

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS

CITATION: CHINA BAR NT: APPLICATION FOR LIQUOR LICENCE WITH AUTHORITY [2023] NTLiqComm 32

REFERENCE: LC2023/030

APPLICANT: Y & F (CB) Pty Ltd

PREMISES: China Bar NT
R07, 1 Roystonea Ave
YARRAWONGA NT 0830

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

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Ms Ebony Abbott-McCormack (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 4 October 2023

DATE OF DECISION: 4 October 2023

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 forthwith to Y & F (CB) Pty Ltd (**the applicant**).
2. The licence will be issued with a restaurant bar authority.
3. The licensed premises are situated at R07, 1 Roystonea Ave YARRAWONGA NT 0830 over the area delineated in red marked as Exhibit Two at the hearing of the application (**the licensed premises**).
4. The supply and consumption of liquor on the premises is permitted between 11:00 hours and 21:00 hours each day, except on Good Friday and Christmas Day, when trading hours are as prescribed by reg 79(2) of the *Liquor Regulations 2019* (**the Regulations**).
5. The conditions of the licence will be those authority conditions set out in Part 4 Division 15 (“Restaurant authority conditions”) of the Regulations, except reg 80(12).

6. To the extent of any inconsistency between the conditions at paragraph 5 above and the conditions set out in Part 4 Division 16 (“Restaurant bar authority conditions”) of the Regulations, the conditions in paragraph 5 prevail. The Commission notes that the conditions imposed in paragraph 5 of this decision are more restrictive than those prescribed by Part 4 Division 16 of the Regulations.
7. The Commission approves the appointment of Ms Rongrong Huang and Mr Dong Li as licence nominees.

Reasons

The Application

8. On 30 August 2023, the applicant, having paid the prescribed fee, completed the lodgement of an application for a liquor licence and restaurant bar authority with the Director of Liquor Licensing (**the Director**).
9. The China Bar chain of restaurants was established in Melbourne in 1996, and currently operates in 20 outlets, most of which are in Victoria. China Bar NT, the first such venue in the Northern Territory, is located in the Gateway Shopping Centre in Palmerston, where it has operated as a restaurant since 18 January 2023.
10. The applicant proposes that Ms Rongrong Huang and Mr Dong Li both be appointed as nominees of the liquor licence.

Consultation

11. As required by section 57 of the Act, notices of the application were published in the NT News on 1 July 2023, and on the Director’s website. The applicant also displayed a sign at the proposed premises to notify the public of the application.
12. In accordance with section 56 of the Act, notification was given to the Department of Health, NT Police and the City of Darwin, as well as to Northern Territory Fire and Rescue Services.
13. No objections to the application were received by the Director, and none of the stakeholders contacted by the Director raised any objections.

The licensee’s record of compliance

14. The applicant has never previously held a liquor licence.

The referral

15. On 22 September 2023, pursuant to section 59 of the Act, the Director referred the 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 4 October 2023.

16. The Director provided the following documents to the Commission with the referral (**the brief**):
- a. Application for liquor licence
 - b. Affidavit and Declaration of Associates pursuant to section 54 of the Act
 - c. ASIC company extract for applicant
 - d. Probity documents for Junyu Chen
 - e. Probity documents for Rongrong Huang
 - f. Probity documents for Dong Li
 - g. Registration of business name for China Bar NT
 - h. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act
 - i. Business Plan
 - j. Food Registration Certificate
 - k. Financial reports and records
 - l. Landlord's letter supporting the application
 - m. Commercial lease over the premises
 - n. Site plan
 - o. Menu and proposed drinks list
 - p. Correspondence with stakeholders

The hearing

17. On 4 October 2023, the application proceeded as a public hearing. Mr Junyu Chen appeared on behalf of the applicant with Ms Rongrong Huang and Ms Crystal Huang. Ms Jenny Kimber appeared for the Director. The Commission thanks them all for their attendance and assistance.
18. Pursuant to s 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. The matter proceeded as a public hearing.
19. The brief was tendered and admitted into evidence without objection.
20. The Commission also accepted into evidence a site plan with the boundary of the proposed licensed premises clearly delineated.

ASSESSMENT OF THE APPLICATION

21. In accordance with s 59 of the Act, the Commission has considered:
- a. the applicant's affidavit required by s 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 body corporate;
- d. the general reputation and character of the secretary and executive officers of the body corporate;
- e. whether the applicant and the nominees designated by an applicant, are fit and proper persons to hold a licence;
- f. whether each associate of the applicant is a fit and proper person to be an associate of a licensee.

22. In accordance with s 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

23. 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.

