

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: *THE TROPIC OF CAPRICORN APPLICATION FOR LIQUOR LICENCE [2024] NTLiqComm 1*

REFERENCE: LC2023/036

APPLICANT: Epilogue Enterprises Pty Ltd

PREMISES: The Tropic of Capricorn Restaurant
8/89 Todd Mall
Alice Springs NT 0870

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

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Professor Phillip Carson (Health Member)
Ms Rachael Shanahan (Community Member)

DATE OF HEARING: 13 December 2023

DATE OF DECISION: 13 December 2023

DECISION

1. On 13 December 2023, in accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) determined to immediately issue a licence to Epilogue Enterprises Pty Ltd (**the applicant**) over premises to be known as “The Tropic of Capricorn Restaurant”.
2. The licence will be issued with a public bar authority and a late night authority.
3. The licensed premises are situated at 8/89 Todd Mall, Alice Springs and designated by the area bounded in pink on the plan at page 129 of Exhibit One admitted as evidence at the hearing of the application (**the premises**).
4. The Commission approves the appointment of Mr Chris Wilkinson (**Mr Wilkinson**) as the licence nominee.

5. The conditions of the licence will include those conditions set out in Part 4 Divisions 1, 10 and 14 of the *Liquor Regulations 2019* (**the Regulations**).
6. The following additional conditions are fixed:
 - a. A light meal must be available for purchase by patrons during the hours of operation.
 - b. The kitchen must remain open during the hours of operation until 1.5 hours before the close of the licensed premises.
 - c. A substantial range of non-alcoholic and low-alcohol beverages must be available for purchase by patrons during the hours of operation.
 - d. Complimentary tap water must be available to patrons during the hours of operation.
 - e. Although liquor must not be consumed off the licensed premises, it is not a breach of these conditions if a patron takes away the unconsumed portion of wine left in a bottle purchased with the meal.
 - f. The consumption of liquor without the purchase of a meal must not be advertised or encouraged.
 - g. The licensed premises must appear to be a café, restaurant or eatery.
 - h. Patrons must be able to be served and eat food in all areas of the licensed premises where liquor is served during the hours of operation.
 - i. The licensed premises must provide seating for not less than 75% of the maximum number of patrons allowed on the premises under the *Fire and Emergency Act 1996*.
 - j. The Licensee must comply with the *Northern Territory Noise Management Framework Guideline* issued by the Northern Territory Environment Protection Authority in September 2018 and as may be varied from time to time.
 - k. The performance of live music is not permitted after midnight.
 - l. The licensee must prominently display on the premises information about the National Health and Medical Research Council (**NHMRC**) *Australian guidelines to reduce health risks from drinking alcohol*.
7. The permitted hours of operation of the licence every day of the year, except Good Friday and Christmas Day, are:

- a. between 12:00 and 01:00 for the consumption of liquor on the premises.
 - b. between 12:00 and 00:30 for the sale, supply and service of liquor on the premises.
8. The permitted hours of operation for Good Friday and Christmas Day are as prescribed by Regulations 75(2) and 75(2A) of the Regulations.
 9. On New Year's Day operation is permitted until 02:00 if the licensee notifies the Director of Liquor Licensing (**the Director**) in accordance with Regulation 75(3) of the Regulations.
 10. Where conditions or hours of trading fixed by the Commission are more restrictive than those prescribed by the Regulations, the more restrictive conditions fixed by the Commission apply and prevail.
 11. Liquor must not be sold, supplied, served or consumed under the licence until the Commission gives the applicant written approval to do so, following the provision of documentary evidence to the satisfaction of the Director that the applicant has obtained the necessary fire safety, building and planning approvals, including a certificate of occupancy, in respect of the premises.
 12. The Commission delegates to any of its members Goldflam, Carson and R Shanahan the authority to provide the written approval referred to in the foregoing paragraph.
 13. The Commission notes that pursuant to reg 59 of the Regulations and s 20 of the Act, it is a condition of the licence that the licensee comply with the provisions of the *Code of Practice for CCTV System in Licensed Premises* issued by the Commission on 26 April 2023 and as may be varied from time to time.
 14. The Commission stated that it would issue reasons for the above decision. Those reasons are set out below.

