

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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**MATTER:** APPLICATION FOR A LICENCE

**REFERENCE NUMBER:** LC2018/128

**PREMISES:** **Lucky Bat Café**  
2 & 3 / 8 Pavonia Place  
NIGHTCLIFF NT 0850

**APPLICANT:** Lucky Bat Pty Ltd

**NOMINEES:** Mr Justin Schmidt  
Mr Danny Crichton

**OBJECTOR/S:** Ms Pauline Joy  
Ms Melodie Murphy

**LEGISLATION:** Section 26, Part IV and V of the *Liquor Act*.

**HEARD BEFORE:** Mr Richard Coates (Chairperson)  
Dr Charles Douglas (Health Member)  
Ms Christine Hart (Community Member)

**DATE OF HEARING:** 13 November 2018

**DATE OF DECISION:** 13 November 2018

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### **Decision**

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act* ("the Act") the Commission has determined to issue a licence authorising the sale of liquor for consumption on or at the licensed premises to Lucky Bat Pty Ltd in respect of the premises, Lucky Bat Café.
2. In accordance with section 31 of the Act, the licence shall be subject to the specific conditions (in addition to those general conditions of all such licences) that:
  - a. The liquor shall be sold pursuant to an authority as Restaurant authorising the sale of liquor for consumption on or at the premises known as Lucky Bat Café.

- b. The trading hours shall be between:
    - i. Monday to Sunday 1100 hours to 2359 hours.
  - c. The licence shall be subject to and inclusive of such additional conditions as may at any time be:
    - i. Requested in writing by the Licensee;
    - ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and
    - iii. Notified in writing by the Director-General to the Licensee.
  - d. Those conditions set out at the conclusion of these reasons in addition to the general conditions included in a Restaurant authority.
3. This licence will be issued and commence as and from the date of this Decision Notice.

## **Reasons**

### **Background**

4. On 8 May 2018, an application was lodged by Messers Justin Schmidt and Danny Crichton, Directors of Lucky Bat Pty Ltd (“the Applicant”) seeking a licence for premises located at Shops 2 & 3, 8 Pavonia Place, Nightcliff (“the premises”).
5. The premises are an established café in Nightcliff that has been operating for 2 ½ years as a café and bakery. The business has been built around a 4 tonne wood-fired oven which is fired up on 5 days. The premises currently operate as a café during the day and a pizzeria on Friday and Saturday evenings. The eatery has attracted favourable media reviews for the quality of its food and coffee and has conducted a number of “pop up” theme nights which have proved very popular. The Applicant aims to increase the current trading hours to attract families, couples and professionals who want to enjoy good food and relax in a stylish establishment. It has in the past hosted a range of cultural and community based events, including science nights, art exhibitions, poetry readings, comedy nights as well as musical events. The venue has also featured a number of events from the Darwin Fringe Festival. It currently employs 16 people and is hopeful that by expanding the business as proposed that it will employ double that number.
6. The application is for a licence to be permitted to undertake liquor sales between 1100 hours and 1159 hours, Monday to Sunday.
7. The premises is designed for sit down dining and the ability for patrons to order a drink while waiting to be seated or to accompany meals.
8. The Applicant seeks a licence that will allow for the sale and consumption of alcohol without a meal so that patrons who are not intending to eat can join friends

who are dining at the restaurant for a drink prior to or after their meal. The applicant also wants to be able to serve alcohol to persons attending art exhibitions and other cultural events on the basis that food will always be on offer, that the premises will primarily operate as a restaurant and that there will be no advertising or promotion of the premises as a bar.

9. On 24 September 2018, pursuant to sections 28(1) and 50(a) of the Act, the Director- General referred this application to the Commission to be determined by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application.

