

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: DCL HOSPITALITY PTY LTD APPLICATION FOR
SUBSTITUTION OF A LIQUOR LICENCE AND
PERMANENT VARIATION OF AUTHORITY AND
CONDITIONS [2023] NTLiqComm 22

REFERENCE: LC2023/010

APPLICANT: DCL Hospitality Pty Ltd

PREMISES: Tavern at Zuccoli Plaza
Tenancies 6-10
2 Crosby Street
ZUCCOLI NT 0832

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

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Mr Greg Shanahan (Legal Member)
Mr Bernard Dwyer (Health Member)
Mr Denys Stedman (Community Member)

DATES OF HEARING: 28 to 29 June 2023

DATE OF DECISION: 4 August 2023

Decision

1. For the reasons set out below and in accordance with section 75 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to substitute other premises for Liquor Licence 80303981 (**the licence**) with a public bar authority held by DCL Hospitality Pty Ltd (**the applicant**).
2. The substituted premises are situated at Tenancies 6-10, 2 Crosby Street, Zuccoli, NT 0832, as designated by the area bounded in red on the plan exhibited as Exhibit 12 at the hearing of the application the subject of this decision (**the substituted licensed premises**).
3. The Commission approves the appointment of Mr Andrew Case and Mr Guy Dunne as joint nominees of the licence.

4. The conditions of the licence include those in Part 4 Division 1 and 14 of the *Liquor Regulations 2019 (the Regulations)*.
5. In accordance with s 75(2A)(a) and s 110 of the Act, the Commission has determined to impose the following conditions:
 - a. Concept: The venue must be established, maintained, operated and promoted as a family friendly tavern.
 - b. Dress Code: Patrons must at all times be dressed in clean, neat and tidy apparel in keeping with the concept of a family friendly tavern.
 - c. Responsible Service of Alcohol: The Licensee shall not sell double nips or shots or permit any skolling games.
 - d. Entertainment:
 - i. Pre-recorded and live entertainment may be provided and shall be consistent with the concept of the premises. It shall be in the nature of light, background music intended to complement the family nature of the premises.
 - ii. There shall be no designated dance floor on the premises.
 - iii. Entertainment in the al fresco areas must not be of such volume as to cause nuisance to nearby residents and must be in keeping with the separate Noise Control special condition.
 - iv. Live entertainment in the al fresco areas must be limited to solo acoustic performers or duos and must not continue after:
 - 21:00 Sunday to Thursday; and
 - 22:00 Friday to Saturday.
 - e. 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. No amplification shall be directed outward or away from the licensed premises.
 - iii. 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.

6. The Commission refuses to issue a late night authority to the applicant.
7. The following conditions of the existing licence are deleted:
 - a. Notwithstanding anything contained elsewhere in these licence conditions, no liquor other than light beer may be sold or supplied prior to 11:30 hours Monday to Friday inclusive (other than Public Holidays) for consumption on or within any part of the licensed premises. For the purposes of this condition "light beer" is defined as any brewed beverage containing NOT more than 3.00% by volume of ethyl alcohol, the onus of proof of which shall lie with the Licensee in any proceedings in relation to an alleged breach of this condition. This condition shall not prohibit sale and supply as per the special condition pertaining to Alice Springs Balloon Flight ticket holders.
 - b. Between the hours of 06:00 and 10:00 the Licensee may allow limited consumption of champagne by Alice Springs Balloon Flight ticket holders.
8. Noting that the premises are not yet constructed, no business is to be conducted on or in the substituted premises unless and until:
 - a. the proposed premises have been constructed with the al fresco and bistro areas on the western side of the premises facing the Zuccoli Plaza carpark, with "back of house" facilities on the eastern side of the premises facing Seafury Court, as shown in the preliminary concept plans dated 30 June 2023 and marked Exhibit 22;
 - b. the licensee has provided the Director with a Northern Territory Development Consent Authority (**DCA**) Development Permit that satisfies the Director that the DCA has approved the use of the premises as licensed premises with a public bar authority; and
 - c. the applicant has been given written approval by the Director subsequent to the applicant having provided written confirmation that it has obtained all the necessary building, planning and safety approvals, including a certificate of occupancy for the premises.
9. Within 3 years from the date of this decision notice, or such later date as the Director may approve, the licensee must complete the proposed construction works.

Reasons

Background

10. In August 2014, the DCA approved the subdivision of the Zuccoli residential suburb in the City of Palmerston. Later that year, the Urbex Land Development Corporation (**the developer**) applied for planning approval of “a neighbourhood centre with local shop and community uses” on a parcel of land situated to the southeast of the intersection of Zuccoli Parade and Crosby Street, and since named Zuccoli Plaza.¹

11. Also in 2014, the developer published a document titled “Expression of Interest Lot C1 Zuccoli”, stating:²

It is envisaged that the Centre may comprise a number of uses including for example, but not limited to:

- news agency/convenience store
- medical centre
- pharmacy
- café
- restaurant
- tavern
- supermarket

12. Since 2014, the population of the area has grown, with further housing estates under development. According to the 2021 census, the population of Zuccoli was 4,131.³ Zuccoli Plaza has been constructed and its current tenants include an IGA supermarket licensed to sell takeaway liquor with a grocery authority, a pharmacy, a medical clinic, the office of the local Member of the Legislative Assembly, the developer’s offices, a gym, and a café. Five adjoining tenancies in the Plaza remain vacant.

13. The applicant now seeks to establish a tavern in Zuccoli Plaza. The applicant seeks to remove the internal walls between the five vacant tenancies to create a facility comprising both indoor and outdoor areas over a combined area of about 500 m², trading with a public bar authority and a late night authority.

14. There are currently about 67 licensed premises in the Palmerston region within 5 km of the proposed licensed premises, including 8 licences with a public bar authority, 3 with a club authority and 10 with a late night authority.⁴

¹ Exhibit 18 exhibited at the hearing on 29 June 2023

² Exhibit 21, tendered by the applicant after the hearing, and exhibited without objection

³ Australian Bureau of Statistics, accessed at <https://abs.gov.au/census/find-census-data/quickstats/2021/SAL70303>, 2 August 2023

⁴ Exhibit 20

15. In October 2022, the Commission approved the issue of a liquor licence for a tavern (**the Parkside Bistro**) to Armada Hotels and Leisure Pty Ltd (**Armada**) for premises 1.7 km from the proposed licensed premises. The Parkside licence was issued with a public bar authority. Armada also applied for a late night authority, but the Commission refused that application. Relevantly, the Parkside Bistro has yet to commence construction, and, in contrast to the proposed licensed premises, which are located in an established residential precinct, the suburban area adjacent to the Parkside site is still in the early stages of development.

The application

16. The applicant could have simply applied for a liquor licence pursuant to section 52 of the Act. Instead, however, it embarked on a more complicated course, by contracting to purchase an existing licence in Alice Springs that has not operated for several years (**the Heavitree Gap tavern licence**), obtaining approval for the transfer of that licence to the applicant, and now applying for substitution of the Alice Springs premises to the proposed premises in Zuccoli Plaza.

17. As a principal of the applicant frankly stated in oral evidence given at the hearing, the sole reason for proceeding in this manner was to enable the applicant to obtain approval to install and operate ten electronic gaming machines (**EGMs**) in the proposed tavern.⁵

18. If the applicant had simply applied for a new liquor licence, it would have been ineligible to acquire EGMs because the Northern Territory Government has imposed a cap on the issue of EGMs. However, authority to operate ten EGMs has long been “attached” to the Heavitree Gap tavern licence, opening up the possibility that the applicant will be able to obtain authority to operate both a liquor licence and ten EGMs in a tavern at Zuccoli Plaza.

19. On 23 January 2023, the applicant lodged an application with the Director for the substitution of the premises. On 27 January 2023, a Delegate of the Director refused to accept the application.⁶ Section 75 of the Act provides that a licensee who wishes to substitute premises must apply for a new licence. Section 52 of the Act provides, among other things, that an application for a new licence must be accompanied by evidence necessary to satisfy the public interest and community impact requirements. It is apparent that the Director was not satisfied that the applicant had complied with this requirement.

