

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2020/048

APPLICANT: Air Raid Arcade Pty Ltd

PREMISES: Birth of Venus Darwin
Shop 2 & 4 and Adjoining Arcade
35 Cavenagh Street
DARWIN NT 0800

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

HEARD BEFORE: Mr Richard Coates(Chairperson)

Mr Bernard Dwyer (Health Member)

Ms Christine Hart (Community Member)

DATE OF HEARING: 14 December 2020

DATE OF DECISION: 14 December 2020

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 Air Raid Arcade Pty Ltd (“**the Applicant**”).
2. The licence will be issued with a small bar authority authorising the sale of liquor to customers attending the Applicant’s “Birth of Venus Darwin” bar at Shop 2 / 35 Cavenagh Street Darwin. The licence will not extend to Shop 4, as was originally sought, nor any part of the arcade area adjoining Shop 2 or Shop 4.
3. The conditions of the licence will be those authority conditions set out in Division 17 of the Liquor Regulations 2019, subject to a further condition that any live musical performances not be amplified.
4. In accordance with section 60(5) of the Act, and noting that the premises are not yet constructed, liquor must not be sold under the licence until such time as the applicant has been given written approval to do so by the Commission subsequent to the applicant having provided written confirmation that it has obtained all the necessary building, planning and safety approvals.

5. The Commission delegates to any one of Members Coates, Dwyer and Hart the authority to grant the approval referred to in paragraph 4 above.
6. In accordance with section 85 of the Act, the term of the licence will be for three (3) years from the date on which the Commission gives written approval for liquor to be sold under the licence.

Reasons

The Application

7. On 17 August 2020, an application was lodged by Mr Matt Mulga on behalf of the Applicant for a Liquor Licence with a small bar authority allowing for on premises consumption at new premises located at Shop 2 and Shop 4, and a portion of the arcade of the building known as the Air Raid Arcade, located at 35 Cavenagh Street, Darwin.
8. The application was assessed as being incomplete with the Applicant supplying further documents and clarifications via email on the 31 August, 2020. These clarifications include:
 - that the applicant wishes to apply for a small bar authority to end at midnight and not to seek a late night authority.
 - clarification that the proposed red line liquor licence site plan ends with the property boundary and is not council land.
 - explanation that the windows fronting onto Cavenagh Street, which are 85 cms from the property boundary will be removed and replaced with bi fold windows that will then allow 100 cms from the window to the property line.
 - the applicant was asked to provide information as to how the arcade area would be delineated during trading times. He stated he would prefer to address this directly with the Commission.
 - the Applicant only provided a Summary of the CIA and not a comprehensive CIA document. They were asked if they wished to provide further documents in this regard but indicated they will rely on the documents provided.
 - the Applicant was referred to Section 85 of the Liquor Act and requested to nominate a term of licence. They replied that they will discuss this directly with the Commission
9. The Applicant subsequently confirmed that a late night authority was not being sought and that the proposed trading hours were those prescribed by the regulations, namely 10:00 to 24:00 hours seven days per week.
10. The Applicant company is the licensee for liquor licence FLL1037 for premises known as Babylon Berlin and also located within the Air Raid Arcade. Being a current licensee, the Director did not require any further probity documents for this application.

11. The Applicant has provided ASIC extracts in relation to Air Raid Arcade Pty Ltd which shows there has been no corporate structure changes since the Babylon Berlin liquor licence was issued.
12. A copy of the ASIC Record of Registration for Business Name has been supplied indicating that the business name, "Birth of Venus Darwin" is registered and held by the Applicant.
13. The Applicant has provided the following further documents in support of the application:
 - Cover letter;
 - Request for probity waiver;
 - Copies of Land Titles Certificate showing that Air Raid Nominees Pty Ltd is the owner of the property. Through the previous application for Babylon Berlin it was established that this company is interlinked with the Applicant for this application where effectively the same people are "leasing or allowing access" to the premises to themselves;
 - Statutory Declaration outlining that there has been no change in the criminal history of Mr Matt Mulga or the financial circumstances of the Applicant since the grant of the Babylon Berlin licence;
 - A copy of Public Interest and Community Impact Assessment Summary;
 - Proposed site plan;
 - Copy of Food Certificate application.

