

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *GORGE VIEW RETREAT APPLICATION FOR LIQUOR LICENCE [2024] NTLiqComm 5*

REFERENCE: LC2023/040

APPLICANT: Gorge View Pty Ltd

PREMISES: Gorge View Bush Retreat
1635 Gorge Road
Landsdowne NT 0650

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

HEARD BEFORE: Mr Russell Goldflam (Deputy Chairperson)
Ms Elizabeth Stephenson (Health Member)
Mrs Rachael Shanahan (Community Member)

DATE OF HEARING: 24 January 2024

DATE OF DECISION: 30 January 2024

Decision

1. For the reasons set out below and in accordance with s 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Gorge View Pty Ltd (**the applicant**).
2. The licence will be issued with a catering authority.
3. The licensed premises is the Gorge View Bush Retreat, 1635 Gorge Road, Landsdowne NT 0850 designated by the area bounded in red on the plan at page 109 of the Exhibit One of the evidence received by the Commission at the hearing of the application (**the licensed premises**).
4. The Commission approves the appointment of Ms Katherine Ganley as the licence nominee.

5. The conditions of the licence will be those authority conditions set out in Part 4 Division 1 and Division 5 of the *Liquor Regulations 2019* (**the Regulations**).
6. The following additional conditions are fixed:
 - a. The applicant is authorised to supply, sell and serve liquor on the premises only at an event or function, and subject to the following condition, no more than 40 patrons may attend.
 - b. The applicant is authorised to supply, sell and serve liquor on the premises at an event attended by more than 40 patrons if:
 - i. The applicant has not held more than 9 events or functions attended by more than 40 patrons in the previous 12 months; and
 - ii. At least 5 business days before holding the event or function, the applicant has sought in writing the consent of the Director of Liquor Licensing (**the Director**) to hold the event or function; and
 - iii. The Director has either:
 - I. consented to the event or function being held; or
 - II. not notified the applicant at least 2 business days before the event or function that the Director refuses to consent to the event or function being held.
 - c. The applicant is required to extinguish lights illuminating the sunset viewing deck when an evening event or function on the deck concludes.
7. The supply, sale, service and consumption of liquor is not authorised from the proposed building designated and described as a “kiosk and veranda” in the varied permit DP99/0274A dated 20 July 2023 issued by the Northern Territory Development Consent Authority (**the DCA**) and admitted as Exhibit Five of the evidence received by the Commission at the hearing of the application, unless and until the Director gives written approval to do so, following the provision of documentary evidence to the satisfaction of the Director that the applicant has obtained the necessary fire safety and building approvals, including a certificate of occupancy, in respect of the kiosk and veranda.
8. Notation: The Commission notes that the Northern Territory Environmental Protection Agency has issued the Northern Territory Noise Management Framework Guideline, which provides direction to assist compliance with the

noise pollution standard fixed by the *Waste Management and Pollution Control Act 1988*.

9. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

10. In 2022 the applicant acquired the Gorge View Bush Retreat as a glamping and caravanning site that slopes down to the bank of the Katherine River, 16 km from the town of Katherine, ten minutes' drive from Nitmiluk National Park and Katherine Gorge. In 2023, Gorge View Bush Retreat won a Brolga Award for "Unique Accommodation". Between April and December 2023, the applicant applied for and was issued with eleven liquor licences with a special event authority permitting it to supply liquor at "sunset sessions" on a viewing deck it has constructed. The applicant now seeks a single, ongoing licence that will authorise it to continue to hold events of this type, as well as to cater for functions such as weddings on and off the premises.

The Application

11. On 3 August 2023 the applicant lodged an application with the Director for a liquor licence with a catering authority.

Consultation

12. On 25 October 2023, in accordance with s 57 of the Act, notice of the application was advertised in the Katherine Times. Details of the application were displayed on the website of the Department of Industry, Tourism and Trade, and signage was displayed at the premises.
13. In accordance with s 56 of the Act, notification was given to the Department of Health, NT Police and the Katherine City Council.
14. The Director informed the Commission that the Department of Health and NT Police advised that they had no objection to the application. The Katherine City Council replied that it had no comment to make.
15. The Director also consulted with Northern Territory Fire and Emergency Services, but received no response.

