

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE AND AUTHORITY

REFERENCE: LC2020/017

APPLICANT: The Hub Tavern Pty Ltd

PREMISES: The Hub Tavern
1/31 Maluka Drive
PALMERSTON NT 0830

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

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Bernard Dwyer (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 12 May 2021

DATE OF DECISION: 12 May 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 The Hub Tavern Pty Ltd (the Applicant).
2. The licence will be issued with a public bar and late night authority.
3. The conditions of the licence will be those authority conditions set out in Divisions 10 and 14 of the Liquor Regulations 2019 (the Regulations).
4. The permitted hours of operation of the licence are between 10:00 hours and 03:00 hours every day of the year, except for Good Friday and Christmas Day the liquor trading conditions for which are prescribed by Regulation 82(2) of the Regulations.
5. In accordance with section 85 of the Act, the term of the licence will be for 99 years from the date of issue of the licence.
6. 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 statutory approvals, including a certificate of occupancy in relation to the use of the premises as a public bar.

REASONS

BACKGROUND THE APPLICATION

7. On 3 February 2021, an application was lodged by DNS Specialist Services on behalf of The Hub Tavern Pty Ltd (the Applicant) seeking the issue of a new liquor licence and authorities for premises proposed to be known as The Hub Tavern and located at 1/3 Maluka Drive, Palmerston.
8. The proposed licensee is The Hub Tavern Pty Ltd. This company is registered with ASIC where Mr Michael Burns and Mr Paul Palmer are listed as Directors with Mr Palmer listed as the Secretary.
9. The company has 3 shares. One share is owned by Paul & Sarah Investments Pty Ltd, one share is owned by Crocosaurus Cove Pty Ltd and one share owned by LACT Investments Pty Ltd.
10. Paul & Sarah Investments Pty Ltd is a company registered with ASIC. Mr Paul Palmer and Ms Sarah Palmer are listed as directors with Mr Palmer listed as the secretary. The company has various share structures but ultimately Mr Palmer and Ms Palmer own all the shares.
11. Crocosaurus Cove Pty Ltd is a company registered with ASIC. Mr Michael Burns and Ms Tanya Gamble are listed as directors with Ms Gamble listed as the secretary. This company has two shares where one share is owned by Brimsnuck Pty and one share owned by Gamble Group Pty Ltd.
12. LACT Investments Pty Ltd is a company registered with ASIC. Mr Mark Gray is listed as the director and secretary. This company has 12 shares all owned by Mr Gray.
13. In relation to the probity requirements all parties are considered known to the Director of Liquor Licensing (the Director) where further probity documents are not required in this application.
 - Paul Palmer and Sarah Palmer are known to the Director due to their involvement with the Hibiscus Tavern where they hold liquor licence 80303086 but under different company. They have previously provided required probity documents. There are no negative compliance reports in regard to the conduct of that business. Mr Palmer is also the President of Hospitality NT.
 - Michael Burns and Tanya Gamble are known to the Director where Crocosaurus Cove Pty Ltd is the licensee that holds two liquor licences. Licence 80818038 relates to The Tap On Mitchell and licence 80817924 relates to Crocosaurus Cove. There are no negative compliance reports in regard to the conduct of that business. Mr Burns is also the Senior Vice President of Hospitality NT.
 - Mark Gray is known to the Director due to his involvement with Mayberry Darwin where another company owned by Mr Gray hold liquor licence 80300317 and have previously provided required probity documents. This licence was only recently transferred and has not re-opened for business at the time of this referral where the premises were previously known as Bar3/Sinsations.

Therefore there are no compliance reports in regard to the conduct of that business under new ownership.

