

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE AND REASONS**

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**CITATION:** *JAN N JAY PTY LTD APPLICATION FOR LIQUOR LICENCE [2023] NTLiqComm 11*

**REFERENCE:** LC2023/006

**APPLICANT:** Jan N Jay Pty Ltd

**PREMISES:** Burrito Bar Casuarina  
Unit 1, 289 Trower Road  
CASUARINA NT 0810

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

**HEARD BEFORE:** Mr Russell Goldflam (Chairperson)  
Ms Elizabeth Stephenson (Health Member)  
Mr Bernard Dwyer (Health Member)

**DATE OF HEARING:** 27 April 2023

**DATE OF DECISION:** 27 April 2023

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**Decision**

1. For the reasons set out below and in accordance with s 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Jan N Jay Pty Ltd (**the applicant**).
2. The licence will be issued with a restaurant bar authority.
3. The licensed premises are situated at Unit 1/289 Trower Road Casuarina NT 0810 in the area delineated in red at page 274 of the brief of evidence exhibited at the hearing of the application (**the licensed premises**).
4. The supply and consumption of liquor on the premises is permitted between 10:00 hours and 22:00 hours each day, except on Good Friday and Christmas Day, when trading hours are as prescribed by reg 79(2) of the *Liquor Regulations 2019* (**the Regulations**).
5. The conditions of the licence will be those authority conditions set out in Part 4 Division 15 ("Restaurant authority conditions") of the Regulations, except reg 80(12).

6. To the extent of any inconsistency between the conditions at paragraph 5 above with the conditions set out in Part 4 Division 16 (“Restaurant bar authority conditions”) of the Regulations, the conditions in paragraph 5 prevail. The Commission notes that the conditions imposed in paragraph 5 of this decision are more restrictive than those prescribed by Part 4 Division 16 of the Regulations.
7. The licence will not issue until documentary evidence has been provided to the satisfaction of the Director of Liquor Licensing (**the Director**) that the applicant has obtained the necessary fire safety and building approvals, including a certificate of occupancy, in respect of the premises.

## **Reasons**

### **The Application**

8. On 2 January 2023 Ms Jahnvi Nandana (**Ms Nandana**), a principal of the applicant, having paid the prescribed fees (including an expedited application fee), lodged an application on behalf of the applicant for a liquor licence and restaurant bar authority with the Director.
9. The applicant is a franchisee of the Burrito Bar chain of “new wave Mexican street-style” restaurants established in Brisbane in 2011, and currently operating in over 40 outlets, the majority of which are in Queensland, as well as in NSW, Victoria and the ACT. The proposed premises will be the first Burrito Bar venue in the Northern Territory. The applicant plans to open the doors for business on or about 22 May 2023.
10. The applicant plans to cater principally to takeaway customers with a drive-through service, and also seeks to offer dine-in meals from the Burrito Bar chain’s standard menu complemented by the Burrito Bar chain’s standard drinks list, which features Mexican-style beers, margaritas, tequila and sangria, along with other alcoholic and non-alcoholic products.
11. The applicant proposes that Dr Shaik Hiremutt Hakeem (**Dr Hakeem**) and Mr Lava Kumar Bollineni (**Mr Bollineni**) both be appointed as nominees of the licence.

### **Consultation**

12. As required by s 57 of the Act, notices of the application were published on the Director’s website and in the NT News on 14 January 2023. The applicant also displayed a sign at the proposed premises to notify the public of the application.
13. In accordance with s 56 of the Act, notification was given to Department of Health, NT Police and the City of Darwin, as well as to Northern Territory Fire and Rescue Services (**NTFRS**).
14. One objection to the application was received, from a neighbouring business. However, on 21 April 2023, the objector notified the Commission that it was

satisfied with the licensee's response to the objection, which was accordingly withdrawn.

15. None of the stakeholders contacted by the Director raised any objections, although NTFRS proposed that a condition be imposed that the issue of the licence be subject to approval of the premises by building and fire safety authorities.

