

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**AMENDED<sup>1</sup> DECISION NOTICE AND REASONS FOR DECISION**

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**CITATION:** *DOM'S BAR & LOUNGE PTY LTD APPLICATION FOR ADDITIONAL AUTHORITIES [2023] NTLiqComm 3*

**REFERENCE:** LC2023/001

**LICENSEE:** Dom's Bar & Lounge Pty Ltd

**PREMISES:** Dom's Bar & Lounge  
Unit 7, 60 Aralia Street  
NIGHTCLIFF NT 0810

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

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

**DATE OF HEARING:** 1 February 2023

**DATE OF DECISION:** 1 February 2023

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**DECISION**

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (**the Act**), the Northern Territory Liquor Commission (**the Commission**) has determined to issue the following additional authorities to Dom's Bar & Lounge Pty Ltd (**the Licensee**): -
  - (a) Producers' authority on the conditions prescribed by Division 13 of the *Liquor Regulations 2019* (**the Regulations**) save that the following special conditions apply to the authority:
    - i. the hours of operation of this authority will be from 15:00 hours to 22:00 hours Monday to Friday, and from 10:00 hours to 22:00 hours Saturday and Sunday.

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<sup>1</sup> This Decision Notice was amended on 3 March 2023, to correct the Notice of Rights. Paragraph 50 was amended to include persons who make a submission or objection.

- ii. liquor produced by the Licensee may only be sold for consumption off the premises when liquor is also able to be consumed on the premises.
- (b) Catering authority on the conditions prescribed by Division 5 of the Regulations, save that this authority does not authorise the sale and supply of liquor at the premises known as Dom's Bar & Lounge; it only applies to the sale and supply of liquor at functions held away from those premises.

## **REASONS**

### **BACKGROUND**

#### **The Application**

2. Dom's Bar & Lounge Pty Ltd currently holds Liquor Licence FLL1063 with small bar and late night authorities attached.
3. An application was lodged by Mr Dominic Wundke of Dom's Bar & Lounge Pty Ltd seeking a producers' authority and catering authority to be added to the existing licence FLL1063. The final documents were received on 10 January 2023.
4. The Licensee sought to add a producers' authority with proposed trading hours of 10:00 hours to 22:00 hours 7 days a week, and further sought to add a catering authority with proposed trading hours of 11:30 hours to 24:00 hours 7 days a week
5. The application was accompanied by:
  - An Affidavit;
  - Two completed Public Interest and Community Impact Assessment Summaries;
  - Draft public notice of application;
  - Consent letter from landlord, KL Ford & Riversea Trust;
  - Business Plan;
  - Business Summary for Dom's Catering;
  - Food Business Registration;
  - Various photographs depicting interior of shops and wares;
  - Copy of Commercial & Industrial Property Long Term Lease;

- Development Consent Authority Development Permit and Notice of Consent;
  - Email from NT Worksafe;
  - Email from Casuarina Police;
  - Email from City Of Darwin Council meeting; and
  - Manufacture Licence.
6. The application was published in the NT News on 17 December 2022. The application was also published on the Director of Liquor Licensing's (**the Director**) applications webpage during the course of the advertising period. A green advertising sign was erected at the premises for the course of the advertising period.
  7. In accordance with the Act, the following were notified of the application:
    - The Chief Executive Officer (CEO) of the Department of Health;
    - The Commissioner of Police; and
    - The CEO of City of Darwin.
  8. Due to nature of the application the NT Fire & Rescue Service (NTFRS) was also notified.
  9. The Department of Health replied via email dated 28 November 2022, stating it had no objections.
  10. The NTFRS replied via email dated 29 November 2022, stating that "if Dom's Bar & Lounge starts to produce spirits on site, the class of this building needs to change to reflect the change of added use. Part of this building may need to become a class 7b to comply for occupancy. Mr Wundke was advised by the NTFRS to get clarification or engage an NT Building Certifier as per *NT Building Act 1993* for any development of the current building to include a distillery". The NTFRS also advised that maximum patron numbers may be impacted.
  11. The reply from the Department of Infrastructure, Planning and Logistics indicated further planning consent is not required.
  12. The NT Police replied via email dated 2 December 2022, stating it had no objections.
  13. The City of Darwin replied via email dated 12 December 2022, stating it had no comments.