14. As this is a new Applicant with no trading history there are no previous financial reports. Confirmation of access to sufficient funds to commence operations have been provided.
15. The proposed nominee is Mr Andrew Binns. He is known to the Director as being the current nominee of Mayberry Darwin and previously providing the required probity documentation. He is further known as being a previous nominee of Monsoons.
16. The Applicant has provided the following further documents in support of the application;
 - Declaration of Associates
 - Public Interest and Community Impact Assessment Summary
 - Community Impact Assessment
 - Addendum to Community Impact Assessment
 - Public Interest Criteria
 - Copy of Lease of premises
 - Business Plan
 - Copy of proposed liquor licensed area
 - Letter of support from neighbour, Rydges Palmerston

PUBLICATION AND CONSULTATION

17. The application was published in the NT News newspaper on Wednesday 24 February 2021 and Saturday 27 February 2021. The Applicant also displayed the required “green sign” at the premises.
18. As a result of publication of the application, there were two objections received from the public.
19. Ms Sheryl Shepton a resident of Cunningham Crescent Gunn objected on the basis that she is already adversely impacted by the noise and anti-social behaviour that occurs near Cazaly’s Club, Woolworths packaged liquor outlet and the Rydges Complex. She also referred to the Children’s play centre that was part of the hub Complex and further complained that a new tavern would exacerbate existing traffic congestion problems within the neighbourhood.
20. Mr Paul Savelberg, the Manager of the Gateway Shopping Centre lodged an objection on the basis that he was working in the neighbourhood of the proposed premises. He asserted that issuing the licence would adversely affect the amenity of the surrounding neighbourhood.

21. Mr Savelberg referred to an increase in alcohol related assaults in Palmerston and stated;

I object to granting of a late-night licence as the Palmerston area is well served by late-night venues and this will increase the ratio/density of late-night venues. Currently 3 late-night venues are within 400 metres (being Goodtimes, Palmerston Tavern and Cazalys Club) and the Landmark Gateway tavern is 1.1 kilometres from this group.

I believe that an increase in the density of late-night venues will adversely affect the amenity of Palmerston CBD and surrounding neighbourhoods of Palmerston CBD, Gunn, Gray & Driver through increased antisocial behaviour from those affected by alcohol. Palmerston is predominately a family orientated location with limited customers to frequent licensed premises after midnight. The 4 venues are currently in balance with 3 having a long history in Palmerston CBD and Landmark Tavern is part of a large retail complex extensive CCTV / security protocol and provides protection to the patrons. Another venue will lead to Mitchell Street style competition between late-night venues encouraging discounting and leading to risk of harm from the excessive or inappropriate consumption of liquor.

I note the Community Impact Statement January 2021 (Version 2.0) reviewed the Density of Licensed Premises (Section 8.4) and noted only one restaurant at Gateway being Burger Urge. However, we have recently had ICHI Gateway apply and we are leasing 4 other restaurant premises currently and they will all be seeking liquor licences in our approved and built Restaurant precinct "Pavilions"

22. The objections were forwarded to the Applicant's representative on the 30 March 2021 in accordance with Section 62 of the Act seeking a response. On the 8 April 2021 they sought, and were granted, and extension of time to the 20 April 2021 to provide a response.
23. On the 14 April 2021, in response to Ms Shepton's Objection the applicant provided the following comments;

The applicant acknowledges Ms Sephton's comments and would reassure her that they are experienced traders with a long history of managing licensed venues in Darwin. Security will be engaged at the venue every day and unlike the previous operator at the site, there will be no takeaway alcohol at The Hub Tavern. Furthermore, the applicant has undertaken to liaise with Ms Sephton directly should there be any concerns in the future.

Regarding Ms Sephton's comments about the existing children's play business (The PlayShack) which is located in the complex underneath, we do not anticipate any adverse impact. The owner of the PlayShack has been consulted and they are in full support of the application, they have commented that the increased traffic to the hub complex will actually help their business and they are "looking forward to it", a copy of their consultation and comments is included with the main liquor licence application.

24. In response to Mr Savelberg's objection the applicant stated;

We note Mr Savelberg's comments regarding approval of the licence increasing the density of late night premises and concerns regarding possible increases in antisocial behaviour as a result of alcohol consumption.

