

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE AND AUTHORITIES

REFERENCE: LC2022/007

APPLICANT: Sunshine House Holdings Pty Ltd

PREMISES: Rays Café and Patisserie aka Rays by Day
Shop 1/66 Smith Street
DARWIN NT 0800

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

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Ms Elizabeth Stephenson (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 9 March 2022

DATE OF DECISION: 23 March 2022

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 issue a licence to Sunshine House Holdings Pty Ltd (the Applicant).
2. The licence will be issued with a restaurant bar authority and subject to those authority conditions set out in Part 4, Division 1 and 16 of the *Liquor Regulations* (the Regulations).
3. The licensed premises is the area (the premises) depicted on the site plan tendered at the hearing of the application as Exhibit 2.
4. 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 in the area marked "Area C" of the premises until such time as it provides written confirmation to the Director that it has obtained the necessary planning and safety approvals in respect of the premises, and the Commission has given the licensee written approval to commence the sale and supply of liquor at the premises. The Commission delegate the authority to provide this approval to any one of the members Truman, Stephenson or Fong Lim.

5. Pursuant to section 318 of the Act the Commission has determined to extend the time allowed for the making of this decision to 23 March 2022.

REASONS

BACKGROUND THE APPLICATION

6. An application was lodged by Mr Joseph Stock on behalf of Sunshine House Holdings Pty Ltd (the Applicant) seeking a new liquor licence with a Restaurant Bar authority. The Applicant trades under the name of “Ray’s Café and Patisserie” and has a registered business name of “Ray’s by Day”. The café is known by both names, with “Ray’s by Day” being the registered business name. The applicant has been trading the café at Shop 1, 66 Smith Street since 2019 (the premises).
7. The applicant recently commenced operating a pasta bar in the evenings known as “Darlings” in December 2021. During the hearing, it was stated on behalf of the applicant that although the licence was “primarily for the purpose of ‘Darlings’ operations”, it was also intended by the applicant to be able to utilise the licence for the purpose of operating functions at the premises and to enable patrons to have a drink with their meals should they choose to do so whilst consuming food during the day.
8. The Applicant is seeking a licence with a restaurant bar authority. There was some discussion during the hearing of the proposed trading hours under the licence however; it was made clear that the applicant wished to have a licence in accordance with those standard hours of operation set out in regulation 82 of the *Liquor Regulations 2019* (“the Regulations”).
9. The Applicant is a company registered with ASIC. Ms Hannah Corner (“Ms Corner”) is listed as sole Director, Secretary and sole shareholder. As noted earlier, the Applicant holds a business name of “Rays by Day” which is also registered with ASIC.
10. Ms Corner provided the following probity documents:
 - a. Copy of photo identification by way of NT Drivers Licence
 - b. Copy of National Police Certificate based on name and fingerprint check
 - c. Resume
 - d. One personal and one professional reference.
11. It is proposed that Mr Joseph Stock (“Mr Stock”) be the nominee under the licence and in support of Mr Stock, the following probity documents were provided:
 - a. Copy of photo identification by way of NT Drivers Licence
 - b. Copy of National Police Certificate based on name and fingerprint check
 - c. Resume
 - d. One personal and one professional reference.

- e. Copy of RSA Certificate.
12. Mr Stock is known to Licensing NT as the dual nominee for liquor licence 80519263 in the name of Stock Standard and More Pty Ltd for the premises known as “SweetBrew Dining Room”. This was granted in August 2016 as a restaurant authority and there have been no reported matters.
13. The applicant is also known by Licensing NT having obtained two (2) separate special event authorities at the premises with both Mr Stock and Ms Corner being identified as nominee respectively. There is no evidence to indicate there were any issues of concern for either of those licences. In addition, on 20 December 2021, the applicant was issued a BYO registration pursuant to section 41D(1) of the Act and there have been no reported matters to date.
14. The application was accompanied by;
 - a. Affidavits in accordance with Section 54 of the Act
 - b. Copy of lease of the premises
 - c. Public Interest and Community Impact Assessment with proposed menu
 - d. Profit and Loss Statement
 - e. Proposed licence site plan and related emails
 - f. Registration of food business

PUBLICATION AND CONSULTATION

15. The application was published in the NT News on 15 January 2022 and electronically published on the Department of Industry, Tourism and Trade. A green advertising sign was erected at the premises for the course of the advertising period. No objections were received.
16. 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.
17. Being a new liquor licence application, the NT Fire & Rescue Service (NTFRS) was also notified.
18. The Department of Health had no objection. The NT Police supported the application. The City of Darwin did not provide a response.
19. The NTFRS replied via email dated 19 January 2022 stating they could not comment on the application until an occupancy certificate was issued enabling them to inspect the premises of the area that became known as “Area C” at the hearing.

