

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *HAPPINESS BEYOND THE GREEN PTY LTD*
APPLICATION FOR LIQUOR LICENCE [2023]
NTLiqComm 8

REFERENCE: LC2023/004

LICENSEE: Happiness Beyond the Green Pty Ltd

PREMISES: X-Golf Palmerston
1 Roystonea Avenue
YARRAWONGA NT 0830

LEGISLATION: Sections 47 and 52 of the *Liquor Act 2019*

DECISION OF: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Mr Denys Stedman (Community Member)

DATE OF HEARING: 28 March 2023

DATE OF DECISION: 14 April 2023

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Happiness Beyond the Green Pty Ltd (**the Applicant**).
2. The Commission approves the appointment of Mr Alexander Makkreel as the nominee of the licensee.
3. The licensed premises is designated by the area marked in red on the plan tendered as part of Exhibit One at the hearing of the application in Attachment E at page 123 of 329.
4. The licence will be issued with a special venture authority and subject to those authority conditions set out in Part 4, Divisions 1 and 19 of the *Liquor Regulations 2019* (**the Regulations**) and further subject to the additional conditions set out below

5. The following additional conditions relate to this special venture authority:
 - a. The hours of operation of the special venture authority are:
 - i. 10:00 to 22:00 Monday to Thursday;
 - ii. 10:00 to 23:00 Friday and Saturday;
 - iii. 10:00 to 20:00 Sunday;
 - iv. 10:00 to 22:00 on public holidays except Good Friday and Christmas Day; and
 - v. 11:00 to 21:00 on Good Friday and Christmas Day.
 - b. Liquor may be sold, served or supplied to bonafide spectators or guests of the customers of the licensee's services.
6. The licence will be issued immediately following the publication of this decision notice however the licensee shall not be permitted to sell or supply liquor from the premises until such time as it provides written proof to the satisfaction of the Director of Liquor Licensing (**the Director**) or the Director's Delegate that it has obtained a certificate of occupancy and all the necessary safety approvals in respect of the premises.

REASONS

THE APPLICATION

7. An application was lodged by Mr Andrew Giles ("Mr Giles") on behalf of Happiness Beyond the Green Pty Ltd (**the Applicant**) seeking the issue of a new liquor licence with a public bar authority for premises to be known as "X-Golf Palmerston" to be located at 1 Roystonea Avenue in Palmerston. Payment of the application fee was made. The proposed trading hours were sought to be 10:00 hours to 24:00 hours 7 days a week with all other trading hours pursuant to those set out within the Regulations.
8. The Applicant is a company registered with ASIC. Messrs Benjamin and Charles Styles are listed as Directors and Mr Benjamin Styles as Secretary. The company has 100 shares; with all shares issued to X-Golf Pty Ltd.
9. X-Golf Pty Ltd is a company registered with ASIC. Again, Messrs Benjamin and Charles Styles are listed as Directors and Mr Benjamin Styles as Secretary. The company has 120 shares; with 36 shares issued to Stylzy Enterprises Pty Ltd and 84 shares issued to Flapjack (Vic) Pty Ltd. The Commission has been provided with evidence relating to the beneficial ownership of these shares via the relevant trust deeds and is satisfied as to the material provided in relation to the same and related questions as to probity.

10. Stylzy Enterprises Pty Ltd is a company registered with ASIC. Mr Charles Styles is recorded as sole Director and Secretary. The company has 100 shares wholly issued to Mr Charles Styles.
11. Flapjack (Vic) Pty Ltd is a company registered with ASIC. Mr Benjamin Styles is recorded as sole Director and Secretary. The company has 10 shares wholly issued to Mr Benjamin Styles.
12. The trading name of the proposed premises is X-Golf Palmerston
13. In relation to both Messrs Benjamin and Charles Styles, each have provided the following probity documents:
 - a. Copy of photo identification by way of Victorian Drivers Licence
 - b. Copy of National Police Certificate based on name and fingerprint check
 - c. References
 - d. Copy of RSA Certificate
 - e. Copy of resume.
14. In relation to the proposed nominee, Mr Makkreel, he provided the following probity documents:
 - a. Copy of photo identification by way of Victorian Drivers Licence
 - b. Copy of National Police Certificate based on name and fingerprint check
 - c. References
 - d. Copy of RSA Certificate
 - e. Copy of resume.
15. The Applicant has never held a liquor licence in the NT and is therefore not known to the Director and has no compliance history. The proposed nominee is also not known to the Director. There is no evidence before the Commission to support the Commission making any findings concerning the Applicant's abilities in relation to holding a liquor licence.
16. The application was accompanied by;
 - a. Affidavit pursuant to Section 54 of the Act
 - b. Business Plan & Information
 - c. Example menu