Firstly, we would reiterate that the applicant is an experienced operator of licensed venues in NT and in particular Darwin, they are committed to providing a safe and friendly venue for the enjoyment of patrons. Strong harm minimisation policies will be implemented at the venue to minimise any potential risk from the provision of liquor and gaming facilities.

Secondly, we would highlight the fact that the proposed venue has previously traded as a licensed liquor and gaming venue, namely the Palmerston Sports Club, for twenty years and only ceased trading in January 2019. The management of the Gateway Shopping Centre seem to have had no issues with an increase in the density of licensed premises when their own tenant, Landmark @ Gateway, applied for a liquor licence which was granted in 2018 while the Palmerston Sports Club was still in operation.

Given Mr Savelberg's obvious concern regarding the density of licensed premises we are perplexed by his additional comment regarding an additional four (4) premises within the Gateway Shopping Centre that will be applying for a liquor licence. If the density of licensed premises is such a concern to Mr Savelberg and the Gateway Shopping Centre, would it not be prudent to re-evaluate the necessity of these new liquor licence applications. Given the above it would not be amiss to ask Mr Savelberg's if this concern in this regard only extends to premises who are not tenants of the Gateway Shopping Centre.

25. The following stakeholders were notified of the application in accordance with Section 56(4) of the Act.

- The Chief Executive of the Department of Health;
- Northern Territory Police;
- Chief Executive Officer - City of Palmerston.

26. Northern Territory Fire and Rescue Service were also notified of the application as part of the Director's investigations into the application due to this venue potentially re-opening after being closed for some time.

27. The Department of Health replied via email dated 25 February 2021 stating that it had no adverse comment and that the Applicant was required to comply with COVID-19 Safety Checklists. It also requested a range of tobacco information be forwarded to the applicant, which it has been.

28. The Northern Territory Police replied via email dated 15 March 2021 stating it had no objections.

29. The City of Palmerston replied via email dated 11 March 2021 stating it will not be providing a submission on the application.

30. The NTFRS replied via email dated 15 April 2021 stating it has issued a “Notice to the Occupier/Owner” with a list of defects. They support the application in principle but on proviso the defects are rectified.
31. On 5 May 2021 the Commission wrote to the applicant and the objectors notifying them that the public hearing had been set down for 12 May 2021. That date was fixed having regard to the availability of the applicant’s representatives, the most efficient use of Commission resources and the requirements of section 60 of the Act.
32. On 11 May 2021 the Commission received detailed submissions from Ms Mary Chalmers, Counsel for the applicant in support of this application.

THE HEARING

33. 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.
34. On 12 May the application proceeded as a public hearing. Mr Paul Palmer and Mr Michael Burns appeared as representatives of the applicant and Ms Tania Chin appeared for the Director. There was no appearance by either of the objectors.
35. The brief was tendered and admitted into evidence. The submissions of Ms Chalmers of counsel were also tendered.
36. Mr Palmer and Mr Burns both spoke in support of the application and responded to all questions put to them by Commissioners. The Commission is grateful for the assistance provided by all those present at the hearing.

ASSESSMENT OF THE APPLICATION

37. 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.

38. 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

39. 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.
40. The applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

THE APPLICANT'S ASSOCIATES

41. 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.
42. Both Mr Palmer and Mr Burns have a proven track record within the Northern Territory hospitality industry for operating well run licensed venues. Mr Gray is a professional accountant from South Australia who controls another company which holds a liquor licence in the Northern Territory.
43. There is nothing in the evidence nor any suggestion made by the Director that any of the office holders of the applicant company or their associates are not fit and proper persons to be associated with the operation of licensed premises.
44. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the applicant.