REASONS

Background

15. For over a decade, the applicant has owned and operated two popular and successful hospitality venues at the southern end of Todd Mall, Alice Springs: firstly, the licensed premises comprising The Epilogue Lounge (which operates with a restaurant bar authority) and the Rooftop Bar (which operates

with a public bar authority and a late night authority); and secondly, Page 27 Café, a nearby unlicensed café/restaurant.

16. Although the southern end of Todd Mall is in the heart of the hospitality and tourism precinct of Alice Springs, in recent times several resident businesses, including a café immediately next door to The Epilogue Lounge, have closed down, leaving a row of shuttered shops which impairs the visitor experience. Motivated in part by a desire to revitalise the precinct, Mr Wilkinson, the applicant's sole director and shareholder, now seeks to establish a new licensed café restaurant in premises that include the vacant former café next door to The Epilogue Lounge, to be called "The Tropic of Capricorn Restaurant".¹

The Application

17. On 18 August 2023, the applicant lodged an application for a liquor licence seeking a public bar authority, restaurant bar authority and late night authority for premises extending west from an alfresco area in Todd Mall, along a narrow passageway between two buildings, into a saw-tooth roofed building that was originally an ice factory, and in more recent times has been part of an art gallery. The applicant proposes to fit out the premises as a modern restaurant including a children's play area and a space for the performance of low-key live music.

Consultation

18. As required by s 57 of the Act, notices of the application were published by a notice displayed at the premises and posted on the Licensing NT website.

19. In accordance with s 56 of the Act, the Director notified the Department of Health (**DOH**), NT Police and the Alice Springs Town Council. The Director also notified the Northern Territory Fire and Rescue Service (**NTFRS**) of the application.

20. In its response, DOH expressed concerns about an application that included "trading till 01:00 due to antisocial behaviour that historically has taken place in the early hours of the morning in the [Alice Springs] CBD".

21. By contrast, NT Police supported the application, stating:

There is no evidence that an additional licensed premises in the Todd Mall, Alice Springs would have a negative impact on the

¹ Alice Springs is situated 30 km south of the Tropic of Capricorn, at a latitude of approximately 23.5°

amenity of the surrounding area. The proposed location is currently a disused space with closed roller shutters. The immediate surrounds also include disused space, other cafes, licenses premises and businesses which are open during the business hours. The immediate area will benefit from another business which is both a place to eat and drink.

There is no evidence that opening another licensed premises at the location will adversely affect the health, education, public safety or social conditions in the community. The CBD of Alice Springs is in desperate need of business expansion, in particular to bring tourists to the town. Another eatery/licensed premises will not only assist with tourism, it will encourage local residents to come into the CBD to enhance the vibrancy of the Todd Mall.

The applicant currently manages the Epilogue Lounge and appears to be a fit and proper person.

There is NO objection to this application by NT Police.

22. The Alice Springs Town Council, the offices of which are located about 100 metres from the proposed premises, did not respond to the Director. However, the applicant had previously provided to the Director a letter signed by the Mayor of Alice Springs, Mr Matt Paterson “on behalf of Alice Springs Town Council in support of the liquor licence application”. Although this letter was dated 13 March 2023, and therefore pre-dated the application by some five months, the Commission infers from its terms that its author was generally familiar with both the nature and circumstances of the application. Mayor Paterson stated:

The activation of spaces in the CBD is essential for the social and economic development of Alice Springs with this proposal for alfresco dining with lunch and dinner facilities in the heart of Todd Mall being much needed. It will assist in attracting visitors to town as well as those considering relocating to Central Australia who are looking for a vibrant and relaxed lifestyle.

23. Notably, however, the letter did not advert to the applicant’s proposal to trade after midnight. Accordingly, the Commission is left none the wiser as to the view of the Alice Springs Town Council regarding the applicant’s proposed late night trading, which is the only significant contentious aspect of the application.

