that the public interest and community impact tests do apply.

29. The public interest and community impact tests are established by sections 49, 50, 51 and 52 of the Act, which are contained within Part 3 Division 4 (“Issuing licences and authorities”). Section 49(1) provides:

The Commission may only issue a licence or an authority if satisfied 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.

30. Section 49(2) lists 10 “objectives” the Commission must consider to determine whether issuing a licence or authority is in the public interest. Section 49(3) lists 10 matters the Commission must consider to determine whether issuing a licence or authority would have a significant adverse impact on the community.

31. Section 51(1) places an onus on an applicant for a licence or authority 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.

32. Section 52(3)(c) requires an applicant to lodge with the Director evidence necessary to satisfy the section 51 onus, and section 52(3)(d) requires the applicant to lodge with the Director a summary of the part of that evidence that is suitable for publication.
33. On its face, section 72(5) appears to imply that when considering an application for the transfer of a liquor licence, an applicant is not required to satisfy the Commission that it has “passed” the public interest and community impact tests. That construction is supported by having regard to section 73, which expressly requires the Commission to be satisfied that the proposed transferee is a fit and proper person, but makes no reference to either the public interest test or the community impact test.
34. It was submitted by the Director that the Commission is nevertheless required to apply the public interest and community impact tests. Section 3(4) of the Act provides that when exercising a power or performing a function under the Act, a person (in this instance, the Commission) must do so in a way consistent with the Act’s purposes, and have regard to them.
35. The Director submitted that application of the public interest and community impact tests was required to give proper effect to the purposes of the Act. That submission has some force. The Commission notes that the purposes in section 3 relevantly include the primary purpose “to minimise the harm associated with the consumption of liquor” and a secondary purpose “to protect and enhance... community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor”.
36. However, the above extracts do not convey the full import of section 3. In its entirety, section 3(1) states:
- The primary purpose of this Act is to minimise the harm associated with the consumption of liquor *in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor* (emphasis added).
37. Section 3(2) sets out the secondary purposes of the Act, which also include:
- (b) to regulate the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory;
- (d) to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.
38. The Commission considers that the Act’s stated purposes disclose an intention by the legislature to strike a balance between the public interest in minimising the harms and maximising the benefits of liquor in the Northern Territory.
39. Returning to Part 3 Division 8 of the Act, the Commission is satisfied that the express provision relieving transfer applicants of a requirement to provide evidence

in relation to the public interest and community impact tests implies that these tests are not applicable to the determination of transfer applications.

40. If the legislature had intended that the public interest and community impact tests apply to the determination of transfer applications, it could have made express provision for this, as it has done with respect to the requirement in section 73(1A) that the Commission be satisfied that the proposed transferee is a fit and proper person.
41. Moreover, having regard, as it is required to do, to the purposes of the Act, the Commission considers that this construction is consistent with the purposes and the scheme of the Act. In contrast to an application for a new licence, an application for the transfer of an existing licence is made in circumstances where a previous decision-maker is presumed to have been satisfied that the establishment and operation of the licence were in the public interest and would not have a significant adverse impact on the community. The construction of Part 3 Division 8 adopted by the Commission is consistent with the purposes of the Act to contribute to the responsible development of the liquor industry and associated businesses, and to stimulate the tourism and hospitality industries.
42. The Commission accordingly finds that the public interest and community impact tests are not applicable to the determination of an application to transfer a liquor licence.
43. In the circumstances of this particular matter, even if the Commission had formed the view that the public interest and community impact tests were applicable, the outcome of the application would have been the same.