20. On 14 February 2023, made a further application to the Director, in which it sought substitution of the premises, the issue of a late night authority, and variation of some of the licence conditions.

⁵ Evidence of Darren Lynch

⁶ Exhibit 1, p 35

21. The Commission notes that the Heavitree Gap Tavern licence, as originally issued in 2015 under the *Liquor Act 1978*, authorised the sale and consumption of liquor on the premises until 02:00 on Fridays and Saturdays.⁷ For reasons set out later in this decision notice, the Commission finds that in September or October 2022 the Director completed the conversion of that licence into a licence under the *Liquor Act 2019* and transferred it to the applicant.
22. The Director approved the transfer of the licence pursuant to his power under delegation conferred by the Commission on 29 January 2020. He effected the conversion of the licence pursuant to s 324 of the Act, which includes a requirement that when doing so, the Director “issue a licence with the authorities and conditions the applicant considers equivalent to the licence or special licence issued under the *Liquor Act 1978*”.
23. Regulation 58 of the Regulations authorises licensees trading with a late night authority to trade every day until 02:00. Regulation 75 prohibits licensees with a public bar authority from trading after midnight. When converting this licence, the Director could have achieved equivalence by issuing a late night authority with conditions limiting trading after midnight to Friday and Saturday mornings. Instead, he issued the converted licence with a public bar authority, but not with a late night authority.
24. For its part, the applicant could have applied to the Commission for a review of the Director’s decision. It did not do so. Instead, it adopted the course of applying for a late night authority in conjunction with the substitution of premises application.
25. In any event, the Director accepted the application he received on 14 February 2023.

Consultation

26. On 25 February 2023, in accordance with section 57 of the Act, notices of the application were published in the NT News, on the Director’s website and on signs placed around the site of the proposed premises. As in the view of the Commission was appropriate, the notices also included information regarding the concurrent application for substitution of the EGM venue.
27. In accordance with section 56 of the Act, notification was given to the Department of Health (**DOH**), NT Police, Northern Territory Fire and Emergency Services (**NTFRS**) and the CEO of the City of Palmerston.

⁷ Exhibit One, pp 9, 10

28. The Director informed the Commission that:

- DOH responded by stating it had no objections.
- NT Police did not provide a response.
- NTFRS did not provide a response.
- The City of Palmerston objected to the applications.

29. In addition, 47 objections were received, including from a group of business interests associated with the Parkside Bistro (**the primary objectors**).

30. The identified objectors were:

- JDI Properties Pty Ltd as trustee for The Aspire Trust (primary objector)
- Armada Hotels and Leisure Pty Ltd as trustee for The Armada Trust (primary objector)
- Zest Projects Pty Ltd as trustee for the Zest Projects Trust (primary objector)
- Armada ELC Pty Ltd as trustee for the Gunn ELC Trust (primary objector)
- Costojic Pty Ltd (developer of Zuccoli Aspire estate)
- Anna Ingram (on behalf of City of Palmerston)
- Jacob Reynolds
- Natalie Bridson
- Laurianne Lerebours and Nathan Gregorie
- Jessica Fernandes
- Drew Gontscharow
- Cassie de Vries
- Jade Ferry
- Carly Palm
- Chelsea Mulcahy
- Ian and Marita Lunney
- John Cruz
- Alison Watters
- Amy Field
- Briony Gallagher
- Marvin Murphy
- Pilita Antiporda
- Rishi Kesh Bhandari

- Robert Marquez
- Tyrone Ceba
- Michille Acebido
- Heidi Ceba
- Joshua Marquez
- David Paull
- Irene Manjares
- Nathan Gregorie
- Nelson Nheu
- Thomas Antulor
- Leonard Adams
- Tung Nguyen
- David Ty
- Daniel Da Silva
- Gareth Chin
- Imam Mukblis
- Hieu Nguyen
- Michael Moriarty
- Sunil Kumar
- Dale Mulej
- Lauren Condran
- Binod Khadka

The licensee's record of compliance

31. The applicant is a recently formed company that has never previously held a liquor licence. However, each of the applicant's three directors and equal shareholders, Mr Darren Lynch, Mr Guy Dunne and Mr Andrew Case, is or has been a principal or nominee of one or more Northern Territory liquor licensees. The Director has informed the Commission that each of them has a good record of compliance with the Act and the conditions of the liquor licences under their management.

The referral

32. On 26 May 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 and objectors that the matter would be listed for a public hearing on 28 and 29 June 2023.

33. The Director provided a substantial bundle of documents to the Commission with the referral (**the brief**), including the following:
- a. Heavitree Gap Tavern licence 80303981 stamped 29 May 2015
 - b. Certificate of Transfer of licence to applicant dated 24 October 2022
 - c. Liquor licence 80303981 dated 24 September 2022
 - d. Gaming machine licence GM138 for applicant dated 25 October 2022
 - e. Application for variation of licence dated 9 January 2023
 - f. Notice of refusal to accept application dated 27 January 2023
 - g. Application for substitution of premises dated 1 February 2023
 - h. ASIC Register extract for DCL Hospitality Pty Ltd
 - i. Asset sale agreement between applicant and former Heavitree Gap licensee
 - j. Section 54 Affidavit dated 9 January 2023
 - k. Public Interest and Community Impact Assessment summary
 - l. Concept and Proposal: "Zuccoli Tavern", including site plans
 - m. Zuccoli Tavern camera surveillance plan 1 February 2023
 - n. Zuccoli Tavern Community Impact Assessment
 - o. Zuccoli Tavern Public Interest Criteria
 - p. Heads of Agreement for applicant's lease over proposed premises
 - q. Community survey: selected results 27 February 2023
 - r. Community Impact Assessment: Late Night Authority March 2023
 - s. Objections received
 - t. Applicant's response to objections
 - u. Correspondence with stakeholders

The hearing

34. 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. The hearing was conducted in public, save for when evidence was being received regarding commercial-in-confidence information that the Commission considered it was not appropriate in the circumstances to make publicly available. Prior to the hearing, the Commission determined which documents in the brief were to be provided to the parties, and arranged for this to occur.
35. On 28 and 29 June 2023, the hearing took place. Dr Ford appeared on behalf of the applicant. Ms Ganzer, the Acting Director, appeared on behalf of the Director. Mr Giles appeared for the primary objectors. Mr Maher appeared for the City of Palmerston. Two other objectors, Mr Drew Gontscharow (who gave evidence) and Mr Ian Lunney (who cross-examined a witness called by the

applicant) also participated in the hearing. The Commission thanks them all for their attendance and assistance.

36. The brief was tendered and admitted into evidence without objection, as was the redacted version that had been circulated to the parties.

37. In addition and also without objection additional documents were tendered during, and in some cases, following the conclusion of the hearing, including:

- a. Photographs of the site and sample menu
- b. Applicant's forecast budget (confidential exhibit)
- c. Photographs supplied by Mr Gontscharow
- d. Letterbox drop letter, dropped off in letterboxes in April 2023
- e. Map of density of licensed premises
- f. Site plan of Heavitree Gap Tavern premises in Alice Springs
- g. Certificates of financial stability for applicant
- h. Crime Statistics
- i. Site Plans for proposed Zuccoli Tavern
- j. Parking Survey: Zuccoli Plaza
- k. Proposed policies and procedures manual: Zuccoli Tavern
- l. Full results of residents' survey
- m. Extract from Zuccoli Plaza developer's website
- n. List of Liquor and Gaming licensees by suburb
- o. Booklet with Facebook comments in the Zuccoli Community group
- p. List of Darwin venues in proximity to residential areas
- q. Site plan of Zuccoli Plaza tenancies
- r. Urbex Land Development Corporation invitation for expressions of interest to develop a commercially zoned "Village Centre", potentially including a tavern, for Zuccoli, 2014
- s. Permit 15/0357 for development of "a commercial centre with shops, restaurants and a medical clinic" over Lot 13078 in Zuccoli, 26 June 2015
- t. Applicant's Altered Preliminary Concept plans, 30 June 2023

38. At the hearing the following witnesses were affirmed, gave evidence and were subject to cross-examination:

- a. Mr Lynch
- b. Mr Gontscharow
- c. Mr Case
- d. Mr Dunne

- e. Ms Shellie Lay (manager of Zuccoli IGA and Cellarbrations)
- f. Mr Danny Nixon-Smith (consultant engaged by the applicant)
- g. Mr David Anthony (Parkside Bistro nominee)

Legal issues

39. The Commission now turns to consider four contentious legal issues that were raised either by the parties or the Commission in the course of these proceedings:

- a. The validity of liquor licence 80303981
- b. The validity of the applicant's application
- c. The permissible scope of the primary objectors' objections
- d. The relevance of the concurrent EGM application

a. The validity of liquor licence 80303981

40. The Commission sought further information and provided the parties with an opportunity to make submissions on an issue that emerged during the hearing, namely whether the licence the subject of the application was itself invalid, thereby depriving the Commission of jurisdiction to determine the applications.