24. NTFRS objected to the application because of fire safety issues it stated required attention.

The objector

25. The People's Alcohol Action Coalition (**PAAC**) lodged an objection limited in its scope to the proposed late night trading. Although PAAC did not oppose the issue of a late night authority permitting the applicant to remain open until 01:00 hours, it submitted that there be no sale or service of alcohol by the applicant after midnight. PAAC supported its objection with citations to research demonstrating that "harm typically increases after extensions in on-licence trading hours".²

The licensee's record of compliance

26. The applicant, in its capacity as licensee for The Epilogue Lounge, has on two previous occasions been found to have breached its licence conditions.

27. On 17 December 2021, the Director took disciplinary action by issuing a formal warning arising from occasions in August 2021 when the licensee served liquor to a child on the premises, failed to prevent a patron from smoking in a non-smoking area, and failed to produce a CCTV record requested by a liquor inspector.

28. On 10 August 2023, the Director took disciplinary action by issuing infringement notices to a total of \$1,296 arising from an occasion in March 2023 when the licensee had supplied liquor to a patron who was intoxicated, and had failed to remove the patron, who was disorderly or incapable of controlling his behaviour.

The referral

29. On 20 November 2023, 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 13 December 2023.

30. The Director provided the Commission with a bundle of documents (**the brief**), including:

² Nepal and others, "Effects of Extensions and Restrictions in Alcohol Trading Hours on the Incidence of Assault and Unintentional Injury: Systematic Review" *J Stud Alcohol Drugs*, 81, 5–23, 2020, a meta-analysis of 22 studies from Australia and eight other countries

- a. An affidavit and Declaration of Associates pursuant to s 54 of the Act;
- b. A Public Interest and Community Impact Assessment summary pursuant to ss 49 to 52 of the Act;
- c. The lease agreement for the premises;
- d. An ASIC register extract for the applicant;
- e. Evidence of the applicant's financial circumstances;
- f. Letters of support for the application from three neighbouring businesses, Tourism NT and a local tour business;
- g. A letter of support for the application from the Mayor of Alice Springs;
- h. The applicant's procedures and policies for The Epilogue Lounge;
- i. Smoking Management Plan;
- j. Architectural drawings and plans for the proposed premises;
- k. A Statement of Effect for the proposed works submitted to the Development Consent Authority (**DCA**);
- l. Correspondence with stakeholders; and
- m. Correspondence with the objector, including the applicant's response to the objection.

The hearing

31. On 13 December 2023, the application proceeded as a public hearing. Mr Wilkinson appeared on behalf of the applicant. Ms Free appeared for the Director. Ms Gillick and Professor Boffa appeared for the objector. The Commission thanks them all for their attendance and considerable assistance.
32. The brief was tendered and admitted into evidence without objection, as was a version of the brief that the Commission had provided to the objector, with redactions that the Commission had made to protect commercial in confidence information.
33. In addition and also without objection the Commission admitted the following additional documents into evidence:
 - a. DCA Notice of Consent dated 28 August 2023.
 - b. Decision notice of disciplinary action against the applicant dated 17 December 2021.
 - c. Decision notice of disciplinary action against the applicant dated 10 August 2023.
 - d. Letter of support dated 12 December 2023 for the application from the Uniting Church of Australia Property Trust, the landlord of the premises.

34. In response to a request by the Commission made in the course of the hearing, following the hearing the applicant also provided the Commission with an “Operational Plan of Management” that the applicant had previously provided to the DCA, to which was appended a document titled “Development Application Acoustic Report” dated March 2023. Section 23(3) of the Act authorises the Commission to inform itself in any manner it considers appropriate. The Commission has had regard to this document for the purpose of preparing these reasons for its decision.

35. Mr Wilkinson and Professor Boffa gave oral evidence at the hearing.

ASSESSMENT OF THE APPLICATION

36. In accordance with s 59 of the Act, the Commission is required to consider:

- a. the applicant's affidavit required by s 54;
- b. the objection to the application made under s 61;
- c. the response provided by the applicant under s 62;
- d. 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;
- e. the financial stability and business reputation of the body corporate;
- f. the general reputation and character of the secretary and executive officers of the body corporate;
- g. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

37. In accordance with s 49 of the Act, the Commission must also consider whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community. The applicant bears the onus of satisfying the Commission of these matters. Section 50(3) of the Act 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”.