Proposed Nominee

14. The proposed nominee is Mr Mulga. He is already a nominee for liquor licence number FLL 1037 for premises known as Babylon Berlin and also connected with other liquor licences in the NT where he has previously provided the required probity documents. As such, the Director did not require those probity documents to be submitted in this application.

Publishing and Consultation

15. The application was published in the NT News on Wednesday 9 September 2020 and Saturday 12 September 2020.
16. The following stakeholders were notified of the application in accordance with Section 56 (4) of the Act:
 - The Chief Executive of the Department of Health;
 - Northern Territory Police;
 - City of Darwin.

17. Northern Territory Fire and Rescue Service were also notified of the application as part of the Director's investigations into the application due to this being a new liquor licence application and venue. No response was received but it is known that the premises were not completed at the time of the referral being made and therefore could not be inspected for fire compliance.
18. The Department of Health replied via email dated 4 September 2020 stating that it had no adverse comment and that the Applicant was required to comply with COVID-19 Site Safety Plans.
19. The Northern Territory Police replied via email dated 29 September 2020 stating it had no objections if in the same terms as previous licence approved.
20. The City of Darwin replied via email dated 1 October 2020 stating it had no comment or objection.

Compliance History

21. In his referral brief the Director of Liquor Licensing ("**the Director**") reminded the Commission of the history of Mr Mulga's disciplinary dealings with Licensing NT that had been provided with the Babylon Berlin Application. That information was included at para 22 of the Commission's Decision Notice of 28 May 2019 in relation to that matter and is repeated here:

Mr Matt Mulga has been involved in several liquor licensed premises in the NT through his chain of associated companies where he is the director of the Licensee Company and also nominee at the time of offences. A review of records at Licensing NT reveal several disciplinary results before the former NT Licensing Commission":

- *Annie's Place, date of hearing 2001. Complaint of failing to comply with condition of licence. A formal Decision Notice and result cannot be located in the Licensing NT archives but this decision is referenced in the NT Licensing Commission Decision Notice of the hearing dated 27 November 2008 at paragraphs 7 & 10.*
- *Annie's Place, date of hearing 27 November 2008. Complaint of failing to comply with condition of license. Result – Formal Letter of Reprimand.*
- *Annie's Place, date of hearing 24 March 2010. Complaint of sale of liquor to intoxicated person and fail to exclude or remove person. Result – Warning from Licensing Commission, the Commission requires the licensee to install CCTV by 1 June 2010, the Commission suspends the liquor licence on a Monday evening as determined by the Deputy Director from 9.00pm until closing.*
- *Monte's Lounge 12 August 2010. NT Licensing Commission immediately suspends liquor licence for unapproved material alteration. Refer to paragraph 49 of Decision Notice dated 1 December 2010. Paragraphs 51 & 61 outline that licensee has suffered financial loss due to suspension and therefore no further penalty to be imposed. Paragraph 73 lifts the suspension of the licence. Material Alterations approved but variations of licence condition refused.*

- *Monte's Lounge 1 September 2011, emergency suspension of licence re no maximum patron numbers being issued. Premises certified and the suspension lifted 2 September 2011.*
- *Monte's Lounge, date of hearing 24 November 2011. Complaint of breach of Section 110 of the Act. 1. Fined \$400 2. Licence condition varied to include the word "restaurant".*
- *Monte's Lounge February 2013. Letter from Director of Licensing re breach of licence condition re noise control device bypassed and intention to issue Penalty Infringement Notice. A search of the records at Licensing NT cannot find a copy of this Penalty Infringement Notice which is believed to be stored in an archive area.*
- *Monte's Lounge October 2013. Warning Letter from Manager South Region re breach of licence condition and possession of gaming machine without licence.*
- *Monte's Lounge, date of hearing 5 June 2014. 1. Complaint of 5 breaches of Section 110 relating to noise 2. Breach of licence condition Result- 1. Fined \$2,000 2. Fined \$500.*

22. Since that time the Applicant has received a formal warning from the Director on 20 December 2019 for commencing trade under the Babylon Berlin Liquor Licence prior to receiving written approval to commence the sale of liquor.

