

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

LICENCE NUMBER: LC2019/091

PREMISES: **Café Central Darwin**
1/29 Rossiter Street
RAPID CREEK NT 0810

APPLICANT: **We Care NT Pty Ltd**

NOMINEE: Mr Daniel Treacy

LEGISLATION: Part III of the *Liquor Act 1978*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Ms Pauline Reynolds (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 29 July 2019

DATE OF DECISION: 22 August 2019

DECISION

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* (the Act) the Commission has determined to refuse the application for a licence by We Care NT Pty Ltd (the Applicant) authorising the sale of liquor at the Café Central Darwin (the premises) at 1/29 Rossiter Street, Rapid Creek.

REASONS

BACKGROUND

2. The Applicant is a registered Australian Proprietary Company limited by shares that operates under its registered business name Café Central Darwin, at premises situated in a row of four small shops in a residential area of the Darwin suburb of Rapid Creek. The Applicant initially sought a licence authorising it to supply liquor either with or without a meal from 11:00 hours to 23:00 hours seven days a week in conjunction with its current trade as a café during the day, and its proposed trade as a Mexican restaurant at night. As will be seen below, during the hearing of the application, the Applicant substantially varied this proposal.
3. The Applicant has operated an unlicensed café at the premises for about eight years, serving breakfast and lunch.

4. The Applicant lodged a completed application with Licensing NT on 1 May 2018, following which Licensing NT undertook community notification, consultation and investigations. On 18 June 2019, following a substantial delay, a Delegate of the Director-General of Licensing (the Director-General) referred the application to the Commission for hearing pursuant to sections 28(1) and 50(a) of the Act.
5. The circumstances of the delay are of relevance to the Commission's consideration of this application. The delay was in part due to an administrative error in the office of the Director-General, as a result of which the Applicant's file was shelved, instead of being actioned. However, it was also due in part to the Applicant's own inaction. Despite seeking and being granted an extension of time to reply to the eight objections received by the Director-General in response to the application, the Applicant failed to lodge a reply.
6. The Director-General provided the Commission with a brief of evidence (the brief) including:
 - Application for a liquor licence dated 27 December 2017
 - Affidavit for purposes of s26A of the Act deposed by Mr Daniel Treacy (Mr Treacy) dated 16 April 2018
 - Record of Registration for Business Name
 - Extract from ASIC company register for Applicant
 - Documents certifying identity, managerial capacity, financial stability, character and RSA certification of Mr Treacy
 - Documents certifying identity, managerial capacity, financial stability, character and RSA certification of Ms Katie Lee Treacy (Ms Treacy)
 - Community Impact and Public Interest Assessment statement in compliance with s6 and s6A of the Act
 - Consent from landlord to apply for liquor licence
 - Business Plan
 - Plan of proposed licensed area
 - Certificate of Applicant's registration as a food business dated 7 July 2019
 - Public notices of application for grant of a liquor licence, dated 5 and 9 May 2018
 - Letter of support for application from Martin Boland, 8 June 2018
 - Objections from:
 - Scott Smith, 29 May 2018
 - Anna and Stephen Goat, 30 May 2018
 - Carol Putica, Andrew Gray, Natasha Gray and Scarlett Gray, 3 June 2018
 - Sally Ingleton, 3 June 2018
 - Clare Taylor, 30 May 2018
 - Brett Murphy, 6 June 2018
 - Birgit Hallenstein, undated
 - Tammie K Coyne, 12 June 2018
 - Correspondence between Licensing NT and Applicant
 - Correspondence between Licensing NT and: Department of Health (DOH); NT Police; NT Fire and Rescue Service (NTFRS); City of Darwin; and Development Consent Authority (DCA)

THE APPLICATION

7. The Applicant proposed to operate the premises both as a restaurant and bar: “To be clear we will function as a restaurant and bar so that customers have the choice of an alcoholic drink with or without a meal.”¹
8. The premises are located on the corner of Rossiter Street, a residential street, and Kelly Place, a cul de sac with seven residences, including a double-story block of three flats on the corner of Rossiter Street and Kelly Place immediately across the road from the premises.
9. The Applicant submitted a sketch plan of the premises depicting nine tables inside, and a further eight tables on an outdoor deck area along the two external sides of the shop. The deck is about two metres wide, which the Commission considers allows the outside tables to each comfortably seat two diners. The Applicant estimated a seating capacity of 55 to 70, and stated:

We do not believe this to affect public order and safety within the licensed area or those adjacent to the premises. We will manage this by working with residents within the surrounding area if there are any problems.²
10. The Applicant also stated that there would be no loud music, and that it did not want to disturb “our neighbours”, although “we would like the option to be able to have live music in the future”.³
11. The premises share eight parking spaces with the other three shops on the block, one of which is currently vacant. There is apparently no other nearby off-street public parking.