THE SUITABILITY OF THE APPLICANTS PREMISES

45. The proposed location for the Hub Tavern was formerly occupied by the Palmerston Sports Club and traded as a licensed gaming and liquor venue for approximately 20 years until it closed in January 2019. There are no residential premises within 200 metres of the premises, there is significant on-site parking and most businesses around the site will be closed during the anticipated peak trading hours.
46. The businesses that might conceivably be adversely impacted by the grant of a licence, the Play Shack and Rydges Hotel have both expressed positive support for the proposed redevelopment of the site. Although it might be suggested that Rydges' expression of support could be influenced by Mr Burns proprietary interest in that business it is also clear that he has an economic interest in ensuring that the operation of the tavern does not diminish the value of his interest in the adjoining Rydges Hotel.
47. It is relevant that neither the Palmerston City Council nor the NT Police raised any concern over the proposed relicensing of these premises. Those agencies would be expected to be aware of any past problems associated with the operation of licensed premises at this venue. On the evidence before the Commission we find that

reactivating the site will have a positive impact on improving the amenity of the immediate neighbourhood.

48. Having inspected the detailed plans for the works that were included in the brief, the Commission assesses the premises to be suitable for the supply and consumption of liquor in the manner set out in the application.
49. The Commission notes that pursuant to section 91 of the Act, the Licensee 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

50. The Commission notes that the applicant has only recently been incorporated, and is therefore yet to establish a business reputation in its own right. However the Commission finds that the applicant's principals both have a good general business reputation, are of good character, and are financially stable.
51. The Commission assesses the applicant to be a fit and proper person to hold a licence.
52. The Commission further notes that there has been no suggestion that the proposed nominee Andrew Binns is not fit for that role. Mr Binns has past and current experience as a nominee. The Commission assesses Mr Binns as a fit and proper person to be a licensed nominee.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

53. 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 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.

54. The applicant engaged a specialist consulting firm DNS to compile an extensive Community Impact Assessment (CIA) to be used in both the Liquor Licence and Gaming Machine licence applications. Included within the CIA statement was the results of a resident's survey that had been conducted by the consultants. The survey was designed to elicit the views of residents to the proposed tavern. The consultants had, not unreasonably defined the Local Community Area (LCA) likely to be impacted by the proposed licence as the area within a 3km radius of the site. The survey was delivered to 6,797 households via letterbox drop and recipients were given the opportunity of registering their concerns or support for the proposal either on line or by completing and mailing back a form. Although it is not clear from the CIA statement as to the location of the 6,797 residents, the Commission is prepared to assume that they were within the LCA as defined by the Consultants.
55. The response to the survey was underwhelming with only 56 residents completing the questionnaire. Of those people responding, more than 80% were generally supportive and most of the negative respondents articulated an increase in gaming machines as their primary concern.
56. As part of their demographic analysis the authors of the CIA statement asserted;
- "There is a lower representation of Aboriginal residents in the LCA (9.8%) and LCA (10%) compared to the NT (24.4%)." ¹

As the Commission has observed in the past, this type of analysis, often made by interstate "experts" is not helpful in evaluating the real risk factors associated with some of our most vulnerable Territorians. The Territory's indigenous population is not evenly spread across the Northern Territory. Although Palmerston as a whole may only claim 10% of its residents as indigenous Australians, suburbs such as Moulden and Gray have a much higher proportion of indigenous residents. In fact Moulden with almost 25% of residents being indigenous would likely make it the suburb within the greater Darwin area with the highest representation of indigenous residents.

57. Having regard to the fact that these premises had been operating under a liquor licence for 20 years and there has been no suggestion by any of the stakeholders that the provision of liquor for on premises consumption over the bar or in a restaurant setting was having serious adverse consequences for Local Indigenous residents, the Commission accepts that the potential risks to those community members can be migrated by the comprehensive RSA policies that have been foreshadowed by the applicant.
58. The applicant estimates that the new tavern will create around 45 jobs and that there will also be income for local contractors in getting the premises refurbished. Both Messrs Palmer and Burns have a demonstrated capacity for revitalising old venues and creating high quality, popular hospitality destinations. They both impressed the Commission with their appreciation of the challenges they face in restarting this Tavern and their commitment to providing a worthwhile addition to the relatively limited hospitality options available in Palmerston.

