

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE AND AUTHORITIES

REFERENCE: LC2021/030

APPLICANT: Fleurieu Holdings Pty Ltd

PREMISES: Ruby G's Canteen
Shop 3/2 Tang Street
COCONUT GROVE NT 0810

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

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 20 August and 30 September 2021

DATE OF DECISION: 12 October 2021

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (NT) (the Act) the Northern Territory Liquor Commission (the Commission) has determined to issue a licence to Fleurieu Holdings Pty Ltd (the Applicant).
2. The licence will be issued with a catering authority and restaurant bar permitting the licensee to sell liquor to patrons on or in the premises between the hours of 10:00 hours to 24:00 hours on the conditions set out in Divisions 5 and 16 of the *Liquor Regulations 2019* (the Regulations).
3. In accordance with section 85 of the Act, the term of the licence will be for six (6) years from the date of issue of the licence.
4. The licence will be issued immediately following the publication of this decision notice, however the licensee shall not commence trading until such time as it provides documentary proof to the satisfaction of the Director of Liquor Licensing (the Director) that it has obtained all the necessary planning and safety approvals in relation to the use of the premises as a restaurant bar.

REASONS

BACKGROUND

THE APPLICATION

5. An application was lodged by Mr Shane Ortis on behalf of Fleurieu Holdings Pty Ltd (the Applicant) seeking a new liquor licence with a Catering authority and Restaurant Bar authority. Payment of the application fee was made at the time of lodgement.
6. The Applicant is seeking a licence with proposed trading hours of:
 - a. 10:00 hours to 24:00 hours seven (7) days per week except Good Friday and Christmas Day;
 - b. All other trading conditions as per the *Liquor Act 2019* (the Act) and *Liquor Regulations 2019* (the Regulations).
7. The Applicant is Fleurieu Holdings Pty Ltd. This company is registered with ASIC where Mr Shane Ortis and Ms Melissa Pritchard is listed as Directors and Mr Ortis listed as Secretary. This company has 20 shares all of which are owned by Mr Ortis and Ms Pritchard.
8. In relation to both Mr Ortis and Ms Pritchard, each have provided the following probity documents:
 - a. Copy of photo identification by way of NT Drivers Licence
 - b. Copy of National Police Certificate based on name and fingerprint check
 - c. Resume
 - d. Two personal and two professional references.
 - e. Copy of RSA Certificate.
9. Neither Mr Ortis or Ms Pritchard have held a liquor licence in the NT and therefore they are not known to the Director and have no compliance history. It is proposed that both Mr Ortis and Ms Pritchard will be joint nominees. Both Mr Ortis and Ms Pritchard have an extensive history in hospitality and other licensed venues interstate and overseas.
10. The application was accompanied by;
 - a. Affidavit in accordance with Section 54 of the Act
 - b. Declaration of Associates
 - c. Financial Report
 - d. Copy of lease of the premises
 - e. Community Impact Assessment Summary
 - f. Amended Community Impact Assessment Summary

- g. Operational manual
- h. Copy of proposed liquor licensed area
- i. Registration of food business
- j. "Business Plan and Vision"
- k. Various photographs.

PUBLICATION AND CONSULTATION

11. The application was published by way of two notices in the NT News on the 23 June 2021 and 26 June 2021. The application was also published on the Director's webpage during the advertising period. A green advertising sign was erected at the premises for the course of the advertising period.
12. During this period there was a COVID-19 "lockdown". As a result, the Senior Director of Liquor extended the closing date for objections by one week to 2 August 2021. No objections were received.
13. In accordance with the Act, the following were notified of the application:
 - The Chief Executive Officer of the Department of Health
 - The Commissioner of Police
 - CEO, City of Darwin.
14. Being a new liquor licence application, the NT Fire & Rescue Service (NTFRS) was also notified.
15. The Department of Health replied via email dated 6 July 2021 stating it had no adverse comments.
16. The NT Police replied via email dated 8 July 2021 stating it had no objection.
17. The City of Darwin replied via email dated 19 July 2021 stating it had "not received comment from Elected Members or City of Darwin management" and therefore "supports due process of the Liquor Commission".
18. The NTFRS replied via email dated 22 July 2021 stating there were "some fire safety issues" that they are "working through which should be resolved in the near future" and as a result "NTFRS are unable to support this application at this time. When all the issues identified are resolved the NTFRS will then support ... and supply Maximum Patron Numbers".

COMPLIANCE HISTORY

19. As earlier noted, the Applicant has never held a licence before in the Northern Territory and therefore has no compliance history.

THE REFERRAL

20. On 5 August 2021, pursuant to section 59 of the Act, the Director referred this application to the Commission. On 6 August 2021 the Applicant was notified that the matter was listed for public hearing on 20 August 2021.

