

(c) Noise Control

- i. Noise levels emanating from any part of the premises (including but not limited to noise from entertainment) must be such as to not cause unreasonable disturbance to the businesses or ordinary comfort of the neighbouring premises and residences.
- ii. The Director of Liquor Licensing (**the Director**) on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such sound attenuation and noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director's view a reasonable requirement in the circumstances then prevailing.

REASONS

THE APPLICATION

3. An application was lodged by Mr Andrew Giles of law firm HWL Ebsworth on behalf of Armada Hotels and Leisure Pty Ltd seeking a new liquor licence with a public bar authority and late night authority.
4. The Applicant is seeking a licence with a public bar authority and late night authority with proposed trading hours of:
 - 10:00 hours to 02:00 hours, 7 days a week
 - All other trading conditions as per the Act and Regulations.
5. The application has been lodged by the developer of the proposed site and includes substantial documentation which outlines the concept plans for the venue which are to include a bistro restaurant, sports bar, gaming room and beer garden. As required by the Act, the application also includes a community impact assessment as well as a response to the public interest criteria.
6. The Applicant has also confirmed that it has lodged an application for a new gaming machine licence with the Director of Gaming Machines and sought approval for the deployment of 20 machines at these premises.
7. David Anthony, the sole company director of the Applicant was involved with an associated company that was granted a liquor licence for premises then known as Flynn Tavern which were to be constructed at Bellamack in 2016. On completion of the premises the licence was transferred to a different entity whose directors included Justin Coleman, an experienced Darwin hotelier, and traded as the Bell Bar and Bistro.
8. Neither the Applicant nor David Anthony currently hold a liquor licence. The applicant company is registered with ASIC where David Anthony is the sole director and secretary of the company. This company has 100 Shares and Mr Anthony is the sole owner of those shares.

9. In relation to David Anthony, he has provided the following probity documents:
 - Copy of photo identification by way of Australian passport
 - Copy of National Police Certificate based on name and fingerprint check
 - Copy of RSA Certificate
 - References
 - A copy of resume
10. David Anthony is proposed to be the nominee.

PUBLICATION AND CONSULTATION

11. The application was published in the NT News on the 6 August 2022. The application was also published on the Director's applications webpage during the course of the advertising period. A green advertising sign was erected at the premises for the course of the advertising period. Copies of the NT News, photographs of the green sign erected in-situ and a signed statement of display have been retained by Licensing Officers. As a result of the publication of the application, no objections from the public were received.

CONSULTATION

12. 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
 - Chief Executive Officer, City of Palmerston
13. The Department of Health did not make any response to their notification.
14. The NT Police replied via email dated 25 August 2022, stating it has no issues with the application.
15. The City of Palmerston sought and were approved an extension of time to lodge a reply by the 29 August 2022. It replied via objection letter dated 26 August 2022.
16. The objection lodged by the City of Palmerston cited a range of issues, including the adverse impact on the amenity of the residential neighbourhood because of the proposed opening hours, the proximity of a primary school and early childhood learning centre, as well as the significant social and economic impacts of alcohol misuse in the Northern Territory. It also objected to the grant of any gaming machine licence.
17. A copy of the objection was forwarded to the Applicant's legal counsel on 26 August 2022 in line with section 62 of the Act seeking a response.

18. A comprehensive response was received on 9 September 2022.
19. In his concluding remarks in the letter of referral, the Director's delegate, Mr Mark Wood observed:

"The Director takes note of the contents of the application documents but does raise a concern that much of the information presented in the documentation as to how the venue will be operated may not be able to be relied upon where it is believed that David Anthony is a builder and developer and not necessarily the operator of the venue."

THE REFERRAL

20. The application was referred to the Commission on 19 September 2022.

THE HEARING

21. On 20 September 2022, the Commission notified both the Applicant and objector that the matter was listed for public hearing on 5 October 2022. The hearing took place on that date. Mr Andrew Giles instructed by Ms Anna Lindsay appeared for the Applicant. Mr James Stuchbery appeared for the City of Palmerston while Mr Wood appeared for the Director. The Commission is grateful for the assistance provided by all those present at the hearing.