The applicant

38. The Commission finds that the applicant complies with s 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.

39. The applicant, who has previously been assessed as being suitable to hold a liquor licence, has provided extensive documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

40. 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 s 54.

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

The objection and its reply

42. The Commission accepts Mr Wilkinson's evidence that he has taken appropriate steps to address the fire safety issues identified by NTFRS in its objection. The Commission has fixed the condition at paragraph 11 above to ensure that these issues have been resolved before the commencement of trade under the licence.

43. The applicant readily accepted that PAAC, a community-based body, was qualified to make an objection, and that the objection was made on legitimate grounds in accordance with s 61(2) of the Act. The Commission considers the issue raised by this objector later in these reasons.

The suitability of the applicant's premises

44. The applicant provided detailed plans of the extensive renovations and refurbishment works that it has commenced, with DCA approval, on the site of the premises.

45. The applicant has a secure lease over the premises, and has provided unchallenged evidence that the proprietor of the premises consents to its use for the supply of liquor with a late night authority.

46. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

The financial stability, general reputation and character of the body corporate

47. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

The general reputation and character of the applicant's secretary and executive officers

48. Having regard to his demonstrated success and commitment as a local entrepreneur, manager and licensee, the Commission assesses the general reputation and character of the applicant's executive officer and secretary, Mr Wilkinson, to be satisfactory.

Whether the applicant is a fit and proper person to hold a licence

49. Section 51(3) of the Act provides that a licence applicant is assumed to be a fit and proper person, in the absence of evidence to the contrary. The Commission has had regard to the circumstances of the applicant's previous licence breaches as summarised at paragraphs 26 to 28 above. From Mr Wilkinson's evidence given at the hearing, the Commission is satisfied that the licensee has taken responsibility for these breaches, which it regrets, and has taken appropriate remedial action to minimise the risk of further contraventions. The Commission considers that these relatively minor breaches do not rebut the presumption that the applicant is a fit and proper person.

50. The Commission assesses the applicant to be a fit and proper person to hold the licence and authorities it has determined to issue in this matter.

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

51. The applicant has nominated Mr Wilkinson, who is also the nominee of The Epilogue Lounge licence, as the licence nominee. The Commission assesses Mr Wilkinson be a fit and proper person to hold the licence.

Public notice and consultation

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

Whether issuing the licence is in the public interest

53. 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 s 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.

54. Having considered each of these objectives, and having particular regard to the venture's cultural, recreational, employment and tourism benefits, as well as the applicant's good record of establishing and managing similar enterprises in Alice Springs, the Commission is satisfied that it is in the public interest to issue the licence.

55. In coming to this conclusion, the Commission has given significant weight to the comments by both NT Police and the Mayor of Alice Springs as summarised at paragraphs 21 and 22 above.

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

56. 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 s 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;³
- (j) any other matter prescribed by regulation.⁴

57. Having considered each of these matters, the Commission is satisfied that issuing the licence and authorities subject to the conditions the Commission has determined to impose will not have a significant adverse impact on the community.

58. In coming to this conclusion, the Commission has had particular regard to the location of the proposed premises in a non-residential retail, entertainment and hospitality precinct.

³ The Commission considers that there are no community impact assessment guidelines currently in force

⁴ The Commission notes there are no "other" matters prescribed by regulation.

59. In summary, in accordance with s 49 of the Act, the Commission is satisfied that:

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

A late night authority

60. The Commission accepts PAAC's submission that a substantial body of research supports the proposition that extending liquor trading hours is typically followed by an increase in alcohol-related harm, and that, conversely, restricting liquor trading hours is typically followed by a reduction in alcohol-related harm.