41. The Acting Director wrote to the Commission submitting that it was precluded from considering this issue, because to do so would in effect require the Commission to embark on a review of previous decisions of the Director, and that the Commission had no jurisdiction to undertake such a review. The Commission disagrees. When an issue going to jurisdiction has arisen, the tribunal is obliged to address and determine that issue. As President Bruxner observed in *Woolworths Group Limited v Northern Territory Liquor Commission, Foundation for Alcohol Research and Education Ltd & Ors* [2019] NTCAT 37, at [44]:

the tribunal has implied jurisdiction to determine whether it has jurisdiction to proceed with a review; indeed, it has the responsibility to do so.

42. The licence the subject of the application is Liquor Licence 80303981 dated 24 September 2022, purportedly issued to the applicant under the Act on that date.⁸

43. Section 324 of the Act, which came into force on 1 October 2019, established a scheme for the conversion of all liquor licences issued under the *Liquor Act 1978* (**the 1978 Act**) to licenses under the *Liquor Act 2019*. It provides:

- (1) A licence or special licence issued under the *Liquor Act 1978* and valid immediately before the commencement continues in effect in accordance with its terms and conditions after the commencement.

⁸ Exhibit 1, p 26

- (2) A licence or special licence issued under the *Liquor Act 1978* expires on the earlier of the following dates:
 - (a) 1 October 2020;
 - (b) the date the licence is converted under subsection (6).
- (3) A person holding a licence or special licence issued under the *Liquor Act 1978* may apply to the Director to convert it into a licence with equivalent authorities under this Act.
- (4) An application to convert a licence or special licence must be:
 - (a) lodged with the Director before 1 April 2020; and
 - (b) in the approved form.
- (5) If a licensee does not submit an application before 1 April 2020, the Director may proceed to convert the licence or special licence under subsection (6)(b) or (c) without the licensee's consent or participation.
- (6) After considering the application, the Director must:
 - (a) issue a licence with the authorities and conditions the applicant considers equivalent to the licence or special licence issued under the *Liquor Act 1978*; or
 - (b) issue a licence with the authorities and conditions the Director considers equivalent to the licence or special licence issued under the *Liquor Act 1978*; or
 - (c) refuse to issue a licence and allow the licence or special licence issued under the *Liquor Act 1978* to expire.
- (7) Issuing licences and authorities under this section is not subject to the following:
 - (a) the public interest and community impact requirements, including any onus on the applicant to satisfy those requirements;
 - (b) the giving of public notice of an application;
 - (c) the process of making objections to an application.

44. Section 324 of the Act was considered in *Woolworths Group Limited v Northern Territory Liquor Commission, Foundation for Alcohol Research and Education Ltd & Ors* [2019] NTCAT 37, in which President Bruxner stated, at [39]:

Plainly the purpose of section 324 is to establish an administrative procedure for bringing licences validly issued under the auspices of the *Liquor Act 1978* within the regulatory regime established by the *Liquor Act 2019*. The chosen mechanism - of conversion by the Director of Liquor Licensing (either on application or own motion), rather than, for example, a simple deeming provision - is unconventional, but is possibly explained by an intention to weed out licences that are no longer being used.

45. The Act also contains s 66 ('Surrender of licence or authority') and s 67 ('Abandonment of licence').

46. Section 66 of the Act provides:

- (1) A licensee may surrender the licence or an authority by returning it to the Director.
- (2) The surrender of a licence or authority has no effect unless accepted by the Director.
- (3) The Director must accept the surrender of a licence or authority if satisfied that the licensee gave all persons who have an interest in the licence at least 14 days notice of the licensee's intention to surrender the licence or authority.
- (4) If the surrender of a licence is accepted, a person who held the licence ceases to be a licensee, but remains liable for:
 - (a) any act or omission done, caused, permitted or made by the person prior to the surrender taking effect; and
 - (b) any liability incurred by the person under this Act prior to the surrender taking effect.

47. Section 67 of the Act provides:

- (1) A licensee is taken to have abandoned the licence if the licensee ceases to operate the licensed premises for more than 6 months without the prior approval of the Director.
- (2) If a licence is abandoned:
 - (a) the abandoned licence has no effect; and
 - (b) the Director may cancel the abandoned licence; and
 - (c) the person who held the abandoned licence has no rights or privileges under it.
- (3) A person who held an abandoned licence remains liable for:
 - (a) any act or omission done, caused, permitted or made by the person prior to the abandonment; and

- (b) any liability incurred by the person under this Act prior to the abandonment.

48. Neither s 66 nor s 67 of the Act had a counterpart in the 1978 Act. Accordingly, a 1978 Act licensee who ceased to operate the premises did not thereby cease to be a licensee.

49. On the basis of evidence received during the hearing the Commission finds:

- a. Liquor Licence 80303981 stamped “29 May 2015” was issued under the *Liquor Act 1978* to Australian Property Projects Pty Ltd (**the transferor**) for the Heavitree Gap Tavern premises.⁹
- b. On 27 August 2022, the applicant was registered with the Australian Securities & Investments Commission.¹⁰
- c. On 5 September 2022, the transferor and the applicant entered into an asset sale agreement pursuant to which the applicant contracted to purchase the licence from the transferor at a significant price.¹¹
- d. On 30 September 2022, the applicant applied for the transfer of the licence.¹²
- e. On 24 October 2022 a Delegate of the Director approved the transfer of the licence from the transferor to the applicant.¹³
- f. On 24 October 2022, the Director’s Delegate issued a certificate transferring licence 80303981 from the transferor to the applicant.¹⁴

50. On the basis of material provided at the request of the Commission by the Director and the applicant following the hearing, the Commission finds:

- a. Before 5 September 2018, the transferor ceased to operate the licensed premises.
- b. The transferor did not apply to the Director to convert the licence pursuant to s 324(3) of the Act.
- c. On 28 March 2020, the Director approved the continuation of the licence pursuant to section 67(1) of the 2019 Act.
- d. On 14 September 2020, the Director extended the continuation of the licence until 30 June 2021.
- e. Subsequently, the Director extended the section 67(1) approval, until 30 September 2022.
- f. The Director did not issue a converted licence in accordance with section 324(6)(b) of the Act before 24 September 2022.