- d. Manual related to Standard Operating Procedures
- e. Documents related to budget and financial projections
- f. Declaration of Associates
- g. Public Interest Responses
- h. Community Impact Assessment
- i. Financial Reports
- j. Letter from landlord and lease
- k. Copy of proposed liquor licensed area
- l. Concept and floor plans
- m. Documents related to fit out and licensed area

PUBLICATION AND CONSULTATION

17. The application was published in the NT News on 3 December 2022 and published on the Director's website for the required advertising period. A green advertising sign was erected at the premises for the course of the advertising period.
18. As a result of the publication, an objection was received from Little Cashy Pty Ltd, the licensee of "The Landmark @ Gateway". This objection will be referred to later in these reasons. The Commission considers the objection was validly made and has considered carefully the matters raised therein.
19. In accordance with the Act, the following stakeholders were notified of the application:
 - The Chief Executive Officer of the Department of Health
 - The Commissioner of NT Police
 - The City of Palmerston.
20. Being a new liquor licence application, the NT Fire & Rescue Service (**NTFRS**) was also notified.
21. The Department of Health replied via email dated 1 December 2022, stating it had no objection, but did raise "a concern" as follows:
 - a. "The main concern is regarding the alcohol service times which are proposed for 10.00am to 00:00 each day, given that this business is

aimed at a family fun activity perhaps the times be reduced as to not encourage excessive alcohol consumption.”

The Commission notes the “concern” expressed and that this is not provided by the Department of Health as an objection.

22. The NT Police replied via email dated 2 December 2022, stating it had no objection.
23. The City of Palmerston replied via email dated 16 December 2022, stating it had no objection.
24. The NTFRS replied via email dated 5 December 2022, stating that they supported the application “provided that building works go through the buildings approval process as per the *Building Act* (NT)” and that on completion of the building works they would inspect the premises to ensure compliance and also assess the premises for maximum patron numbers.

COMPLIANCE HISTORY

25. As earlier noted, the Applicant has never held a licence before in the Northern Territory and therefore has no compliance history.

THE REFERRAL AND HEARING

26. On 7 March 2023, pursuant to section 59 of the Act, the Director referred this application to the Commission. On 8 March 2023, the Applicant, Director and objector were notified that the matter was listed for public hearing on 28 March 2023.
27. On 28 March 2023, the application proceeded as a public hearing. The Director appeared in person. Dr Cameron Ford appeared for the Applicant accompanied by Mr Makkreel. The objectors did not appear and stated they would “abide” by the Commission’s decision.
28. 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. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No submissions were made to the Commission to this effect.
29. The Director’s referral brief was tendered into evidence together with a number of other documents during the course of the hearing that were exhibited and oral submissions were made.

ASSESSMENT OF THE APPLICATION

30. In accordance with section 59 of the Act, the Commission has considered:
- a. The Applicant's affidavit required by section 54;
 - b. The objection made and response provided thereto;
 - c. 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;
 - d. The financial stability and business reputation of the Applicant body corporate;
 - e. The general reputation and character of the secretary and executive officers of the Applicant body corporate;
 - f. Whether the Applicant is a fit and proper person to hold a licence; and
 - g. Whether the Nominee designated by the Applicant is a fit and proper person to hold a licence.
31. In accordance with section 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

32. The Commission finds that the Applicant complies with section 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
33. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances, and plans. The Commission is satisfied as to the financial circumstances of the Applicant.
34. The Commission is satisfied that the Applicant has complied with the disclosure requirements of section 54.