61. The research literature also supports the proposition, which the Commission also accepts, that late night trading is particularly risky, especially in relation to alcohol-related violence.⁵ This view is consistent with the scheme of the Regulations: Schedule 2 of the Regulations classifies a late night authority as a "very high risk" authority. Regulation 59 ("Safety for late night authority") requires licensees with a late night authority and public bar authority to employ

⁵ For example, see:

- Nepal and others (supra, n. 2)
- Wilkinson and others, "Impacts of changes to trading hours of liquor licences on alcohol-related harm: a systematic review 2005-2015" *Public Health Res Pract.* 2016 Sep 30;26(4):2641644
- Atkinson and others, "Impacts of licensed premises trading hour policies on alcohol-related harms" *Addiction* 2018 Jul;113(7):1244-1251
- Burton and others, "A rapid evidence review of the effectiveness and cost-effectiveness of alcohol control policies: an English perspective" *Lancet* 2017 Apr 15;389(10078):1558-1580
- Rossow and Norström, "Impact of small changes in bar closing hours on violence. The Norwegian experience from 18 cities", *Addiction* 2012 Mar; 107(3):530-7
- Moniek and others, "The impact of extended closing times of alcohol outlets on alcohol-related injuries in the nightlife areas of Amsterdam: a controlled before-and-after evaluation" *Addiction* 2015 Jun;110(6): 955-64
- Menéndez and others, "The effects of liquor licensing restriction on alcohol-related violence in NSW, 2008-13" *Addiction* 2015 Oct; 110(10):1574-828
- Kypri and others, "Effects of restricting pub closing times on night-time assaults in an Australian city" *Addiction* 2011 Feb;106(2):103-109
- Kypri and others, "Restrictions in pub closing times and lockouts in Newcastle, Australia five years on" *Drug Alcohol Rev* 2014 May; 33(3):323

or hire a prescribed number of security officers, and to install, maintain and operate a video surveillance system.

62. Three Todd Street venues in close proximity to the premises currently trade until 02:00: the applicant's Rooftop Bar, the NT Rock Bar and Bojangles Saloon and Dining Room. In addition, Uncles Tavern nearby trades until 01:00. In its 2019 decision in relation to a previous application by the current applicant, the Commission accepted the following evidence from the then officer in charge of the Alice Springs police station:⁶

Todd Street continues to be one of the major ASB [anti-social behaviour] hotspots for Alice Springs, especially on Friday and Saturday nights where there is a large number of people attending licensed premises. There is frequent ASB, intoxicated persons and assaults, all of which continue to adversely impact public safety.

63. On 24 March 2020, Bojangles Saloon and Dining Room closed (along with all licensed bars, pubs, clubs and restaurants in the Northern Territory) due to COVID restrictions. It remained closed until mid-2023, when it re-opened under new ownership and management. The NT Rock Bar continues to trade late at night, although the Commission has been informed that it has reduced its trading days. A third popular night-time venue a few minutes' walk away, Montes, has ceased trading and is currently vacant. Nevertheless, the Commission has received no evidence to suggest that Todd Street is no longer an anti-social behaviour hotspot on Friday and Saturday nights, and it makes no such finding.

64. In The Rooftop Bar matter, the Commission was required to consider whether to approve a substantial increase in the size of The Rooftop Bar, which was already authorised to trade until 02:00. That application was opposed by NT Police, but allowed by the Commission, in part because evidence adduced by police in that case strongly supported a finding that The Rooftop Bar, in contrast to its competitors down the road, was not associated with a high incidence of anti-social behaviour. Over the two years to August 2019, in the area comprising the locale of The Rooftop Bar, the NT Rock Bar and Bojangles Saloon and Dining Room, less than 10% of the 691 alcohol-related incidents

⁶ Northern Territory Liquor Commission, *Application for permanent variation of conditions and application for material alteration of licensed premises* (LC2019/104), 3 September 2019, (The Rooftop Bar matter) at [20], accessed at

https://cmc.nt.gov.au/_data/assets/pdf_file/0007/726361/Decision-Notice-Epilogue-Enterprises-Pty-Ltd_corrected-201219.pdf

recorded by police occurred at or in the immediate vicinity of The Rooftop Bar.⁷ Furthermore, the Commission found that during a nine month period when The Rooftop Bar was closed for renovations, police data showed that alcohol-related incidents in the locale had significantly increased.⁸ The Commission found that the applicant's responsible trading practices had produced positive outcomes. The Commission is confident that Mr Wilkinson will manage The Tropic of Capricorn Restaurant with the same degree of skill and care as he has shown in managing The Rooftop Bar next door.

