

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: Application for a New Licence and Authority

REFERENCE: LC2022/032

APPLICANT: Fat Tuna Pty Ltd

PREMISES: Fat Tuna
4/28 Mitchell Street
Darwin NT 0800

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

HEARD BEFORE: Richard Coates (Chairperson)
Bernard Dwyer (Health Member)
Christine Hart (Community Member)

DATE OF HEARING: 16 June 2022

DATE OF DECISION: 7 July 2022

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Fat Tuna Pty Ltd (**the Applicant**).
2. The licence will be issued with a restaurant bar authority and subject to those authority conditions set out in Part 4 Division 1 and 16 of the *Liquor Regulations 2019* (**the Regulations**).
3. 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 has provided written proof to the satisfaction of the Director of Licensing (**the Director**) that it has obtained a certificate of occupancy and all the necessary safety approvals in respect of the premises.

REASONS

BACKGROUND

THE APPLICATION

4. On 5 May 2022, an application was lodged by Mr William Grundy on behalf of Fat Tuna Pty Ltd (**the Applicant**) seeking the issue of a new liquor licence with a small bar authority for premises known as Fat Tuna, located at 4/28 Mitchell Street, Darwin. Payment of the application fee has been made.

5. The Applicant's proposal is for the issue of a new liquor licence with a small bar authority. The proposed liquor trading hours are:

- 10:00 hours to 24:00 hours seven (7) days a week

The hours sought are in line with the maximum prescribed for this authority by regulation 85(1) of the Regulations.

6. An affidavit has been supplied by William Grundy, outlining persons or entities of influence and benefit as required by section 54 of the Act.

7. The proposed licensee is Fat Tuna Pty Ltd. This company is registered through ASIC where William Grundy and Richard Grundy are appointed as Directors.

8. The company has 100 shares, 90% of which are owned by William Grundy and 5% are owned by Richard Grundy and Christopher Grundy respectively.

9. The business name Fat Tuna is currently registered with ASIC.

10. In relation to the probity requirements, William Grundy has provided the following:

- Photo identification - NT Drivers licence
- National Police Certificate
- Resume
- Two personal and two professional references
- RSA Certificate.

11. It is proposed that William Grundy will be the nominee on this licence. The required probity documents for this role have been provided to the Commission.

12. The Applicant has provided the following documents in support of the application:

- Declaration of Associates
- Cover Page

- Community Impact Assessment and Public Interest Criteria
- Financial Report
- Community Survey Feedback
- Lease and Landlord permission to hold liquor licence at premises
- Copy of proposed liquor licenced area site plan.

PUBLICATION AND CONSULTATION

13. The application was published in the NT News on Saturday, 14 May 2022 and published on the Director's website applications page for the required 14 days advertising period. A green advertising sign was also displayed at the premises. Copies of the NT News, photographs of the green sign erected at the premises and Statement of Display have been retained by Licensing Officers.
14. As a result of publication of the application, there were no objections received from any members of the public.
15. The following stakeholders were notified of the application in accordance with Section 56(4) of the Act and invited to provide comment on the application:
 - The Chief Executive of the Department of Health;
 - Northern Territory Police;
 - CEO, City of Darwin.
16. Northern Territory Fire and Rescue Service (NTF&RS) were also notified of the application as part of the Director's investigations into the application due to this being a new venue.
17. The Department of Health replied via email that they have no objections to the application.
18. On 27 January 2022, Police advised via email that they support the application.
19. The City of Darwin had not provided a response at the time of referral.
20. The NTF&RS replied via email dated 12 May 2022, stating a number of fire safety maintenance issues have been identified. Once compliance has been reached, Licensing NT will be advised and Maximum Patron Numbers will be issued.

THE HEARING

21. On 30 May 2022, pursuant to section 59 of the Act, the Director referred this application to the Commission. On 8 June 2022, the Applicant was notified by the Commission that the matter was listed for public hearing on 16 June 2022.

22. On 16 June 2022, Mr William Grundy appeared by telephone conference call for the Applicant and Mark Wood appeared for the Director. The Commission is grateful for the assistance of all those involved with the hearing.
23. The Director's referral brief was tendered into evidence and additional evidence was provided by Mr Grundy who was outside the Territory at the time.

ASSESSMENT OF THE APPLICATION

24. 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.
25. In accordance with section 59 of the Act, the Commission has considered:
 - (a) The applicant's affidavit required by section 54;
 - (b) The suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
 - (c) The financial stability and business reputation of the applicant body corporate;
 - (d) The general reputation and character of the secretary and executive officers of the applicant body corporate;
 - (e) Whether the applicant is a fit and proper person to hold a licence; and
 - (f) Whether the nominees designated by the applicant are fit and proper persons to hold a licence.
26. 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

27. 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.
28. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.
29. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the Applicant has complied with the disclosure requirements of section 54.

