

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**NOTICE OF PROPOSED VARIATION OF LICENCE CONDITIONS**

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**LICENSEES**                      Bagala Aboriginal Corporation  
   Bagala Social Club  
   Lots 94 and 211  
   BARUNGA NT 0852

   Wirib Aboriginal Corporation  
   Wirib Store & Tourism Park  
   1/13 Victoria Highway  
   TIMBER CREEK NT 0852

**LEGISLATION:**                      Section 113 of the *Liquor Act 2019* (NT)

**CONSIDERED BY:**                      Russell Goldflam (Chairperson)

   Ms Ebony Abbott-McCormack (Health Member)

   Mr Bernard Dwyer (Health Member)

**DATE:**                                      14 October 2024

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**PROPOSED VARIATION OF LICENCE CONDITIONS**

1. Section 113 of the *Liquor Act 2019* (**the Act**) confers power on the Northern Territory Liquor Commission (**the Commission**) to vary the conditions of a liquor licence on its own initiative. Before varying the conditions, the Commission must give the licensee written notice of the proposed variation, the reasons for the proposed variation, and an invitation to the licensee to respond to the proposed variation within 28 days.
  
2. This is a notice to the Bagala Aboriginal Corporation (**Bagala**) that the Commission proposes to vary the conditions of the liquor licence (**the Barunga licence**) that on 15 February 2022 the Commission decided to issue for proposed premises at Lots 94 and 211 Barunga, NT 0852 (**the Barunga premises**), by omitting the condition at paragraph 1(g)(i) of the Commission’s Reasons for Decision dated 22 February 2022 (**the Commission’s Barunga decision**)<sup>1</sup> and substituting the following condition:
  - i. By 30 June 2025 the licensee must provide to the Director of Liquor Licensing (**the Director**) evidence that satisfies the

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<sup>1</sup> Northern Territory Liquor Commission, *Bagala Aboriginal Corporation – Application for liquor licence and authority* (LC2021/122, 22 February 2022)

Director that the lease has been amended to permit the use of the premises for the supply, sale and consumption of liquor;

- ii. By 30 June 2027 the licensee must provide to the Director evidence that satisfies the Director that a Certificate of Occupancy granted in accordance with Part 8 of the *Building Act* 1993 has been issued to the applicant for the refit of the premises;
- iii. The applicant must enter into an enforceable undertaking with the Director that Mr Braun Bush and Ms Danielle Bush not be involved in the applicant's day-to-day management or operation of the business conducted under the liquor licence;
- iv. The licensee must provide to the Director evidence that satisfies the Director that the governance committee has been formed and is operating.
- v. The issue of the licence is subject to notice in writing to the applicant by the Director that the Director is satisfied of all of the matters set out in this condition.

3. This is a notice to the Wirib Aboriginal Corporation (**Wirib**) that the Commission proposes to vary the conditions of the liquor licence (**the Timber Creek licence**) that on 26 February 2020 the Commission decided to issue for proposed premises at 1/13 Victoria Highway, TIMBER CREEK, NT 0852 (**the Victoria River premises**), by omitting the condition at paragraph 3 of the Commission's Reasons for Decision dated 26 February 2020 (**the Commission's decision**)<sup>2</sup> and substituting the following condition:

- (a) By 30 June 2027 the licensee must provide to the Director evidence that satisfies the Director that a Certificate of Occupancy has been granted together with all other requisite statutory approvals.
- (b) The issue of the licence is subject to notice in writing to the applicant by the Director that the Director is satisfied of all of the matters set out in this condition.

## REASONS

### Background to the Barunga licence

4. In February 2022 the Commission decided to allow an application to establish a social club at Barunga, to trade with a restaurant bar authority. The background and circumstances of the application are set out in detail in the Commission's Barunga decision. In that decision, the Commission noted that Bagala had

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<sup>2</sup> Northern Territory Liquor Commission, *Wirib Aboriginal Corporation – Application for a Licence* (LC2019/120, 26 February 2020)

engaged the Aboriginal Investment Group (**AIG**) to develop the enterprise, and that AIG is an Aboriginal controlled non-government organisation originally established by the Northern Land Council to hold and administer Indigenous owned assets.

5. The Barunga premises are on land leased by the licensee from the landowner, the Beswick Aboriginal Land Trust. A term of the lease is that “the land must be used for operating a store, including food, drink and grocery items”. Accordingly, having accepted the applicant’s submission at the hearing of the application for the licence that there was a reasonable prospect that the landlord would agree to the lease being amended to permit the land to be used for a licensed social club,<sup>3</sup> the Commission made the following order:<sup>4</sup>

The issue of the licence is subject to notice in writing to the applicant by the Director that the Director is satisfied [that]... the lease has been amended to permit the use of the premises for the supply, sale and consumption of liquor.