ASSESSMENT OF THE APPLICATION

22. The Applicant adduced further evidence in support of its application from Mr Anthony, Mr Hermanus Louw a representative of Costojic Pty Ltd, the head developer of "Zuccoli Aspire" and Stephen Dugan, a director of Coleman Management Group (CMG) which may play a role in the management of the proposed premises once they are operational.
23. Mr Anthony conceded that while he grew up in Darwin and has substantial business interests in the Territory he permanently resides in Queensland where his wife and children are based. Having regard to Mr Wood's comments outlined in paragraph 20 above, a real issue arises as to whether the exercise the Commission is required to undertake in determining whether the Applicant is a fit and proper entity to hold a licence will be rendered futile if the business is sold prior to the licence becoming operational.
24. Section 60 (5) of the Act provides:

To avoid doubt, the Commission may issue a licence and an authority in respect of premises that are not yet constructed, or are still under construction, but liquor must not be sold under the licence until:

- (a) the Commission gives the licensee written approval to do so; or*
- (b) the licence is transferred and a certificate of transfer is issued under section 74.*

25. That section clearly envisages that the licence might be transferred prior to any liquor being sold under the licence. Indeed that is what occurred previously when Mr Anthony built the Flynn Tavern and prior to it becoming operational, transferred the business and licence to a company owned by Mr Coleman and Mr Dugan.
26. Mr Giles seemed to take umbrage at the Director's suggestion that the Applicant may not be the ultimate operator of this licence and relied on the fact that Mr Anthony was the owner of a number of childcare centres in Darwin as proof that he was not just a builder developer but someone who was prepared to run a business on an ongoing basis.
27. Mr Anthony also spoke of his involvement with the hotel industry in Darwin through his father's ownership of a number of licensed venues. He said that he had engaged with the CMG group in relation to the possibility of them assisting him in the management of these premises including the recruitment of key staff. While it was his current intention to retain ownership of this business once it was operational he could not rule out the possibility that it would be sold or leased to another operator. Whereas the Commission is prepared to accept that this Applicant might ultimately operate this licence there seems little prospect of David Anthony actually taking on the role of nominee once the licence comes into effect given the fact that he resides interstate and that his other business interests would leave him little time to properly acquit his responsibilities under the licence. Nevertheless, the Commission is still required to carry out an assessment as to his suitability for that role.
28. Given the uncertainty over the ultimate operator of this proposed licence Mr Giles quite properly adduced evidence from Mr Stephen Dugan as to the support that CMG could provide in managing the premises including the appointment of an appropriate nominee. He explained that there had been significant changes within the hotel industry over recent years. Whereas in the past hotels were often run as a family business with the children taking over once the parents had decided to retire it was becoming increasingly likely that the next generation would not have the expertise required, nor the inclination to take on the responsibility of running a licensed venue. Accordingly his group has developed a business model whereby they manage the day-to-day operation of the hotel for the benefit of the absent owners. In his view, such an arrangement would work if this Applicant was granted a licence and the director of the corporate licensee wanted to remain residing primarily interstate. He also said that once these premises were completed he and his partners could potentially be interested in purchasing the business.
29. Mr Louw gave evidence about the ongoing development of this part of the suburb of Zuccoli, known as "Zuccoli Aspire". He was shown an aerial map of the Aspire development by Mr Stuchbery and acknowledged that it was an enlarged version of a map that was already in evidence as part of the Director's referral brief. The enlarged map was tendered as Exhibit 5 and provided a useful focus for Mr Louw's evidence and the Commission's consideration of the community impact issues associated with the proposed venue.

