

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS

CITATION: *EMPIRE HOSPITALITY PTY LTD APPLICATION FOR LIQUOR LICENCE [2023] NTLiqComm 12*

REFERENCE: LC2023/009

APPLICANT: Empire Hospitality Pty Ltd

PREMISES: Patty Shack
Unit 1 and 2, 38 Progress Drive
NIGHTCLIFF NT 0810

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

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Phil Carson (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 3 May 2023

DATE OF DECISION: 3 May 2023

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 Empire Hospitality Pty Ltd (**the applicant**).
2. The licence will be issued with a restaurant bar authority.
3. The licensed premises are situated at Unit 1 and 2, 38 Progress Drive, Nightcliff NT 0810 in the area delineated in red on exhibit 3 of the 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 6 March 2023 Ms Rachna Naidu (**Ms Naidu**), a Director of the applicant, having paid the prescribed fees lodged an application on behalf of the applicant for a liquor licence and restaurant bar authority with the Director.
9. The applicant is establishing a casual dining burger restaurant located within the Nightcliff Shopping Village. The applicant plans to open the doors for business in the very near future as it reaches final completion of its fit out of the premises. It is proposed that the premises will offer a casual dining experience “where locals and interstate visitors can order an array of burgers, hotdogs and sides with bespoke house made drinks and craft beer.
10. The applicant plans to provide “a casual venue promoting a family friendly environment” and the ability to hold “functions and occasional events”. Whilst they will have a small outdoor seating area, they do not propose to provide any service of alcohol to the outdoor area. The liquor that is proposed to be provided is predominantly in the form of craft beer with a small range of cocktails. There is no proposal for wine.
11. The applicant proposes that Ms Naidu be appointed as nominee of the licence.

Consultation

12. As required by section 57 of the Act, notices of the application were published on the Director’s website on 25 March 2023. The Director stated it was satisfied that the applicant had complied with the requirements to advertise the application.
13. In accordance with section 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. There were no objections to the application, however the Department of Health expressed some concerns given the “current focus on alcohol related problems in Darwin”. There was however no objection to the application.

15. 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 submissions to the Commission at the hearing of the application, the representative of the Director stated that the Director was “happy” with the application.

The licensee’s record of compliance

17. The applicant has not previously held a licence in the Northern Territory, however both Ms Naidu and Mr William Jolley (**Mr Jolley**) have both worked in the hospitality industry for a considerable number of years both here and interstate. The Director advised the Commission that there was “no known recorded, relevant or recent adverse compliance issues in relation to the applicant or propose nominated person”.

The referral

18. On 23 April 2023, pursuant to section 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 that the matter would be listed for a public hearing on 3 May 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 section 54 of the Act
- c. ASIC company extract for applicant
- d. Probity documents for Ms Naidu and Mr Jolley
- e. Registration of business name for Patty Shack
- f. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act
- g. Business Plan
- h. Financial reports and records
- i. Lease Agreement
- j. Plan of proposed premises
- k. Draft menu and drinks list
- l. Correspondence with stakeholders

The hearing

20. On 3 May 2023 the application proceeded as a public hearing. Mr Jolley and Ms Naidu appeared on behalf of the applicant. Ms Christine Free and Ms Claire Wright 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 updated menu plans 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 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 body corporate;
- d. the general reputation and character of the secretary and executive officers of the body corporate;
- e. whether the applicant and the nominees designated by an applicant, are fit and proper persons to hold a licence;
- f. 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 one shareholder, Mr Jolley, who is also one of the two (2) directors of the applicant, with Ms Naidu being the other directors. Mr Jolley is also the company secretary.

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 Mr Jolley and Ms Naidu, as associates of the applicant for the purpose of s 55, are a "fit and proper" person to be an associate of the applicant:
31. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of the above-named natural persons, the Commission finds each of them is a fit and proper person to be an associate of the applicant.

The suitability of the applicant's premises

32. The proposed premises, formerly known as the Nightcliff Fish and Chip shop, are located in a small commercial complex known as the Nightcliff Shopping Village which is adjacent to the Nightcliff Shopping Centre. There are a number of nearby licensed premises within the Village.
33. It was stated openly and frankly on behalf of the applicant that their "focus is on the food" for the premises and that "alcohol is not our driver". Ms Naidu indicated that "serving of alcoholic beverages was intended as a complement to the experience" and that they were "going for a more family friendly style venue". Mr Jolley stated that the premises were "all about the food" and that there was "no point in shutting the kitchen for a drinks only venue".
34. It was clear during the course of the hearing that the substantive reason the applicant had applied for a restaurant bar authority rather than a restaurant authority was because of concern about what was meant by having "available" "full meal" for purchase during operation. When this was discussed further, both Mr Jolley and Ms Naidu stated they wished only to have a restaurant authority.
35. What was then noted however is that all of the advertising material, including menus and fit out material, referred to "Patty Shack" as a "Burger Bar". As noted in a recent decision of the Commission there is a prescribed condition for a restaurant authority in reg 80(12) of the Regulations which prohibits the use of the word "Bar" to identify, advertise or market the premises¹. Although the applicant is not a franchise, as was the case in that decision, the applicant identified that it would be extremely difficult to change all of their material (and costly) and further that that they had chosen the word "Burger Bar" because there was in fact a "Patty Shack Burger Joint" in the United States and they did not want to invite unwanted litigation about the name.
36. Whilst this may be the case, the Commission made clear during the hearing that it does not consider that the premises are suitable for a restaurant bar

¹ LC2023/006 (27 April 2023) at [35]

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.

37. The Commission assesses the premises as suitable for the supply and consumption of liquor as a licensed restaurant and in order to accommodate the applicant's wish to continue to operate as "Patty Shack Burger Bar", 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 financial stability, general reputation and character of the body corporate

38. 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

39. 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

40. 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

41. The applicant has nominated Ms Naidu as the licence nominee. Ms Naidu holds a current RSA certification and has provided appropriate documentation of her reputation, character and work history. The Commission assesses Ms Naidu to be a fit and proper person to hold the licence.

Public notice and consultation

42. 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

43. To determine whether the issue of the license 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.

44. The Commission did have concern in relation to the proposal for a restaurant bar, however once the applicant stated it wished to apply for a restaurant authority and it was only the provision within regulation 80(12) that was the issue, the Commission is satisfied that it is in the public interest to issue the licence on the conditions set out at the commencement of this Decision Notice

45. Further, the Commission also 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;
- (d) the safety, health and welfare of customers will be protected;
- (e) there will be a small increase in employment benefits for the local community area;
- (f) the applicant will conduct its business in compliance with the law;
- (g) 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.

46. As earlier noted, 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

47. 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 section 50;
- (j) any other matter prescribed by regulation.

48. The Commission notes there are no such “other” matters prescribed by regulation.

49. 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.

50. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under s 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. The Commission has considered the guidelines in its assessment of this application.

51. 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”.
52. 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.
53. 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

54. 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.
55. 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.
56. As earlier noted, whilst the business name is “Patty Shack”, the material advertising the premises (including in particular the menu) includes “Burger Bar”. It is the word “Bar” that represents a challenge for the applicant in seeking a restaurant authority given the provisions of regulation 80(12). The applicant stated it was not aware of this and to be required to change the wording would potentially incur significant cost and may result in unwanted attention from other businesses based overseas with similar names. The Commission has had regard to the secondary purposes of the Act set out above and considers that 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.
57. 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.

NOTICE OF RIGHTS

58. 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.

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



JODI TRUMAN

DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
3 May 2023

On behalf of Commissioners Truman, Carson and Fong Lim