6. In its Barunga decision the Commission did not fix a timeframe within which Bagala was required to satisfy the Director that the lease had been amended, or within which Bagala was required to satisfy the Director that construction of the proposed Barunga premises had been completed. With the benefit of hindsight, it now appears that the Commission should have fixed such a timeframe.
7. On 11 April 2023 the Director received an undated letter signed by Ms Helen Lee (**Ms Lee**), the Bagala General Manager, and Ms Elizabeth Morgan-Brett, the AIG Chief Executive Officer, reporting on the status of the social club project. They stated that the lease had not yet been amended, and that Bagala was waiting for the Northern Land Council (**NLC**), which provides administrative services to the Beswick Aboriginal Land Trust, “to undertake community consultation to finalise the awarding [sic] of the S19 (lease)”.<sup>5</sup> The letter also stated that until the lease had been amended, Bagala was unable to apply for funding to build the facility. The letter did not offer a prediction of when the lease would be amended, but stated that a funding request could take “anywhere between 4 – 24 months” to be approved.
8. On 20 March 2024, in response to a request from the office of the Director for an update, Ms Christine Rhazi (**Ms Rhazi**), who had replaced Ms Lee as Bagala General Manager, made a further written report to the Director, stating that:
  - a. the lease had still not been amended, and that a draft of the amended lease was “in review”;

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<sup>3</sup> Ibid, at [38]

<sup>4</sup> Ibid, at [1(g)]

<sup>5</sup> Presumably, “S19” is a reference to s 19 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), which regulates dealings with interest in land by Aboriginal Land Trusts.

- b. the licensee was “in the process of sourcing relevant funding” to build the premises;
  - c. funding would be sought to engage a consultant to develop an Economic Growth Plan;
  - d. after receiving funding, the licensee planned to form an “Events & Social Management Committee”; and
  - e. estimating a timeframe was difficult, but “we hope to have the Social Club built and ready to operate by 2026”.
9. On 22 July 2024 Ms Rhazi sent an email to the office of the Director stating that she had resigned as Bagala General Manager on 17 July 2024, and that on 1 May 2024 “the Beswick Lands Trust [sic] approved the Section 19 for the Social Club. This has taken a significant amount of time due to the delays from the Northern Land Council. [Bagala] are now waiting for the Deed of Transfer.” It appears that the Director has not been informed of the reason for transferring the lease, or to whom it has been apparently transferred. The Director has not been provided with a copy of the amended lease.
10. On 13 August 2024, Mr Stephen Smith (**Mr Smith**) sent an email to the office of the Director. Mr Smith had previously served as Chief Executive Officer of AIG, and at the time of the hearing of the application for the licence was the secretary of Bagala and the proposed Barunga licence nominee. He stated that “for various reasons”, Bagala had terminated its relationship with AIG, and that he, Mr Smith, had now been appointed as Bagala’s Chief Executive Officer. He stated that the Barunga Social Club would not be able to commence operation by 1 January 2026. In his email Mr Smith did not respond to a written request from the office of the Director that he provide projected dates for the commencement of works at the proposed Barunga premises and the commencement of operation of the Barunga licence. He did not mention the lease.

### **Background to the Timber Creek licence**

11. In February 2020 the Commission decided to allow an application by Wirib to establish “a licensed venue for the enjoyment of the local Aboriginal residents of Timber Creek as well as the tourists that visit the town”. The background and circumstances of the application are set out in detail in the Commission’s Wirib decision.
12. As with the Barunga licence application, Wirib was supported and/or managed by AIG, and in both cases, Mr Smith was the secretary of the applicant and a proposed nominee. As with the Barunga licence, the Commission approved the appointment of Mr Smith as a licence nominee. As with the Barunga licence, the applicant persuaded the Commission to approve the issue of a liquor licence with a restaurant bar authority rather than with a club authority. As with the Barunga licence, the Commission did not fix a timeframe within which Wirib was required to satisfy the Director that construction of the proposed Timber Creek premises had been completed.

13. In September 2022, Mr James Poppleton, the AIG General Manager Projects and Operations, corresponded with the office of the Director regarding a proposed minor alteration to the floorplan of the Timber Creek premises. The office of the Director has informed the Commission it has received no further communication from or on behalf of Wirib since then.