30. Mr Louw said that it had always been envisaged that there would be a commercial centre including a supermarket depicted on the Exhibit 5 map as 4E and a tavern at the adjacent block labelled 4D. He could not point to anything in the planning or promotional material which would have alerted purchasers of the nearby residential blocks that the proposed tavern would be trading until 2 am. When asked about the block labelled 4G, which is right next to these proposed premises, he said there was a possibility this could be used for the construction of an eight story mixed commercial and residential complex. Leaving that possibility out of the equation, there are 576 residential blocks that directly surround these proposed premises. From Exhibit 5 it would appear that only about 44 of those lots are currently occupied. There are another 84 blocks where the headworks seemed to have commenced so it is likely these have been sold, however the overwhelming majority, 348 blocks, would appear to have not yet been sold. While Mr Giles made much of the fact that there had been no objections from local residents to the licence application, Mr Stuchbery countered that this was because there were very few people living there yet.
31. Mr Anthony was asked by the Commission whether he was proposing to provide musical entertainment at the venue and in particular the external garden area. On answering in the affirmative he was asked about how he would ensure that noise from any entertainment did not cause undue disturbance to his residential neighbours. His answers that he would comply with the required maximum decibel levels displayed a lack of appreciation of the realities of noise attenuation issues that arise with licensed premises in the Northern Territory. We do not have the necessary expertise readily available in Darwin to require licensed venues to comply with a specific, technical limit of noise emission as is the situation in other jurisdictions. When the Commission informed Mr Anthony of this fact he did not want to be drawn on the possibility of limiting the type of music that would be played nor the times at which it could be played. The further response that he would comply with any disciplinary ruling of the Commission was also unsatisfactory. In the Commission's experience once these noise disputes escalate to the point where disciplinary proceedings are instituted, a level of ill feeling may have arisen within the local community which will take a long time to dissipate.
32. Mr Stuchbery submitted that whereas the City of Palmerston had objected to the grant of any license it was primarily opposed to the grant of the Late Night Authority. This was because there were so few residents currently residing within this new suburb that it would be unfair to deprive the majority of those who were expected to form this community with any opportunity to express their view on such a contentious issue as late night gambling and liquor sales.
33. Although the Applicant stressed the need for shift workers to access licensed premises late at night, no evidence was provided as to the number of shift workers that were likely to reside within this suburb nor had there been any surveys conducted on the views of local residents to late-night trading.
34. The Community Impact Analysis that was submitted with the application justifies the grant of an additional licence on the basis that this will be a "family friendly" venue in a brand new suburb where the closest other 3 tavern style outlets are 4 to 5 kilometres away. Although the Applicant had suggested that one of those

venues, the Virginia Tavern had ceased trading, Mr Wood confirmed that it was expected to re-open shortly. The nearest of those 3 outlets is the Bell Bar and Bistro in Bellamack which Mr Anthony also built and is located within what was then a new residential development.

THE APPLICANT

35. 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.
36. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances, and plans. As the Commission has observed earlier, there is no certainty that the Applicant will ever operate this licence however it is satisfied, on the basis of Mr Anthony's previous experience and his willingness to engage the expert assistance of Mr Dugan's group, that it could properly acquit the responsibilities of a licensee under the Act.

THE APPLICANT'S ASSOCIATIONS

37. 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

38. In the Applicant's Community Impact Assessment document at page 159 of the referral brief (Exhibit 1), it is stated:

"Further, although the Premises will be a "new" and technically an additional liquor outlet within the locality, it will be situated within the new Zuccolo Aspire development. Realistically, the entire community is "new" and all the constructed buildings, businesses and landscaping are "additional" to what was originally onsite. The Premises is simply another design-ready development to be implemented for the benefit of the community that is forming in the area, and according to Zuccoli Aspire's well-researched plans. This additional premises, and the Zuccoli Aspire development, is part of the growth and development of Darwin as a whole, with increased population and attractive liveability being essential pillars of Darwin's future as a principal northern capital of Australia."