The objectors

16. Three objections were received from neighbourhood residents on the ground that issuing the licence would adversely affect the amenity of the neighbourhood. The objections were from:

- Mr Michael (Trent) Machin
- Ms Hailey Dack on behalf of Mr Anthony Dack and Ms Karen Dack
- Mr Andrew Pickering and Ms Megan Pickering

The licensee's record of compliance

17. Between April and December 2023 the applicant was issued with eleven liquor licences with a special event authority. The Director has informed the Commission that no complaints were received arising from the operation of these licences.

The referral

18. On 1 December 2023, pursuant to s 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 3 January 2024, but at the request of one of the objectors this was postponed to 24 January 2024.

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

- a. Application for liquor licence
- b. Affidavit and Declaration of Associates pursuant to s 54 of the Act;
- c. Public Interest and Community Impact Assessment
- d. Lease and letter of landholder's consent to proposed use of the premises
- e. Extract from ASIC register showing applicant's company details
- f. Probity materials for Katherine Ganley (**Ms Ganley**)
- g. Financial statements and accountant's letter re financial stability
- h. Correspondence with objectors and stakeholders
- i. Various registrations and plans

The hearing

20. On 24 January 2024 the application proceeded as a public hearing in Darwin, with audio-visual links to Alice Springs, Sydney and Katherine. As the applicant and the objectors appeared unrepresented, the hearing was conducted with a minimum of formality. Ms Ganley appeared on behalf of the applicant. Ms Free appeared for the Director. Mr Trent Machin, Mr Anthony and Ms Hailey Dack, and Mr Andrew and Ms Megan Pickering appeared as objectors. The Commission thanks them all for their attendance and conscientious participation.

21. The brief was tendered and admitted into evidence without objection. Prior to the hearing, pursuant to s 23(2)(c) of the Act, the Commission had determined which documents in the brief were to be provided to the parties. The redacted brief was also admitted into evidence.

22. In addition and also without objection the Commission received the following documents into evidence:

Exhibit Three: Northern Territory Planning Authority Development Permit DP99/0274 dated 25 June 1999, and associated drawings

Exhibit Four: List of special liquor licences sought by the licensee since 2022

Exhibit Five: Northern Territory Planning Authority Development Permit DP99/0274A dated 20 July 2023, and associated drawings

23. Ms Ganley, Mr Michael Machin, Ms Megan Pickering, Mr Andrew Pickering, Ms Hailey Dack and Mr Anthony Dack was each affirmed and gave oral evidence. The Commission gave each of the objectors the opportunity to ask questions of the applicant, and the applicant the opportunity to ask questions of each of the objectors who gave evidence. The Commission also gave all parties the opportunity to make final submissions. During the course of the hearing, the Commission drew the attention of the parties to key provisions of the Act that the Commission considered were particularly relevant to the determination of the application.

ASSESSMENT OF THE APPLICATION

24. 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, including the nominee designated by an applicant, is a fit and proper person to hold a licence;
- f. the objections to the application; and
- g. the applicant's response to the objections.

25. 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

26. 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.

27. The applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

28. 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.

29. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of Ms Ganley, the sole executive officer of the applicant, the Commission finds that she is a fit and proper person to be an associate of the applicant.

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

The suitability of the applicant's premises

31. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application. To avoid doubt, the Commission notes that this favourable assessment includes both the

premises as they are currently equipped, and the premises as they will be altered in the event that the applicant proceeds to undertake the construction of the “kiosk and veranda” that were approved by the DCA in July 2023. The Commission notes that the applicant has not yet finally decided whether to undertake those works. In this regard, the Commission refers to the condition set out at paragraph 7 above.

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

32. 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

33. Having been provided with appropriate evidence regarding her reputation, character and work history, the Commission assesses the general reputation and character of the applicant’s executive officer and secretary, Ms Ganley, to be satisfactory.

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

34. 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

35. The applicant has nominated Ms Ganley as the licence nominee. The Commission assesses Ms Ganley, who holds current RSA certification and has provided appropriate documentation of her reputation, character and work history, to be a fit and proper person to hold the licence.

