

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

REFERENCE: LC2019/116

PREMISES: **Burger Urge**
Shop R6
Gateway Shopping Centre
Roystonea Avenue
PALMERSTON NT 0830

APPLICANT: **Burger Urge Pty Ltd**

NOMINEE: Trenton Colby Carthew

LEGISLATION: Part III of the *Liquor Act 1978*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Ms Elizabeth Stephenson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 18 October 2019

DATE OF DECISION: 18 October 2019
Amended 2 November 2020

DECISION

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* (NT) (“the Act”) the Northern Territory Liquor Commission (“the Commission”) has determined to issue a licence to Burger Urge Pty Ltd (“the applicant”) authorising the sale of liquor and consumption on conditions as set out below in the area of the Gateway Shopping Centre, Palmerston delineated in red on the floor plan set out at page 75 of Exhibit One admitted at the hearing of the application (“the licensed area”), at the following times:
 - a. From 10:00 hours to 23:00 hours Sunday to Thursday; and
 - b. From 10:00 hours to 23:59 hours Friday to Saturday; except
 - c. On Christmas Day, when there shall be no liquor trading; and

- d. On Good Friday, from 11:00 hours to 21:00 hours only if the liquor is served, sold or supplied to patrons purchasing full meals.

CONDITIONS

2. Pursuant to section 31(3) of the Act, the licence is subject to a condition that the sale of liquor on the premises is not permitted until the Commission has granted written approval to commence the sale of liquor following receipt from the applicant of all of the following to the satisfaction of the Commission:
 - a. Evidence that the Northern Territory Fire and Rescue Service (“NTFRS”) has inspected the premises, assessed them as being compliant with the *Fire and Emergency Act 1996* and *Regulations*, and provided instructions as to the maximum number of patrons permitted on the premises;
 - b. Evidence that the Development Consent Authority (“DCA”) has certified that the operation of the licence as a restaurant ~~bar~~¹ is permitted or consented to pursuant to Development Permit DP14/0889;
 - c. Evidence that the Lease set out at Attachment O of Exhibit One admitted at the hearing of the application has been executed by the parties to that Agreement;
 - d. Evidence that an Occupancy Permit under the *Building Act 1993* has been issued to the licensee certifying that the building works undertaken by the licensee on the licensed area are suitable for occupation; and
 - e. Evidence that a Registration of Food Business has been issued to the licensee by the Environmental Health Branch of the Northern Territory Department of Health.
3. In relation to the condition set out at paragraph 2 above (“the section 31(3) condition”), the Commission delegates to any one of Members Goldflam, Cannon and Stephenson the authority to grant the approvals referred to therein. Once those approvals have been granted, the Commission authorises the licence to be re-issued with the section 31(3) condition deleted.
4. The licence is subject to restaurant bar authority operating conditions as prescribed by Regulation 83 of the *Liquor Regulations 2019* (NT) (“the 2019 Regulations”).

REASONS

THE APPLICABLE LAW

5. This matter concerns an application for a liquor licence made in July 2019, prior to the commencement on 1 October 2019 of the *Liquor Act 2019* (NT) (“the 2019 Act”). Regulation 129 of the *Liquor Regulations 2019* (“the Regulations”) provides that in these circumstances, unless the applicant notifies the Director of Liquor Licensing (“the Director”) that it wishes to have the application determined under the 2019 Act, the application is to proceed and be determined under the 1978 Act. The applicant made no

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such notification, and accordingly, the application proceeded and is being determined under the 1978 Act.

6. As also required by Regulation 129, the applicant notified the Director the authority it seeks to have issued in conjunction with the licence, namely a restaurant bar authority.

BACKGROUND

7. The applicant is a registered Australian Proprietary Company limited by shares based in Queensland. The applicant operates under its registered business name Burger Urge, with gourmet burger restaurants operating in 28 locations across Australia. Eleven of these restaurants are owned by the applicant, and the remainder are operated under franchise arrangements.
8. The applicant is effectively owned solely by Sean Charles Carthew, and jointly directed by him and his brother, Trenton Colby Carthew, the proposed licence nominee. The applicant's business was established in 2007, and this application is for the first Burger Urge restaurant in the Northern Territory. The applicant currently holds 10 liquor licences in Queensland, and one in NSW.
9. The applicant lodged a completed application with Licensing NT on 9 August 2019, and, following community notification and consultation, and an assessment by Licensing NT of the application, on 24 September 2019 a Delegate of the Director-General of Licensing ("the Director-General") referred the application to the Commission for hearing pursuant to sections 28(1) and 50(a) of the Act.