14. In his email dated 13 August 2024 referred to above, Mr Smith informed the Director that Wirib had also left AIG, and said:

**WIRIB** – The entire site is closed and has never sold alcohol. My intention is to meet with the Board in mid to late August and develop a plan to reopen the site and revisit the sale of alcohol through the café.

### **The request to the Commission**

15. On 15 September 2024, Mr Bernard Kulda, a delegate of the Director, referred the Barunga matter to the Commission, and requested that the Commission utilise its powers under Part 4 Division 5 of the Act to vary the conditions of the Barunga licence on its own initiative by imposing a deadline on the construction of the Barunga premises.

16. On 1 October 2024 the Commission determined to accept this referral and to issue a notice to Bagala under s 113(2) of the Act proposing to vary the conditions of the licence.

17. On the basis of the limited information it has received about the Timber Creek licence, the Commission has also determined to issue a similar notice to Wirib.

### **Consideration**

18. Section 67 of the Act confers on the Director power to cancel a liquor licence if the licensee ceases to operate the premises for more than six months without the prior approval of the Director. The Commission considers that s 67 is not engaged in these matters because neither the Barunga nor the Timber Creek licence has ceased to operate: they have never operated.

19. Section 160(1)(g) of the Act establishes as a ground of complaint against a licensee that the premises are no longer being used for the sale, supply, service or consumption of liquor. Similarly, the Commission considers that this provision is not engaged in these matters, because neither the Barunga nor the Timber Creek premises have ever been used for the sale, supply, service or consumption of liquor.

20. None of the other permissible grounds for complaint, which are all set out at s 160 of the Act, is applicable in the circumstances of these cases.

21. It appears that the only procedure available under the Act to impose a timeframe on the licensee to progress either the Barunga or the Timber Creek premises is by way of a variation of conditions pursuant to s 113.

22. In the tentative view of the Commission, subject to the licensees' responses, it should impose a timeframe on both licensees. The Commission has imposed such a timeframe on a number of previous occasions when issuing liquor licenses for greenfield projects.<sup>6</sup>

23. In the view of the Commission, the grant of these two licences were milestone events. In the Commission's 2021-2022 Annual Report, Chairperson Coates stated:

We have... experienced a welcome increase in the number of applications related to the operation of licensed social clubs in remote Aboriginal communities. During the past year, the Commission granted a licence to the Bagala Aboriginal Corporation to operate a licensed social club in Barunga. It also approved a significant extension of premises for the Wuduluk Progress Aboriginal Corporation's social club at Beswick. The Commission also conducted an own motion review of the product restrictions in place at social clubs operating across remote Aboriginal communities, to support the aspirations of those clubs to include mid-strength mixed spirit drinks as an alternative to mid-strength beer.

Licensed social clubs are not necessarily the answer for all Aboriginal communities, however the Commission is committed to working with those remote Aboriginal organisations which are trying to develop their own strategies to promote the responsible consumption of liquor within their homelands.

24. The Barunga and Wirib licences are to date the only two such licences that have been issued by the Commission. In the view of the Commission there is a significant public interest in seeing these projects come to fruition. Conversely, the lack of apparent progress, the absence of either a satisfactory explanation for the very significant delay, and the lack of a fixed timeframe within which these projects will be required to operate, is not in the public interest. Fixing a timeframe will provide both Bagala, Wirib and other stakeholders in these projects with an incentive to take concrete action. If the licensees fail to comply with timeframes that are imposed, this will place them in breach of a condition of the licence and make them liable to disciplinary action, including licence cancellation.

25. The Commission continues to adhere to the commitment given by Chairman Coates two years ago: the Commission is keen for the licensed premises it has approved to be funded, constructed, approved, operate and flourish.

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<sup>6</sup> For example: *Darwin Airport Resort Operating Company Pty Ltd Joint Application for material alteration and substitution of licence* [2023] NTLiqComm 10; *Application for a material alteration - AFS Realty & Business Brokers Pty Ltd and Application for substitution of premises - Nundor Pty Ltd* (LC2019/122 and LC2019/123, 20 October 2020); *9DLS Pty Ltd Application for a Licence* (2019/114, 22 October 2019)

## INVITATION TO RESPOND

26. In accordance with s 113(2)(c) of the Act, the Commission invites Bagala and Wirib to submit a response to the proposed variations within 28 days after the date of this notice.



Russell Goldflam  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
14 October 2024

On behalf of Commissioners Goldflam, Abbott-McCormack and Dwyer