16. In final submissions to the Commission at the hearing of the application, the representative of the Director neither supported nor opposed the application.

### **The licensee's record of compliance**

17. Ms Nandana is currently a co-licensee of the Wagaman Supermarket. The Director has informed the Commission that Ms Nandana is not the subject of any current compliance issues. Ms Nandana has not previously been the subject of a complaint that has been referred to the Commission.

### **The referral**

18. On 14 April 2023, pursuant to s 59 of the Act, the Director referred the application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the applicant and the objector that the matter would be listed for a public hearing on 27 April 2023.

19. The Director provided the following documents to the Commission with the referral (**the brief**):

- a. Application for liquor licence
- b. Affidavit and Declaration of Associates pursuant to s 54 of the Act
- c. ASIC company extract for applicant
- d. Probity documents for Ms Nandana
- e. Probity documents for Mrs Jaya Hiremutt Hakeem (**Mrs Hakeem**)
- f. Probity documents for Dr Hakeem
- g. Probity documents for Mr Bollineni
- h. Registration of business name for Burrito Bar Casuarina
- i. Public Interest and Community Impact Assessment summary pursuant to s 49 to 52 of the Act
- j. Business Plan
- k. Financial reports and records
- l. Licence to Occupy
- m. Plan of proposed premises
- n. Draft menu and drinks list
- o. Correspondence with building certifiers
- p. Objection and applicant's response to objection
- q. Correspondence with stakeholders

## The hearing

20. On 27 April 2023 the application proceeded as a public hearing. Mr Dylan Walters appeared on behalf of the applicant with Dr Hakeem and Ms Nandana. Ms Christine Free appeared for the Director. The Commission thanks them all for their attendance and assistance.
21. Pursuant to s 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.
22. The brief was tendered and admitted into evidence without objection.
23. The Commission also accepted into evidence a bundle of photographs of the premises, and a franchise agreement between Burrito Bar Franchising Corporation Pty Ltd and the applicant (**the franchise agreement**), both of which were tendered by the applicant, without objection.

## ASSESSMENT OF THE APPLICATION

24. In accordance with s 59 of the Act, the Commission has considered:
  - a. the applicant's affidavit required by s 54;
  - b. the objection to the application made under s 61;
  - c. the response provided by the applicant under s 62;
  - d. 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;
  - e. the financial stability and business reputation of the body corporate;
  - f. the general reputation and character of the secretary and executive officers of the body corporate;
  - g. whether the applicant and the nominees designated by an applicant, are fit and proper persons to hold a licence;
  - h. whether each associate of the applicant is a fit and proper person to be an associate of a licensee.
25. In accordance with s 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**

26. The Commission finds that the applicant complies with s 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
27. The applicant is an Australian proprietary company limited by shares, with two shareholders, Ms Nandana and Mrs Hakeem, who are also the applicant's sole directors. Ms Nandana is the company secretary. The applicant is trustee for the Jan N Jay Unit Trust, the beneficiaries of which are, the Commission infers, the families of Ms Nandana and Mrs Hakeem.
28. The applicant has provided satisfactory documentation regarding its operations, activities, financial circumstances and plans.

## **The applicant's associates**

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 s 54.
30. The Commission considers that it is appropriate to consider whether each of the following persons, each of whom is an associate of the applicant for the purpose of s 55, is a fit and proper person to be an associate of the applicant:
  - Ms Nandana (director/shareholder)
  - Mrs Hakeem (director/shareholder)
  - Dr Hakeem (proposed nominee)
  - Mr Bollineni (proposed nominee)
  - Burrito Bar Franchising Corporation Pty Ltd (franchisor)
31. Having had regard to the ample material tendered by the applicant attesting to the character, experience and qualifications of the above-named natural persons, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.
32. The Commission also finds that Burrito Bar Franchising Corporation Pty Ltd is a fit and proper person to be an associate of the applicant.