THE SUITABILITY OF THE APPLICANT'S PREMISES

35. The premises have not previously operated as licensed premises and appear to have been vacant since construction. The Applicant has a lease agreement in place and will be undertaking significant fit out works.
36. As with any new premises, the Commission is aware there will remain some issues to be confirmed by the NTFRS for the purposes of occupancy once fit out has been completed, however these issues can be addressed by the Applicant and inclusion of a condition that the Applicant cannot commence selling or

supplying liquor from the premises until such time as it provides written proof to the satisfaction of the Director (or it's Delegate) that it has obtained a certificate of occupancy and all the necessary safety approvals in respect of the premises will sufficiently address these outstanding matters.

37. The Commission notes that pursuant to section 91 of the Act, the Applicant will be required to comply with the requirements of the *Fire and Emergency Act 1996* and the associated regulations, including those that prescribe fire safety standards.
38. There was some concern expressed by the Commission during the course of the hearing as to the lack of information concerning adequate security at the premises. The Commission considered carefully as to whether there should be additional conditions placed upon the licence in relation to security and in particular in relation to the storage and display of liquor at the premises. The Commission notes however that Regulation 19 provides specifically that all liquor must be stored and displayed in accordance with a plan of the licensed premises which is "approved by the Director".
39. Given this specific provision is included in the standard operating conditions placed upon the authority of this licence, the Commission has determined that this adequately addresses its concerns and is confident that the Director will ensure such plans are appropriate in all the circumstances.

THE FINANCIAL STABILITY, GENERAL REPUTATION AND CHARACTER OF THE BODY CORPORATE

40. The Applicant has provided appropriate documentation regarding its financial circumstances such that the Commission is satisfied as to the financial circumstances and stability of the Applicant.
41. The Commission notes that the Applicant has been registered as a company since 2 May 2022. It does not appear to have operated as a business at all since that time. It therefore does not have an established business reputation. On the material provided, the Applicant does appear to have sufficient funds for it to be assessed as financially stable.

THE GENERAL REPUTATION AND CHARACTER OF THE APPLICANT'S SECRETARY AND EXECUTIVE OFFICERS

42. The Applicant's Directors, Messrs Benjamin and Charles Styles (noting Benjamin is also the secretary) have provided material to the Commission that establishes they each have a good general reputation and character.

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

43. Pursuant to section 49(1)(a) the Commission may only issue a licence or an authority if satisfied that the applicant is a fit and proper person. Where the applicant is a body corporate, it must designate an individual to be the licensee's nominee. In this application, Mr Makkreel has been designated as the nominee.
44. Section 59(3)(i) of the Act provides that when considering an application for a licence or authority the Commission must consider whether "the applicant, *including the nominee* designated by the applicant is a fit and proper person to hold a licence" (emphasis added).
45. Section 59(3)(j) requires the Commission to consider whether each associate of the applicant is a fit and proper person to be an associate of the licensee. The mechanism established to enable the Commission to inform itself in relation to an applicant's associates is established by sections 54 and 55, which require licence applicants to disclose their associates.
46. In the view of the Commission, in this instance to determine whether a body corporate person is fit and proper the Commission must consider whether:
 - a. the executive officers of the body corporate are fit and proper to hold the licence,
 - b. the designated nominee is fit and proper to hold the licence, and
 - c. the associates of the body corporate are fit and proper to be associates of the licensee,having regard to the relationships between these individuals and the respective roles they propose to play in the operation of the licence.
47. The Commission has previously considered the meaning of the expression "fit and proper", as follows¹:

The term "fit and proper" is not defined by the Act.

In *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, the High Court considered the meaning of the expression "fit and proper" in relation to licensees under *the Broadcasting Act 1942* (Cth).