THE BRIEF OF EVIDENCE

10. The Director-General provided the Commission with a brief of evidence ("the brief") including:
 - Application for a liquor licence dated 26 June 2019
 - Extract from ASIC company register for applicant
 - Documents certifying identity, managerial capacity, financial stability and character of Sean Charles Carthew
 - Documents certifying identity, managerial capacity, financial stability, character and RSA qualifications of Trenton Colby Carthew
 - Affidavit for purposes of s26A of the Act deposed by Trenton Colby Carthew dated 27 August 2019
 - "Community Interest Criteria Document" dated 8 August 2019
 - "Community Impact Assessment Burger Urge Pty Ltd" dated 3 July 2019
 - "Business Plan 2019 – Burger Urge Darwin"
 - Certified Burger Urge Financial Reports for 2018/19 and 11 months to 31 May 2019
 - Plan of proposed licensed area
 - Licence Agreement between lessee ("BUF Holdings No 3 Pty Ltd") and applicant for applicant to conduct its business on the premises commencing 28 October 2019
 - Lease of premises between lessee and owner (unexecuted)
 - Schedule of liquor licences held by applicant in Queensland and NSW
 - Application to register a food business dated 13 June 2019
 - Public notices of application for grant of a liquor licence, dated 14 and 17 August 2019

- Correspondence between Licensing NT and: Department of Health (“DOH”); NT Police; NT Fire and Rescue Service (“NTFRS”); and City of Palmerston
- DCA confirmation of approval to use tenancy as a “restaurant”

ADVERTISING AND NOTIFICATION

11. Details of the application were advertised in the NT News on 14 and 17 August 2019. In addition, signage notifying the application was displayed at the proposed premises for a period of 30 days. The objection period expired on 16 September 2019.
12. No objections to the application were lodged.
13. The Director-General informed the DOH, NT Police, NTFRS and the City of Palmerston of the application.
14. The Commission notes that the following responses were received:
 - a. The DOH made “no adverse comment”, but reminded the applicant of the applicable smoking compliance requirements.
 - b. The NT Police advised that they had “no objections”.
 - c. The NTFRS advised it supported the application subject to building approvals being obtained, certification by NTFRS of compliance with fire regulations, and assessment by NTFRS of maximum permitted patron numbers.
 - d. The City of Palmerston did not respond.

HEARING

15. The hearing was conducted in public on 18 October 2019. On behalf of the applicant Mr Trenton Carthew attended by telephone, as did his representative Mr Nixon-Smith. Mr Verinder appeared for the Director. The Commission thanks them all for their attendance and assistance. The Commission read the brief, which was tendered as the sole exhibit in the proceedings.

ASSESSMENT OF THE APPLICATION

16. The Commission has considered the application, the materials tendered in support of the application, the section 26A affidavit of Mr Trenton Carthew and the results of the investigations conducted by the Director-General in relation to the application. The Commission has applied the public interest and community impact test. Having done so, the Commission has determined to grant the application and issue a liquor licence to the applicant, as detailed below.

THE APPLICANT’S PREMISES

17. The proposed licenced area is a 211m² store located in “Pavilions”, the entertainment and leisure precinct of the recently constructed Gateway Shopping Centre, one of two major retail complexes in Palmerston. Gateway houses a supermarket, a discount

department store, around 60 specialty shops, a cinema centre, a tavern, two liquor stores and other recreational facilities. Gateway has extensive car-parking and is serviced by public transport. There are no residential properties within 200m of the proposed premises.

