

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS

CITATION: *BAR KOKOMO PTY LTD APPLICATION FOR LIQUOR LICENCE WITH SMALL BAR AND LATE NIGHT AUTHORITIES [2023] NTLiqComm 15*

REFERENCE: LC2023/013

APPLICANT: Bar Kokomo Pty Ltd

PREMISES: Bar Kokomo
T1 & T2
56 Smith Street
DARWIN NT 0800

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

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Mrs Rachael Shanahan (Community Member)

DATE OF HEARING: 14 June and 5 July 2023

DATE OF DECISION: 6 July 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 Bar Kokomo Pty Ltd (**the applicant**).
2. The licence will be issued with a small bar authority and late-night authority permitting the licensee to sell liquor to patrons on or in the premises between the hours of 12:00 hours to 02:00 hours on the conditions set out in divisions 10 and 17 of the *Liquor Regulations 2019* (the Regulations).
3. The licensed premises are situated at T1 and T2 of 56 Smith Street, Darwin in the area delineated in red on page 68 of exhibit 1 of the evidence exhibited at the hearing of the application (**the licensed premises**).
4. 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

5. On 6 March 2023, Ms Anneliese Grazioli (**Ms Grazioli**), sole Director of the applicant and having paid the prescribed fees, lodged an application on behalf of the applicant for a liquor licence with small bar and late-night authority with the Director.
6. The substance of the application is for a liquor licence with a small bar authority and late-night authority for a Caribbean style cocktail lounge that focuses on high quality cocktails, wines and spirits with a Central and South American influence while serving South American style tapas to locals, interstate and overseas tourists.
7. The venue will be similar to its sister venue Hanky Panky Lounge located in Mitchell Street, Darwin City. The premises will be furnished with quality furnishings, comfortable seating and have soft ambient background style music playing. Evidence of what is proposed was provided to the Commission.
8. The applicant proposes that Ms Grazioli be appointed as nominee of the licence.

Consultation

9. 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.
10. 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**).
11. There were no objections to the application, however the Department of Health provided three (3) "suggestions" including promotion of the availability of non-alcohol and low alcohol beverages, availability and access to free drinking water and the display of NHMRC responsible drinking guidelines.
12. 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.
13. The City of Darwin advised that elected members and the CEO were notified of the application but had not provided a comment.
14. In submissions to the Commission at the hearing of the application, the representative of the Director stated that the Director "had no concerns with the application".

The licensee's record of compliance

15. The applicant, being "Bar Kokomo Pty Ltd" has not previously held a licence in the Northern Territory, however its sole Director and the proposed nominee, Ms Grazioli, is extremely well known in the hospitality industry and to Licensing NT, particularly in relation to her involvement with Hanky Panky and also Hot Tamale. The Director advised the Commission that there was "no known recorded, relevant or recent adverse compliance issues in relation to the Applicant or proposed nominated person".

The referral

16. On 2 June 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 14 June 2023.
17. 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. Request for waiver of probity documents for Ms Grazioli and Mr Robinson
 - e. Application for registration of a food business
 - f. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act
 - g. Draft lease agreement
 - h. Various financial documents
 - i. Basic plan of proposed premises
 - j. CCTV plan
 - k. Various correspondence

The hearing

18. On 14 June 2023, the application proceeded as a public hearing. Ms Grazioli and Mr David and Ms Kellie Robinson appeared on behalf of the applicant. Ms Jenny Kimber appeared for the Director. The Commission thanks them all for their attendance and assistance.
19. 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.

20. The brief was tendered and admitted into evidence without objection.
21. On that date the Commission indicated it was not satisfied with the state of the evidence in support of the application, in particular with respect to relevant financial information, a proposed draft menu and drinks list or likely costs with respect to the venue to enable the Commission to make an assessment of the application. As a result, the applicant sought (and was granted) an adjournment to provide further information. The application was adjourned to 5 July 2023 by which time the applicant provided:
- a. Further written submissions relating to the application for a late-night authority.
 - b. Draft menu and drinks list.
 - c. Information concerning costs.
 - d. Receipt for registration of business name.
 - e. Copy of Ms Grazioli's RSA certificate.
 - f. Various bank account statements as a bundle.
22. The Commission accepted this material into evidence as tendered by the applicant, without objection.