⁹ Exhibit 1, p 5

¹⁰ Exhibit 1, p 51

¹¹ Exhibit 1, p 54

¹² Exhibit 1, p 21

¹³ Exhibit 1, p 21

¹⁴ Exhibit 1, p 20

- g. The transferor did not surrender the licence pursuant to s 66 of the Act.
51. The Commission considers that in light of the above findings of fact, the following questions arise:
- a. Was the licence abandoned by the transferor?
 - b. Does the fact that a licence was apparently issued to the applicant a week before the applicant applied for the transfer of the licence and a month before the certificate of transfer was issued render either the licence or the certificate of transfer invalid?
 - c. Did the licence expire because a converted licence was not issued before 1 October 2020?
 - d. If the answer to any of questions (a), (b) or (c) above is “yes”, what effect, if any, does this have on the jurisdiction of the Commission to grant the applications to substitute premises, amend conditions and issue a late night authority?
52. In relation to these issues the Commission is grateful to the applicant and the Acting Director for their written submissions, which the Commission has considered. For the reasons that follow, the Commission answers these questions:
- a. No
 - b. No
 - c. No
 - d. Unnecessary to answer
53. The first question: As there were no provisions in the 1978 Act equivalent to s 67 of the Act, the Commission is satisfied that although the licensee had ceased to operate the licence for over a year, the licence was still in effect until 1 October 2019, when the 2019 Act commenced.
54. The Director’s approval given on 28 March 2020 was within 6 months of the commencement of the Act, and hence constituted “prior” approval for the purpose of s 67(1). That approval was continuously extended at least until 30 September 2022, the date the applicant lodged an application with the Director to approve the transfer of the licence from the transferor to the applicant. The Commission is accordingly satisfied, in answer to the first question, that there was no abandonment of the licence pursuant to s 67.
55. The second question: The purported issue of the licence on 24 September 2022 to the transferee applicant was anomalous, as this predated the making of the transfer application. In all the circumstances, the Commission is inclined to the view that the date “24 September 2022” in the licence is a slip, and that the licence was actually issued on 24 October 2022, the same date as the Director’s Delegate approved the transfer and issued the transfer certificate.
56. Alternatively, it is possible that the licence was issued on 24 September 2022 in anticipation of the forthcoming transfer application, but that the name of the

licensee was mistakenly recorded as the name of the applicant instead of the transferor.

57. In the Commission's opinion, whether due to the date on the licence being incorrect, or the name of the licensee being incorrect, such an irregularity is likely the result of an inadvertent clerical mistake of the sort that courts routinely have the power to correct under "the slip rule". The Commission considers that such a mistake does not of itself cause a licence purportedly issued under the Act to be invalid.¹⁵
58. The third question: At first blush, it appears that the licence expired on 1 October 2020, as provided by s 324(2): the transferor did not apply to have the licence converted, and there is no evidence that the Director proceeded to convert the licence before 1 October 2020 pursuant to s 324(5).
59. If the Director had proceeded to convert the licence pursuant to s 324(5), in the usual course of events he would have issued a licence under the Act before 1 October 2020. However, no such licence was issued until approximately two years later.
60. Section 324(5) and (6) provide that if the Director exercises his power to convert a licence, "after considering the application, the Director must... issue a licence". Although the word "after" is not expressly qualified by reference to a specified period of time, the Commission is of the view that when "after" is construed in the context of s 324 as a whole, in order to effect a s 324 conversion, the Director was required to issue the converted licence before 1 October 2020. The Commission is of the view that he did not do so.
61. Nevertheless, the Commission is satisfied that between 1 October 2019 and 24 October 2022 the Director dealt with the transferor as if the licence had not expired, by repeatedly approving the continuation of the licence. During this period the Director held out to both the transferor and, later, to the applicant that the licence remained on foot.
62. Belatedly, on 24 September 2022 (or, perhaps, 24 October 2022), the Director did proceed to issue a converted licence. The Commission finds that the Director exercised his power to convert the licence, but in so doing he failed to comply with the procedure prescribed by s 324 of the Act.
63. It is then necessary for the Commission to consider whether that non-compliance was such as to render the issue in 2022 of the licence invalid and of no effect.
64. In *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; 194 CLR 355, the plurality stated:¹⁶

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect.

¹⁵ There is a third conceivable explanation for the anomaly. Knowing that the approval to continue the licence expired on 30 September 2022, the officer who issued the licence could have "fudged" the date to avoid issuing the licence after the approval period had expired. Such a finding would be seriously adverse to a senior officer of Licensing NT, no such allegation has been made, there is no evidence to support such a finding, and the Commission makes no such finding.

¹⁶ At [91], per McHugh, Gummow, Kirby and Hayne JJ

Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.

65. The clear purpose of s 324 was to establish an administrative scheme to facilitate the conversion of liquor licences issued under the 1978 Act to the 2019 Act. Significantly, that scheme was one to which the Act's public interest, community impact and public notification requirements expressly did not apply. The Commission infers that the scheme was intended to operate in a manner that minimised cost and inconvenience to both licensees and Licensing NT. The consequences of finding that the non-compliance in this case vitiated the licence would be seriously adverse to both the applicant and the transferor, who entered into an asset sale agreement for the purchase of the licence at a significant price, in reliance on the Director's approval for the continuation of the licence.
66. The Commission is satisfied that parliament did not intend that non-compliance of the type that occurred in this case would invalidate the exercise by the Director of his power under s 324 to convert a licence. It follows that question three is answered in the negative.
67. Question four: The answer to the first three questions being "no", it is unnecessary to answer the fourth question.

b. The validity of the applicant's application

68. Prior to the commencement of the hearing, the primary objectors filed a detailed objection in which they urged the Commission to refuse the application without conducting a hearing, on the grounds that the application was "fundamentally deficient", "not lodged in the approved form and manner" and not supported by the accompanying material required by s 52(3) of the Act. The primary objectors vigorously submitted that the Director had erred in accepting the application under s 56 of the Act.
69. Section 21 of the Act confers on the Commission the discretion to determine an application without a hearing, but only in limited circumstances, namely where:
- a. a public hearing is likely to cause undue hardship to a person;
 - b. commercial-in-confidence information must be protected;
 - c. the matter is not controversial; or
 - d. conducting the hearing in public would not be worthwhile.

None of these circumstances was present in this instance, and accordingly, the Commission refused the application by the primary objectors that it proceed without a hearing.

70. The Commission readily accepts that the materials contained in the brief provided by the Director were deficient. However, in the view of the Commission, once the Director has referred an application to the Commission

(as the Director is obliged to do in accordance with s 59(1) of the Act), the Commission is obliged to consider and determine the application, on its merits. Where, as in this case, the application was inadequately supported, the Commission is empowered by s 59(5) to require an applicant to provide the Commission with such “additional documents or information that the Commission considers necessary to make a proper assessment of the application”. That, in effect, is what occurred, as may be inferred by the lengthy list of additional documents tendered by the applicant as the hearing progressed.

71. The primary objectors renewed this ground of objection in their final written submissions. In effect, the primary objectors have urged the Commission to overturn the Director’s decision to accept the application. The Commission considers that once it is seized of an application referred to it by the Director under s 59 of the Act, the Commission has no power to review the correctness of the Director’s decision to accept the application and refer it to the Commission.

c. The permissible scope of the primary objector’s objections

72. Perhaps by way of riposte to the above-mentioned thrust by the primary objector, for its part the applicant submitted at various stages of these proceedings that the objector did not have standing to advance as a ground of objection anything except the matters set out at s 61(2) of the Act, namely that granting the application would adversely affect either the amenity of the neighbourhood or the community’s health, education, public safety or social conditions, or that the applicant was not a fit and proper person.
73. As the Commission has both rejected the primary objector’s challenge to the validity of the Director’s decision to accept the application, and ultimately determined to grant the application on its merits, it is unnecessary to determine this issue. However, in the tentative view of the Commission, where a threshold jurisdictional issue has been raised, all parties to the hearing are entitled to assist the Commission by making submissions. In the tentative view of the Commission, issue (a) considered above regarding the validity of the licence is one such issue, but issue (b) regarding the validity of the applicant’s application is not.

d. The relevance of the concurrent EGM application

74. A focus of most of the objections was on the applicant’s plan to bring poker machines – EGMs – to Zuccoli. The objectors pointed to what they claimed would be the adverse effect of EGMs on community health, public safety and social conditions. With respect, the Commission considers that there is considerable force in those submissions. There is a substantial body of evidence that poker machines in Australia are highly profitable, that they are a lucrative source of taxation income for State and Territory governments, and that they cause widespread and serious harm to many vulnerable members of the community. It does not necessarily follow, however, that the Commission is entitled to take any of these matters into account.
75. Previously, in considering an application by the Darwin Turf Club under the *Liquor Act 1978* (LC2019/092), the Commission was, as in the instant case,

required to determine whether to approve an application to substitute premises that had been devised to work around the government-imposed cap on EGMs. In that case, the Commission, in granting the application, stated, at [14] and [16]:

The Director [of Gaming Machines] determines gaming machine licence substitution applications (see *Gaming Machine Act*, s 42E), and the Commission has no direct role to play in their assessment or determination.

