

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: Application for a liquor licence

REFERENCE: LC2022/045

APPLICANT: Nitmiluk Tours Pty Ltd

PREMISES: Nitmiluk National Park
Gorge Road
Katherine NT 0851

LEGISLATION: Section 52 of the *Liquor Act 2019*

HEARD BEFORE: Richard Coates (Chairperson)

Liz Stephenson (Health Member)

Amy Corcoran (Community Member)

DATE OF HEARING: 27 September 2022

DATE OF DECISION: 27 September 2022

DECISION

1. For the reasons set out below and in accordance with section 60 of the *Liquor Act 2018* (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to grant a new licence authorising the sale of liquor to Nitmiluk Tours Pty Ltd (**the Applicant**). The new licence will not issue until existing licences 80815700 and 80818636 are surrendered and cancelled.
2. The authorities attached to the Licence will be on the conditions prescribed by the *Liquor Regulations 2019* (**the Regulations**). Those authorities are as follows:-
 - (a) Restaurant Bar Authority with a Late Night Authority, until 02:00, in respect of the Cicada Lodge Dining Room and the Nitmiluk Visitor Centre Bistro and lawn area. The authority is subject to the special condition that only light beer may be sold between 10:00 and 12:00 hours;
 - (b) Lodging Authority in respect of Cicada Lodge luxury chalets and Nitmiluk Visitor cabins;
 - (c) Small Bar Authority in respect of the Jatti Poolside Kiosk. This authority is subject to the special condition that liquor will not be sold to members of the

general public. Liquor may only be served to bone fide lodgers of the campground, the Nitmiluk Cabins, the Cicada Lodge and to their guests while in their company. The authority is subject to the special condition that only light beer may be sold between 10:00 and 12:00 hours;

(d) Catering Authority;

(e) Special Venture Authority in respect of prearranged excursions including boat cruises, safari camps, picnics, and heli-tours.

REASONS

THE APPLICATION

3. On 24 May 2022, an application was lodged by Mr Adam Stencil of Bowden McCormack Lawyers as counsel for the Applicant, seeking a new liquor licence with the following authorities including proposed liquor trading hours for the area known as Nitmiluk National Park located at Gorge Road, Katherine, NT:
 - Restaurant Bar – 10:00 hours to 02:00 hours (the following day), seven (7) days a week
 - Small Bar – 10:00 hours to 24:00 hours, seven (7) days a week
 - Special Venture – 05:30 hours to 24:00 hours, any day that the services, to which the liquor is ancillary, are provided by the licensee
 - Lodging – Minibar – 00:00 hours to 24:00, every day of the year
Room Service – 10:00 hours to 24:00 hours, every day of the year
 - Catering – 11:30 hours to 24:00 hours, seven (7) days a week
 - Late Night – 24:00 hours to 02:00 applies to Restaurant Bar authority only
4. The hours sought for the above authorities are in line with the maximum prescribed for these authorities by the relevant regulations pursuant to the Regulations.
5. Nitmiluk Tours Pty Ltd currently holds liquor licence 80815700 for Nitmiluk Centre located on Gorge Road, Nitmiluk with the following authorities: restaurant bar; BYO; lodging; special venture; catering; and special event. Nitmiluk (Cicada Lodge) Pty Ltd currently holds liquor licence 80818636 for Cicada Lodge located on Gorge Road, Nitmiluk with the following authorities: restaurant; lodging; and late night. The basis of the application is to replace liquor licenses 80815700 and 80818636 with one licence for the purpose of varying some of the existing authorities and including additional licensed areas within the Nitmiluk National Park.
6. Nitmiluk Tours Pty Ltd, which is owned by the Jawoyn traditional owners of the Nitmiluk Gorge area, has decided to wind up the separate entity Nitmiluk (Cicada Lodge) Pty Ltd and amalgamate the two liquor licences in a manner which is

consistent with the standard authority conditions now provided for by the Act. If the application for a new licence is granted the applicant has agreed it will surrender the two existing licences.