ADVERTISING AND NOTIFICATION

12. Details of the application were advertised in the NT News on 5 and 9 May 2018. In addition, signage (the green sign) notifying the application was displayed at the proposed premises for a period of 30 days. The objection period expired on 8 June 2018. Contrary to the Director-General’s standard instructions, the green sign was not displayed in a prominent external area of the proposed premises. It was instead displayed inside the premises in a manner apparently visible only to persons inside the café. The Applicant did not respond to two requests from the Director-General to supply a Statement of Display of the green sign.
13. The Director-General informed the DOH, NT Police, NTFRS, the City of Darwin and the DCA of the application.

¹ “Central Nights Business Plan”, Exhibit One, p. 100

² Public Interest Statement, Exhibit One, p. 65

³ Ibid, p. 69

OBJECTIONS AND RESPONSES

14. The application attracted eight objections from 12 local residents, all of whom live in either Kelly Place or Rossiter Street. Section 47F(4)(b) of the Act requires objections to be signed. Only one of them, by Tammie K Coyne, was signed. The principal focus of all the objections was that the licence would cause undue annoyance, disturbance and inconvenience to persons residing in the neighbourhood; that there would be excessive noise emanations from the premises; and that the amenity of the neighbourhood would be adversely affected. Specifically, concerns were raised about the following issues:
- An increase in commercial traffic, particularly from garbage and delivery trucks.
 - The noise, nuisance and intrusiveness of late night diners on the deck affecting occupants of private residences in the immediate vicinity.
 - An increase in cigarette smoke from patrons smoking either in a designated smoking area (if one were established) or in the street, affecting occupants of private residences in the immediate vicinity.
 - Increased risk of break-ins for alcohol.
 - Increased risk of anti-social behaviour by patrons affected by alcohol and by other people seeking to obtain alcohol.
 - Increase in vehicular traffic by restaurant patrons, particularly in Kelly Place.
 - Congestion from patrons' parked cars.
 - Nuisance from patrons' dogs (the café is "dog-friendly"), and the increase in late-night barking of local dogs due to the late-night movement of people in the area.
 - Children coming home from nearby schools being exposed to drunks.
 - The proximity to a playgroup centre, a kindergarten, a primary school and a middle school, and the location of the premises on a street designated as a school route.
 - The risk that the Applicant would use the liquor licence to engage in "scope creep", expanding, changing and/or selling the business in such a way as to create further adverse impact on the neighbourhood.
15. On the last day of the objection period a member of the public wrote an unsigned email to the Director-General in support of the application. He stated that he runs a board games group that likes to meet in locally run cafés and bars, and that Café Central was conveniently located for this group. He also said that there were not many places in the area where people could go "to eat out or enjoy a quiet drink".

16. The following responses were received from the agencies that had been notified of the application, and conveyed to the Applicant:
- a. The DOH made “no adverse comment”, but reminded the Applicant of the applicable smoking compliance requirements by referring the Applicant to the relevant provisions of the *Tobacco Control Act 2002* and the Tobacco Control Regulations; and by providing the Applicant with a copy of appropriate signage, a sample Smoking Management Plan, the Enclosed Area Guidelines and an extract of legislation.
 - b. The NT Police advised that they had no objections to the grant of a restaurant licence, but did not support a licence authorising the sale of liquor other than ancillary to a meal.
 - c. The City of Darwin responded in similar terms to the NT Police.
 - d. The NTFRS advised it had “no issues at the moment”.
 - e. The DCA noted that the proposed outdoor dining area differed from the DCA approved plans for the premises. On 1 June 2018, Licensing NT informed the outdoor seating area arrangement and further advice on the appropriate documentation and lodgement procedures for approval.” The Applicant did not act on this suggestion.