Public notice and consultation

36. The objectors all complained about what they considered to be the applicant’s failure to consult with them. The permitted grounds of objection to an application for a liquor licence set out at s 61(2) of the Act do not include an applicant’s failure to consult, and accordingly, even if the Commission were of the view that the applicant had failed to comply with the provisions of the Act relating to its duty to consult with other people about its application, this would not be a basis on which the Commission could allow an objection.

37. In any event, the Commission is not of that view. The Commission is satisfied that notice of the application was given and consultation was undertaken in accordance with s 57 of the Act.
38. That said, in this matter, as indeed the applicant apologetically acknowledged both in its written response to the objectors, and in Ms Ganley's oral evidence to the Commission, with the benefit of hindsight, a preferable course might have been for the applicant to consult with its neighbours before lodging its application with the Director.
39. For its part, the Director followed his usual procedure of issuing directions to the applicant in accordance with s 57(3) of the Act to post a notice of the application on site (which the applicant did), and publish a notice of the application (which the applicant did, in the Katherine Times). In addition, the Director published details of the application on its website.
40. Again, with the benefit of hindsight, the Commission considers that the Director could have done more. Section 57(3)(d) of the Act provides that the Director may direct an applicant to "post or publish such other notices as the Director considers necessary to properly publish the application". The premises the subject of this application are located on a country road in a rural area with a small number of neighbouring residential properties. In such circumstances, it is reasonably foreseeable that, firstly, a sign posted at the premises will not be readily noticed by members of the public, and that secondly, neighbours might be particularly concerned about the impact of a liquor licence on their secluded rural lifestyle. The Commission suggests to the Director that consideration be given in future applications to tailoring the terms of the s 57(3) directions he gives to applicants so as to reduce the risk that affected persons do not become aware of the application during the 14 day period within which objections must be made after publication of the notice.
41. In this instance, the Commission accepts the evidence of the objectors that the sign posted at the premises was rather inconspicuous. Moreover, as the objectors have made clear, the neighbours are indeed highly concerned about the impact of the proposed licence on their secluded rural lifestyle. Nevertheless, in the view of the Commission, none of the objectors sustained any actual prejudice arising from the way in which public notice of the application was given. All the objectors became aware of the application within the allowable objection period, they all submitted written objections within that period, they all attended and participated in the hearing, they were all provided with ample opportunity to cross-examine Ms Ganley at the hearing, and they all accepted the Commission's invitation to give evidence and to make both oral and written submissions to the Commission.

42. Had there been prior consultation by the applicant with its neighbours, this might have addressed some of their concerns and mollified the objectors to some extent. On the other hand, there is also a real possibility that taking such a course would have had the opposite effect. This is a case in which there are strongly held opposing views. Prior to lodging her application, Ms Ganley was faced with a difficult choice as to how best to manage what the Commission suspects she foresaw was likely to be a contentious matter. The course Ms Ganley chose was in accordance with the requirements of the Act, and the Commission makes no criticism of her for taking that course.

The objections to the application

43. Section 61(4)(a) of the Act provides that a person residing in the neighbourhood of the proposed licensed premises may make an objection. Hailey Dack was previously a member of the same household as her parents Anthony and Karen Dack, but now lives in the town of Katherine. The Commission considers that Hailey Dack is not an eligible objector, but accepts that her evidence was given on behalf of her parents, who are both eligible objectors. All of the other objectors reside in the neighbourhood of the proposed licensed premises, and are therefore eligible objectors.

44. The sole ground of objection on which all the objectors stated that they rely is that issuing the licence would adversely affect the amenity of the neighbourhood. The only other ground of objection allowable under the Act is that the issuing of the licence would adversely affect the health, education, public safety or social conditions in the community.