Mason CJ stated, at 349:

[A] licensee has a responsibility to exercise the power conferred by the licence with a due regard to proper standards of conduct and a responsibility not to abuse the privilege which it enjoys... A licensee

¹ Bojangles Restaurant Saloon - Disciplinary action LC2020/058 (28 January 2021) at [37] – [44]

which lacks a proper appreciation of those responsibilities or does not discharge them is not, or may be adjudged not to be, a fit and proper person.

Gaudron and Toohey JJ stated, at 380:

The expression “fit and proper”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities...

In *Qadir v Department of Transport* [2015] NTSC 86, Kelly J stated, at [52]:

A decision about whether an applicant is a “fit and proper person” for a particular role or purpose requires a consideration of the qualities necessary to fulfil the role or purpose. It would also generally require some consideration of the person’s moral integrity and rectitude of character as well as the applicant’s knowledge, ability and honesty as it relates to the role in question.

...

The question whether a person is a fit and proper person to hold a liquor licence is one of value judgment (*Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, 388 per Toohey and Gaudron JJ).

48. In this matter, the Directors (and Secretary) of the Applicant, Messrs Benjamin and Charles Styles, have deposed as to the relevant associates and the Commission has no evidence to suggest that those persons deposed to are not fit and proper person to be an associate of the licensee of the premises.
49. In relation to Messrs Benjamin and Charles Styles themselves, together with the proposed nominee Mr Makkreel, the Commission finds them to be persons of good character and general reputation, however more is required. The Commission is of the view that it also has to consider whether these individuals have the knowledge and ability² and a proper appreciation of the responsibilities required to fulfil the role³ of being the licensee of the premises and in particular of a licence with a public bar authority as is being sought.
50. In this regard, throughout the application it is made clear that what is proposed is a “product and place for golf that is perfect for players of all ages, genders, and abilities”⁴. A premises that:

“... will provide an abundance of opportunities and experiences to meet a large and diverse target market. This includes state-of-the-art golf

² See *Qadir v Department of Transport* [2015] NTSC 86, at [52], per Kelly J

³ See *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 at 349, per Mason CJ

⁴ P.18 of exhibit 1

simulators and technology. But, importantly, it also includes a fun and social atmosphere to allow players to connect with others, providing a clearer, more inclusive, pathway for learning and developing your golf game. At the Premises, players will have opportunities to engage in weekly nation-wide competitions, golf lessons, training, memberships, school programs and clinics, mini-putt (known as "Hey Caddy") and social events. The Premises will also be available to be used as a venue for functions; whether they be corporate events, children's birthday parties, adult's parties and events, or hens and bucks shows.

It is usual practice at X-Golf franchises across Australia to provide food and alcoholic beverages. This is not, of course, the focus of the businesses. It is however, an important component of the ethos of X-Golf and the reason for its remarkable success; advanced golfing software, lessons and competitions alongside inclusive entertainment to foster an enjoyable and relaxed atmosphere.”⁵

51. Throughout the application there are references to the provision of alcohol “not being the focus” and therefore being ancillary to the main business being golf.
52. During the course of the hearing, counsel for the Applicant stated that a significant reason it was seeking the public bar authority was because it did not consider that the special venture authority with its conditions limited to “customer ... who have booked those services in advance” would enable it to conduct the premises in a manner that would allow it to operate effectively and would also make compliance with licence conditions virtually impossible.
53. The Commission accepts that only allowing those persons who attend and book to play a game of golf to purchase or consume liquor at the premises, and not their accompanying friends who may wish to spectate or even visitors to the premises who wanted to attend to “see what it was all about”, would make it extremely difficult for the Applicant to ensure compliance. This panel of the Commission also does not consider that this was the intention of the legislature when it drafted its provisions for a special venture authority, nor however does this panel of the Commission consider that by default this should mean that an Applicant receives a public bar authority.
54. The Applicant provided examples of the food and alcohol to be provided at the premises. The experience of Messrs Benjamin and Charles Styles together with Mr Makkreel was also provided. However, as the Commission has already noted there is no evidence of their experience in operating a licence with a public bar authority which is classified as “high risk” under the risk classification for authorities.