7. The Applicant provided all relevant probity and corporate documentation, however as it currently holds a liquor licence and its corporate structure is well known to the Director of Licensing (**the Director**), no issues as to probity arose and the Director accepts that the Applicant is a fit and proper entity to hold the proposed licence.
8. In support of the application the Applicant provided the following documentation:
 - Covering Letter – Detailing the corporate structure and business operations.
 - Business Model – Including proposed liquor licenced area site plans and photos.
 - Community Impact Assessment and Public Interest Criteria – Community Consultation.
 - Declaration of Associates.
 - Jawoyn Association Aboriginal Corporation – Corporate Structure.
 - ASIC Company Extract – Nitmiluk (Cicada Lodge) Pty Ltd.
 - ASIC Business Name Details – Nitmiluk Tours, Nitmiluk, Nitmiluk Café and Cicada Lodge.
 - Parks and Wildlife Commission – Letter of Support.
 - Jawoyn Association Aboriginal Corporation – Letter of Support.
 - Financial Letter – Key Support Accountants.
 - Duty Statement – Nitmiluk Tours.
 - Commercial Visitors Accommodation Registration - Cicada Lodge and Nitmiluk Chalets.
 - Food Business Registration – Cicada Lodge, Nitmiluk Bistro and Nitmiluk Kiosk.
9. Prior to the hearing as part of the Applicant's further submissions its legal counsel provided the following useful table which detailed the existing license conditions and the proposed changes.

Venue	Current Authorities and Conditions under 80818636 Cicada Lodge 80815700 Nitmiluk Centre	CHANGES SOUGHT (SUMMARISED)
All	<p>80818636 (Cicada Lodge) Restaurant Authority Lodging Authority Late Night Authority Special Conditions</p> <p>80815700 (Nitmiluk Centre) Restaurant Bar Authority BYO Authority Lodging Authority Special Venture Authority Catering Authority Special Event Authority Special Conditions</p>	<p>Single licence Restaurant Bar Authority Lodging Authority Late Night Authority Small Bar Authority Special Venture Authority Catering Authority</p> <p>Changes to Special Conditions as identified</p>
Accommodation		
Cicada Lodge (luxury chalets)	Lodging Authority ¹ Minibar 00:00 to 24:00- every day Room Service 10:00 to 24:00- every day	No change
Nitmiluk visitor accommodation (Cabins)	Lodging Authority	
Dining		
Cicada Lodge Dining Room	Restaurant Authority ² & Late Night Authority ³ 10:00 to 02:00 00:00 to 02:00	Restaurant Bar Authority will now apply across the 2 venues⁴.
Nitmiluk Visitor Centre Bistro and lawn area	<p>Restaurant Bar Authority</p> <p>Coffee Lounge (Special Condition) 10:00 to 23:00 (only light beer is served from 11:00 to 12:00).</p> <p>Balcony Restaurant (Special Condition) 11:00 to 23:00 (only light beer is served from 11:00 to 12:00).</p>	<p>Late Night Authority will now apply across the 2 venues.</p> <p>Bistro (balcony) trading from 10:00am (change from 11:00am)</p>
Nitmiluk — large event venues e.g. Lawns & Function Centre	Catering Authority ⁵ . 11:30 to 24:00.	No change but catering authority would apply across the 2 venues.

¹ Regulations 63,64,65, Liquor Regulations 2019 (NT)

² Regulations 78,79,80, Liquor Regulations 2019 (NT)

³ Regulations 57,58,59,60, Liquor Regulations 2019 (NT)

⁴ Regulations 81,82,83, Liquor Regulations 2019 (NT)

⁵ Regulations 33,34,35,36 Liquor Regulations 2019 (NT)

Other		
Jatti Poolside Kiosk	Small Bar Authority ⁶ Special Condition "Garden Area and Swimming Pool" Alcohol to be served 11:00 to 23:00 --7 days a week (only light beer is <u>served from 11:00 to 12:00</u>).	Change of hours 10:00 to 24:00 per the Regulations.
Special Ventures Nitmiluk National Park	Special Venture Authority Dinner Boat Cruise 11:00 to 23:00 Special Condition — (only light beer will be served from 11:00 to 12:00)	<i>Boat Cruises</i> Licence with flexibility to hold eg. breakfast event on Sunrise Cruise or lunch event. Proposed to timings from 05:30 to 24:00 — everyday with special condition that patrons must be seated at a table / food service. <u>Add additional special ventures:</u> <i>Biddlecombe Safari Camp</i> 3 course dinner, with flexibility to do a breakfast. Proposed timings are from 05:30 to 24:00 — everyday. Camp is 8km from Park Entrance. <i>Baruwei Lookout Events</i> Licence with flexibility to hold catered events, picnics, and celebratory moments. Proposed timings are 05:30 to 24:00 —everyday. <i>Heli-Tours</i> Licence with flexibility to provide a bottle of wine or champagne, within 300m radius of park helicopter landing site. Proposed timings are 05:30 to 24:00 — everyday.
Special Event Authority.	Special Event Authority: Applies to Liquor Licence 80815700.	Special Event Authority applications will be made by Nitmiluk Tours Pty Ltd on a needs basis.