23. Mr Mulga was also issued with a penalty infringement notice in relation to the licensed premises, Lola's Pergola for a breach of the Chief Health Officer's Directions regarding Covid 19 public health restrictions.

24. The application was referred to the commission on 21 October 2020 and on 26 October 2020 the Commission wrote to the applicant advising that the matter would be set down for Public Hearing on 2 November 2020.

The Hearing

25. The hearing commenced on 2 November 2020. Mr Mulga appeared for the Applicant and Mr Jeff Verinder represented the Director. The referral brief was admitted into evidence as Exhibit 1.

26. It was clear from the correspondence between the Applicant and licensing officers that Mr Mulga wanted this matter referred to the Commission despite advice that there were deficiencies with the Community Impact and Public Interest Statements, that there was insufficient information as to how the licensed area of the arcade would be delineated and that he had not addressed the issue of the term of licence.

27. During the course of the hearing Mr Mulga conceded that his application was not fully prepared and said that he had been surprised at how quickly the hearing had been scheduled. Commissioners raised concerns over the proposed inclusion of the adjacent arcade within the licensed foot print of the small bar. Apart from the risks associated with an informal merger of this bar

with the Applicant's other premises, Babylon Berlin located at the other end of the arcade, the Applicant was pressed as to how he could prevent the licensed arcade area from being used as a thoroughfare by customers of the retail outlets or patrons of this other bar. The Applicant was also advised that he had not sufficiently addressed the requirements of the Act in relation to the Community Impact and Public Interest criteria such that the application would likely fail if it was assessed on the basis of the evidence then before the Commission.

28. The Commission also observed, that if the Applicant as owner of this two storey building, had the ultimate intention of operating the whole space as licenced premises then it could be more appropriate for the Applicant to obtain the necessary planning approvals and submit an application for a licence and public bar authority over the whole of the premises.
29. Mr Mulga then sought an adjournment of the hearing so that he could address the deficiencies that had been identified with his application.
30. Although the Commission acceded to the Applicant's request on this occasion, that has in effect required us to extend the time limit (pursuant to section 318 of the Act), that is now imposed by section 60 (2) of the Act, that a decision be made within 28 days of the date on which the period for objections closed which was 10 October 2020. In the earlier application concerning Babylon Berlin, this Applicant also presented an incomplete application in the hope that the Commission would provide some guidance on what would be required to bring it to a successful conclusion. However that application was under the 1978 Act where there were none of the arbitrary time limits that now apply under the current legislation. As Section 51 of the 2019 Act clearly casts an onus on an applicant to satisfy the Commission that issuing a licence of authority is in the public interest, an applicant cannot assume that the Commission will automatically allow it another "bite of the cherry" if the evidence submitted at hearing does not meet the standard required. These new time limits are aimed at achieving more timely decisions on the approval or refusal of liquor licence applications in the interest of providing greater business certainty. It is an anathema to the advancement of those interests for applicants to present "half-baked" proposals to the Commission in the expectation that any identified deficiencies with the application can be cured at a subsequent hearing.
31. Having adjourned the matter part heard to a date to be fixed, the Commission received a letter from Mr Giles of HWL Ebsworth lawyers dated 4 December 2020 advising that he now acted for the Applicant. The letter indicated that the Applicant would eventually be moving to apply for a licence with a public bar authority, over the entirety of the building but wished to continue with the Application for a small bar authority in the meantime. He anticipated being in a position to file a Community Impact Statement and Public Interest Response by close of business on 7 December 2020 and sought a further hearing date by early to mid December.