45. The objectors all raised similar issues, and generally adopted each other's evidence and submissions. Accordingly, it is convenient to summarise those issues as coming from the objectors as a group, rather than by reference to each individual objector household, as follows:

- a. Failure to consult with neighbours prior to lodging the application
- b. Light pollution from the lighting on the sunset viewing deck, and vehicle lights as they drive into and out of the applicant's property
- c. Noise pollution from potentially up to 100 patrons on the sunset viewing deck every night, traffic, campground conversations and radio, and heavy machinery
- d. Disturbance of the neighbourhood's long-established peaceful rural lifestyle

- e. Incompatibility of the proposed enterprise with the area's intended use as a rural residential zone
- f. Decrease in resale value of neighbouring properties
- g. Environmental harm from a failure to manage waste from the increased number of visitors and their pets
- h. Risk of more intrusive operations in the event that the applicant sells the property to a purchaser who embarks on large commercial or industrial scale development
- i. Invasion of privacy with a risk of patrons trespassing onto neighbouring properties
- j. Lack of facilities to securely store liquor
- k. Lack of means to control intoxicated and unruly patrons
- l. Risk of increase in alcohol-related crime
- m. The proposed expansion of the premises to include a "kiosk" will increase the disturbance, annoyance and inconvenience to neighbours

The Commission's assessment of the objections

46. Having considered the applicant's responses, which are referred to below, the Commission makes the following observations and findings.
47. Failure to consult: as explained at paragraphs 36 to 42 above, this issue is not a permissible ground for an objection under the Act.
48. Light pollution: the Commission accepts Ms Ganley's evidence that the only permanent lighting is low-lumen fairy lights and solar lights. The Commission accepts the evidence of one neighbour that this causes him offence, annoyance, disturbance or inconvenience, but the Commission considers that this type of lighting is not such as to cause *undue* offence, annoyance, disturbance or inconvenience (see s 49(3)(a) of the Act). The Commission has imposed a condition set out at paragraph 6.c) above to address this issue.
49. The Commission also accepts that the glare of headlights shining into the home of another objector causes offence, annoyance, disturbance or inconvenience. The Commission expects that in accordance with the undertaking she gave at

the hearing, Ms Ganley will request patrons to dim their lights when driving through the property at night.

50. In the view of the Commission, the issue of a liquor licence will have no significant effect on the level of nocturnal vehicular traffic and associated light pollution from guests who are staying at the premises. The Commission accepts that the issue of the licence may result in a moderate increase in vehicular traffic from guests who visit the premises to attend a special event or function.
51. Noise pollution: Ms Ganley's evidence, which the Commission accepts, was that although she seeks the authority to supply liquor every night, she expects to host functions and events at which liquor is served no more than three evenings a week in the dry season, and less frequently at other times. Unamplified guitar and didgeridoo music is played at these events. Ms Ganley also gave evidence that the sunset viewing deck, the site on the premises from which it is proposed to supply liquor, can only accommodate up to 40 people. Ms Ganley readily agreed to a condition being imposed on the licence requiring that there be no more than 40 patrons.
52. The applicant held eleven licensed events on the deck at the premises in 2023, none of which resulted in a complaint. The evidence given by the objectors fell short of supporting a finding by the Commission that they have in fact been disturbed by noise from the deck, and the Commission makes no such finding.
53. The Commission accepts that neighbours have been disturbed by conversation and radio noise from the campground and caravan park. However, in the Commission's view, this is not a consequence of the applicant's supply of liquor, but of the long-standing use of the premises as a campground and caravan park. The DCA granted a permit "for the purposes of a caravan park and/or camping ground with a maximum of 40 people on site at any one time" in 1999, and updated this permit in 2023.
54. The Commission also accepts that the applicant's use of heavy machinery has caused disturbance to neighbours. Ironically, that noise was a result of the applicant's attempt to rehabilitate an old gravel pit on the property by revegetating it with trees which will provide acoustic and visual screening to reduce the adverse impact of the applicant's activities on its neighbours. The objectors expressed their scepticism about the potential effectiveness of these measures, but in any event, in the view of the Commission the heavy machinery noise is unlikely to be ongoing and, more importantly for the purpose of determining this application, is unrelated to the issuing of a liquor licence.