...

As a result, the Commission's consideration of this application is rather disconcertingly artificial. On the one hand, the Commission is required to determine a liquor licence application, the underlying dominant purpose of which is to facilitate the establishment of a venue for 55 EGMs, in circumstances where a refusal of the application would preclude the licensee from obtaining approval to operate the EGMs as planned. On the other hand, the task of assessing the gaming machine licence substitution application, including the community impact of the proposed 55 EGMs, falls to another decision-maker.

76. In assessing whether the Darwin Turf Club application would put the safety, health and welfare of persons who would use the proposed licensed premises at risk, as the Commission was required to do by s 6(2)(d) of the *Liquor Act 1978* (a provision substantially similar to s 49(2)(d) of the *Liquor Act 2019*), the Commission stated, at [52]:

The only particular potential concern to the Commission regarding this objective relates to the use by club patrons of EGMs. However, as discussed at paragraph 14 to 16 above, the Commission accepts that this is a matter exclusively for the Director [of Gaming Machines] to consider. The Commission considers that the scope of s 6(2)(d) of the Act does not extend to consideration of the risk to the welfare of patrons arising from their use of EGMs while using the licensed premises, because that is a field covered by the *Gaming Machine Act*. That Act establishes a scheme to regulate the assessment of applications for gaming licences, and for the substitution of gaming licences. The scheme includes the requirement to conduct and consider a community impact analysis, which in turn is required to address, among other matters, problem gambling risk management and responsible gambling strategies.

77. In determining an application by Hibiscus Tavern Pty Ltd to vary its licence conditions (LC2019/113), and an application by Jumiam Pty Ltd and Thedugies Pty Ltd to substitute premises (LC2020/023) where similar issues arose, two differently constituted panels of the Commission came to the same conclusion as the Commission had done in the Darwin Turf Club case.

78. In her written submissions on this issue, Acting Director Ganzer advocated that the Commission depart from this approach. As the Acting Director

correctly pointed out, the Commission is not bound by its previous decisions. On the other hand, in accordance with the principles of comity and consistency, the Commission does not ignore its past decisions, and is often assisted and guided by them.

79. The Acting Director firstly submitted that “but for the Gaming Machines, the venue would not be financially viable”. However, the financial viability of the enterprise is primarily a matter for its proprietors and operators, rather than the Commission. As will be discussed below, the Commission is satisfied that the principals of the applicant are financially stable, with an impressive record of operating successful licensed venues in the Darwin region. No suggestion has been made by any of the parties that Mr Lynch, Mr Case and Mr Dunne are not all fit and proper persons for the purpose of this application.
80. Furthermore, and more importantly, even if the Commission were to find that the viability of the venue depended on approval of the EGMs, the Commission is unable to identify how such a finding could affect its assessment of any of the public interest objectives or community impact matters listed in s 49 of the Act. Save in those rare cases where the Commission forms the view that an applicant is so lacking in experience or competence in business as to justify a finding that the applicant is not a fit and proper person for the purpose of granting an application in relation to a liquor licence,¹⁷ the Commission’s functions do not extend to evaluating entrepreneurs’ business decisions.
81. Secondly, the Acting Director submitted that the Commission is required to consider the impact of EGMs by s 49(2)(f) of the Act, which requires the Commission to consider how an application would promote “compliance with this Act and other relevant laws of the Territory”. Assuming that the *Gaming Machine Act 1995* is an “other relevant law”, in the view of the Commission compliance with that Act is best promoted by not intruding on its administration, and by allowing the Director of Gaming Machines, who is the decision-maker appointed by that Act, to perform their functions in accordance with that Act.
82. The primary objectors submitted that as the liquor component and the gaming component of the application are “intrinsically linked” and “intertwined”, the Commission should have regard to the gaming component when applying the public interest and community impact tests. The Commission’s difficulty with this submission, which was not supported by authority, is that it does not address with any clarity or specificity the substantive issue previously considered by the Commission, namely how the distinct statutory schemes regulating decision-making for, on the one hand, liquor licences, and the other hand, gaming machine licences, are intended to operate in tandem.
83. On behalf of the City of Palmerston, Mr Maher submitted that the Commission is entitled to have regard to the effect of the presence of EGMs on how liquor is consumed on the premises. The Commission agrees.
84. In the view of the Commission, with this limited exception, the presence of EGMs on the premises is not a matter to which the Commission is entitled to have regard for the purpose of considering an application under the Act.

¹⁷ See, for example, LC2022/053, in relation to the NT Rock Bar, Alice Springs

Assessment of the application

85. Section 75(1) of the Act (“Substitution of premises”) requires licensees who apply for substitution of premises to apply for a new licence for the new premises. Although s 75(2) authorises the Commission to amend the existing licence instead of issuing a new licence, all the parties proceeded on the basis that the application should be considered as if it were an application for a new licence. The Commission agrees.

86. Accordingly, as required by s 59(3) of the Act, the Commission has considered:

- a. the applicant's affidavit required by s 54;
- b. the objections to the application made under s 61;
- c. the applicant's response to the objections 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 applicant;
- 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;
- h. if the Commission considers it appropriate – whether each associate of the applicant is a fit and proper person to be an associate of a licensee.

87. In accordance with s 49 and s 51 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

88. 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.

89. It is common ground that applicant's three principals, Mr Lynch, Mr Dunne and Mr Case between them have extensive experience in the Northern Territory tourism and hospitality industry. Between them they have at various times managed and in some cases owned a range of prominent venues, including Melanka Lodge in Alice Springs, the Discovery Nightclub, the Vic Hotel, the Cavenagh Hotel, the Beachfront Hotel, the Humpty Doo Tavern, The Precinct Tavern and Wharf One restaurant.

90. The applicant has provided extensive documentation of the operations, activities, procedures and policies its principals have developed and implemented at other licensed premises.
91. Each of the applicant's principals gave evidence at the hearing. They were all impressive witnesses. The Commission has particular regard to their record of successfully converting Territory venues such as the Humpty Doo Tavern and the Beachfront Hotel in Nightcliff from rough and rowdy hard-drinking venues to classier contemporary facilities with broader appeal. The Commission readily accepts that the applicant's principals have the experience, temperament, maturity, enthusiasm, resources and commitment to successfully establish and operate a family-friendly tavern in a new suburban precinct.

Persons of influence and potential beneficiaries

92. 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 primary objectors submitted that the applicant had failed to comply with this requirement because a Declaration of Associates had not been completed. Even if this were a valid ground of objection for an objector, as is doubtful (see discussion above, at [72]), this ground of objection is misconceived. Section 54 does not require an applicant to lodge a Declaration of Associates. Section 55 establishes a framework within which applicants can (and often do) declare their associates, which can be of assistance to the Commission if, in the event that the Commission considers it appropriate to do so, the Commission considers whether an applicant's associate is fit and proper to be an associate of a licensee (s 59(3)(j)). However, there is no *requirement* that an applicant submit a Declaration of Associates.
93. In this instance, no such Declaration was submitted. If the Commission had had concerns about the applicant's associates, it could and would have required the applicant to provide it with additional information, as s 59(5) empowers it to do. However, in this instance, given the well-established credentials of the principals of the applicant, the Commission did not consider it appropriate to consider the associates of the licensee's principals.
94. The Commission is satisfied that the applicant has complied with the disclosure requirements of s 54.

The objections

95. As mentioned above, many of the objections focussed on the gaming component of the application, but the Commission has determined that this important issue is one which the Commission must not consider, except in a very limited manner.
96. The weight the Commission gives to the primary objectors' comprehensively prepared and professionally executed opposition to the application is necessarily moderated by the fact that the primary objectors are a group of companies whose commercial interests in the Parkside Bistro place them in

direct competition with the applicant, and whose own business aspirations in Zuccoli stand to be impaired, if not thwarted, in the event that a tavern is opened at Zuccoli Plaza.