## **OBJECTIONS**

14. As a result of the publication of the application, four objections were lodged within the prescribed period by the following local residents: -
- (a) Paul and Susan Walsh, residents of 35 Cunjevoi Crescent, Nightcliff, objected to any increase in the existing hours of trade and to the takeaway aspect of the application. They claimed that there was already too much anti-social behaviour in the vicinity of their residence due to takeaway liquor.
  - (b) Mark and Alex Kersemakers of 31 Cunjevoi Crescent, Nightcliff objected to any increase in trading hours particularly during school hours as school children use the arcade adjacent to these premises on their way home from school. They also raised concerns about takeaway sales at the premises because of the unacceptable level of anti-social behaviour around the nearby licensed supermarket.
  - (c) Peter and Rosanna van den Herik of 14 Cunjevoi Crescent, Nightcliff objected to all aspects of the application on the basis that the Northern Territory is already “abundantly supplied with liquor outlets” and that the consumption of takeaway spirits in this area is causing unacceptable levels of anti-social behaviour.
  - (d) Kirrily Chambers of 18 Pandanus Street, Nightcliff objected to the takeaway aspect of the application and to any extension of the trading hours into the school’s normal hours of operation. She also raised concerns that the current planning approval for these premises would not permit the operation of an “ancillary light industry” such as the distillation of spirits.
15. The Licensee responded in detail to the objections. It said that further activation of the Aralia Street Business Precinct would deter anti-social behaviour and that providing an additional range of boutique spirits for Darwin would be good for tourism and create more jobs.
16. The Department of Infrastructure, Planning and Logistics provided a letter dated 6 January 2023, confirming that no further planning permission was required to enable the production of spirits at the licensed premises.

## **COMPLIANCE HISTORY**

17. In March 2021, the Commission upheld a number of complaints against the Licensee for noise disturbances arising from incidents between August and November 2020 at these premises. As a result of those findings, the licence conditions of the small bar authority were varied.

## **THE REFERRAL**

18. The Director referred these applications to the Commission on 12 January 2023.

## THE HEARING

19. On 16 January 2023, the Licensee and objectors were notified that the public hearing of this matter would take place on 1 February 2023.
20. Prior to the hearing, the objector Paul Walsh sought and was granted leave by the Commission to file a further written submission rather than appear at the hearing.
21. The public hearing took place on 1 February 2023. Mr Dominic Wundke appeared for the Licensee, Mr Mark Wood appeared for the Director, and the objector Peter van den Herik also attended and spoke to the Commission on behalf of his objection. The Commission thanks all those who participated in the hearing for their assistance.
22. 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.
23. At the commencement of the hearing, the Commission informed Mr Wundke that the factors such as the use of the arcade adjacent to these premises by school children during weekdays, which had motivated the Commission to restrict the opening hours for the small bar authority until after 15:00 hours, were relevant to the current application for a producers' authority. The Licensee initially argued that it should be able to sell liquor to be consumed off the premises from 10:00 hours in the same way as the neighbouring licensed supermarket, regardless of whether the premises were open for consumption of liquor on the premises. As much of the concerns raised by the objectors centred on their opposition to any increase in trading hours and the risks associated with the introduction of another takeaway outlet in this area, the Commission determined to deal with these issues at the outset.
24. Section 47(j) of the Act authorises the holder of a producers' authority "to sell amounts of the liquor prescribed by the licensee for consumption on or off the premises".
25. Section 84(3) of the Act provides that no takeaway authority may be created or issued until at least 31 August 2023.
26. Regulation 73 prescribes that during the hours of operation of a producers' authority that a light meal must be available for purchase by patrons and complimentary tap water must also be available to patrons.