24. The applicant is a recently incorporated Australian proprietary company limited by shares, with six shareholders. Half of the shares are held by a company jointly owned and directed by Mr Junyu Chen and Ms Rongrong Huang, and the other half are divided equally between five individual shareholders, one of whom is Mr Dong Li. Mr Junyu Chen is the applicant's sole director and company secretary.

25. Although the applicant's restaurant is promoted by the China Bar restaurant chain as one of its venues, the applicant is not a China Bar franchisee. Mr Chen gave unchallenged evidence that the applicant is supplied with China Bar products by way of a licence agreement.

26. The applicant has provided satisfactory documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

27. 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.

28. The Commission considers that it is appropriate to consider whether each of the following persons, each of whom is an associate of the applicant for the purpose of s 55, is a fit and proper person to be an associate of the applicant:

- Mr Junyu Chen (director/shareholder)
- Ms Rongrong Huang (director/shareholder/proposed nominee)
- Mr Dong Li (shareholder/proposed nominee)

29. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of the above-named persons, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.

The suitability of the applicant's premises

30. The proposed premises are located in a large Palmerston suburban shopping and entertainment centre, which includes a Woolworths supermarket, variety stores, speciality shops, a cinema complex, a gymnasium, a bistro and nightclub, an indoor play and party zone, and some eight restaurants, the newest of which is China Bar NT.
31. The premises can accommodate up to 90 diners in an alfresco area, plus 65 diners inside.
32. The applicant has applied for a restaurant bar authority rather than a restaurant authority only because the prescribed condition for a restaurant authority in reg 80(12) of the Regulations prohibits the use of the word "Bar" to identify, advertise or market the premises. However, the applicant, as an established business that trades as "China Bar NT", wishes to continue to identify, advertise and market its business with the word "Bar". The Commission does not consider that the premises are suitable for a restaurant bar authority, which, in contrast to a restaurant authority, permits the sale, supply and service of liquor to customers who are not also consuming food on the premises.
33. The Commission assesses the premises as suitable for the supply and consumption of liquor as a licensed restaurant. In order to accommodate the applicant's wish, which in the circumstances the Commission considers to be reasonable, to continue to use its current name and retain its brand association with the China Bar franchise, the Commission has determined to issue the applicant with a restaurant bar authority. However, the Commission has also determined to impose the more restrictive conditions applicable to licensees trading with a restaurant authority, with the exception of the prescribed condition for restaurant authorities in reg 80(12) of the Regulations.

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

34. 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

35. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officers and secretary to be satisfactory.

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

36. 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

37. The applicant has nominated Ms Rongrong Huang and Mr Dong Li as the licence nominees. They hold current RSA certification and have provided appropriate documentation of their reputation, character and work history. The Commission assesses each of them to be a fit and proper person to hold the licence.

Public notice and consultation

38. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with ss 56 and 57 of the Act.

Whether issuing the licence is in the public interest

39. 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.

40. The Commission has had regard to all of these objectives and, in particular, it considers that:

- (a) the establishment of an additional licensed restaurant in a large shopping and entertainment centre carries a low risk of directly increasing the incidence of alcohol-related harm or ill-health to people;
- (b) the applicant is likely to serve and supply liquor in a responsible manner;
- (c) the licensing of the restaurant will likely provide a modest additional recreational benefit for the local community area;
- (d) the applicant is unlikely to encourage irresponsible drinking; and
- (e) the grant of the licence is unlikely to lead to an increase in anti-social behaviour.

41. The Commission is satisfied that it is in the public interest to issue the licence.

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

42. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must consider the following matters set out at 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 s 50;

- (j) any other matter prescribed by regulation.
43. The Commission notes there are no such “other” matters prescribed by regulation, and considers that there are no guidelines currently in force under s 50.
44. 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.
45. The onus is on the applicant: s 50(3) provides 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. Having particular regard to the fact that the licensed premises are wholly situated within a major shopping and entertainment centre, the Commission is satisfied that the issue of the licence and authority with the conditions the Commission has determined to impose will not have a significant adverse impact on the community.
47. Having considered all of these matters, the Commission is satisfied, in accordance with s 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.

The objects of the Act

48. Section 3(4) of the Act provides that in exercising its power to issue a licence with conditions, the Commission must have regard to the primary and secondary purposes of the Act.
49. Among the secondary purposes of the Act in s 3(2) are 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; and
 - stimulates the tourism and hospitality industries.

The Commission considers that the manner in which it has exercised its power in this matter is consistent with the purposes of the Act.

50. For these reasons, the Commission has determined that the application should be granted, and that a licence and authority be issued on the conditions set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

51. 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.

52. 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 and the applicant.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
10 October 2023

On behalf of Commissioners Goldflam, Abbott-McCormack and Fong Lim