97. The applicant drew the attention of the Commission to what it called “the tactics of frustration” engaged in by the primary objectors, including the registration in February 2023 by the Parkside Bistro licensee of the business name “Zuccoli Tavern”, shortly after the applicant had lodged its second application with the Director. In a similar vein, evidence was received suggesting that Mr Anthony, the nominee of the Parkside Bistro, had solicited objections to the application by posting on a Zuccoli Community Facebook group.
98. The Commission notes that although not a member of the legally represented primary objectors group, one other objector, Costojic Pty Ltd, the Zuccoli Aspire developer, also appears to have a commercial interest in opposing the application, and, conversely, in supporting the Parkside Bistro.
99. The City of Palmerston filed an objection, and appeared, with legal representation, at the hearing.
100. Twenty-six of the objections from local residents were by way of signatures to a letter with identical wording, as follows:

We are residents of Zuccoli and currently enjoy a relatively peaceful neighbourhood compared to other suburbs of Darwin and Palmerston. We are concerned that a 2nd proposed Tavern – The Zuccoli Tavern with Gaming at the Zuccoli Plaza will affect the amenity, the health, education, public safety or social conditions in the community.

The location of the proposed Zuccoli Tavern & Gaming is a shopping centre with a nearby by [sic] bottle shop is likely to bring crime and attract people to the area that otherwise have no reason to come to Zuccoli. It is likely that people who have been drinking will cause issues with other businesses and shopping centre visitors.

The Zuccoli Plaza needs to remain a safe place free from alcohol and gaming as it is the only Shopping area in the [sic] Zuccoli. Children regularly walk and ride bikes there before and after school and on weekends, exposure to gaming and alcohol and potentially intoxicated persons is too risky.

We are also concerned that if the proposal is approved, we are going to be a suburb with two venues and 30-40 poker machines. The suburb still has a long way to grow, and it is definitely far too early considering a proposal for a second tavern especially before the first one has been built.

101. The Commission has also had regard to individually written objections from 15 residents of the neighbourhood, which raised in particular the following additional relevant concerns:

- The presence of the tavern would make the community less safe, and deter prospective home-buyers
- Noise, extra foot and road traffic will particularly impact residents of Seafury Court
- A tavern would impair Zuccoli's family-friendly "village" lifestyle

102. Two of these objectors, Mr Gontscharow and Mr Lunney, attended and participated in the hearing. The Commission records its appreciation to them and to the many Zuccoli residents who went to the trouble to contribute to the assessment of this application.

The reply to the objections

103. Whether or not, as the applicant has contended, the Parkside Bistro backers, motivated by self-interest, sought to mobilise community opposition to the application, there is some evidence that the applicant itself also sought to mobilise community support. The applicant distributed a "Have Your Say" survey to 17 service providers in the neighbourhood. As one would expect, the applicant presented its proposal in a positive light, as in this letter to nearby residents:

As we're sure you are aware, we propose to open a Family-Friendly Tavern at neighbouring Zuccoli Plaza. Our biggest focus, as Owner Operators, is providing a fun, safe and value for money family offering to the residents of Zuccoli.

104. In February 2023, the applicant conducted a letterbox drop to some 6,900 households in Zuccoli and neighbouring suburbs. 377 responses were received, 49% of which were positive, 39% of which were negative and 12% of which were neutral. Despite the fact that the applicant only provided the Commission and the other parties with the results of the survey late on the final day of the hearing, the Commission commends the applicant for going to such lengths to consult with the community.

105. One pithy hand printed response from a local business to the "Have Your Say" survey particularly impressed the Commission as capturing the diverse views of the community: "ITS GOT A GOOD SIDE + A BAD SIDE".

106. In its formal response to the objectors, the applicant replied in detail to the detailed objection of the primary objectors, and provided 11 supportive testimonials from businesses, community organisations and a local resident (who is also a former employee of a principal of the licensee).

The relevance of community wishes

107. The Commission considers that community views are relevant to its assessment of the merits of an application. Although, unlike in previous iterations of the *Liquor Act*, there is no specific reference in the Act to “the needs and wishes of the community”, community views can feed into the decision-making process in at least four ways:¹⁸

- a. Firstly, s 49(3) requires the Commission to consider the potential impact on the community in the area that would be affected by the decision. If a decision is made that is at odds with community wishes, the impact on the community will likely be adversely affected.
- b. Secondly, s 57 requires the applicant to publish notice of the application, unless the Director considers that it discloses no public interest issues. An obvious purpose of that provision is to provide members of the affected community an opportunity to voice their wishes regarding the application, whether in support or opposition.
- c. Thirdly, s 56(4)(c) requires the Director to inform the Chief Executive Officer of the local council. The council, an elected body, represents the interests of its constituents.
- d. Fourthly, s 61 establishes a scheme for certain members of the affected community to object to an application.

108. In this instance, the Commission considers that community opinion is evenly divided: half of the survey respondents supported the application, and half did not. Community wishes may be unequivocal and decisive in some cases that come before the Commission. This is not one of those cases.

The suitability of the applicant’s premises

109. The site plans and drawings provided to the Commission in support of the application were preliminary and conceptual rather than advanced and detailed. On the one hand, it is more challenging to evaluate plans when they are at such an early stage. On the other hand, at such an early stage the applicant has the opportunity to adjust the plans as issues emerge. On the next working day following the conclusion of the hearing, the applicant provided the Commission with two Altered Preliminary Concept plans that were subsequently admitted without objection into evidence. These altered plans were obviously drawn to address the objections relating to noise from residents of Seafury Court, which runs along the rear of the proposed premises. Under the altered plans, the proposed al fresco area of the tavern is relocated from the rear of the premises to the front, facing the Zuccoli Plaza car park.

¹⁸ See Glen Helen Outback Resort Lodge decision (LC2020/003) at [58]

110. The Commission has given serious consideration to whether it is suitable to situate a family-friendly tavern in Zuccoli Plaza, a small suburban shopping centre.
111. The applicant went to considerable lengths to make the case that from its inception, the plans for the Zuccoli Village development had included a tavern. For example, the applicant tendered a 2014 prospectus by the Urbex Land Development Corporation containing a list of potential commercial tenants of what would become Zuccoli Plaza, including a tavern. The Commission accepts the evidence of Mr Lynch that the applicant had been strongly encouraged by the developer (Urbex), the lessor (RR Morriss Group) and even by the CEO of the City of Palmerston to develop its proposal for a tavern. The Commission also accepts that the lessor has been attempting to secure a tenant to establish and operate a tavern on the premises since 2019.¹⁹
112. The objectors, on the other hand, pointed to evidence that a tavern was not part of the original Lot 13208 (Zuccoli Plaza) plans. For example, Mr Gontscharow, the proprietor of a residence in Seafury Court immediately adjacent to the proposed premises, gave oral evidence which the Commission accepts that when he had purchased his home in 2015, he had not been told that a tavern might be built across the road. In 2015, Lot 13208 was granted a Development Permit (DP15/0357) for a “Commercial Centre with shops, restaurants and medical clinic in three single storey buildings with car parking”.²⁰
113. It is apparent that at different times, different stakeholders have painted the future of Zuccoli with differently coloured brushes, for different audiences.
114. On 17 May 2022, the Minister for Infrastructure, Planning and Logistics issued Amendment No. 45 to the Northern Territory Planning Scheme which now classifies Lot 15460 Town of Palmerston (which includes Lot 13208 and the surrounding residential areas of Zuccoli) as being a Specific Use zone with the following purpose:
- Provide for a range of lot sizes that will facilitate a variety of low rise housing options and compatible residential uses in a location *supported by appropriate commercial and community facilities* and where full reticulated services are available [emphasis added]
115. The Commission considers that a tavern may well be compatible with this purpose. However, that is ultimately a matter for the DCA, as is reflected in the condition set out at paragraph 8.b) above.
116. Zuccoli Plaza has a carpark with 180 spaces that the Commission finds is significantly under-utilised.²¹ This too is a matter for the DCA to consider.