27. Regulation 106 does not require the holder of a producers' authority to use and maintain the Banned Drinker's Register (**BDR**) identification system as is required with takeaway and grocery store authorities.
28. The Commission has taken the view in a number of previous decisions concerning applications for a producers' authority that this type of licence is akin to the "cellar door" concept which has become popular in Australia's wine producing regions. Tourists are encouraged to visit the wineries, sample the latest vintages and purchase bottles of the wines they like for consumption at a later stage. In both the matters of Charlie's Darwin<sup>2</sup> and Willing Distillery<sup>3</sup>, the Commission rejected the Applicants' contention that the producers' authority would entitle them to sell their product online or by mail order. In the most recent matter involving Beaver Brewery<sup>4</sup>, the Commission made it clear to the licensee that it could not sell beer for consumption off the premises unless it was also open for that product to be consumed on the premises.
29. The fact that the Regulations require a licensee that operates under a producers' authority to have a meal and free water always available to customers, supports the view that the sale of liquor for consumption off the premises can only be made when that product is also available for consumption on the premises.
30. Although the current collection of licensees in the Northern Territory that are operating under a producers' authority could fairly be categorised as "boutique" brewers and distillers of a high end product, that will not necessarily always be the case. On the evidence of Mr Wundke there is a significant profit margin on the sale of locally distilled spirits which could prove attractive to less scrupulous operators if they had the option of only engaging in takeaway trade where they would also not be subject to any of the restrictions imposed by the BDR.
31. Having regard to the moratorium on any new takeaway liquor licences, and the restrictions now imposed on existing grocery stores to limit packaged liquor sales to below 25% of gross turnover, the Commission is not about to broaden the scope of a producers' authority in a way that would permit a licensee to operate solely as a takeaway outlet. On that basis, Mr Wundke was advised that the previous considerations in relation to on-premises drinking which had persuaded the Commission not to permit the small bar to open before 15:00 hours were still relevant to the proposed producers' authority.
32. Although Mr Wundke countered with the argument that the school had not lodged an objection to this application, it was clear from the correspondence with the

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<sup>2</sup> Commission's decision LC2020/054, Application for a New Authority for TNP Holdings Pty Ltd (Charlie's of Darwin), date of decision 24 November 2020

<sup>3</sup> Commission's decision LC2020/051, Application for a Licence and Authority for David Willing (Willing Distillery), date of decision 24 November 2020

<sup>4</sup> Commission's decision LC2021/010, Application for Variation of Conditions of Licence for Beaver Brewery Pty Ltd (Beaver Brewery), date of decision 4 March 2021

school officials that their lack of any objection was based on the understanding that there would be no change to the opening hours on school days.

33. Having raised the possibility of unscrupulous operators using a producers' authority to profit from takeaway sales to problem drinkers, the Commission is not suggesting that is the motivation behind this licensee's application for a producers' authority. Although the Commission has in the past had to curtail Mr Wundke's enthusiasm for creating a vibrant party atmosphere at Dom's Bar, he has revitalised one of Darwin's old moribund suburban shopping complexes and created a new sophisticated entertainment venue which is popular with young "professionals", particularly women. Apart from the past noise disturbance incidents, the bar is well run and police have not been required to attend the premises to control drunken behaviour. It would also appear that the Licensee has taken steps to mitigate the noise disturbance which soured its relationship with its Cunjevoi Crescent neighbours.
34. Peter van den Herik told the Commission that he maintained his objection to the applications. He and his wife remain concerned that any increase in the availability of liquor in this area will exacerbate the already unacceptable levels of anti-social behaviour in their neighbourhood.
35. The application for a catering authority was not particularly controversial as it is aimed primarily at enabling the Licensee to cater at pre-arranged functions held elsewhere around Darwin. During COVID, the Licensee operated a mobile cocktail bar at special functions which proved popular and garnered favourable media interest. The Commission was concerned however, at the suggestion by Mr Wood for the Director, that a catering authority could be used at the Licensee's existing licensed premises. Whilst there has been no suggestion by Mr Wundke that he is intending to use the catering authority for events at Dom's Bar or the adjoining arcade, the Commission believes it should use its discretion to impose a condition to ensure that not occur. Having regard to the special conditions the Commission has put in place to mitigate the risk of disturbance to local residents and children using the school, it would be provocative in the extreme were the Licensee to use the catering authority to conduct a function on these premises outside the bar's normal opening hours.