⁶ Regulations 84, 85, 86, Liquor Regulations 2019 (NT)

PUBLICATION AND CONSULTATION

10. The application was published in the NT News on Saturday 2 July 2022 and published on the Director's website applications page for the required 14 days advertising period.
11. The Applicant displayed the required "green sign" at the premises.
12. Copies of the NT News, photographs of the green sign erected at the premises and Statement of Display have been retained by Licensing Officers.
13. As a result of publication of the application, there were no objections received from any members of the public.

CONSULTATION

14. The following stakeholders were notified of the application in accordance with Section 56(4) of the Act and invited to provide comment on the application:
 - The Chief Executive of the Department of Health;
 - Northern Territory Police;
 - CEO, Roper Gulf Regional Council.
15. Northern Territory Fire and Rescue Service (NTF&RS) were also notified of the application as part of the Director's investigations into the application due to this being a new venue.
16. The Department of Health replied via email dated 4 July 2022, stating they have no objections.
17. The Police replied via email dated 30 June 2022, stating they have no objections.
18. The Roper Gulf Regional Council replied via email dated 30 June 2022 stating they have no objections.
19. The NTF&RS replied via email dated 1 July 2022 stating they support the application.
20. The licensee and/or the nominee have not been the subject of any disciplinary proceedings or similar since the date of the initial Commission hearing granting the liquor licence.

THE REFERRAL

21. The application was referred to the Commission by the Director on 1 September 2022.

THE HEARING

22. On 8 September 2022, the Commission wrote to the Licensee's solicitor advising that the matter had been listed for public hearing on 27 September 2022. The matter proceeded on that date when the Licensee was represented by Mary Chalmers SC and Adam Stencil. Mr Mark Wood appeared to represent the Director. Ms Sveva Falletto, the proposed nominee also spoke in support of the application via telephone conference. The Commission is grateful for the assistance that was provided by all those involved in this matter.

ASSESSMENT OF THE APPLICATION

23. 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.
24. 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.
25. 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

26. 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.
27. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

THE APPLICANT'S ASSOCIATIONS

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

29. The Commission notes that the Applicant has established a strong business reputation and already holds a licence. Furthermore no issues have been raised by the Director in relation to the Applicant's compliance with its obligations under its existing licence. The Commission assesses the Applicant be a fit and proper person to hold a restaurant bar licence.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

30. 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.
31. The Commission has been presented with a comprehensive very well prepared application that has addressed all the relevant public interest issues. The Licensee has been operating a successful tourism operation at this venue over

a long period of time. It is an Aboriginal owned and operated venture which provides local employment and is a significant tourist attraction in the Katherine Region.

32. The Licensee is to be commended for having made the effort to rationalise the previous licence conditions so that they now fit comfortably within the parameters of the authorities that have been created by the Act. The application is not controversial and the Commission is satisfied that it has not been motivated by any desire on the part of the Licensee to significantly increase the revenue it derives from liquor sales.
33. The Commission accepts that the impetus for the extended trading hours and Special Venture activities is to provide greater flexibility for the Licensee in relation to one-off special functions as well as a greater range of options for the “high end” tourist market. Given the focus of this tourism enterprise is about engaging with the rugged natural landscape of this iconic river gorge, late nights in the bar are not going to be a priority for most of the clientele. Ms Falletto said that most guests currently finish dining no later than 8:30 PM and she is not expecting this to change in the future.
34. This is one of the Northern Territory’s most important tourism attractions and the proposed change in licence conditions will enhance the amenity of the park for its visitors. The Commission is satisfied that the application meets the public interest criteria imposed by the Act.

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

35. 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.

36. 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 – children and young people;</p> <ul style="list-style-type: none"> • 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.</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). 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"> • 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?

37. The Licensee has relied, as it is entitled to do, on its excellent record in complying with its obligations under the Act. It has also responsibly engaged with its closest neighbours, the Jodetluk family outstation, to ensure that they have no concerns about the proposed changes to the licence. As the Small Bar Authority for the kiosk limits the sale of liquor to residents of one of the park's accommodation facilities, there is no real risk that vulnerable groups would be attracted to that venue. All other liquor outlets within the park are confined to residential guests, restaurant diners, guests invited to a special function or persons who have booked a special tourism excursion. In those circumstances the Commission is satisfied that issuing the licence will not have a significant adverse impact on the community.
38. 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.
39. At the conclusion of the hearing, the Applicant was advised that its application would be approved.

NOTICE OF RIGHTS

40. 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 2014 provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
41. 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.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
10 October 2022

On behalf of Commissioners Coates, Stephenson, Corcoran