ASSESSMENT OF THE APPLICATION

23. 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.
24. 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

25. 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.
26. The applicant is an Australian proprietary company limited by shares. The current office holders are Ms Grazioli (Director and Secretary) and Grazioli and Co Pty Ltd is the Ultimate Holding Company. There are currently 100 ordinary class shares issued with Grazioli and Co Pty Ltd beneficially holding 60 shares and Beer & Skittles Pty Ltd beneficially holding 40 shares. Ms Grazioli is the sole Director, Secretary and shareholder of Grazioli and Co Pty Ltd.
27. The Commission notes that Grazioli and Co Pty Ltd and Beer & Skittles Pty Ltd are the same companies involved with Ms Grazioli in the bar known as Hanky Panky Lounge. Beer & Skittles Pty Ltd is an Australian proprietary company limited by shares. The current office holder is Mr David Robinson as sole Director and KDNT Enterprises Pty Ltd is the Ultimate Holding Company. There are currently 100 ordinary class shares issued with KDNT Enterprises Pty Ltd being the sole shareholder.
28. It is noted that the Director acceded to a request for a waiver of the probity requirements of the Act with respect to this application due to the applicant and these relevant companies being known to the Director as a result of that licence.
29. Although there was some delay, the applicant has provided satisfactory documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

30. 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.
31. The Commission considers that Ms Grazioli, Mr David and Mrs Kellie Robinson, as associates of the applicant for the purpose of s 55, are also "fit and proper" persons to be an associate of the applicant:
32. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of Ms Grazioli and her experience and reputation with respect to the licence held for the premises known as Hanky Panky, the Commission finds her to be a fit and proper person.

The suitability of the applicant's premises

33. The proposed premises are situated across both tenancy one and two of 56 Smith St, Darwin City. A lease agreement has been provided. The Commission notes that the landlord is currently in liquidation. The premises are also associated with Liquor Licence 80519075 held by Martin the Chef Pty

Ltd, formerly known as “Phat Mango” which has a restaurant authority attached to it.

34. The applicant has stated it does not wish to transfer the restaurant authority liquor licence held in relation to Phat Mango because it does not permit the following:
- a. The sale of liquor without the consumption of food.
 - b. Offering light meals during the hours of operation.
 - c. Styling the interior to have the aesthetics of a themed small bar.
 - d. Using the word “bar” to identify, advertise or market the premises.
 - e. Trading after midnight.
35. These are all aspects of trade that the applicant wishes to undertake.
36. The Commission notes the premises are located in the city and centrally located to the entertainment section of the city with a large number of other licenced premises in and around the premises.
37. Noting that the premises have previously been considered suitable for a restaurant authority, the Commission considers the premises suitable for the supply and consumption of liquor in the manner proposed in the application. There was a discussion held with respect to the sufficiency of the CCTV installed at the premises and Ms Grazioli in fact noted that she intended to place two (2) additional CCTV cameras focused on the entrance to the premises which would increase security. The Commission considers this to be a reasonable improvement.
38. The Commission further 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

39. The Commission notes that the applicant has 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.

The general reputation and character of the applicant’s secretary and executive officers

40. As noted earlier, the Commission assesses the general reputation and character of the applicant’s executive officer and secretary to be satisfactory.

Whether the applicant is a fit and proper person to hold a licence

41. As noted earlier, 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

42. The applicant has nominated Ms Grazioli as the licence nominee. Ms Grazioli holds a current RSA certification and has provided appropriate documentation of her reputation, character and work history. The Commission assesses Ms Grazioli to be a fit and proper person to hold the licence and notes Ms Grazioli is also the nominee of Hanky Panky since its inception in January 2022.

Public notice and consultation

43. 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

44. 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 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.

45. The Commission did indicate concern in relation to the proposal for a late-night authority. This was therefore the subject of further submissions made by Ms Grazioli. Having considered each of the above objectives, particularly the recreational and tourism benefits of what appears to be an upmarket small bar targeting a market likely to be attracted to such a premises, 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.

46. Further, the Commission also considers that:

- (a) the establishment of relatively small bar which will only be able to hold a maximum of 100 persons in the main commercial precinct of Darwin carries a relatively 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.

47. 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

48. 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.

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

50. 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.

51. 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.

52. 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”.

53. The Commission notes that the reality of this application is that there will not be an addition of a new licence or licenced premises because the premises are already the subject of a licence. The Commission notes that there will of course be a change to the nature of the licence, however there will not be an increase in the actual number of licenced premises in the “community” area.

54. The Commission is therefore 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.

55. 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

56. 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.

57. 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.

58. For these reasons, the Commission has determined that the application should be granted, and that a license and authority be issued on the conditions set out at the commencement of this Decision Notice.

59. Before completing these Reasons, the Commissions wishes to note that during the course of the hearing the applicant was specifically asked to respond to the suggestions made by the Department of Health, namely promotion of the availability of non-alcohol and low alcohol beverages, availability and access to free drinking water and the display of NHMRC responsible drinking guidelines. The Commission notes that the menu provided clearly sets out the availability of non-alcohol and low alcohol beverages and further that the applicant will make available free drinking water. In relation to the display of NHMRC responsible drinking guidelines; Ms Grazioli noted on behalf of the applicant that as a small bar her staff would be carefully observing patrons at all times and ensuring responsible drinking occurs. Ms Grazioli did however indicate she would consider including messages about responsible drinking within the drinks menu itself or within the bathrooms available for the premises. The Commission notes this indication and encourages the applicant to take reasonable steps in this regard.

NOTICE OF RIGHTS

60. 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.

61. 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.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN

DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
6 July 2023

On behalf of Commissioners Truman, Dwyer and R. Shanahan