“Fit and proper person”

44. In the view of the Commission, two questions for consideration arise in relation to the provision in section 73(1A) of the Act that the Commission may only authorise the transfer of a licence if it is satisfied that the proposed transferee is a fit and proper person. Firstly, when “the proposed transferee” is a body corporate, which individuals should the Commission scrutinise for the purpose of applying section 73(1A)? Secondly, what is the test for being satisfied that the proposed transferee is a fit and proper person?
45. In relation to the first question, section 72(2) of the Act provides that section 53, 54 and 55 apply to an application for the transfer of a licence. Section 53(5) states:

If a licence is issued to a body corporate:

- (a) the name of the nominee must also be endorsed on the licence; and
- (b) the body corporate may change the nominee only with the written approval of the Director; and
- (c) the nominee is taken to be a joint licensee with the body corporate of the licensed premises.

46. Section 59(3)(i) of the Act provides that when considering an application for a licence or authority the Commission must consider whether “the applicant, *including the nominee designated by the applicant* is a fit and proper person to hold a licence” (emphasis added).
47. Section 59(3)(j) requires the Commission to consider whether each associate of the applicant is a fit and proper person to be an associate of the licensee. The mechanism established to enable the Commission to inform itself in relation to an applicant’s associates is established by sections 54 and 55, which require licence applicants to disclose their associates.
48. In the view of the Commission, when a proposed transferee is, as in this instance, a body corporate, to determine whether that corporate person is fit and proper the Commission must consider whether the executive officers of the body corporate are fit and proper to hold the licence, whether the designated nominee is fit and proper to hold the licence, and whether the associates of the body corporate are fit and proper to be associates of the licensee, having regard to the relationships between these individuals and the respective roles they propose to play in the operation of the licence.
49. In this matter, the sole executive officer of the applicant, Mr Singh, has deposed that the only associates of the applicant are Mr Singh himself and his wife. The sole designated nominee, Mr A, has deposed that his only associates are the applicant company and Mr Singh. The Director has not contended otherwise, and the Commission accepts this evidence of Mr Singh and Mr A. The Commission has no difficulty in finding that Mr Singh’s wife is a fit and proper person to be an associate of the licensee of the premises.
50. The Commission will consider the suitability of Mr Singh and Mr A to hold the licence later in these reasons.
51. In relation to the second question, the Commission has previously considered the meaning of the expression “fit and proper”, as follows:³

The term “fit and proper” is not defined by the Act.

In *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, the High Court considered the meaning of the expression “fit and proper” in relation to licensees under the *Broadcasting Act 1942* (Cth).

Mason CJ stated, at 349:

[A] licensee has a responsibility to exercise the power conferred by the licence with a due regard to proper standards of conduct and a responsibility not to abuse the privilege which it enjoys... A licensee which lacks a proper appreciation of those responsibilities or does

³ *Bojangles Restaurant Saloon - Disciplinary action* LC2020/058 (28 January 2021) at [37] – [44]

not discharge them is not, or may be adjudged not to be, a fit and proper person.

Gaudron and Toohey JJ stated, at 380:

The expression “fit and proper”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities...

In *Qadir v Department of Transport* [2015] NTSC 86, Kelly J stated, at [52]:

A decision about whether an applicant is a “fit and proper person” for a particular role or purpose requires a consideration of the qualities necessary to fulfil the role or purpose. It would also generally require some consideration of the person’s moral integrity and rectitude of character as well as the applicant’s knowledge, ability and honesty as it relates to the role in question.

...

The question whether a person is a fit and proper person to hold a liquor licence is one of value judgment (*Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, 388 per Toohey and Gaudron JJ).

52. In this matter the Commission has found that Mr Singh is a person of good character and general reputation. However, more is required. The Commission is of the view that it also has to consider whether Mr Singh and Mr A between them have the knowledge and ability⁴ and a proper appreciation of the responsibilities required to fulfil the role⁵ of being the licensee of the The NT Rock Bar.

53. Not every executive officer of a licensee company requires a detailed working knowledge of the day-to-day responsibilities of a liquor licensee. It depends on “the activities in which the person is or will be engaged”.⁶ Up until the day before the hearing, so far as the Commission, and apparently, the Director, were aware, the applicant was proposing to operate with Mr Singh as the sole licence nominee. In his affidavit deposed on 29 November 2022, Mr A stated that Mr Singh had offered him a position as Business Manager and nominee “on or around 1 November”.