32. The Commission scheduled the further hearing of the matter for 14 December 2020 however it was not until 11 December 2020 that the Community Impact and Public Interest were actually filed.
33. At the reconvened hearing, Mr. Ryan Sanders, solicitor appeared for the Applicant and Mr. Verinder once again appeared for the Director. The Commission is grateful for the assistance they provided.
34. It was confirmed that the Applicant had reduced the proposed size of the Premises by removing Shop 4 and the adjoining Arcade area from the Application. Mr Mulga said that this was to allay to some extent the concerns that had been raised about the merging of these premises with the Applicant's other bar, Babylon Berlin, situated at the other end of the arcade. He also said that he would be needing to use Shop 4 as the access point for the ongoing renovation work proposed for the upper level of the building.
35. Mr Mulga told the Commission the retail tenants in the Arcade were happy about the proposed new bar and that they had recently signed up to 3 year leases. Although most of the tenants ceased trading at or before 5pm, three of them were open for trade on at least some days of the week until 9pm.
36. During the course of the hearing, Mr Mulga was asked how he might reduce the risk of the Arcade being used as a thoroughfare by unaccompanied minors and others seeking to access the retail outlets within the Arcade or just taking a shortcut to Austin Lane whilst it was being used as a Licenced premises. The Commission raised the prospect of the gates at both ends of the Arcade being closed whilst liquor was being consumed within the Arcade. Mr Mulga rejected that as an option on fire safety grounds although in the Community Impact Statement submitted in support of the Babylon Berlin application he had asserted the Arcade gates at the Cavenagh Street entrance would be closed daily at 8pm on "security grounds".
37. At the conclusion of the hearing the Applicant was advised that a decision would be made as soon as possible. As there were logistical difficulties in compiling this Decision Notice whilst the Chair was on leave interstate and due to the closure of the office of Commission and Board Support over the Christmas break it was decided to notify the Applicant via its solicitors of the outcome of this application in the terms outlined at the commencement of this decision by letter dated 18 Deember 2020 prior to the issue of this Decision Notice.

ASSESSMENT OF THE MATTER

38. Section 49(1) of the Act provides:-

The Commission may only issue a licence or an authority if satisfied 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.

39. As was outlined in the Director's referral the proposed licensee already holds another licence in respect of the Babylon Berlin Bar situated in the same building. Whilst the Director provided details of the recent compliance issues concerning the Applicant and Mr Mulga, its nominee, there has been no suggestion that either of them are no longer fit and proper persons to be involved with the operation of the Liquor Licence. The Applicant also provided ASIC extracts which indicated that there has been no changes with the corporate structure since the Babylon Berlin liquor licence was issued.

40. On the evidence before it the Commission is satisfied that the Applicant is a fit and proper person to hold a licence and that Mr Mulga is a suitable nominee. In the Babylon Berlin decision the Commission took a charitable view of Mr Mulga's less than unblemished compliance history by categorising most of the breaches as an "attempt to push the envelope". These further two breaches are a further cause for concern and the Commission expects that Mr Mulga will exercise a greater level of diligence in future to ensure compliance with his obligations as a licensee.

41. Section 59(3)(e) of the Act requires the Commission to consider:-

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.

42. This has been the crucial issue in these proceedings. Another company controlled by Mr Mulga owns the freehold of the Air Raid Arcade. Although he was not forthcoming about his plans for the upper storey of the building it is clear from visiting the site that renovation work is being undertaken on the first floor and it was conceded by Mr Mulga during this hearing that Shop 4 would no longer be part of these proposed premises as it would be required for access to the upper floor. Although not formally acknowledged by the Applicant it would seem likely that Mr Mulga has some commercial plans for the first floor which may include the supply of liquor to patrons attending all or some of that space.