### **Disclosure of influential persons or potential beneficiaries**

10. The Commission notes that section 26A(1) of the Act now requires applicants to make 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 applicant has filed such an affidavit noting that only the directors of the company are able to influence the applicant.
11. The Applicant is registered with the Australian Securities and Investments Commission ("ASIC"). The Directors are listed as Danny Crichton and Justin Andrew Schmidt. Both Directors are proposed as Nominees for the premises.
12. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

### **Advertising and Objections**

13. Details of the application were advertised in the NT News on 27 June 2018 and 30 June 2018. Signage was displayed at the premises for a period of 30 days. The objection period expired on 30 July 2018.
14. Two objections were received from Ms Pauline Joy, business owner of the nearby Groove restaurant and Ms Melodie Murphy an employee of an unnamed business in the vicinity of the applicant's premises.
15. The terms of Ms Joy's objection follows:
  - *It is not necessary to have another liquor licence in the Shopping Village.*
  - *The close proximity to residents is a concern.*
  - *The 11am proposed start time is absolutely unnecessary.*
  - *The lack of security in their premises is a concern – no roller shutters and they have already been broken into many times.*
  - *They do not follow police directives – they give water and drinks to itinerants even though all the other businesses in the shopping village have been directed not to.*

- *One of the owners is a professional grant writer which gives them the advantage of well worded applications.*
- *It is harmful to my business which they have copied many of my ideas and we have been waiting for the cameras in the area to improve the antisocial problems so we ourselves could begin trading at night. The Lucky Bat knew this and that is why they now want to trade at night. We have been established for 16 years.*

The terms of Ms Murphy's objection follows:

- *As an employee in a business located in this small suburban shopping centre I have witnessed and personally suffered the violence and negative effects of alcohol availability and abuse in Nightcliff along with the associated crime. Antisocial behaviour and violent behaviours no longer come here.*
- *The BDR and the installation of CCTV cameras in the centre have just begun to improve this situation but another liquor outlet in close proximity to the children's playground and residential buildings (across the road from the proposed premises) threatens to undermine the good work done by current business owners, the police and the NT Government.*
- *The Lucky Bat cafe currently holds a BYO licence which allows their guests to bring their own alcohol and there are 2 bottle-shops within 500 metres of the Lucky Bat (Woolworths and the small supermarket in the same complex) which allows this BYO license to work well.*
- *The Lucky Bat has already been broken into a number of times by individuals seeking alcohol and the provision of this liquor license will only increase the risk of further break-ins and the unnecessary additional pressure on police and emergency services.*
- *Other businesses in the centre have been forced to spend \$1000's of dollars on security screens and roller shutters as a direct result of alcohol related crime but the Luck Bat cafe currently has no such protections and granting this license is inviting break-ins and this increases risk to public safety and further police involvement.*
- *I would like to also call your attention to the following report extracts in support of my concerns;*
  - *Northern Territory Police (2016). Northern Territory crime statistics. These statistics clearly show that there are at least "two deaths, 52 hospitalisations and 69 assaults occurring each week as a result of alcohol consumption. Alcohol is involved in almost 60 per cent of domestic assaults and more than half of all assaults."*
  - *Nightcliff has notoriously experienced it's fair share of these harms, please do not add more opportunity for these risks.*

- *In its 2016 report the Foundation for Alcohol Research and Education - Calling time on too much grog in the NT, FARE noted that: "Licensed venues are a high risk setting for alcohol-related violence and injury. This risk increases as the density of liquor outlets (the number of active liquor licences in an area) increases and both on- and off- premises are associated with harm. These harms include assaults, domestic violence, drink driving, homicide, suicide, child maltreatment, adolescent drinking, and alcohol-related chronic disease."*

16. With respect to the objections, the Commission finds that the permissible grounds fall broadly into two (2) categories:

- a. The amenity of the neighbourhood will be adversely affected by the expanded business;
- b. Anti-social behaviour concerns because of another liquor outlet.