⁴ See *Qadir v Department of Transport* [2015] NTSC 86, at [52], per Kelly J

⁵ See *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 at 349, per Mason CJ

⁶ *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 at 380, per Gaudron and Toohey JJ

54. Having considered the oral evidence of Mr Singh and Mr A, and the documentary material tendered by the applicant to the Commission, the Commission finds that Mr Singh intends to play an active and leading role in the management of the business, with the assistance and guidance of Mr A.
55. In his evidence to the Commission, Mr Singh stated that a licensee can ask an intoxicated patron to leave the premises but can not force them to do so, a view that conveys a fundamental misunderstanding of the powers conferred on licensees and the duties imposed on licensees by sections 141 and 142 of the Act. The Director submitted that Mr Singh has only minimal knowledge of the requirements of the Act. The Commission accepts that submission and finds that Mr Singh, who has only superficial experience in the liquor industry, has only a rudimentary appreciation of the responsibilities of a liquor licensee.
56. The Commission also accepts the Director's submission that the material provided by Mr Singh to demonstrate that he has the knowledge and ability to operate the licence is unsatisfactory. In the view of the Commission, the Business Plan lodged by Mr Singh is sketchy and lacking in depth. It does not include a detailed breakdown of projected income and expenditure of the business. When the Commission raised this concern at the hearing, the applicant offered in its final submissions to provide a more detailed business plan.
57. Mr Singh's evidence is that the applicant intends to immediately resume trading from 1130 hours each morning until 0200 hours the following day, to serve restaurant meals for both lunch and dinner, and to create a "family-friendly" environment.
58. The applicant relies on the licensee's existing security plan, employee handbook and policy manual. While that is not in itself a matter of concern to the Commission, it is notable that the applicant has provided no material setting out the steps that the applicant proposes to take to modify either the licensee's business model or trading policy and procedures to address the issues that led to the disturbing pattern of unsafe and often unlawful trading by the licensee in recent times.
59. The applicant submitted that the engagement of Mr A, with his extensive experience managing liquor outlets, as Business Manager, should allay the Commission's concerns about Mr Singh's lack of experience.
60. Mr A was the full-time Bar and Restaurant Manager of Bojangles Saloon, which is next door to The NT Rock Bar, from July 2018 until Bojangles closed in March 2020 due to COVID-19 restrictions. Mr A's then employer was the former licensee and nominee of Bojangles, Mr Habib, who the Commission subsequently disqualified from holding a licence for a period of 10 years (arising from Mr Habib's misconduct after Bojangles closed in March 2020). During the period of Mr A's employment at Bojangles, the following events occurred:
- On 19 November 2018, the Commission dismissed on technical grounds a complaint against the licensee of Bojangles arising from misconduct by one of the licensee's employees that had taken place before Mr A commenced his employment at Bojangles.

- On 26 November 2018, police attended Bojangles and detected a drunk patron who had not been removed. The licensee was prosecuted, and on 13 August 2019 was convicted in the Local Court of an offence against the *Liquor Act 1978*, and ordered to pay a fine.
- On 30 November 2018, four days after that breach, the Commissioner of Police suspended the licensee's licence for 48 hours, following the detection of "a number of alleged breaches of the *Liquor Act* in the past week, as well as ongoing issues of antisocial behaviour in and around the licensed premises."
- On 17 May 2018 at about 1400 hours, a drunk patron was observed unconscious on the footpath outside the entrance to the premises, leading to a complaint against the licensee. On 22 February 2019, the Commission upheld the ensuing complaint and imposed a monetary penalty.
- On 22 March 2019, a man was seen vomiting on the footpath outside the entrance to the premises, leading to a complaint against the licensee. On 19 January 2020, the Commission upheld that complaint and suspended the licence for two days.