HEARING

17. The hearing was conducted in public on 29 July 2019 following notification to the Applicant and the objectors in accordance with s53(1)(a) of the Act. Mr Treacy appeared on behalf of the Applicant. Mr Verinder appeared for the Director-General. In addition, the following objectors appeared: Brett Murphy, Andrew Gray, Scott Smith, Stephen Goat, Clare Taylor and Tammie K Coyne. The Commission thanks them all for their attendance and assistance. The Commission read the brief, which was admitted as evidence.
18. Several of the objections lodged in 2018 had not been signed, as is required by s47F(4)(b). Accordingly, by leave granted by the Commission to extend time for the signing of the objections, and with the consent of the Applicant and the Director-General, a bundle of signed copies of the objections in the brief of Scott Smith, Andrew Gray, Clare Taylor, Birgit Hallenstein, Brett Murphy and Tammie K Coyne was admitted as evidence.
19. In addition, the Applicant tendered the following documents:
- a. Letter from the Applicant’s accountant dated 11 January 2018 stating that the Applicant’s financial position is sound
 - b. Identification documents and resumé for Mr Treacy
 - c. Identification documents and resumé for Ms Treacy
 - d. Extract of Applicant’s lease agreement over the premises

Leave was given by the Commission for the objectors present at the hearing to inspect these documents.

20. An objector tendered a bundle of 5 photographs showing that the premises are located on “Ride2School” cycling routes to St Pauls Catholic Primary School and Nightcliff Primary School.

21. The Applicant conceded that each of the objections was validly made by a person qualified under s47F(3) to make an objection, as was clearly the case. Ultimately, two of the objections, one of which was authored by an objector who attended and participated in the hearing, were unsigned. Neither of the unsigned objections raised issues that were not also raised by other objectors. In the circumstances, the Commission, which is not bound by the rules of evidence in hearing this application, considers that all of the neighbours' objections should be accorded similar weight.
22. At the outset of the hearing the Applicant made three substantial amendments to its application, as follows:
- The licence should be issued on condition that liquor be only served ancillary to a meal
 - Trading should be limited to no more than three days a week (although the Applicant did not specify exactly which three days)
 - Trading hours should be until either 21:00 hours or 21:30 hours
23. During the hearing, Mr Treacy disclosed that the Applicant already holds a liquor licence, over the Saltwater Café at the Museum and Art Gallery of the Northern Territory at Bullocky Point. The Commission has not been informed that there have been any compliance issues that have arisen in the course of operating that licence. The Saltwater Café opened in July 2018, although the liquor licence's date of effect is 26 February 2019.⁴ The Commission presumes that the Applicant has no history of non-compliance with the terms of this licence.
24. Mr Treacy sought to explain his contribution to the delay referred to, at paragraph 5 above by stating that his attention had been engaged by the work involved in taking over the Saltwater Café, and by family issues requiring him to travel interstate frequently.
25. Mr Treacy stated that he had displayed the green sign inside the premises because he was concerned that if he had displayed it outside it might have been damaged or stolen. He did not offer an explanation for having failed to supply a Statement of Display to the Director-General.
26. Mr Treacy said that he did not know whether it was a requirement to have a designated smoking area. He did not advert to the material referred to at paragraph 16(a) above that had been provided to him in relation to smoking requirements.
27. When a concern was raised by an objector about disabled access to the toilets (which are located behind Shops 2 and 3) and the other shops (one of which is a hairdresser) in the complex, Mr Treacy maintained that there is room for wheelchairs to negotiate the deck area past the existing tables and chairs.

⁴ Liquor Licence 80515140, accessed at <https://licensingnt.nt.gov.au/PublicRegister/>

28. When a concern was raised by an objector about whether the Applicant had approval for the outdoor dining area, Mr Treacy said that he wanted to get that issue sorted, and accordingly was granted leave by the Commission to file further material to clarify this issue. Consequently, on 12 August 2019, Mr Treacy wrote to the Commission as follows:

As requested I went to the department of infrastructure, planning and logistics after our tribunal hearing regarding the liquor licence. They told me we do not have approval for alfresco dining and that we need to put in a development application for this. **We were completely unaware this was not already in place.** They were not sure why this had not been approved or why it had not been followed up. I put the application in today. I was hoping to leave the liquor licence decision on hold till this development application has been approved or not. This is because the development application directly relates to the viability of the café and we would still like some time to see if there are any ideas for how we could work together with all the neighbours to make everyone happy. I was told the development application process would take 6-8 weeks.

29. The Commission refused this application to postpone the determination of the liquor licence application until after the DCA application had been completed. Whether or not the Applicant's pending application to the DCA is granted, the Commission has decided to refuse the application for a licence. Section 29(2) of the Act requires the Commission to give a decision notice to the Applicant and the objectors as soon as practicable after making its decision.