43. That is one of the reasons why the Commission suggested during the hearing that the Applicant should consider whether it might be more appropriate to submit a comprehensive application in respect of the whole of the building even if such a proposal carried with it the need to obtain planning approval. However in his letter of 4 December 2020, Mr Giles advised that although it was the Applicants ultimate goal to pursue an application for a public bar authority over the whole of the building it wishes to maximise the economic and goodwill benefits it hoped to derive from the operation of the small bar in the meantime.

44. Having now removed Shop 4 from the proposed premises there is very little space within Shop 2 to accommodate patrons. The proposed layout of the premises features bar service directly into the arcade. It is therefore likely that a significant proportion, if not the majority of the bar's clientele would be situated in the Arcade in the vicinity of its entrance to Cavenagh Street.
45. The Applicant suggested that a similar situation existed with the different bars and restaurants situated at the Darwin Waterfront where there is a common walkway which links the various licenced premises. However at the Waterfront Precinct there is a clear delineation between the various licenced establishments and the public walkway. Furthermore whilst patrons might be able to carry liquor across the walkway at the Waterfront to the adjacent "alfresco area" attached to the particular licenced premises, they are not entitled to consume liquor on the public walkway.
46. Mr Verinder for the Director also submitted that the situation that existed at the Waterfront Precinct was not an appropriate comparison to what is being proposed with this application. The Commission agrees, there has been no attempt by this Applicant to create any sort of "clearway" through the licenced premises by the use of barriers, placement of furniture, or by confining the supply of liquor to that provided by wait staff to patrons seated at a table in the arcade.
47. It is therefore conceivable that at a time of peak demand such as Friday between 5.30 and 6.00 that a large number of patrons could be standing consuming liquor at the entrance to the arcade thereby restricting the access of those members of the public that might have businesses elsewhere in the arcade. This problem will be inevitably compounded once the works are completed to the first floor and people begin accessing that area by the stairs in what is now shop 4. The prospect of members of the public, possibly accompanied by children making their way through a crowded bar in order to get to another venue in the building, or just to get to Austin Lane via a covered walkway is not an outcome that the Commission considers acceptable. There is also a risk that intoxicated persons who have been refused service at Babylon Berlin will depart those premises via the arcade and necessarily enter the Applicants Venus Bar premises, potentially putting the licensee in breach of section 141 of the Act for having an intoxicated person on licenced premises.
48. The Applicant submitted that the proposed use of the arcade is in line with the practice in place for bars in the popular European tourist destinations as well as that which is emerging within some of the laneway bars in Melbourne and Adelaide. However that does not accord with the Commissioners' collective experience of those places. As we recall, the bars and licenced cafés that extend out to the arcades and piazzas in European cities invariably provide waiter service to patrons seated at tables which are positioned to ensure that the public thoroughfare is maintained. Similar arrangements seem to prevail with the bars situated along Melbourne's iconic Degraes Street and Hardware Lane.

49. The Commission's decision to licence the western end of the arcade for Babylon Berlin after 17.00 hours on weekdays and 12.00 hours on weekends was made on the basis the arcade's retail outlets would have ceased trade by that time and that there would be little need for persons other than patrons of the bar to use the arcade. On the evidence now before us that is not correct, however it seems more likely that "after hours" customers of the arcade's retail outlets would use Cavenagh Street rather than the Austin Lane entrance, thereby avoiding the problem that arises through the unintended traversing of licenced premises. If the current arrangements concerning the use of the arcade area associated with the Babylon Berlin licence were to become problematic then the Commission would need to consider whether it was appropriate to proceed on its own initiative to vary the conditions of that licence pursuant to s.113 of the Act.
50. It is clear however, that if the Commission were to grant this application a licence over the arcade area adjacent to the proposed Darwin Venus Bar that after 17.00 hours on the weekdays and 12.00 hours on weekends, persons intending to access other parts of this complex could only do so by walking through licenced premises. Having had regard to the purposes of the Act specified in section 3, the objectives and considerations listed in section 49 as well as the requirements of section 59(3)(e), the Commission is not satisfied for the reasons outlined above that the arcade area adjacent to this proposed bar is suitable premises to be licenced.