55. Disturbance of the neighbourhood's long-established peaceful rural lifestyle: Ms Ganley and her family, Mr Machin, the Pickerings and the Dacks all live on Gorge Road, which leads to one of the Territory's iconic tourist attractions, Katherine Gorge and the Nitmiluk National Park. The Commission accepts that the character of the neighbourhood is changing, with a number of tourism ventures springing up along this road. For some Gorge Road residents, including the objectors, this is profoundly disheartening, as their distinctive, secluded and treasured lifestyle is under threat. The Commission has considerable sympathy for the objectors in these circumstances, but it is not persuaded that issuing or refusing to issue this liquor licence to this applicant will make a significant difference to the quality of life of the applicant's neighbours, or the character of the neighbourhood. The applicant's proposal is in essence to continue what it has already been doing since 2023, within the parameters of a DCA permit that was issued 25 years ago.
56. Incompatibility of the proposed enterprise with the area's intended use as a rural residential zone: The Commission reiterates the observations it has made in the previous paragraph.
57. Decrease in resale value of neighbouring properties: The objectors submitted that the value of their properties has been adversely affected because they can no longer be marketed as properties that offer a secluded rural lifestyle. The applicant submitted that the value of properties in Gorge Road may have increased as their tourism and hospitality enterprise potential has grown. Neither the objectors nor the applicant produced evidence in support of their respective submissions on this issue, and the Commission makes no finding on this point.
58. Environmental harm: The DCA permit issued on 20 July 2023 includes conditions relating to waste management, effluent disposal, water contamination, landscaping and dust suppression. The concerns raised by the objectors about environmental harm are not, in the view of the Commission, concerns that arise because of the potential issue of a liquor licence to the applicant, and the Liquor Commission is not the appropriate agency to deal with such concerns.
59. Risk of more intrusive operations in the event that the applicant sells the property: Ms Ganley was asked how long she intends to live at the premises. Her answer was unequivocal: "for life". Ms Ganley has lived and worked in the Northern Territory for many years, and has a record of service and commitment to the Katherine community. The Commission is satisfied not only that the applicant intends to retain the business, but that its intention is to operate and develop it as a low-impact boutique tourism venture through which guests, as Ms Ganley put it, "experience real outback hospitality... are made to feel

welcome, where people can share and appreciate a beautiful place in the company of others.”

60. Invasion of privacy: The Commission does not consider that this is a concern that arises because of the potential issue of a liquor licence to the applicant.

61. Lack of facilities to securely store liquor: Ms Ganley gave evidence that she usually purchases the liquor required for events at the premises on the day of the event, and in addition has the capacity to store liquor at the premises in her home, which is situated on the premises. She does not store liquor elsewhere on the property. All licensees are subject to the condition set out at reg 19(1) of the Regulations, which states:

All liquor must be stored and displayed in accordance with a plan of the licensed premises approved by the Director.

62. The Commission received no evidence of any incidents of concern arising from a failure to securely store liquor at the premises, and considers that this concern is adequately addressed by the imposition of the licence condition set out above.

63. Lack of means to control intoxicated and unruly patrons: The Commission received no evidence that there have been any incidents of anti-social or drunken behaviour at the premises since the applicant has obtained and operated special event licences at the premises. Ms Ganley is RSA certified, and gave uncontested evidence to the Commission, which it accepts, that any persons engaged by the applicant to supply or serve liquor will be RSA-certified in accordance with the requirements of the Act.

64. Risk of increase in alcohol-related crime: The Commission accepts that alcohol-related offending is a serious and on-going issue throughout the Northern Territory, including Katherine and the surrounding district. The Commission does not however consider that the licensing of this small business, located in an isolated rural area, with plans to supply liquor in a relatively restricted manner, is likely to lead to an increase in alcohol-related offending.

65. The proposed expansion of the premises to include a “kiosk”: The objectors highlighted with concern the terminology “kiosk bar” that appears in the draftsperson’s caption on a drawing of the proposed structure that is part of the varied DCA permit issued on 20 July 2023. The permit itself approves the “addition of a sunset viewing deck and a kiosk with a veranda to an existing caravan park”. The drawings that form part of the permit depict a single storey 12.5 m x 15 m roofed structure comprising:

- a roofed 5.5 m veranda running the length of the building;
- a 7m x 12.5 m air-conditioned function room; and
- a fully enclosed 7m x 2.5 m food preparation and storage area comprising a kitchen and cool room, with access to the function room by way of a door.