61. In his oral evidence to the Commission, Mr A stated that he was aware of these incidents, and had confronted Mr Habib about Bojangles' trading practices after the suspension imposed by police in November 2018. Mr A's evidence was that Mr Habib was out of control and took no notice of Mr A, who could not stop him. Mr A, however, continued to work at Bojangles as a manager for another 16 months, until it closed. Having conducted disciplinary hearings involving the Bojangles licensee in 2018, 2019, 2020 and 2021, the Commission notes that a particularly egregious feature of Bojangles' trading practices during this period was the sessions it ran on weekdays from 1130 hours to shortly before takeaway liquor outlets opened at 1400 hours. Those morning trading sessions were crowded, noisy, disorderly and, in the view of the Commission, dangerous.

62. The Commission does not find or suggest that Mr A bears responsibility for the trading practices of his former employer. However, having previously managed premises for a significant period during which his former employer repeatedly engaged in very poor trading practices, Mr A has not demonstrated to the satisfaction of the Commission that he has the authority or capacity to prevent another employer from engaging in poor trading practices.

63. At the hearing, the Commission expressed its concern that no evidence had been adduced by the applicant of measures planned to avoid a repeat of the previous poor trading practices at Bojangles during the morning sessions in which the applicant now proposes to open the premises next door. In response, the applicant offered in its final submissions to accept a condition that security staff be on duty during these morning sessions.

64. At the hearing, the Commission also expressed its concern regarding the capacity of the proposed transferee's capacity to safely manage late night trading at the premises. In response, the applicant offered in its final submissions to accept a condition that closing time be at 0100 hours for the first three months after the transfer of the licence.
65. These responses, together with the other measures mentioned above that were proposed by the applicant to alleviate various concerns expressed by the Commission in the course of the hearing, are consistent with the applicant's conduct of its application from the start. Both in its dealings with the Director's officers and with the Commission, there has been a pattern of failure on the part of the applicant to pro-actively and realistically identify the risks and challenges associated with the operation of the licence.
66. For example, in the applicant's written submissions to the Commission prior to the hearing and signed by Mr Singh, the applicant stated "the Purchaser is not aware of any community concern over the conduct of the sale of alcohol at the Business".⁷ Whether or not this statement is disingenuous, it is starkly at odds with the concerns that would be raised in the mind of a reasonable person who has been apprised of the recent trading history of The NT Rock Bar. In a similar vein, the applicant's written submissions stated that "the Applicant is only purchasing the Business as a going concern on the understanding that the Business will be run relatively similar to the current operations."⁸
67. When those risk and challenges have been brought to the applicant's attention, the applicant's responses have been unsatisfactorily belated, vague and inadequate.
68. The Commission's concerns are amplified when the question of whether the proposed transferee is a fit and proper person is considered in its context.⁹ Schedule 2 of the *Liquor Regulations 2019* ascribes to a liquor licence with a late night authority a "very high risk" classification. Proper management of a very high risk venue requires knowledge and abilities to a concomitantly high standard. Given the recent history and current circumstances of the premises, the standard of knowledge and abilities required to manage and operate the licence in accordance with its conditions and the Act is even higher.
69. The Commission is not satisfied that Mr Singh and Mr A between them have the knowledge and ability and a proper appreciation of the responsibilities required to equip the applicant to properly fulfil the role of licensee of the The NT Rock Bar. It follows that the Commission is not satisfied that the proposed transferee is a fit and proper person for the purpose of section 73(1A) of the Act.
70. For these reasons, the Commission refuses to authorise the transfer of the licence.

⁷ Exhibit One, p. 235 and p. 240

⁸ Exhibit One, p. 239

⁹ See *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 at 380, per Gaudron and Toohey JJ

Notice of rights

71. Section 31(1) read with section 73(2) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal. 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.

72. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensee and the applicant.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
6 December 2022

On behalf of Commissioners Goldflam, Dwyer and Corcoran