The applicant responded to the objections as follows;

- *The fact that our application for a liquor license received only 2 objections from the owner and worker of a 'rival' cafe is testament to the high regard and positive community support for our business.*
- *As proprietors of Lucky Bat we are well aware of location close to residents and other business and operate our business accordingly. We are also aware and sensitive to the anti-social elements that have at times become an issue in the Nightcliff village, but we think that activating the area through more people being around late at night will decrease the prevalence of drunken behaviour and break ins. Our patron demographic will dine in, have a meal, a glass of wine and then go home; not become perpetrators of property damage and other antisocial behaviour. We are wanting to gentrify the area, creating a "Hanumans of the North" and are currently going through the Movida cookbook as our menu will be based around Mediterranean Tapas, we are excited to activate this new part of our business.*
- *We are in the process of getting a thorough security upgrade having successfully applied for a Bizsecure grant, this week (August 21st) workmen have completed installing roller shutters around all the windows, other measures will follow. We have had meetings with Police and security experts outlining our plans to create a secure premises, we have an obvious interest in not being broken in to and appreciate Pauline's concerns, but we will be like Fort Knox when we have finished.*
- *I can categorically state that neither Justin nor Danny are professional grant writers, as our supplied CVs will state. But we are well educated and have chosen to be proprietors of a cutting edge hospitality business, which we would like to become well regarded nationally, and a crucial part of that is being articulate and clear in what we are doing. A spurious point at best!*

- *As far as not following Police directives, we are not aware of being asked not to allow people to drink from our water bubbler. We consider it community building and a human right to offer people water, I think it's even a statutory requirement for hospitality business to provide water when asked. We do not discriminate on the basis of socio economic status or race and have worked hard to build a welcoming interesting space.*
- *We are not aware of copying any ideas from the Grove Cafe other than the idea to sell food and coffee, we think we are on well-trodden territory here, retail being as old as civilization itself. Further we think Pauline Joy's objection is more to do with competition and her own commercial interests rather than genuine concern about the community she has her business in.*

The Commission will return to the objections later in these reasons.

17. It is noted that section 27(3) of the Act requires that the Director-General must inform:
  - a. the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
  - b. the Commissioner of Police; and
  - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.
18. In relation to this application, the Director-General also informed the NT Fire & Rescue service (“NTFRS”) and the Development Consent Authority (“DCA”)
19. The Commission notes that the following responses were received:
  - a. The DOH made “no adverse comment”. However it asked that the venue clearly display signage relating to smoking.
  - b. The NT Police advised that the applicant is to improve the general security of the premises to ensure safety of the business after business hours and indicated that whilst not objecting to the application, it was not supported based on “alcohol is not ancillary to a meal”.
  - c. The City of Darwin advised that there was no reason for Council to formally object to the application.
  - d. The NTFRS advised of “conditional support to this application”.
  - e. The Department of Infrastructure, Planning and Logistics advised that the Development Authority confirms it has no town planning concerns and that the appropriate planning approval has been granted.

## Public Hearing

20. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
21. As earlier noted, on 24 September 2018 the Director General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 11.30am on 13 November 2018 and notice sent to the applicant on 16 October 2018 advising of the hearing scheduled to take place.
22. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
23. The public hearing commenced at 11.30am on 13 November 2018. Mr Crichton and Mr Schmidt attended in person on behalf of the applicant. Ms Stephanie Monck as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks both Messrs Schmidt and Crichton and Ms Monck for their assistance. Neither of the objectors appeared at the hearing.