#### **WHETHER ISSUING THE AUTHORITIES ARE IN THE PUBLIC INTEREST**

36. Pursuant to section 49(1)(b) of the Act, the Commission may only issue a licence or authority if satisfied that it is in the public interest. 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.
37. The Commission has considered each of these objectives and has also had regard to section 50(3) of the Act which provides:

*“The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community.”*

38. The Licensee has submitted a comprehensive, well-argued case in support of its application. It relied on its previous good record on responsible service of alcohol (RSA) and the fact that there had not been one fight on the premises in three years of operation. In addressing the objects of section 49(2)(e) of the Act, the Licensee stated:

*“(e) increasing cultural, recreational, employment or tourism benefits for the local community area;*

*Darwin's culture is diverse and evolving quickly. A recent article in the NT News highlighted data showing every 5 years one third of the Territory population moves interstate. The thirst for good quality food and drink options is strong as we have found in the last 3 years of trade. By providing these options and contributing to the evolution of culture in the Territory we help make it a more attractive place to live and stay longer thus helping the economy. Adding a distilling arm to the business will add interest and further the diversity of offerings to tourists who visit Darwin. Distilleries nationwide have proven to be popular*



*destinations in tourism. The success of Willing Distillery in Winnellie and contribution it has made to the community has been significant.*

*The producers authority will add 1-2 FTE to our current team of 5 staff over the next 3 years as detailed in the business plan submitted with this application. The caterers authority will also have a positive impact on the community by providing extra FTE opportunities and increase the opportunity for people to create special moments with our help on great food and drink catering.”*

39. When questioned by the Commission as to how he would deal with itinerants who might attend the bar solely for the purpose of buying takeaway spirits, Mr Wundke said that he did not consider this likely as a takeaway bottle shop with cheaper products was less than 20 metres away. He said he had been obliged to deal in the past with itinerants coming into the premises and this was an issue that needed to be managed sensitively. If problem drinkers began to frequent these premises as a matter of course, it would be detrimental to the successful business model he had developed. The Commission is satisfied that the Licensee appreciates the risks associated with the takeaway aspect of the producers' authority and will manage that risk appropriately.
40. The Commission is satisfied that it is in the public interest to grant the authorities sought, provided conditions are imposed to ensure there is no trade outside the existing hours of operation of the small bar authority.

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

41. 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.

42. The community impact assessment guidelines previously published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act remain the 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"> <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> <p>Are there any community buildings, 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> <p>What policies and procedures will the applicant implement to minimise any potential</p>

	harm or health impacts to these 'at-risk' groups or sub-communities?
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>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>
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"> <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 not 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> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

43. 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.

44. As can be seen from the above, there are numerous matters the Commission must consider and the Licensee 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”.*
45. 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.
46. For the reasons enumerated earlier in this Decision Notice, the Commission is satisfied that by imposing the conditions that it has attached to these authorities that there will not be a significant adverse impact on the community.
47. The Commission therefore grants the authorities in accordance with the conditions set out at the commencement of this Decision Notice.
48. The Licensee was advised of this decision at the conclusion of the hearing.

#### **NOTICE OF RIGHTS**

49. 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.
50. 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, Director, and the persons who made a submission or objection.



Richard Coates  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
20 February 2023

On behalf of Commissioners Coates, Taylor and Hart