THE SUITABILITY OF THE APPLICANT'S PREMISES

30. The proposed premises were formerly home to the popular "Go Sushi" licensed restaurant which was destroyed by fire over 10 years ago. The Applicant has expended a significant sum of money renovating the building and fixtures to a high standard and has been operating as a restaurant / takeaway for a number of months. The restaurant offers meals in a "bowl" in the style of the Hawaiian / Japanese inspired Poke. Customers choose a base of sushi, brown rice, or cabbage and top this with a choice of various proteins such as sashimi tuna, chicken, or tofu together with a range of salad options. The meals are promoted as a "healthy option" and the concept has proved successful elsewhere in Australia.
31. Mr Grundy said that 85% of his business was takeaway meals but he had indoor seating for up to 20 people. The current operating hours for the business is from 11:00 am until 8:00 pm each day.
32. When asked why he was seeking a small bar licence rather than a restaurant bar licence, Mr Grundy said he believed a small bar licence would provide him with the greatest degree of flexibility in terms of liquor supply.
33. Apart from some minor technical issues that have been raised by the fire service and which the Applicant has agreed to resolve, no concerns have been advanced by the Director as to the fitness of these premises to operate as a licensed restaurant bar or small bar.
34. The Commission is satisfied that, provided the Applicant obtains all the necessary safety approvals, these premises are suitable to be used as a restaurant bar or small bar.

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

35. The Commission notes that the Applicant has already established a satisfactory business reputation. Mr Grundy, the Principal Director and proposed Nominee, has a good general business reputation, is of good character, and the Applicant is financially stable.
36. The Commission assesses the Applicant to be a fit and proper person to hold a licence.
37. The Commission notes that Mr Grundy holds a current RSA certification and based on his history within the hospitality industry is assessed to be a fit and proper person to be the nominee of the licence.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

38. 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.

39. 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.

40. As the Commission pointed out to Mr Grundy during the course of the hearing, the onus was on the Applicant to establish that issuing the licence and proposed small bar authority was in the public interest. The business is currently operating primarily as a takeaway food outlet with a limited capacity to serve in-house diners. The essence of the operation is the provision of a novel range of nutritious meals. The sale of a limited range of wine and beer is only proposed as a supplementary offering to that small proportion of patrons that will be eating on the premises or their non-dining friends and the odd takeaway customer that might order a drink whilst waiting for her or his bowls to be prepared.

41. The prescribed conditions of the small bar authority do not require a licensee to offer meals, other than snacks, to patrons. Whereas the overriding benefit advanced in favour of this application is that it will "combine delicious proteins

and textured and crisp ingredients to create memorable and flavour-filled bowls and salads¹".

42. While the Commission is prepared to accept that this Applicant is sincere in its expressed intention to continue running this business primarily as a restaurant, a change in circumstances or ownership could see the withdrawal of a full meal service if the business was operating under a small bar authority.
43. Upon being advised by the Commission that on the basis of the material currently before it there was little prospect of a small bar authority being granted, Mr Grundy asked that the application be treated as an application for a restaurant bar authority instead. He also requested an adjournment of the further hearing of the matter so he could lodge further documentation in support of that application.
44. The matter was adjourned to a date to be fixed and the parties advised that if the Commission was disposed to grant the amended application in light of the further documentation submitted, it would not be necessary for any of the parties to appear on the adjourned date.
45. On 30 June 2022, the Applicant filed further material in support of the amended application which included:
 - a. An overarching submission;
 - b. Sample drinks menu and food menu (which had been submitted initially but were not included in the Director's referral);
 - c. Procedural instructions for the secure storage of alcohol; and
 - d. Additional photographs of the premises including the CCTV and other security equipment that has been installed.
46. On 5 July 2022, the Commission convened to consider the further material that had been filed.
47. On all the evidence now before it, the Commission is satisfied that the option of a glass of wine or craft beer would enhance the dining experience of the restaurant's patrons. The Applicant also has plans to cater for occasional functions at the premises so a restaurant bar authority would provide it with the flexibility to serve liquor to patrons who were not intending to consume a meal.
48. The Commission is satisfied that it is in the public interest to issue the licence and restaurant bar authority.

¹ Attachment F to application, page 30, Exhibit 1

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

49. 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.
50. 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, 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.	<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;

	<ul style="list-style-type: none"> • 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 this should be provided for both on and off premises sales). The Commission will consider information available to it about the</p>

	current alcohol consumption rates for the community area.
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?

51. 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.
52. 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.

EXTENSION OF TIME

53. This matter was referred to the Commission on 30 May 2022, and was listed for public hearing before the Commission on 16 June 2022, on which date the Applicant requested an adjournment in order to adduce further evidence. That evidence was provided on 30 June 2022.

54. In accordance with section 60 of the Act the Commission was obliged to make a decision in respect of the application by 27 June 2022. If it had complied with that requirement it would have had no alternative but to refuse the application.
55. Pursuant to section 318 of the Act, the Commission extends the time within which to make a decision in accordance with section 60 until the date of this decision.

NOTICE OF RIGHTS

56. 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.
57. 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 and Director.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
13 July 2022

On behalf of Commissioners Coates, Dwyer and Hart