## **The suitability of the applicant's premises**

33. The proposed premises, formerly a Red Rooster store, are located in a small commercial complex with seven tenancies, including a takeaway food outlet, health services, financial services and a hobby store.
34. The premises are situated on the corner of a main road and a laneway that permits drive-through customers to place and pick up their orders. Inside, seating will be provided for up to 20 diners.

35. The applicant has applied for a restaurant bar authority rather than a restaurant authority only because the prescribed condition for a restaurant authority in reg 80(12) of the Regulations prohibits the use of the word "Bar" to identify, advertise or market the premises. However, the applicant, as a Burrito Bar chain franchisee, will necessarily identify, advertise and market its business with the word "Bar". The Commission does not consider that the premises are suitable for a restaurant bar authority, which, in contrast to a restaurant authority, permits the sale, supply and service of liquor to customers who are not consuming food on the premises.
36. The Commission assesses the premises as suitable for the supply and consumption of liquor as a licensed restaurant. In order to accommodate the applicant's wish to continue to operate as a member of the Burrito Bar franchise, which in the circumstances the Commission considers to be reasonable, the Commission has determined to issue the applicant with a restaurant bar authority, but to impose the more restrictive conditions applicable to licensees trading with a restaurant authority, with the exception of the prescribed condition for restaurant authorities in reg 80(12) of the Regulations.

### **The objection and its reply**

37. The Commission notes that the sole objection to the application has been withdrawn. However, the Commission considers that it is appropriate to consider the nature of the objection and the licensee's response.
38. In substance, the objection raised was that the establishment of licensed premises in the commercial complex at 289 Trower Road would lead to an increase in break-ins in the neighbourhood. Unfortunately, the night after sending its written objection to the Director, the objector's premises and adjoining premises were the target of an attempted break-in, with significant damage by way of broken windows and glass doors.
39. In its response to the objection, the applicant readily conceded that vandalism and break-ins, particularly by young people, are a serious problem in the neighbourhood, and that the applicant's own premises have also been damaged. The applicant, however, contended that recent incidents of this nature have been directed indiscriminately at local businesses and schools, and not particularly at licensed premises. In addition, the applicant stated that it is in the process of fortifying its premises with security screens on all glass windows and doors, CCTV surveillance and an alarm system, that alcohol will not be displayed during trading hours, and that alcohol will be secured after hours in a locked safe space.
40. In its response the applicant also submitted that all Burrito Bar stores with dine-in facilities around Australia trade with a liquor licence, and that "providing alcohol is essential for our customers as they wish to enjoy the full flavour and ambiance of the restaurant".
41. In the circumstances, the Commission agrees with the objector that in all the circumstances the applicant's response to the objection is satisfactory.

### **The financial stability, general reputation and character of the body corporate**

42. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

### **The general reputation and character of the applicant's secretary and executive officers**

43. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officers and secretary to be satisfactory.

### **Whether the applicant is a fit and proper person to hold a licence**

44. The Commission assesses the applicant to be a fit and proper person to hold a licence.

### **Whether the licensee's nominee is a fit and proper person to hold a licence**

45. The applicant has nominated Dr Hakeem and Mr Bollineni as the licence nominees. They hold current RSA certification and have provided appropriate documentation of their reputation, character and work history. The Commission assesses each of them to be a fit and proper person to hold the licence.

### **Public notice and consultation**

46. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with s 57 of the Act.

### **Whether issuing the licence is in the public interest**

47. 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 s 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.

48. In relation to the first of these objectives, the Commission is concerned not to establish a precedent that will result in a plethora of applications by fast food takeaway restaurants for liquor licences. The prospect of popular drive-through hamburger, pizza, fried chicken and other similar restaurants becoming licensed venues is on its face one that would be inconsistent with the key objective of minimising alcohol-related harm.

49. In relation to the last of these objectives, although the applicant is to be commended for taking the sensible measures set out at paragraph 39 above, the Commission is concerned that the establishment of another licensed premises in the area could lead to an increase in break-ins by offenders seeking to steal liquor.