39. Those lofty sentiments are somewhat diminished by a closer examination of the concept plans for the building which include a small enclosure attached to the side of the proposed gaming machine room labelled DOSA¹. Although no evidence was adduced as to the meaning of this acronym it is hard to conceive of anything other than "Dedicated Outdoor Smoking Area". Perhaps this Applicant and the licensees of similar venues which also offer dedicated smoking areas for gamblers, should pause to reflect on whether such arrangements,

¹ Page 174, Exhibit 1

which have the potential to keep a patron's focus on the gaming machines is in fact "friendly to families".

40. Otherwise, the Commission assesses the proposed premises satisfactory 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

41. The Applicant has provided appropriate documentation regarding its operation, activities, financial circumstances, and plans. 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

42. The Commission has assessed the general reputation, character and work history of the Applicant's Secretary and Directors as satisfactory.

WHETHER THE APPLICANT IS A FIT AND PROPER PERSON TO HOLD A LICENCE

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

WHETHER THE LICENSEE'S NOMINEE IS A FIT AND PROPER PERSON TO HOLD A LICENCE

44. Although the Commission considers it extremely unlikely that Mr Anthony will ever perform the role of nominee it finds that he is a fit and proper person to hold that role.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

45. 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.
46. The Applicant has justifiably relied on the significant construction costs and the jobs that will follow the grant of a licence for these premises. It has estimated spending approximately \$7M on the build and fit out. Ongoing employment will involve 6 full time positions, 3 part time employees, and 20 casuals.
47. The Commission is satisfied that a small tavern style venue has been appropriately included in the head developer's original plans for this new suburb. The Commission also accepts that the proposed concept for these premises is similar to that which Mr Anthony and Messrs Coleman and Dugan created previously with the Bell Bar and Bistro which has proved to be a popular well run venue.
48. Having considered each of the section 49(2) objectives, particularly having regard to the fact that this is a new suburb without any other licensed hospitality venues, the Commission is satisfied that it is in the public interest to grant a licence with a public bar authority.
49. On the evidence currently before it, the Commission is not satisfied that it is in the public interest to grant a late night authority. There is little in the material filed in support of the application to justify the grant of a late night authority. In fact, the Business Plan and Forecasts² stated "*It is proposed that the Hotel will apply for standard trading hours 10:00 am until 12:00 midnight seven days per week...*"
50. Although Mr Giles said that the Applicant had changed its mind in this regard all the positive financial projections in that report were based on the standard trading hours. Apart from the vague assertion that shift workers wanted the option of longer hours there has been no valid justification for why the residents of this new suburb need these premises to trade until 2:00 am. Given the close proximity of this venue to residential dwellings which are predicted to house young families the contrary view would seem more likely.
51. The Commission also accepts the thrust of Mr Stuchbery's submission that it is too early to bind the future residents of this suburb to living with a late night tavern

² Page 90, Unredacted Hearing Brief

on their doorstep when most of the residential blocks in closest proximity to the premises have not yet been sold.

52. All the other late night venues in Palmerston are situated in areas which have a greater degree of separation from the residential neighbourhoods. It is also relevant that the Bell Bar and Bistro, which is also located in a residential area does not have a late night trading authority.

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

53. 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.

54. 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
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.	Are there any 'at-risk' groups or sub-communities within the locality? This may include – children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might

	<p>be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • 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. This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>

Volume	<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>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<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? • Will it use existing premises improve or add to existing premises or is it a new premises?

55. 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.

56. 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".

57. 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.
58. Having regard to all these matters the Commission is satisfied that granting a licence with a public bar authority will not have a significant adverse impact on the local community. However, given the Applicant's lack of clarity in relation to noise mitigation risks it has determined to impose a condition in relation to Noise Control.
59. For the reasons referred to earlier in this Decision Notice, the Commission considers that there would be an unacceptable risk of undue offence, annoyance, disturbance, and inconvenience to nearby residents through the grant of a late night authority.
60. Accordingly on that basis and because the Commission is not satisfied that it is in the public interest, the application for a late night authority is refused.

NOTICE OF RIGHTS

61. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
62. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Applicant and Director.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
18 October 2022

On behalf of Commissioners Coates, Taylor and Fong Lim