30. The six objectors who attended the hearing each repeated and adopted in substance the matters raised in their written objections lodged more than twelve months previously. Notwithstanding the concessions implicit in the significant amendments to the application that were communicated to the objectors by Mr Treacy in the course of the hearing, each of the objectors was firm in their opposition to the grant of a liquor licence to the Applicant. If anything, that opposition appeared to have hardened over the intervening period. Then Commission has regard to the fact that the authors of six of the eight objections lodged more than a year previously were still sufficiently interested in the matter to attend and participate in the hearing.

31. The Commission heard no evidence that over that period the Applicant had either attempted to enter into meaningful discussions with any of the objectors to address the concerns they had identified, or taken any other meaningful steps to address their concerns. For example, the disturbance to neighbours caused by delivery vehicles arriving early in the morning appears to be just as prevalent and serious now as it was in May 2018.

ASSESSMENT OF THE APPLICATION

32. The Commission has considered the application, the s26A affidavit of Mr Treacy, the results of the investigations conducted by the Director-General in relation to the application, the objections and responses received, the Applicant's reply to the objections and responses, the conduct of the Applicant in making and presenting the application, and the submissions made on behalf of the Applicant, the objectors and the Director-General. The Commission has had regard to the objects of the Act, all of the relevant matters in s28(2) of the Act, the public interest and community impact test in s6 of the Act, and the onus on the Applicant as set out at s6B of the Act.

THE APPLICANT

33. The Applicant has been a registered company since 2008. The sole Directors and Shareholders are Mr Treacy and Ms Treacy. Mr Treacy is the Company Secretary. In accordance with s28(2)(c), the Commission assesses that both the business reputation and financial stability of the Applicant, and the general reputation and character of the Applicant's secretary and executive officers, Mr Treacy and Ms Treacy, to be satisfactory.

34. In accordance with s28(2)(e) of the Act, the Commission assesses the Applicant to be a fit and proper person to hold a licence. Indeed, it already holds a liquor licence.

35. Section 26A 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. Mr Treacy, as the principal executive officer of the applicant, affirmed in his affidavit deposed on 16 April 2018 that apart from his fellow Director, there is no such person. The Commission finds that there is no other person referred to in the s26A affidavit who is an associate of the licensee for the purpose of s28(2)(f).

36. The Commission considers that Ms Treacy, the wife of Mr Treacy, is an associate of the licensee, and that it is appropriate to assess whether she is a fit and proper person for the purpose of s28(2)(g). The Commission assesses Ms Treacy to be a fit and proper person to be an associate of the licensee.

37. It is not entirely clear to the Commission whether the Applicant has nominated Mr Treacy or Ms Treacy or both as its manager. In any event, in accordance with s28(2)(h) of the Act, the Commission assesses them both to be fit and proper persons to manage a liquor licence. They both hold current RSA certification.

38. As noted above, Mr Treacy has repeatedly expressed a willingness to work together with his neighbours to operate the licence so as to minimise any inconvenience and disturbance to them. At the hearing, he significantly amended the application in what the Commission accepts was a serious attempt to assuage the objectors. However, as noted above at paragraph 30, that attempt was rebuffed. Moreover, at the conclusion of these proceedings, the Commission was left with a significant concern about the Applicant's commitment and capacity to effectively address the issues raised by its neighbours. In the particular circumstances of this application, the Commission considers that this concern is relevant to the application of the public interest and community impact test, as will be discussed below.

39. In forming this adverse view of the Applicant, the Commission has had regard to the following matters:

a. The Applicant's decision not to properly display the green sign, and its failure to provide a Statement of Display, or an explanation to the Director-General for that failure when requested to do so.

The Commission found the belated explanation provided at the hearing by Mr Treacy to be unconvincing.

b. The Applicant's failure to reply to the objectors until the hearing, over twelve months later.

Although Mr Treacy's explanation for the initial delay is reasonable, he provided no explanation for not attending to this task promptly once he was informed that the dormant application had been revived.

c. The timing of the Applicant's amendments to the application.