50. Mr Walters submitted that if the applicant were not authorised to sell liquor, not only would it miss out on any profit from the sale of liquor, but dine-in trade would be adversely affected because many customers would choose to eat elsewhere, where they could buy a drink with their meal. It was submitted that this might well affect the viability of the business.

51. However, s 49(1)(b) of the Act establishes an onus on the applicant to satisfy the Commission that the issue of a liquor licence is not merely in the interest of the proposed licensee, or even in the interest of the licensee's customers, but in the public interest.<sup>1</sup>

52. The applicant submitted that another Mexican restaurant in the Palmerston area (**Guzman Y Gomez Bakewell**) with a predominantly takeaway trade and a similarly small dining area already operates with a liquor licence. However, that licence was granted by another authority in 2016, prior to the establishment of the Commission, pursuant to the *Liquor Act 1978*.<sup>2</sup> Section 6(1) of the *Liquor Act 1978* as then in force required the decision-maker to *take into account* "the public interest in the sale, provision, promotion and consumption of liquor". However, unlike the Commission, which is required to apply the Act as now in force, there was no express requirement in 2016 for the decision-maker to be *satisfied* that the issue of a licence was in the public interest. The Commission

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<sup>1</sup> See LC2022/032 (13 July 2022) at [40]

<sup>2</sup> See Acting Deputy Director-General Decision Notice (5 October 2016), accessed at [https://industry.nt.gov.au/\\_data/assets/pdf\\_file/0011/378452/20161005-guzman-y-gomez-bakewell.pdf](https://industry.nt.gov.au/_data/assets/pdf_file/0011/378452/20161005-guzman-y-gomez-bakewell.pdf)



does not consider the decision to issue a liquor licence to Guzman Y Gomez Bakewell to be a precedent of significant weight.

53. It is arguable that for the purpose of applying s 49 of the Act, the scope of “public interest” is limited (as was expressly the case under the *Liquor Act 1978*) to the public interest in the sale, provision, promotion and consumption of liquor. Section 3(1) of the current Act provides that:

The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest *in the sale, supply, service, promotion and consumption of liquor* [emphasis added].

54. However, s 49 does not include words that expressly confine the scope of “public interest” in this manner. It is also therefore arguable that properly construed, this expression is not so limited. The Commission has not had the benefit of submissions on this issue, and it is unnecessary to further consider it on this occasion.

55. In a recent decision, in determining that it was satisfied that the issue of a liquor licence was in the public interest, the Commission did appear to give weight to a finding that the dining experience for a restaurant’s patrons who were given the option of a glass of wine or beer with their meal would be enhanced. In that case, like the applicant’s, up to 20 diners could be accommodated in a restaurant with a predominantly takeaway trade.<sup>3</sup>

56. In similar terms, Dr Hakeem submitted to the Commission that the public interest would be served by giving the public the “full dining experience” that is available only to diners at a licensed restaurant where alcohol can be served with a meal. There is force in that submission, although, as Ms Free submitted, the proprietor of an unlicensed restaurant can easily apply to the Director to be registered as a BYO server of liquor.

57. The Commission accepts that the provision of the “full dining experience” would modestly advance the cultural and recreational benefits for the local community area.

58. The Commission has also considered the remaining objectives set out in s 49(2). The Commission considers that:

- (a) the establishment of this relatively small licensed restaurant in a commercial precinct of suburban Darwin carries a low risk of directly increasing the incidence of alcohol-related harm or ill-health to people;
- (b) the applicant will serve and supply liquor in a responsible manner;
- (c) the business is unlikely to imperil public order and safety;

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<sup>3</sup> LC2022/032 (13 July 2022) at [31], [47]

- (d) the safety, health and welfare of customers will be protected;
- (e) noting that the applicant anticipates that only 10% of its customers will dine in and therefore be permitted to purchase and consume alcohol on the premises, the issue of the licence has the potential to provide a small increase in employment benefits for the local community area;
- (f) the applicant will conduct its business in compliance with the law;
- (g) noting that under its franchise agreement, the applicant's managers will be provided with extensive training by the franchisor, the applicant will ensure that all staff involved in the sale and service of liquor will receive appropriate training;
- (h) the applicant will not allow liquor to be supplied on credit; and
- (i) the applicant will not encourage irresponsible drinking.