## Assessment of the Application and Objections

24. The Act now clearly provides that the Director-General must refer these types of applications to the Commission for decision. In addition, section 6B of the Act makes clear that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
25. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:
  - “For subsection (1), the public interest and community impact test requires consideration of the following objectives:
    - a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
    - b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;

- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
  - i. by-laws made under the Local Government Act; and
  - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
  - i. the kinds of liquor that may be sold;
  - ii. the manner in which liquor may be sold;
  - iii. the containers, or number or types of containers, in which liquor may be sold;
  - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided



on licensed premises or in an adjacent area under the control of the licensee;

- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

26. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
  - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
  - ii. the cultural, recreational, employment or tourism impacts; and
  - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
  - iv. the density of existing liquor licences within the community area; and
  - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
  - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

27. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

28. Those matters are identified as follows:

| <b>Criteria</b>                                                                                                                                                                                            | <b>Matters to be considered</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <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 –</p> <ul style="list-style-type: none"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <hr/> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> |

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|                                                                                                                                                                                                                                        | <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).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>                                                                                                                                |
| <p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>                                                                                                                                        | <p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>                                                                                                                                                                                                                                                                                 |
| <p>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.</p>                                                                            | <ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul> |
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29. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear 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”.

30. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;
- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager”.

31. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

32. The Commission notes there are no such matters prescribed by the Regulations.

33. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.

34. The Commission notes that there is no suggestion, nor any evidence to suggest, that the applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee.

35. The Commission further notes that apart from the general statements by the objectors there is nothing to suggest that the premises are unsuitable.

36. The Commission notes there are no issues of concern in relation to the business reputation and financial stability of the applicant and the general reputation and character of the officers of the applicant. In fact there is evidence as to their good character before the Commission.

37. In relation to the two objections Ms Joy’s complaints seem largely concerned with the perceived unfair challenge to her own longstanding business. This is not a permissible ground of objection. Her suggestion that the applicant has not taken sufficient steps to secure the premises could be a valid ground for objection in that people who are able to steal alcohol from the applicant’s unsecured premises may conceivably cause damage to neighbouring properties. Ms Murphy also raises concerns about security but stressed the relationship between liquor outlets and alcohol fuelled violence. Although Ms Murphy has not provided the Commission with the name of the business at which she is employed the applicant is clearly suggesting she is an employee of the other objector Ms Joy. Having heard from both Mr Schmidt and Mr Crichton at the hearing and also having regard to the material submitted in support of their application we are satisfied that they are planning to take all reasonable precautions to secure their premises from burglars. In relation to the objectors’ concerns over another liquor outlet adversely impacting on the social amenity of the area, this is a matter that we are already obliged to consider under the public impact test. The anti-social behaviour in this particular area is largely fuelled by take-away liquor. We do not believe that a well managed vibrant restaurant will exacerbate alcohol related violence in this neighbourhood.

38. In relation to the public interest test; the applicant provided written submissions as follows:

Lucky Bat is a bustling cafe during the day, but for most of 2016 / 2017 we have run a Friday pizza night where we would regularly produce over 100 pizzas, half as takeaway and half dine in. During this time there were many people coming and going, which created a nice community buzz and made the area feel safer.

We permitted BYO for wine and beer during this time, and the ambiance created was lively, warm and happy and we traded without incident. We considered this period positive market research showing there was demand for patrons to enjoy alcohol with their meal.

We think Nightcliff is ready for an elegant tapas bar serving interesting and hearty food, with matched drinks. We are passionate about food and quality, and everything from the fitout to the menu to the music is designed to create an inviting atmosphere for mature patrons. This can already be observed in the quality we purvey during our daytime trade. We are not interested in juvenile drinking shenanigans. We believe people are interested in a classy and safe environment to consume quality alcoholic drinks in the Northern Suburbs, and believe that the demographic Lucky Bat attracts will help to gentrify the area and reduce anti-social behaviour.

#### **Location and density of licensed premises**

There are 4 licenced eateries, 2 licenced clubs and 4 take away alcohol locations across Nightcliff. Given Nightcliff has a population of almost 3500 and a large number of people visit daily, there isn't a high access to alcohol per-capita in the area.