The Commission accepts the assertion made in June 2018 by one of the objectors, Tammie J Coyne, that Mr Treacy had assured her that he only wanted to trade on Thursday, Friday and Saturday, from 5 pm to 8pm, but had lodged his seven day a week 11am to 11pm application as, in effect, an ambit claim, on the advice of Licensing NT. Although the Commission is strongly of the view that such advice should not be given to intending licence Applicants, it makes no finding as to whether Mr Treacy was in fact given any such advice. However, whether or not he was given any such advice, the Applicant's conduct in persisting right up until the day of the hearing with an application which he knew was so strongly opposed by both its neighbours and the relevant authorities, does not give the Commission confidence that the Applicant can be counted on to work with the neighbours to effectively address their concerns in the future.

d. The Applicant's plea of ignorance at the hearing of the applicable smoking management regime.

This was unsatisfactory, given the detailed information provided to the Applicant in mid-2018 as set out at paragraph 16(a) above.

e. The Applicant's claim in his letter referred to paragraph 28 above that he was "completely unaware" of the non-compliance issue with respect to the al fresco dining area.

The Commission rejects this claim. On 1 June 2018 the DCA and Licensing NT clearly placed the Applicant on notice of this issue. Without explanation, Mr Treacy failed to act on their suggestions made on that date that he take action to address it.

f. The Applicant's failure to enter into meaningful discussions with the objectors to address the concerns they had identified, or take any other meaningful steps to address their concerns.

The Commission draws this inference from the matters set out at paragraph 31 above.

THE APPLICANT'S PREMISES

40. The proposed licenced area is described at paragraphs 8 to 11 above. The Commission also refers to the matters set out at paragraphs 27 and 28 above, the substance of the objections as set out at paragraph 14 above, and its finding at paragraph 38 above. Having taken into account all of the material it has received, and in particular these matters, the Commission does not assess the premises as being suitable for the purpose of operating as a licensed restaurant.
41. The Commission considers that the location of the premises is well suited for its current purpose as a daytime café, but not as a night time restaurant where liquor is consumed. The Commission finds that the proposed use of the premises would cause substantial inconvenience and disturbance to the quiet enjoyment of the occupants of this residential precinct, and for this reason the location of the premises is not assessed as being suitable.
42. In addition, the Commission also has concerns about the suitability of the premises' facilities, and in particular the lack of parking, the unapproved (at this time) use of the deck for al fresco dining, the apparently limited provision of disability access, and the lack of an appropriate designated smoking area.
43. In accordance with s28(2)(a) of the Act, the Commission does not assess the premises as being suitable for the supply and consumption of liquor in the manner set out in the application.

PUBLIC INTEREST AND COMMUNITY IMPACT

44. Section 6B of the Act provides that the Applicant bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test set out in s6 of the Act. In considering and determining this application, the Commission has had regard to the objects of the Act and applied the public interest and community impact test by reference to the community impact assessment guidelines published by the Minister on 6 March 2018 pursuant to s6A of the Act. The guidelines are detailed and specific, but also state 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.

THE PUBLIC INTEREST AND COMMUNITY IMPACT TEST

45. The Commission is required to consider each of the fifteen objectives in s6(2). In doing so, the Commission has had particular regard to both the licensee's public interest and community impact statement, and the matters raised by the objectors and responding agencies.

(a) *Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised.*

The Commission considers that the grant of a licence authorising liquor to be sold for consumption ancillary to a meal in a suburban Darwin restaurant would not raise a substantial risk of harm or ill-health to people or a group of people by the consumption of liquor.

- (b) *Liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner.*

The Commission presumes that the Applicant has a good liquor licence compliance history, and considers that, if granted a licence, it is likely that the licensee would sell it, and that patrons would generally consume it, in a responsible manner.

- (c) *Public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises.*

The Commission notes the concerns of the objectors in relation to this issue, and considers that there is a real risk that public order and safety might be jeopardized, firstly, by the heavy concentration of traffic in the immediate vicinity of the premises; and secondly, by the vulnerability of the premises to attempted break-ins after hours. In making this finding, the Commission has had regard to its findings set out at paragraph 38 above.

- (d) *The safety, health and welfare of persons who use licensed premises must not be put at risk;*

The Commission does not consider that persons using the licensed premises would be exposed to a significant risk of harm.

- (e) *Noise emanations from licensed premises must not be excessive.*

The Commission finds that noise emanations from the licensed premises would be excessive for residents in the immediate vicinity of the premises. Although objectively speaking, the noise emanations would be substantially lower than the noise emanations from, for example, a public hotel, and although only a small number of people would be affected, the Commission considers that the disruption to their lives, as well as the potential diminution of the value of the property they occupy, would be serious. The Commission's concern is heightened by the applicant's stated desire to have live music at the venue at some indefinite future time. In making this finding, the Commission has had regard to its findings set out at paragraph 38 above.