⁵ Ibid

55. Whilst the Commission is willing to accept (based on the evidence provided as to their experience) that Messrs Benjamin and Charles Styles together with Mr Makkreel are fit and proper to hold a licence with a special venture authority (which is classified as “very low risk” under the risk classification for authorities), the Commission is not able to be satisfied on the current state of the evidence to make a finding that Messrs Benjamin and Charles Styles together with Mr Makkreel are fit and proper to hold a licence with a public bar authority.
56. This is not to say that the Commission finds Messrs Benjamin and Charles Styles together with Mr Makkreel are not fit and proper, simply that there is not sufficient evidence to support a finding that they are fit and proper in relation to a licence with a public bar authority.
57. The business plan that has been lodged on behalf of the Applicant relates clearly to the operation of a premises with the focus on golf with the service and supply of liquor being ancillary to that venture. During the course of the hearing, the Applicant’s counsel stated that this was “the primary focus” and that “90% is golfing focused”.
58. So too, the experience of Messrs Benjamin and Charles Styles together with Mr Makkreel is in the management and operation of a premises with golf as the focus, not public bar management. The evidence as to their skills, experience and knowledge is therefore limited to that experience. On the evidence before the Commission, the standard of knowledge and abilities of Messrs Benjamin and Charles Styles together with Mr Makkreel is thus limited to the management of such premises and this is a relevant matter as to whether a licence with a public bar authority should be issued by the Commission.
59. The Commission also considers it relevant that the risk classification for a public bar authority is different to that of a special venture authority. As already noted, a public bar authority has a “high risk” classification whereas a special venture authority has a “very low risk” classification. This needs to be considered in relation to whether Messrs Benjamin and Charles Styles together with Mr Makkreel have the relevant knowledge and ability and a proper appreciation of their responsibilities for such a risk classification. On the current state of the evidence that is not established.
60. For these reasons the Commission is not able to find that Messrs Benjamin and Charles Styles together with Mr Makkreel are fit and proper to hold a public bar authority. The Commission does however find itself satisfied that they are fit and proper to hold a special venture authority.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

61. Pursuant to section 49(1)(b) of the Act, the Commission may only issue a licence or authority if satisfied that it is in the public interest. To determine whether the

issue of the licence is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:

- (a) Minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) Ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) Safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- (d) Protecting the safety, health and welfare of people who use licensed premises;
- (e) Increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) Promoting compliance with this Act and other relevant laws of the Territory;
- (g) Ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) Preventing the giving of credit in sales of liquor to people;
- (i) Preventing practices that encourage irresponsible drinking;
- (j) Reducing or limiting increases in anti-social behaviour.

62. The Commission has considered each of these objectives and has also had regard to section 50(3) of the Act which provides:

The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community.

63. The onus is on the Applicant to establish that issuing the licence and proposed public bar authority is in the public interest. As earlier noted, the evidence before the Commission indicates that the proposed business model is that of a business with a significant focus upon the sport of golf. As was put by the Applicant's counsel; "This is a unique offering. ... it will benefit sporting activities, employment as well as golf as a sport. That is the primary focus". The sale and supply of liquor is therefore said to be only proposed as a supplementary offering to its main purpose.

64. The Commission finds on the evidence before it that a business of the nature proposed by the Applicant in the area proposed, would increase recreational, employment and tourism benefits for the local community area. There is,

however, **no** evidence before the Commission that satisfies this Commission to make a finding that there is any additional benefit to the local community area of another public bar authority. This may change over time, however it is not established on the current evidence before the Commission.

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

65. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must have consider the following matters set out at section 49(3) of the Act:

- (a) The risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) The geographic area that would be affected;
- (c) The risk of harm from the excessive or inappropriate consumption of liquor;
- (d) The people or community who would be affected;
- (e) The effect on culture, recreation, employment and tourism;
- (f) The effect on social amenities and public health;
- (g) The ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) The effect of the volume of liquor sales on the community;
- (i) The community impact assessment guidelines issued under section 50.