- Foreshore cafe - licensed restaurant
- Groove cafe - licenced restaurant (immediate area)
- Asian Gateway - restaurant
- Spice Garden restaurant - licenced restaurant (immediate area)
- Beachfront Hotel - pub and take away alcohol
- Nightcliff 5 star - supermarket and take away alcohol (immediate area)
- BWS woolworths - supermarket and take away alcohol
- Aralia Supermarket - supermarket and take away alcohol
- Nightcliff sports club - licensed club
- The Planet - licensed club

### **Traffic and pedestrian impacts**

There are plenty of car parks short term and long term in the area due to the Nightcliff shopping precinct. The Lucky Bat has wide footpaths at the frontage to afford plenty of area for pedestrian traffic. We have comprehensive footpath seating plans mapped out and passed by the Darwin Council. The cafe has been busy for the past 2 years and there have been no complaints about the increased pedestrian traffic to the area. We have spoken to council about installing more bike racks to encourage patrons to ride to the cafe and reduce car traffic in the area.

### **Target demographic**

We are pitching ourselves at the discerning drinker interested in paying more for a quality product of which less is more. We have noted the new proposed floor price on alcohol but want to make clear we are selling alcohol at many times that price with bespoke beer, wine and spirits alongside our gourmet food. Much of our alcohol will be small run producers, we intend to have a curated selection of rare and interesting beer, spirits and wines and to produce our own homemade syrups and mixers.

### **Volume and type of sales**

While our main focus is food we would like to apply for bar license so people can enjoy a glass of wine while waiting for friends, attending an art opening or function without the need to consume a full meal. Quality rather than quantity, alcohol plays second fiddle, complementing the food, providing interesting wine and paired drinks pitched at our affluent demographic.

### **Entertainment**

Generally we will have background music but occasionally would like to have acoustic acts. We will have shutters around all the windows that can be lowered to attenuate any noise from these intimate events. We also wish to show local artworks and every couple of months to run art opening events. These events attract a very respectful crowd interested in showing support to a local artist and enjoying the cafe atmosphere.

### **Community and social benefits**

As discussed in a previous section we believe that Lucky Bat is at the vanguard of the gentrification of the Nightcliff village, through our friends, acquaintances and patrons we are bringing in creative industry types: NGOs such as the Environmental Defenders Office, design studios like Boab Design and other creative businesses like Spun Territory Tales. We think this is important for the Nightcliff village as many businesses have moved out in recent months leading to a deserted area especially at night time. Both directors are also personally involved in a myriad of other community projects which brings projects and the people associated with them to the area.

Knowledge economies require appropriate cultural and aesthetic outlets to thrive, this includes food and entertainment, there is a reason why we are attracted to and stay in cities. We want Lucky Bat to fill a niche in providing quality dining in the northern suburbs

### **Cultural and recreational benefits**

We continue to have Darwin Fringe Festival events at the Lucky Bat and also host exhibitions by local Darwin based artists, as well as hosting science talks, wildlife demonstrations and poetry nights.

We have plans for a projection and art festival and a night market in conjunction with Ross Dudgean who runs the Nightcliff Sunday markets in which we plan to involve other shop owners. These are all night time events which do not revolve around alcohol consumption, we are passionate about activating our community spaces and involving our neighbours.

### **At-risk groups and sub communities that may be impacted**

There is demonstrated anti-social behaviour in this area. It is expected that the high priced alcohol served 'on premise only' will not be a practical or likely option for the problem drinkers in the Nightcliff area.

As mentioned, we have trialled night time trade with BYO corkage. We have had no alcohol related problems with this.

Lucky Bat policies and procedures:

- Model positive drinking behaviour
- No drinking outside the premises on footpath
- No takeaway alcohol
- High price for alcohol well exceeding the floor price
- RSA assures no drunken behaviour outside the venue
- Early closing times
- Alcohol consumed in safe environment that does not encourage binge drinking

### **Benefits to the anti-social behaviour in the area**

By activating the area past dark we will bring people to the area that will help deter problems that have beset the area recently. It is well known that the area has had a spate of anti-social behaviour which has had an adverse effect on some businesses. The Lucky Bat brings a friendly hubbub to the area through a constant flow of people. We believe this makes the area much safer, and if we have the capacity to open more evenings of the week then we think it will be very well received by locals.