COMPLIANCE HISTORY

20. As earlier noted, there are no compliance issues.

THE REFERRAL

21. On 4 February 2022, pursuant to section 59 of the Act, the Director referred this application to the Commission. On 8 February 2022, the Applicant was notified that the matter was listed for public hearing on 9 March 2022.

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 it is not appropriate. No submissions were made to the Commission to this effect.

23. On 9 March 2022, the application proceeded as a public hearing. Mr Stock and Ms Brigid Beilby appeared on behalf of the Applicant. Mr Jeff Verinder (“Mr Verinder”) appeared for the Director. The Commission thanks them all for their attendance and assistance.

24. The Director’s referral brief was tendered into evidence and additional evidence obtained orally on behalf of the Applicant. The Applicant was also requested to provide additional evidence to support its financial circumstances from the company’s accountant. Submissions were made. On 15 March 2022, the Commission receive correspondence dated 11 March 2022 from the accountant engaged by the Applicant confirming the company is trading as a going concern.

25. During the course of the hearing a number of questions were asked of Mr Stock and Ms Beilby about why a “restaurant bar” authority was being sought rather than a “restaurant” authority. It was made clear on behalf of the Applicant that it had no intention of becoming a bar and the focus would be on food; however, it did wish to be able to cater for functions at the premises that would involve canapés and grazing tables on occasion. As a result of the description given to the Commission of what was intended by the Applicant, the Commission was left in no doubt that, the focus of the premises would be on the food with alcohol “complimenting” the meals to be provided.

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, financial circumstances and plans.

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 premises have not previously operated as licensed premises. It has however operated as a café for a number of years and very successfully so. There are a number of toilets for the premises and work being carried out on the premises to further accommodate the concept of "Darlings" separate to that of "Ray's Café".

32. There remain some issues to be confirmed by the NTFRS however the Commission is satisfied that these issues will be addressed by the Applicant and that including a condition that the Applicant cannot commence trading until such time as it provides documentary proof to the satisfaction of the Director that it has obtained all the necessary planning and safety approvals in relation to the use of the premises as a restaurant bar sufficiently addresses these outstanding matters.

33. The Commission notes that pursuant to section 91 of the Act, the Applicant will be required to comply with the requirements of the *Fire and Emergency Act 1996* and the associated regulations, including those that prescribe fire safety standards.

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

34. The Commission notes that the Applicant has established a strong business reputation. In addition, the Applicant's sole Director and the proposed nominee have a good general business reputation, are of good character, and the Applicant is financially stable.

35. The Commission assesses the Applicant to be a fit and proper person to hold a licence.

36. The Commission notes that Mr Stock 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.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

37. 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.

38. The Commission has considered each of these objectives. Obviously, the location of these premises in the Darwin CBD is significant given the number of licensed premises in close proximity. It is clear however that what is proposed by the applicant is a premises with a strong focus on the food and the provision and service of alcohol as a compliment to that food. There is also no late-night authority being sought and supports the submissions made as to the clientele being targeted by the applicant.

39. Weighing up each of these matters, 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

40. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must have consider the following matters set out at section 49(3) of the Act:

- (a) The risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) The geographic area that would be affected;
- (c) The risk of harm from the excessive or inappropriate consumption of liquor;
- (d) The people or community who would be affected;
- (e) The effect on culture, recreation, employment and tourism;
- (f) The effect on social amenities and public health;
- (g) The ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) The effect of the volume of liquor sales on the community;
- (i) The community impact assessment guidelines issued under section 50.

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

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

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

	<ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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42. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.
43. 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".
44. 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.
45. In considering these issues, it is also important to keep in mind that the onus is on the Applicant. Section 50(3) states that the "mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community".
46. As has previously been noted by the Commission, there is some overlap between the public interest objectives and the community impact matters that the Commission is required to consider. The location of the premises in the Darwin CBD is of particular relevance, however the Commission considers that a premises of the nature of that proposed by the applicant has real potential to enhance the social amenity in the CBD.
47. 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.
48. The Commission closely considered whether a restaurant bar authority was appropriate or whether it should in fact be a restaurant authority. After receiving the evidence of what the Applicant proposes to do at the premises in terms of its concept and particularly the proposed menu, the Commission has determined that a restaurant bar authority is appropriate. This is particularly taking into account the clientele proposed to be targeted and the relatively high price point for the liquor to be sold at the premises.

EXTENSION OF TIME

49. Section 62 of the Act requires the Commission to make its decision in this matter by 26 February 2022, 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 need for additional evidence from the Applicant relating to its financial circumstances. 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 23 March 2022.

NOTICE OF RIGHTS

50. 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.

51. 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
23 March 2022

On behalf of Commissioners Truman, Stephenson, and Fong Lim