¹ Exhibit 1 page 92

59. There are currently 4 other licensed premises in Palmerston that are able to trade between 2:00am and 4:00am.

The applicant is seeking a late night authority to permit trade until 3:00am every day of the week, apart from Good Friday (Easter Friday) and Christmas Day, although it is unlikely that the venue would in fact be open for those hours every day of the week. There is merit in the applicant's argument that it should be able to compete on a level playing field with the other late night venues and in all the circumstances the Commission finds that the proposed hours of trade until 3:00am are not unreasonable.

THE OBJECTIONS

60. The Commission has carefully considered the objections submitted by Ms Sephton and Mr Savelberg. Having regard to the fact that there will be no packaged liquor sales from this venue, as was the case with the former sports club, and given the comprehensive RSA policies that will be adopted, the Commission is satisfied that any risk of increased anti-social behaviour in the vicinity of the premises can be adequately mitigated.
61. Although Mr Savelberg is entitled to object to the application on the basis of him working within the Local Community, the matters raised by him in opposition to the Licence focus heavily on preserving the viability of existing licensed venues including the Landmark Tavern which is a tenant of his Gateway complex. His complaints of an increase in the density of licensed premises is completely at odds with his announcement that the Gateway complex will be supporting the establishment of a further four liquor licensed restaurants within that centre. The Commission did not find Mr Savelberg's objection helpful in determining whether approving the application would adversely impact on the amenity of the neighbourhood.
62. Having considered the objections and each of the objectives set out in section 49(2) of the Act, the Commission is satisfied that it is in the public interest to issue the licence and late night authority.

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

63. 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;

64. 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

	<ul style="list-style-type: none"> 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>
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"> 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?

65. 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.
66. 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”.

67. 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.
68. 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”.
69. Having regard to the location of the premises in a non residential area, designed and used for entertainment , hospitality and commercial activity the Commission is satisfied that issuing a new licence in respect of premises which had previously been licensed for 20 years is unlikely to create any significant adverse impact on the community. In reaching that conclusion the Commission has also taken into account the past achievements of those involved with this company and their proven record in relation to operating licensed premises in a responsible manner. The Commission also accepts the submission by the applicant that following the closure of the Palmerston Sports Club and the Hub cinema that this part of Palmerston has become under utilised and a potential site for itinerant drinkers and anti social behaviour. The revitalisation of this venue is likely to enhance the amenity of the precinct.
70. 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.

THE TERM OF THE LICENCE

71. No submissions were made by either the applicant or the Director as to the term of the Licence and the Commission neglected to raise the issue with the parties during the hearing.
72. There is nothing on the approved application form for a new liquor licence which requires an applicant to specify the term for the licence being sought. The Commission has stated on a number of occasions that despite submissions to the contrary by the Director, it 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 grant a licence in perpetuity and that the Commission is required to fix a definite term. On past occasions applicants have been surprised to be asked for the first time at hearing to specify the term of the licence being sought and often have no idea of the

matters that might be relevant to the Commission's determination of that issue. The application form should alert an applicant to the need to consider and specify the term of licence that is sought and the Commission urges the Director to amend the approved form accordingly.

73. In this matter, while the applicant holds a "40 year lease" over the premises, the owner of the land is a company in which one of the applicant's office holders has a significant interest. In effect the applicant has a greater level of tenure over these premises than is reflected by that "40 year lease". The applicant is therefore making a significant long term investment in the development of these premises. In all the circumstances the Commission has determined that it is appropriate to set a term of 99 years for the licence.

THE OBJECTS OF THE ACT

74. 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.
75. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
76. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice. The applicant was informed of that decision at the conclusion of the hearing.

NOTICE OF RIGHTS

77. 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.
78. 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 two objectors.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
27 May 2021

On behalf of Commissioners Coates, Dwyer and McFarland