ASSESSMENT OF THE APPLICATION SOLELY IN RESPECT OF SHOP 2

51. The Applicant confirmed during the hearing that it would persist with the application for the small bar licence even if the premises were confined to Shop 2 and did not include any part of the arcade. As was indicated in the solicitor for the Applicant's letter to the Commission of 4 December 2020, it is now the intention of the Applicant to ultimately obtain a Public Bar licence in respect of the whole of the building. In the interim it wanted to maintain the current application for the small bar authority as: "this will allow our client to commence trading from the premises and build valuable good will over the next 12 to 24 months whilst it progresses those matters necessary for it to be in a position to make the Public Bar Application".
52. As the Commission has ruled that the arcade cannot be included within the proposed premises, the application now falls to be assessed on the basis that if approved this will be very much a 'small bar'. The Commission was not provided with any evidence of the actual number of patrons that could be accommodated within the confines of Shop 2, ultimately it will be a matter for the fire safety authorities to determine, however we consider it unlikely that it would accommodate more than 25 people. We will therefore proceed to assess the merit of the application on that basis.
53. 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 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

54. In both the Community Impact Analysis and Public Interest Statement filed by the Applicant's solicitor on 11 December 2020 detail the comprehensive risk management policies that the Applicant will implement.

55. The Applicant is proposing to "be serving milkshakes, Gelato and small plates that will be geared at attracting families with children to enjoy the Premises and the shops located within the arcade itself"¹. It suggested furthermore that "establishing unique small bars that provide multifaceted offerings is an important feature for tourism offerings and provides a greater allure to interstate and international tourists"².

¹ Community Impact Assessment para 1

² Community Impact Assessment para 6(b)

56. Having considered each of the objectives set out in Section 49 (2) of the Act and having particular regard to the cultural and recreational benefits that this small bar would bring to the Darwin community, the Commission is satisfied that it is in the public interest to issue the licence.
57. 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;
 - (j) any other matter prescribed by regulation.
58. The Commission notes there are no such “other” matters prescribed by regulation.
59. 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.
60. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50.
61. The guidelines are as follows:

Criteria	Matters to be considered
<p>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.</p>	<p>Are there any 'at-risk' groups or sub-communities within the locality? This may include – children and young people;</p> <ul style="list-style-type: none"> • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • 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.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p>

This includes information about the density of licensed premises within the community area.	This could also include traffic and pedestrian impact and any plans developed to address these potential issues.
Volume	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable 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?

62. 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”.

63. 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.

64. In considering these issues, it is also important to keep in mind that the onus is on the applicant: section 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

65. The Commission considers that if the application is granted there is a low risk that it will have an adverse impact on the community. In reaching this view, the Commission has had particular regard to the fact that this very small bar will only accommodate a small number of patrons and thereby have a minimal impact on the local community.

TERM OF LICENCE

66. Although the Applicant’s solicitor in his letter of 4 December 2020 suggested that the Applicant would surrender his license once any Public Bar Licence was obtained, no further submissions were made during the hearing on this issue. The premises as currently configured may not be financially viable in the longer term however it will provide the Applicant with a presence on Cavenagh Street and will potentially complement its ultimate plans for the building.

67. As the Applicant has clearly expressed an intention to proceed with a Licensing Application in respect of the whole building which will potentially render this license otiose as far as this particular bar is concerned, the Commission has therefore determined to impose a relatively short term of three years in respect of the licence.

68. Having considered all of these matters, the Commission is satisfied, in accordance with section 49 of the Act, that:

- a. the applicant is a fit and proper person; and
- b. issuing the licence or authority is in the public interest; and
- c. the licence or authority will not have a significant adverse impact on the community.

69. For the reasons outlined in this Decision Notice the Commission has determined to grant the licence and small bar authorities on the conditions set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

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

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



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
18 January 2021

On behalf of Commissioners Coates, Dwyer and Hart