### **Cultural, recreational, employment or tourism benefits**

While we are a restaurant we are also a community hub which has already proved to significantly benefit the cultural, recreational, employment and tourism prospects of the Nightcliff area. We put on regular art exhibitions featuring local artists and school students which have proved very successful. We do not charge the artists commission and have run these events as a community service. We have hosted events such as 'Pint of Science' which had speakers talking about a variety of science related topics, poetry readings featuring local Darwin poets and Darwin Fringe Festival events. We plan to host the 'Darwin Hacker space' which is a monthly gathering of programmers and electronics builders.

Currently the Lucky Bat employs 16 people and we hope with our expansion plans to double that number.

Lucky Bat is becoming a go-to cultural phenomenon and a definite place to visit on the tourist map.

### **Provide liquor in a safe manner**

Alcohol will never be the primary draw card for Lucky Bat patrons. We have so much more to offer. We are already running an established restaurant business but would like to offer alcohol as an added positive experience for our patrons. We will look at alcohol in the same fashion as food, top quality ingredients and higher end prices. Quality over quantity.

### **Promotion of alcohol**

Lucky Bat is a food focused business and will not gratuitously advertise or promote alcohol consumption in conjunction with any offer that encourages harmful drinking. Such practises as: happy hours / shots / lay backs or any juvenile drinking shenanigans will not occur at our premises.



No credit will be offered for the consumption of alcohol

### **Restaurant Layout**

Our layout is seated but we have a tapas bar area where people sit up at stools and order tapas plates in the spanish tradition of a tapas bar. We have a seated garden area where patrons can observe their food being made in our masonry brick oven.

39. During the hearing the Applicant impressed the Commission with their vision of their restaurant making a positive contribution to the Nightcliff community. They acknowledged the need to have rigorous security measures in place to protect their premises from break-ins. We also believe there is significant strength in the Applicant's claim that having regard to the anti-social issues which have bedevilled Nightcliff village that by activating the area with the type of patron likely to attend their restaurant they will actually be discouraging drunken itinerants from congregating in the area.
40. Having taken into account the evidence provided by the applicants during the course of the hearing and the various submissions made the Commission is satisfied that the community impact and public interest tests have been properly addressed. There is no evidence to suggest any potential harm or health impact due to the availability and accessibility of liquor as a consequence of the licence sought. It is apparent that the Applicant has in place appropriate measures to ensure liquor is sold in a responsible manner and the Commission is satisfied that allowing the Applicant to provide liquor when it is not ancillary to a meal on the type of occasions referred to in the application will not encourage irresponsible drinking.
41. The Commission is satisfied that the granting of a Restaurant Licence authorising the sale of alcohol without the provision of a meal is appropriate provided the following conditions are imposed:
  - The premises shall at all times have the appearance of and shall trade primarily as a restaurant with the majority of patrons seated at traditional or communal tables or the tapas bar;
  - The concept of the premises will be a family friendly licensed restaurant providing quality food, beverages, service and on occasion entertainment or cultural activity;
  - The sale of liquor will cease no later than one and a half hours after the closure of the kitchen;
  - There will be no advertising or promotion of the fact that alcohol may be purchased without a meal.
42. For the reasons set out above the Commission approves the issue of a restaurant licence, authorising the sale of alcohol, without the requirement to purchase a meal to the Applicant for the Lucky Bat situated at lot 518 and 519 Pavonia Place Nightcliff.
43. Licence conditions relating to the concept of the premises and the ban on advertising the service of alcohol without a meal as outlined in paragraph 41 will be included in the licence conditions.

## **Notice of Rights:**

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



RICHARD COATES  
Presiding Member  
Chairperson

27 November 2018