66. The Commission finds that the DCA permit does not approve the construction of a “bar”, and that the applicant does not intend and has not proposed to construct or operate a “bar”. The “kiosk”, as it has been designated by the applicant, will provide a cool space for patrons to attend and participate in catered events, functions and activities such as yoga workshops or retreats. The 7m x 12.5 m function room is smaller than, and will not be able to accommodate as many patrons as the 8 m x 12 m viewing deck.

67. In the view of the Commission, any additional adverse impact on the community resulting from the issue of a liquor licence to the applicant if and when the kiosk is constructed, would not be significant.

68. The Commission considered the concerns raised by the objectors for the purpose of deciding whether or not to approve the issuing of a liquor licence. Having decided to approve the issue of the liquor licence, the Commission further considered the concerns raised by the objectors for the purpose of determining what conditions to impose on the licence.

The public interest and community impact requirements

69. 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.

70. Having considered each of these objectives, and having particular regard to s 49(2)(e), as well as the character, size, ethos, history and business model of the enterprise, 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

71. 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 section 49(3) of the Act:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;
- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;

- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50;¹
- (j) any other matter prescribed by regulation.²

72. The applicant bears the onus of satisfying the Commission of the relevant matters: s 50(3) of the Act 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”.

73. In this case, the Commission considers that the matter set out at s 49(3)(e) of the Act (“the effect on culture, recreation, employment and tourism”) is of importance.

74. The Commission finds that the issue of the licence will have a modest beneficial impact on culture, recreation, employment and tourism. As a small family business offering a boutique service, the applicant’s enterprise does not aim to tap a mass market or to become a large employer. However, the Commission is impressed by the applicant’s focus on quality, as evidenced by winning a Brolga Award in what was effectively its first year of operation. Research commissioned by the Northern Territory government found that “there is a lack of quality accommodation options” in Katherine.³ The applicant’s business can be expected to go some way to meeting this need.

75. On the other side of the ledger, the matters set out at s 49(3)(a) and s 49(3)(d) are also of particular importance. As discussed at paragraphs 43 to 68 above, the Commission has given careful consideration to how the issuing of the licence will affect the risk of causing undue offence, annoyance, disturbance or inconvenience to persons who reside in the vicinity of the proposed licensed premises, together with how the issuing of the licence will impact on the people or community it affects. The Commission accepts that the business being conducted by the applicant is causing offence, annoyance, disturbance or inconvenience to the occupants of at least three neighbouring properties. However, even if the Commission were to find that this amounted to a

¹ In the view of the Commission, no such guidelines are currently in force.

² No such matters have been prescribed.

³ KPMG, *Market Analysis for Potential Accommodation Development in Katherine* (November 2021), accessed at https://industry.nt.gov.au/_data/assets/pdf_file/0007/1170079/katherine-short-stay-accommodation-developments.pdf

significant adverse impact on the community, the Commission would not and does not attribute such impact to the issuing of the proposed liquor licence. In the view of the Commission, any adverse impact on the community arising from the conduct by the applicant of its business at Gorge View Retreat is due primarily to the existence and operation of the caravan park and camping area, irrespective of whether or not a liquor licence is issued.

76. Whether or not the operation of the Gorge View Retreat business has caused a significant adverse impact on the community (an issue the Commission does not need to determine), the Commission finds that the required causal nexus between the proposed issuing of the licence and the significant adverse impact on the community (if any) has not been established.

77. This reasoning and its conclusion affects the weight the Commission assigns to the objectors' evidence as it bears on the Commission's assessment of the matters at s 49(3)(a) and (d) of the Act. The applicant still has the burden of satisfying the Commission that the issue of the licence will not have a significant adverse impact on the community. The Commission finds that, having regard to all of the matters in s 49(3), the applicant has discharged this burden.