¹⁹ See Exhibit 1, p 400

²⁰ Exhibit 18, Exhibit 21

²¹ Exhibit 13

117. The more general issue is whether or not a suburban shopping centre is a suitable location for a tavern in a residential precinct. The Palmerston CBD has a cluster of licensed premises, as indeed does the Darwin CBD, and it is relatively uncontroversial that it is appropriate to locate licensed premises in tourism and hospitality precincts, typically within a CBD. However, in recent years, several such venues have been licensed to operate in suburban zones in the greater Darwin area. For example, the applicant adduced evidence that there are multiple licensed venues in both Parap/Fannie Bay and Nightcliff/Rapid Creek.²²

118. The Commission accepts that whereas a poorly managed licensed venue can be a source of annoyance, anti-social behaviour and crime that adversely affects nearby residents, on the other hand having a well-run "local" can be a significant amenity for the locals.

119. The Commission assesses the premises as suitable for a family-friendly tavern.

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

120. The Commission received ample documentation from the applicant, including commercial-in-confidence material that leads it to assess 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

121. 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 directors and its secretary (Mr Lynch) to be satisfactory.

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

122. The Commission assesses the applicant to be a fit and proper person to hold a licence. This was one of the few issues for determination by the Commission that was not in contention.

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

123. The applicant has nominated Mr Dunne and Mr Case as joint licence nominees. The Commission assesses them each to be a fit and proper person to hold the licence.

Public notice and consultation

124. The primary objectors contend that public notification of the application was not in accordance with s 57(4) of the Act. Even if the primary objectors have

²² Exhibit 21

standing to advance such a ground of objection, which is doubtful, there is no substance in this contention. The notice published in the NT News and displayed on signs in situ included a link to the Director's website, on which was posted a more detailed notice in conformity with the requirements of s 57(4), notably including that the applicant was seeking a late night authority.

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

126. The applicant submits that as NT Police did not object to the application when they were consulted, the Commission should infer that the police do not harbour concerns about it. The Commission rejects that submission. NT Police did not respond to the Director's notification. There are many possible reasons for that. It would be unreasonable to infer either that the police support or oppose the application, and the Commission does not do so.

Public interest and community impact

127. The applicant bears the onus of satisfying the Commission of the public interest and community impact requirements set out at s 49(2) and s 49(3) of the Act respectively.

128. In considering these key issues, it is also important to keep in mind that, as provided in s 51, the onus is on the applicant. Moreover, 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".

Whether issuing the licence is in the public interest

129. 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.

130. As has been intimated above, the Commission considers that a critically important issue in determining whether the grant of the application would be in the public interest is the Commission's assessment of the capacity and commitment of the applicant to operate the premises responsibly and effectively. The applicant has the highly significant advantage of principals who have an excellent track record of not only running successful licensed premises, but also of bringing poorly-run premises up to a higher standard.

131. The primary objector drew attention to s 49(2)(h), and the applicant's stated intention to securely keep the credit card of a patron who is being supplied with liquor on a bar tab, which the primary objector contends would be an offence pursuant to s 101 of the Act.²³ The Commission considers that the purpose of s 49(2)(h) and s 101 is to eliminate the notorious practice of "book-up" that used to be prevalent, particularly in remote areas of the Northern Territory. Nevertheless, the Commission urges the applicant and licensees in general to ensure that they maintain practices that are compliant with the Act.

132. In relation to s 49(2)(a), the Commission would have been assisted by evidence regarding a group of people potentially vulnerable to alcohol-related harm or ill-health, namely the residents of Palmerston Indigenous Village (**16 Mile**), less than 3 km from Zuccoli Plaza. For reasons that were not explained to the Commission, the extensive letterbox drop conducted by the applicant did not appear to include 16 Mile. The detailed Public Interest Assessment and Community Impact Criteria documents prepared on behalf of the applicant by DNS Specialist Services made no mention of 16 Mile. Ms Lay, a supporter of the application who manages the Zuccoli IGA licensed grocery store next door to the proposed premises, informed the Commission that residents of 16 Mile are not frequent customers of her takeaway liquor store. This is surprising, given that the Zuccoli IGA appears to be the closest takeaway liquor outlet to 16 Mile. The Commission received no information, representations or submissions from or on behalf of residents of 16 Mile or providers of services to 16 Mile residents.

133. Given the dearth of information available to the Commission regarding the residents of 16 Mile, the Commission makes no findings as to whether or how

²³ The Commission notes that it is a defence to a prosecution for an offence against s 101 if the defendant has a reasonable excuse.

the establishment of a tavern at Zuccoli Plaza would affect the harm or ill-health of that group.

134. A common theme amongst the objectors was that the grant of the licence would result in an increase in anti-social behaviour, an issue that s 49(2)(j) requires the Commission to consider. For example:

- “There have been countless break-ins and alcohol-related crime in [the Zuccoli Plaza] complex” (Mr Reynolds)
- “The bottle-shop is already the target of numerous acts of vandalism and break-in” (Ms Lerebours and Mr Gregoire)
- “Crime in the Zuccoli area has increased” (Ms De Vries)
- “The bottle shop has already had so many break ins with the theft of alcohol” (Ms Ferry)

135. The Commission readily accepts that there is a high level of concern in the community about alcohol-related crime, but the evidence heard by the Commission tells a rather different story. Ms Lay’s evidence was that the most recent break-in to her bottle-shop was over a year and a half ago, in October 2021. When Mr Gontscharow was asked to give evidence of crime in the neighbourhood, he recalled two incidents, a 2018 break-in at the IGA supermarket and an attempted break-in to a neighbour’s home in May 2023.

136. The Commission received violent crime statistics compiled by the Northern Territory Department of the Attorney-General and Justice for the five years to April 2023.²⁴ They showed that in Palmerston (an area that includes Zuccoli), the rates of alcohol-related violence, of domestic violence and of violence generally have not changed significantly over the last three years, after a substantial increase in the 12 months to April 2021. The Commission notes that the rates of alcohol-related violent crime, domestic violence and violent crime generally in Palmerston are significantly lower than in Darwin, and less than half of the rates for the Northern Territory.

137. The parties did not provide the Commission with useful statistical information regarding property offending in the area, so the Commission retrieved it from the NT Police Fire and Emergency Services website.²⁵ In the year to 31 May 2023 in Palmerston, the per capita rates of commercial break-ins declined by 5%, house break-ins declined by 10% and property damage declined by 13% over the previous 12 months. Furthermore, the offence rates for these offences in Palmerston is lower than in Darwin and considerably lower than for the Northern Territory as a whole.²⁶

²⁴ Exhibit 11

²⁵ Accessed at <https://pfes.nt.gov.au/police/community-safety/nt-crime-statistics/palmerston>, 31 July 2023

²⁶ Over this period, however, the rate of motor vehicle thefts increased markedly, by 33%. Motor vehicle theft is notoriously a type of offence committed mainly by young people, and is not particularly associated with alcohol.

138. The Commission does not find that alcohol-related crime and anti-social behaviour in Zuccoli are increasing, or that they are at high levels in comparison with the rest of the Northern Territory. This weakens the force of the objections based on the ground that a tavern at Zuccoli Plaza will lead to increases in crime and anti-social behaviour.

139. In considering whether the establishment of a tavern in Zuccoli Plaza would be in the public interest, the Commission has also had regard to the demographic profile of the community. The Commission finds that members of Zuccoli households are typically reasonably well-paid working couples and young families. The Commission also finds that the applicant's business model is well targeted to providing attractive amenities and services to this group. The tavern, if established, will provide significant recreational benefits for the local community area. It will also provide some employment benefits, and attract members of the public to Zuccoli Plaza, with a spin-off of increased trade for other retail outlets in the shopping centre

140. On balance, the Commission is satisfied that the opportunity to provide a beneficial amenity outweighs the risk of causing harm arising from a tavern at Zuccoli Plaza run by this applicant. Having considered each of the s 49(2) objectives, 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

141. 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;
- (j) any other matter prescribed by regulation.

142. The Commission notes there are no such “other” matters prescribed by regulation. The Commission also notes that there are apparently no community impact assessment guidelines currently in force, following the expiry on 1 October 2020 of Part 8 (“Transitional matters”) of the Regulations, which included a provision deeming the community impact assessment guidelines previously published under the *Liquor Act 1978* to be guidelines issued under s 50 of the *Liquor Act 2019*.

143. The discussion above of the s 49(2) public interest objectives is applicable to some but not all of the s 49(3) community impact matters.