59. On balance, and after some hesitation, the Commission is satisfied that it is in the public interest to issue the licence.

**Whether the issue of the licence will have a significant adverse impact on the community**

60. 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 s 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 s 50;

(j) any other matter prescribed by regulation.

61. The Commission notes there are no such “other” matters prescribed by regulation.
62. 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.
63. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under s 6(A) 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 s 50. The Commission has considered the guidelines in its assessment of this application.
64. The onus is on the applicant: s 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 accepts the applicant’s submission that 90% of its business will be from drive-through and other takeaway trade, which will not involve the supply or sale of liquor. Burrito Bar Casuarina is the only Burrito Bar store in the Northern Territory, and the only restaurant in the Casuarina area serving contemporary Mexican street-style food. As a franchisee of a well-established national chain, the applicant will trade with the benefit of the marketing, promotion, product development and organisational support offered by the franchisor. The Commission assesses the likely impact of Burrito Bar on the community to be modest, and, on balance, beneficial.
66. The Commission is comfortably satisfied that the issue of the licence and authority with the conditions the Commission has determined to impose will not have a significant adverse impact on the community.
67. Having considered all of these matters, the Commission is satisfied, in accordance with s 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.

### **The objects of the Act**

68. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.

69. The primary purpose of the Act is set out at paragraph 53 above. Among the secondary purposes of the Act in s 3(2) are to regulate the sale, supply, service, promotion and consumption of liquor in a way that:

- contributes to the responsible development of the liquor industry and associated businesses in the Territory; and
- stimulates the tourism and hospitality industries.

70. In May 2022, the applicant executed the franchise agreement, one clause of which states “A Liquor Licence will be mandatory unless we [the franchisor] advise you [the franchisee] otherwise”. The applicant has since invested a very considerable sum in fitting out the premises and establishing the Bar Burrito Casuarina business. With the benefit of hindsight it may have been unwise for the applicant to commit to the franchise agreement in these terms, and to undertake the associated works, without first applying for a liquor licence. If the Commission now refused to issue the licence, there is a risk that the franchisor would terminate the agreement, a consequence that the Commission readily accepts would be ruinous to the applicant. The Commission is of course not bound by the terms of a commercial contract between private parties, but in the circumstances of this case, the Commission has had regard to the secondary purposes of the Act set out above. To refuse this application would have the potential to damage a small Territory business associated with the liquor industry, and to stifle the hospitality industry.

71. For these reasons, the Commission has determined that the application should be granted, and that a licence and authority be issued on the conditions set out at the commencement of this Decision Notice.

### **Extension of time**

72. Section 60(2)(c) of the Act provides that the Commission must make a decision whether to issue the licence and authority within 28 days of the period allowed for the applicant to respond to the objection. The applicant’s response was provided on 7 March 2023. However, the Commission was unable to make a decision within 28 days of that date because the Director did not refer the application to the Commission until 14 April 2023. The Commission scheduled the application for hearing at the first reasonably available opportunity.

73. It is unfortunate for the applicant that in December 2022 it paid a substantial fee to have its application expedited, but that it has taken over four months for the licence to be approved. The only party who would now be disadvantaged if the Commission refused to exercise its discretion under s 318 of the Act to extend time to issue this decision would be the applicant. That would be most unfair. The Commission extends time for the making of this decision to 28 April 2023.

### **NOTICE OF RIGHTS**

74. Section 31(1) read with s 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.

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

A handwritten signature in blue ink, appearing to read 'R. Goldflam', with a long horizontal flourish extending to the right.

Russell Goldflam

CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
28 April 2023

On behalf of Commissioners Goldflam, Stephenson and Dwyer