65. Mr Wilkinson gave evidence that in his experience, 01:00 is, as he put it "the witching hour", the time beyond which management of patrons starts to become particularly challenging. By contrast, he stated, until 01:00 there are a significant number of patrons who want to continue to have a good time, and who should be permitted to do so without having to move to another venue.

66. Notably, PAAC's objection did not go so far as to oppose a late night authority being issued to the applicant to trade until 01:00. Instead, PAAC submitted that the sale and service of liquor not be permitted after midnight. Mr Wilkinson's evidence at the hearing was that if those conditions were imposed, many patrons would simply exit the premises at midnight and go to a nearby venue where they could continue to purchase liquor. The Commission accepts that evidence, and in addition considers that to impose the condition proposed by PAAC would effectively ensure that in its final hour of business, the venue would be trading at a substantial loss. Mr Wilkinson proposed that last drinks be at 00:45.

67. Having carefully considered the evidence and submissions of the parties, the Commission determined to issue a late night authority with conditions that the sale, supply and service of liquor not be permitted after 00:30, and the consumption of liquor on the premises not be permitted after 01:00.

A public bar authority

68. The proposed concept for the premises is of "a family friendly modern restaurant with an outback edge". The term "family friendly" is deployed with such great frequency in applications heard by the Commission that it has lost whatever persuasive effect it may once have had. In this instance, the term "family friendly" does not sit comfortably with a venue that proposes to trade past midnight. Nevertheless, the Commission accepts Mr Wilkinson's evidence that the business model he has developed will be aimed both at

⁷ The Rooftop Bar matter, at [21]

⁸ The Rooftop Bar matter, at [25]

attracting families during daylight hours (the venue will feature a purpose-built play area for children), and adult patrons at night.

69. On its face, the authority with the best fit for this venture is a restaurant bar authority. The Tropic of Capricorn Restaurant will provide a variety of inside and alfresco areas suitable both for eating full meals and light food, and for drinking. However, in the course of the hearing Mr Wilkinson frankly admitted that he would be unable to comply with reg 83(8) of the Regulations, which prescribes a condition for licensees trading with a restaurant bar authority that (except during a private function) patrons must be seated when consuming liquor.
70. In the view of the Commission, having regard to the proposed layout, concept and style of the premises, it would be unreasonable and impracticable to impose this condition on the licence. The licensee has, however, confirmed that it will be able to comply with all other conditions prescribed by the Regulations for restaurant authorities, as well as reg 80(8), the prescribed restaurant authority condition that requires the premises to provide seating for at least 75% of the maximum number of patrons allowed on the premises under the *Fire and Emergency Act 1996*.
71. Accordingly, the Commission decided to issue a public bar authority, with, as additional conditions, all of those prescribed conditions that apply to restaurant bar authorities except for the condition set out at reg 83(8). In addition, the Commission has fixed a seating condition in the same terms as reg 80(8).
72. The effect of these conditions is that in almost all respects the premises will operate as a restaurant bar: light meals will be available at all times when the premises are open; the consumption of liquor without the purchase of a meal is permitted, but must not be promoted; the premises must appear to be a café or restaurant; and there will be plenty of seating. As a licensee trading with a public bar authority and late night authority, the licensee will also be subject to the safety for late night authority conditions prescribed by reg 59, which do not apply to licensees trading with a late night authority attached to a restaurant bar authority.
73. The Commission is satisfied that this bespoke combination of conditions is tailored to suit the licensee's plans, is in the public interest and will not have a significant adverse impact on the community.

Noise

74. The applicant proposes that The Tropic of Capricorn Restaurant will be a live music venue. The Rooftop Bar next door is one of the most popular live music

venues in Alice Springs, and commendably, as far as the Commission is aware there have been no noise complaints against the applicant since it has operated those premises. Both The Epilogue Lounge (which includes The Rooftop Bar) and The Tropic of Capricorn Restaurant are located in a non-residential precinct, which reduces the risk that undue and unreasonable noise emanating from the premises will affect the amenity of the neighbourhood.

75. Regrettably, the brief of evidence provided to the Commission did not include a noise management plan or any detail regarding the measures proposed by the applicant to mitigate noise pollution from the premises.