THE HEARING

21. 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.
22. On 20 August 2021, the application proceeded as a public hearing. Mr Richardson of De Silva Hebron appeared on behalf of the Applicant accompanied by Mr Ortis. Mr Verinder appeared for the Director. The Commission thanks them all for their attendance and assistance.
23. The Director's referral brief was tendered into evidence. On the first date of the hearing the Commission identified to the Applicant a number of matters that had not been addressed sufficiently. The Applicant sought an adjournment. As a result, the matter was adjourned for further hearing to 30 September 2021, which was the next available date suitable to the Commission and the Applicant.
24. On the 30 September 2021, a number of additional documents were tendered into evidence on behalf of the Applicant. These were exhibited and formed part of the evidence the Commission considered in determining the application.
25. Both Mr Ortis and Ms Pritchard each have long and extensive histories in the hospitality industry both nationally and internationally. They have operated the premises on Tang Street since March 2016; initially starting at a local bowls club and the markets.
26. The Applicant stated:

“In an effort to diversify the services available to customers and to increase the number of full-service food venues in the northern suburbs, the Applicant wishes to extend its trading hours to include evening and night time dinner services. A significant part of this plan to increase the services available to customer is to make the current application for a liquor licence so that the Premises can offer alcohol service to patrons attending the Premises”.
27. It was stated that:

“The concept of the licensed venue is a restaurant bar with a focus on fresh, hand-made artisan foods that celebrate natural ingredients that will be paired with craft beers, wines and some limited spirits. The venue is intended to be a full-service hospitality business with a relaxed, modern vibe.”
28. The Applicant further stated:

“... there are limited options for residents of Coconut Grove and other northern suburbs of Darwin for restaurants providing full-service meals to

patrons. There are also no restaurants (apart from fast-food services) that are open past 9:00pm -10:00pm for patrons to have quality full meal services.

The restaurant bar authority will allow Coconut Grove residents enjoy the benefits of a restaurant and bar without the requirement to travel into the Darwin CBD, the precinct a larger number of restaurant and alcohol venues are located. Reducing the associated risk of encouraging patrons to drink and drive home and encouraging patrons to walk home.

The Applicant is assured that the Catering authority will solely be used in the public's interest in serving food along with beverages offsite from the Premises on a pop-up style, hired basis. This will allow customers to enjoy the all the benefits of the Ruby G's Canteen offsite at a formal event or celebration. The Applicant is confident that while the licence will operate off Premises they will in all forms be able to ensure all of their internal policies in reducing alcohol related risks and harm will maintain enforce".

ASSESSMENT OF THE APPLICATION

29. 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.
30. 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

31. 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.
32. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.
33. 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

34. The premises have not previously operated as licensed premises. It has however operated as a cafe for a number of years and very successfully so. It is clear however that there is a need for further toilets and the Applicant provided evidence to the Commission as to the works being undertaken for these toilets to be constructed on the premises.
35. There remains some issues to be confirmed by the NTFRS, however the Commission is satisfied that these issues will be addressed by the Applicant and that including a condition that the Applicant cannot commence trading until such time as it provides documentary proof to the satisfaction of the Director that it has obtained all the necessary planning and safety approvals in relation to the use of the premises as a restaurant bar sufficiently addresses these outstanding matters.
36. The Commission notes that pursuant to section 91 of the Act, the Applicant will be required to comply with the requirements of the *Fire and Emergency Act 1996* and the associated regulations, including those that prescribe fire safety standards.

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

37. The Commission notes that the Applicant has been incorporated for several years and has established a strong business reputation. In addition, both of the Applicant's principals have a good general business reputation, are of good character, and are financially stable.
38. The Commission assesses the Applicant to be a fit and proper person to hold a licence.
39. The Commission notes that both Mr Ortis and Ms Pritchard hold current RSA certification and based on their history within the hospitality industry are assessed to be a fit and proper person to be joint licence nominees.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

40. 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.

41. Having considered each of these objectives and having regard particularly to the location of these premises in Coconut Grove and the plan for the premises to target the local community and surrounding suburbs, the Commission is satisfied that it is in the public interest to issue the licence and authorities sought.

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

42. 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.

43. 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
<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"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. 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. This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>

Volume	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

44. 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.

45. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state however that:

"...the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits".

46. In addition, section 50(4) provides that the guidelines "may have general, limited or varied application". Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

47. In considering these issues, it is also important to keep in mind that the onus is on the Applicant. Section 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.
48. Having regard to the location of the premises in Coconut Grove and the limited number of premises in and around the area, the Commission considers that the licence is likely to enhance the amenity in that area.
49. 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.
50. The Commission closely considered whether a restaurant bar authority was appropriate or whether it should in fact be a restaurant authority. After receiving the evidence of what the Applicant proposes to do at the premises in terms of its concept and particularly the proposed menu, the Commission has determined that a restaurant bar authority is appropriate. This is particularly taking into account the clientele proposed to be targeted and the relatively high price point for the liquor to be sold at the premises.
51. Given the history of the Applicant and evidence provided, the Commission has no reason to find that it would not be appropriate to grant a catering authority to the Applicant.

THE TERM OF THE LICENCE

52. On behalf of the Director, Mr Verinder submitted that the licence should be granted in perpetuity. This course was supported by the Applicant. The Commission considers that section 85(1) of the Act (the term of a licence is to be fixed by the Commission when it issues the licence) does not permit the Commission to take that course, and that the Commission is required to fix a definite term.
53. The Applicant has a lease over the premises with options that provides for a total term of 6 years expiring 30 April 2025 with a renewal option until 30 April 2026. The licence is therefore granted for a period of 6 years. This does not prevent the Applicant from applying for a further licence at the expiration of that term.

EXTENSION OF TIME

54. Section 62 of the Act requires the Commission to make its decision in this matter by 30 August 2021, the date 28 days after the expiration of the objection period that commenced with public notification of the application. It was impracticable for the Commission to comply with this requirement, as is often the case, particularly with the application for an adjournment by the Applicant. Section 318 of the Act permits the Commission to extend time for the making of this decision. The Commission has determined to extend time to 12 October 2021.

NOTICE OF RIGHTS

55. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
56. 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.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
12 October 2021

On behalf of Commissioners Truman, Dwyer, and Corcoran