144. In particular, it is necessary to specifically consider s 49(3)(a) and s 49(3)(g) and (h).

145. The Commission finds that nearby residents, and in particular the residents of Seafury Court, will be at substantial risk of undue annoyance, disturbance, inconvenience and possibly offence if the applicant’s tavern is established. Mr Gontscharow was a most impressive witness. The boundary of his yard is barely 20 metres from the rear wall of the proposed premises. His apprehension of seriously intrusive noise, pedestrian traffic and vehicle traffic is real and reasonable. The Commission accepts his evidence that he and his partner would never have purchased their family home in Seafury Court if they had anticipated that a tavern would be built across the road. The Commission considers that two or three other households in the immediate vicinity of the proposed premises will be similarly affected.

146. Section 49(3) requires the Commission to consider the impact on “the community”. Noting that Zuccoli currently has a population of about 4,000, the Commission observes that the residents of Seafury Court are part of, but only a small part of “the community”. The Commission is satisfied that, subject to the conditions the Commission has decided to impose as set out at paragraph 5 above, the establishment of a tavern at Zuccoli Plaza will not have a significant adverse impact on the community as a whole, with specific respect to the matter of offence, disturbance, annoyance and inconvenience.

147. Section 49(4) confers on the Commission the power to mitigate any possible adverse impact on the community by imposing conditions on the licence. Section 49(4) includes a list of things that may be limited, such as the nature of entertainment that may be provided, and the days and times when liquor may be sold. The list is not expressed to be exhaustive, and the Commission considers that it is not intended to be exhaustive. The Commission is fortified in that view by the terms of s 87(1) of the Act, which provide that “[t]he Commission may, in accordance with the regulations, make a licence or authority subject to the conditions the Commission considers necessary or appropriate”.

148. In order to mitigate the adverse impact of the tavern on nearby residents, the Commission has imposed a suite of conditions intended to mitigate the noise emanating from the premises, to reduce anti-social behaviour, and to prevent the premises from remaining open after midnight.
149. The Commission has also considered the issue of density, as it is obliged to do by s 49(3)(g) and (h) when read together.²⁷
150. The applicant submitted that the substitution of the premises will not result in an increase in the volume of alcohol sold, because the Heavitree Gap Tavern operated with a larger footprint than the proposed substituted premises. The Commission rejects this submission for several reasons, the most patent one being that the issue before the Commission is the effect of the volume of liquor sales on “the community”, which in this case is the community of Zuccoli. It is trite to observe that if a new tavern opens in Zuccoli, the volume of liquor sold in the community of Zuccoli will increase.
151. The applicant had engaged DNS Specialist Services to prepare lengthy public interest criteria and community impact analysis documents on which it relied, and called the principal of DNS Specialist Services, Mr Nixon-Smith, who gave lengthy evidence, much of which was on the issue of density. The Commission was not greatly assisted by this material, or by Mr Nixon-Smith’s evidence. The DNS material would have been more useful to the Commission if it had directly, clearly and non-repetitively addressed the matters specified in the legislation that the Commission must consider in its deliberations.
152. The Commission found the oral evidence of Mr Nixon-Smith, who appeared as an expert, to be confusing, on occasion contradictory, and at times implausible. For example, in cross-examination he expressed the opinion that the risk of harm arising from drinkers leaving premises at 2 am is no higher than the risk of drinkers leaving at 10 pm. Similarly, he asserted there is not much evidence that late-night liquor trading substantially increases the risk of alcohol-related harm. The Commission rejects these views, which fly in the face of scholarly research and the experience of the Commission members. That in turn leads the Commission to attach reduced weight to the opinion evidence given by this witness on other issues, including density.
153. The Commission was however assisted by Ms Ganzer’s hand-annotated map depicting licensed venues in the Palmerston area²⁸ and the applicant’s “Venues in close proximity” table.²⁹
154. The Commission also accepts the applicant’s submission that as a new suburb with additional subdivisions still under development, Zuccoli’s population is likely to continue to increase over the coming years. That in turn

²⁷ See Liquorland Palmerston decision LC2019/038 and LC2020/007, at [72]

²⁸ Exhibit 7

²⁹ Exhibit 21

will reduce the ratio of existing liquor licences to the population of the community.

155. The applicant submits that as the Commission has previously approved the issue of a licence to the Parkside Bistro, which is less than 2 km from Zuccoli Plaza, “the question on this application becomes whether the addition of one more licence within the 0-2 km band would have a significant adverse impact on the community”.³⁰ The Commission agrees.

156. The Commission is satisfied that the approval of the application will not increase density to an unacceptable level, or to a level incommensurate with the density of similar licensed premises in other suburban areas in the Darwin region.

157. 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.

Late night authority

158. As adverted to at paragraphs 23 and 24 above, the Heavitree Gap Tavern licence authorised trading until 02:00 two days a week. When entering into an agreement to purchase that licence from the former licensee, the applicant might have expected that when transferred, the licence would retain these extended trading hours. Such an expectation, however, is irrelevant to determination of the current application, which falls to be adjudicated by reference to the circumstances in Zuccoli, not the circumstances in a semi-rural area south of Alice Springs.

159. The Commission has had regard to the trading hours of other similar venues in the district. The Bell Bar and Bistro in Bellamack and the Breezes Bar and Bistro in Muirhead both operate without late night authorities, and are required to close at midnight. The Parkside Bistro licensee applied for a late night authority, but was refused. In that decision, the Commission noted that “all the other late night venues in Palmerston are situated in areas which have a greater degree of separation from the residential neighbourhoods.”

160. As stated above, the Commission rejects the proposition that late night trading is no riskier than trading that ceases at midnight. Evidence was given on behalf of the applicant that when trading is permitted until 02:00, most patrons leave earlier, and not all at the same time, thus avoiding the harm that can occur when a large number of patrons all leave together at closing time. The Commission

³⁰ Applicant’s written submissions, 3 July 2023, at [30]

accepts this, but does not accept that if closing time is fixed for midnight, patrons will wait until the stroke of twelve o'clock before leaving en masse.

161. The Commission readily accepts that a late night authority would be welcomed by some patrons, and would be profitable for the licensee, but is not satisfied that it would be in the public interest. Furthermore, late night trading would seriously heighten the already significant adverse impact of the tavern on nearby residents.

162. The Commission refuses the application to issue a late night authority.

Other conditions

163. In presenting its case, the applicant repeatedly asserted that it intends to establish a "family-friendly" facility. The persuasive force of that appealing prospect was diluted somewhat by the applicant's maintenance of its application for a late night authority, and the presence, albeit in the background for the purposes of this application, of EGMs. Nevertheless, the Commission accepts that the applicant is genuine in its promise to establish a family-friendly venue. To consolidate that aspiration, the Commission has decided to impose conditions intended to ensure that it is achieved and maintained.

The objects of the Act

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

165. Throughout its consideration of this application, the Commission has steadily borne the purposes in s 3 of the Act in mind. The Commission considers that the grant of the application with the conditions imposed is consistent with the purposes of the Act.

166. For these reasons, the Commission has determined that the application should be granted on the conditions set out at the commencement of this decision notice.

Extension of time

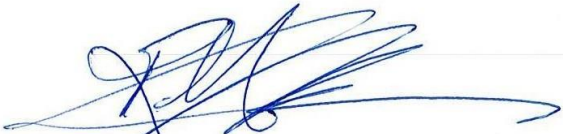
167. Section 60(2)(c) of the Act requires the Commission to make this decision within 28 days after the expiry of the period allowed for the applicant to respond to the objections. The hearing proceeded on the first date convenient to the parties and the Commission after the Commission received the referral. Due to legal issues that emerged at and after the hearing, the Commission requested further information and submissions to be provided by 21 July 2023.

168. In these circumstances, and having regard to the complexity of these proceedings, the Commission, in the exercise of its discretion conferred by s 318 of the Act, extends time for the making of this decision to the date of this decision notice.

NOTICE OF RIGHTS

169. 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.

170. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensee and the objectors listed at paragraph [30] above.



Russell Goldflam
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

4 August 2023

On behalf of Commissioners Goldflam, Shanahan, Dwyer and Stedman