78. The Commission is satisfied, in accordance with s 51 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.

A catering authority

79. The applicant, acting as it would appear on the advice of officers of Licencing NT, has applied for a catering authority. The Commission entertains some doubt as to whether this authority is the best fit for this particular licence. An alternative course may have been to apply for a special venture authority. However, Ms Ganley confirmed in her evidence her understanding of and intention to comply with the prescribed conditions that apply to catering authorities, including that the supply and service of liquor be restricted to patrons who are consuming food from the premises.

80. A catering authority gives a licensee the flexibility to supply food and liquor at events that are conducted away from the licensee's own premises, subject to the consent of the owner or occupier of the premises where the catered event takes place.

Conditions

81. The DCA permit for the premises provides “consent... for the purposes of a caravan park and/or camping ground with a maximum of 40 people on site at any one time.” Accordingly, the Commission has imposed the condition set out at paragraph 6.a) above.
82. During the course of the hearing, Ms Ganley gave evidence that from time to time she may be requested to cater for a special function on the premises, such as a wedding, to be attended by more than 40 persons, and that on such occasions she would apply to the Director for a liquor licence with a special event authority, as she did throughout 2023.
83. A prominent, and perhaps the dominant reason the applicant made this application to the Commission was to move from applying to the Director for a liquor licence with a special event authority on each individual occasion the applicant wanted to conduct a licensed event at the premises, to being issued with a single continuing licence. The Commission is also mindful of the objectors’ concerns that the applicant’s operation of the licence not be permitted to expand to the point that it causes a significant adverse impact on the community.
84. To balance these two competing considerations, the Commission has determined to impose the condition set out at paragraph 6.b) above: if the applicant wishes to conduct a function at the premises with more than 40 patrons, it will need to obtain the prior approval of the Director, and there is a limit on how many such functions the applicant may hold in any twelve month period. The applicant should not take it for granted that the Director will approve any large events or functions at the premises. The applicant’s facilities are not designed to accommodate large groups, and the DCA permit expressly provides that there be “a maximum of 40 people on site at any one time”. That is not to say that it would necessarily be unlawful for more than 40 people to assemble and socialise on the premises, but it may well be a relevant consideration for the Director in deciding whether to approve an event.
85. The Commission notes that, as stated above, the catering authority gives the applicant the flexibility to conduct functions and events away from its own premises. The Commission encourages the applicant to seriously consider finding a more suitable venue for any large events that it caters.
86. The Commission has considered whether to fix a condition in relation to noise emanating from the premises, but has instead determined to note, at paragraph 8 above, the regulatory regime that applies to noise pollution in the Northern

Territory. In addition, the Commission reminds the parties of s 93 of the Act, which provides:

A licensee must not cause or permit its employees or patrons to cause undue or unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.

87. The Commission considers that the evidence given on behalf of both the applicant and the objectors was forthright, genuine and heartfelt, and that all of the witnesses were thoughtful and articulate. Fortunately, Ms Ganley and her neighbours are, it appears to the Commission, people with the skills and resources required to enable them to work together with the aim of resolving their differences. The Commission expects and encourages Ms Ganley to take the reasonable measures available to her to address her neighbours' concerns, for example by requesting her guests to minimise disturbance of the natural tranquillity of the area, particularly at night.

The objects of the Act

88. 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.

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

Extension of time

90. Section 60(2)(c) of the Act provides that the Commission must make a decision whether to issue the licence and authority within 28 days of the end of the period allowed for the applicant to respond to objections, which expired on 29 November 2023. The Director promptly referred the application to the Commission on 1 December 2024, but due to the advent of the Christmas holiday period, the Commission was unable to hear and determine this matter by 27 December 2023. The originally scheduled hearing date of 3 January 2024 was postponed by three weeks at the request of one of the objectors.

91. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision until the date of this decision notice.

Notice of rights

92. Section 31(1) read with s 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.

93. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director, the applicant, Mr Michael (Trent) Machin, Mr Anthony Dack, Ms Karen Dack, Mr Andrew Pickering and Ms Megan Pickering.



Russell Goldflam

DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
30 January 2024

On behalf of Commissioners Goldflam, Stephenson and R Shanahan