76. However, at the hearing Mr Wilkinson gave evidence that he had previously submitted an Acoustic Report to the Development Consent Authority (**DCA**), which had considered it. At the request of the Commission, following the hearing Mr Wilkinson provided the Commission with that report, as an appendix to a document titled "Operational Plan of Management", which included the following proposed measures:

- Live music in the area trading as The Rooftop and the proposed Tropic of Capricorn will cease by 12am
- A qualified sound technician is present for all live music events and is responsible for setting up sound levels
- Any amplifier / PA system used has known output sound levels indicated on the controls to assist in ensuring the amplified sound is kept within acceptable limits at nearby receivers and incorporates a frequency equalizer that is set to control low frequency sound (bass)
- The movement of patrons between venues and alfresco areas is managed in a way that ensures it does not become a dominant source of noise at the site boundaries at any time
- Venue staff in conjunction with contracted security personnel are to monitor dispersal of patrons leaving the premises and manage any noise issues arising

77. The Commission considers that these are all appropriate and sensible measures, and expects the licensee to implement them all. The Commission has fixed the first of the above-listed measures as a condition of the licence, as well as a condition requiring compliance with the *Northern Territory Noise*

Management Framework Guideline issued by the Northern Territory Environment Protection Authority.

78. On the issue of noise, the Commission makes two further observations. Firstly, the Commission notes that in its Notice of Consent dated 20 August 2023, the DCA stated:

It is understood that a liquor license (*Liquor Act 2019*) is being sought for the “Tropic of Capricorn” development and use. If the business is successful in obtaining a license then conditions will be included on the relevant *Liquor Act 2019* approval to ensure noise levels do not impact the future amenity of the area. A liquor license applies to the Epilogue Lounge.

79. When considered in conjunction with the matters discussed above, this passage indicates that the Commission and the DCA could collaborate more closely to regulate noise management when matters arise that involve both agencies. To that end, following the hearing of this matter, the Chairperson of the Commission and the Chairperson of the DCA arranged to meet.

80. Secondly, the Acoustic Report provided by the applicant was deficient. As Mr Wilkinson candidly acknowledged during the hearing, the report is difficult to understand. Moreover, it refers to a regulatory regime from another jurisdiction, and makes no reference to the Northern Territory’s own noise management regulatory regime.

Commencement of trade

81. Section 60(5) of the Act permits the issue of a licence and authorities for premises that are still under construction, as is the case here. However, this provision also provides that liquor must not be sold under the licence until the Commission gives the licensee written approval to do so. The Commission has delegated the authority to grant that approval to any one of the members who conducted the hearing of the application, subject to compliance with the conditions set out at paragraph 11 above. As previously stated, those conditions have been fashioned to address the concerns raised by NTFRS.

The objects of the Act

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

83. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

84. 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 this Decision Notice.

Extension of time

85. Section 60(2)(c) of the Act provides that the Commission must make a decision whether to issue a licence and authorities within 28 days of the expiry of the 14 day period allowed for an applicant to respond after being notified of an objection to the application. In this case, the applicant was notified of PAAC's objection on 20 October 2023, and accordingly the Commission was required to make its decision by 1 December 2023. However, the Commission was unable to make a decision by date because the first reasonably available opportunity for the Commission to hear the application (which was referred by the Director to the Commission on 20 November 2023) was 13 December 2023. The Commission orally notified the parties of its decision immediately following the hearing.

86. In these circumstances, the Commission has determined to exercise its discretion conferred by s 318 of the Act to extend the time allowed to make its decision until 13 December 2023.

87. Section 60(3) of the Act requires the Commission to issue a decision notice as soon as practicable after making its decision. In this matter, the publication of this decision notice was delayed by the Christmas holiday period, during which the Commission's office was closed. In addition, the Commission notes Mr Wilkinson's advice that he would be away from Alice Springs from 15 December 2023 until 10 January 2024. The Commission infers that accordingly, no inconvenience or prejudice to the applicant arises from any delay in publication of this decision notice.

NOTICE OF RIGHTS

88. 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.

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



RUSSELL GOLDFLAM
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
5 January 2024

On behalf of Commissioners Goldflam, Carson and R Shanahan