66. The community impact assessment guidelines previously published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act remain the community impact assessment guidelines issued under section 50, which are as follows:

Criteria	Matters to be considered
The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include – <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people

	<p>that might be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable)</p>

	<p>this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

67. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.

68. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state however that:

"...the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits".

69. In addition, section 50(4) provides that the guidelines "may have general, limited or varied application". Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

70. This application was a difficult one for the Commission to assess. Counsel for the Applicant is correct, this is “a unique offering”. There are no premises in Darwin (or the Northern Territory for that matter) that offer this kind of recreation. The Commission accepts it is likely to cause interest in the local community given its particular offering and the use of the technology it has available. The Commission can readily see persons attending at the premises to play a game of golf and others either attending with them or separately to see what it is all about before trying a game themselves. The Commission accepts it would be extremely difficult in such circumstances for the Applicant to sell or supply liquor **only** to the customers using the services and not those who may attend to spectate. It is therefore understood why the Applicant has argued so strongly for a public bar authority to be granted in order to overcome what it suggests are the limitations of the specific conditions for a special venture authority.
71. Likewise however, this is a proposal for a premises that has as its stated focus being on “golf” in a manner that is different to that presently offered in the local area and in a manner that would appeal to locals and tourists alike. On the other hand, the proposal is related to premises which have been vacant since construction and are to be operated by an Applicant and nominee who have no experience in operating premises with a licence authority of the nature being sought (i.e. public bar) in the Northern Territory (or elsewhere on the evidence) in a location that already has a number of such licences in the local community area and a very large and popular licensed facilities some approximately 180 metres away.
72. With the provision of golf recreation being the focus, the fact that the Applicant has never held a licence, nor has the proposed nominee ever held a licence, of this nature in the Northern Territory and that this is a business that is just starting out for the very first time, it was indicated by the Commission during the course of the hearing to Dr Ford on behalf of the Applicant that the Commission was concerned there was insufficient evidence to establish it was in the public interest for a public bar authority to be issued.
73. Dr Ford indicated that it remained the Applicant’s desire to obtain such a licence and “pressed” the application, however noted that if this were not to be granted by the Commission that consideration be given to a special venture authority with variation to the “standard” conditions granted under a special venture authority to enable the Applicant to sell and supply liquor to persons visiting the premises as spectators of their friends who are customers or who are attending a function at the premises which has been booked.
74. In relation to the question of persons attending the premises for a function that has been booked at the premises, the Commission considers they would be covered under the standard conditions for a special venture authority as they are

“customers” under that function booking. Therefore there need be no variation of the conditions.

75. There is a question however over whether the Commission is entitled to vary the standard conditions for a special venture authority in the manner proposed. This panel of the Commission has considered regulation 22(b) of the Regulations and the Commission’s power under sections 112 and 113 of the Act to vary “any conditions” under the Regulations.
76. During the course of the hearing the Commission made clear to the Applicant and to the Director the proposed variation it **may** consider making to provide for persons visiting the premises as spectators. Both the Director (who appeared in person) and the Applicant’s counsel made submissions that the Commission was empowered to make such a variation and that providing for “bonafide spectators” or “guests” of customers would address the concerns raised as to the limitations of the standard conditions under a special venture authority.
77. On the basis of the evidence, the Commission is satisfied that a licence can be issued to the Applicant with a special venture authority with modification made as proposed. The Commission considers that this fits within the objects of the Act and addresses also addresses the issues the Commission considers were relevantly raised under the objection.
78. The Commission therefore grants a licence in accordance with the conditions set out at the commencement of this decision notice.

EXTENSION OF TIME

79. Section 62 of the Act requires the Commission to make its decision 28 days after the expiration of the objection period that commenced with public notification of the application. As set out above, the Commission was not even referred the matter in such a time period. It was therefore not possible for the Commission to comply with the time limitation period.
80. As a result, and pursuant to section 318 of the Act, the Commission extends the time for the making of this decision in accordance with section 60 until the date of this decision.

NOTICE OF RIGHTS

81. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

82. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Applicant, the Objector and the Director.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
14 April 2023
On behalf of Commissioners Truman, Dwyer, and Stedman