- (f) *Business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school.*

The Commission finds that it is highly likely that the business would cause undue annoyance, disturbance and inconvenience to its neighbours. In addition, the Commission finds that there is a real risk neighbours would be caused undue offence by intoxicated diners leaving the premises. The Commission also finds that there is a real risk that children travelling home from school would be caused undue offence and disturbance by the business, and specifically by lunchtime patrons who have lingered to drink enough liquor to become intoxicated by 15:00 hours. In making these findings, the Commission has had regard to its findings set out at paragraph 38 above.

(g) *A licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:*

- (i) By-laws made under the Local Government Act 2008; and
- (ii) Provisions of or under the Planning Act 1999.

The Commission is not satisfied that the Applicant has obtained the requisite approvals from the Development Consent Authority for its al fresco dining area, and has doubts as to the applicant's compliance with disability access requirements. However, the Commission does not regard either of these matters as being of crucial importance in reaching its decision in this case.

(h) *Each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business.*

The Commission is satisfied that the Applicant would appropriately manage and supervise its service staff.

(i) *The use of credit in the sale of liquor must be controlled.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

(j) *Practices which encourage irresponsible drinking must be prohibited.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

(k) *It may be necessary or desirable to limit any of the following:*

- (i) *The kinds of liquor that may be sold;*
- (ii) *The manner in which liquor may be sold;*
- (iii) *The containers, or number or types of containers, in which liquor may be sold;*
- (iv) *The days on which and the times at which liquor may be sold.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

(l) *It may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

(m) *It may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee.*

The Commission notes that the Applicant does not propose to have entertainment on the premises, at least in the short term.

(n) *It may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

(o) *Any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.*

The Commission considers that the grant of a liquor licence to the Applicant would create a real risk of a modest increase in anti-social behavior in this residential precinct.

THE IMPACT ON THE COMMUNITY

46. In considering the impact of the decision on the local community, as it is required to do, the Commission must have regard to five matters set out at s6(3)(a) of the Act, and in addition apply the community impact assessment guidelines.

(i) *The harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor.*

The Commission does not consider that there is a high risk of harm caused by excessive or inappropriate consumption of liquor from a licensed restaurant.

(ii) *The cultural, recreational, employment or tourism impacts.*

The Commission considers that the business would have a modestly positive recreational and employment impact on the community. The Commission notes the community support for the application referred to at paragraph 15 above, and the applicant's submission, which the Commission accepts, that there are no other Mexican restaurants in the locality. On the other hand, in the view of the Commission, the lack of Mexican cuisine in the Rapid Creek area is not in itself a matter of great significance. The amenity of a licensed restaurant offering a distinctive cuisine would be considerably enhanced if it were located in an entertainment or tourist precinct.

(iii) *The social impact in, and the impact on the amenity of, the locality of the premises or proposed premises.*

The Commission considers that the proposed premises would have a substantially adverse social impact on its immediate neighbourhood. The number of people affected would be small, but the effect on them would be high. In making this finding, the Commission has had regard to its findings set out at paragraph 38 above. The Commission considers that there would be no significant impact on the wider locality.

(iv) *The density of existing liquor licences within the community area.*

The Commission does not consider that this factor is of great significance in the circumstances of this application.

(v) *The volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application.*

The Commission does not consider that this factor is of great significance in the circumstances of this application.

(vi) *Any other prescribed matter;*

No such matters have been prescribed.

47. Section 6(3)(b) requires that the Commission also apply the community impact assessment guidelines. The Commission has done so.

48. Having considered all of these matters, the Commission considers that on balance, the impact of the licence on the community in the area that would be affected by the grant of a licence is likely to be adverse. Specifically, the Commission finds that the grant of the licence would have a highly adverse impact on the residents of Kelly Place, and on the residents of Rossiter Street in the vicinity of the premises.

49. The Commission is not satisfied that the Applicant has met the public interest and community impact test. Accordingly, pursuant to s6 and 6B of the Act, the Commission is required to refuse the application.

50. The application is refused.

NOTICE OF RIGHTS

51. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
52. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
53. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the Applicant and Objectors.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
23 August 2019

On behalf of Commissioners, Goldflam, Reynolds and Cannon