18. The applicant has negotiated a commercial lease over the premises for a term of eight years. A condition of the lease requires the applicant to hold and operate a liquor licence, and the landlord to do all things reasonably necessary to assist the tenant to obtain the liquor licence.
19. In accordance with section 28(2)(a) of the Act, the Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

THE APPLICANT

20. The applicant has been a registered company since 2007. Since then, as Trenton Carthew states, Burger Urge has grown “from a hole in the wall burger joint to the second largest gourmet burger brand in the country”. This bold claim is well supported not only by a range of referees, but also by the applicant’s detailed financial reports, certified by the applicant’s accountants, who state “the company has historically maintained a sound and profitable financial position since incorporation.” In accordance with section 28(2)(c) of the Act, the Commission assesses that both the business reputation and financial stability of the applicant, and the general reputation and character of the applicant's executive officers, Sean Carthew and Trenton Carthew, are satisfactory.
21. In accordance with section 28(2)(e) of the Act, the Commission assesses the applicant to be a fit and proper person to hold a licence.
22. Section 26A 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. Trenton Carthew, as a principal executive officer of the applicant, affirms in his affidavit deposed on 27 August 2019 that the only such person other than himself is his co-director Sean Carthew, the applicant’s only other principal executive officer.
23. The Commission assesses both Trenton Carthew and Sean Carthew to be fit and proper persons for the purpose of section 28(2)(f) of the Act.
24. The applicant has nominated Trenton Carthew to be its manager. In accordance with section 28(2)(h) of the Act, the Commission assesses Trenton Carthew, who holds current RSA certification, to be a fit and proper person to manage the licence.

PUBLIC INTEREST AND COMMUNITY IMPACT

The public interest and community impact test

25. The Commission is required to consider each of the fifteen objectives in section 6(2) of the Act. In doing so, the Commission has had particular regard to the licensee’s public interest and community impact statement.

26. The Commission has also had regard to the restaurant bar authority operating conditions, which are prescribed by Regulation 83 of the Regulations, as follows:

- (1) A light meal must be available for purchase by patrons during the hours of operation.
- (2) The kitchen must remain open during the hours of operation until 1.5 hours before the close of the licensed premises.
- (3) A reasonable range of non-alcoholic beverages must be available for purchase by patrons during the hours of operation.
- (4) Complimentary tap water must be available to patrons during the hours of operation.
- (5) Although liquor must not be consumed off the licensed premises, it is not a breach of this authority if a patron takes away the unconsumed portion of wine left in a bottle purchased with the meal.
- (6) The consumption of liquor without the purchase of a meal must not be advertised or encouraged.
- (7) The licensed premises must appear to be a café, restaurant or eatery.
- (8) Subject to sub regulation (9), patrons must be seated when consuming liquor.
- (9) Patrons may stand while consuming liquor if:
 - (a) They are invitees to a private function held on the licensed premises; and
 - (b) A meal will be served to them during the function.
- (10) Patrons must be able to be served and eat food in all areas of the licensed premises where liquor is served during the hours of operation.

27. The Commission now turns to consider each of the s6(2) objectives:

- (a) *Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised.*

The Commission considers that the grant of a licence authorising liquor to be sold for consumption in a restaurant bar at these premises on the conditions set out at paragraph 26 above will not raise a substantial risk of causing harm or ill-health to people or a group of people by the consumption of liquor.

- (b) *Liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner.*

The Commission notes that the applicant holds eleven liquor licences interstate, and has received no evidence suggesting any non-compliance with any of those licences. The Commission considers that, if granted a licence on the above-

mentioned conditions, the licensee is likely to sell liquor in a responsible manner, and that its patrons would generally consume it in a responsible manner.

- (c) *Public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises.*

The Commission considers that public order and safety are unlikely to be jeopardised by the operation of the licence subject to restaurant bar operating conditions in a modern, purpose-built entertainment precinct located in a large suburban shopping centre.

- (d) *The safety, health and welfare of persons who use licensed premises must not be put at risk.*

The Commission does not consider that persons using the licensed premises would be exposed to a significant risk of harm.

- (e) *Noise emanations from licensed premises must not be excessive.*

Shopping centres and entertainment precincts are typically noisy places. That is one reason they are situated at a substantial distance from residential areas. Taking into account its location and context, the Commission does not consider that the noise emanating from this Burger Urge outlet is likely to be excessive.

- (f) *Business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school.*

Similarly, the Commission considers that the location and context of the premises is such as to effectively nullify this risk.

- (g) *A licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:*

(i) *By-laws made under the Local Government Act 2008; and*

(ii) *Provisions of or under the Planning Act 1999.*

~~The Commission is satisfied that the applicant has obtained the requisite approvals from the DCA for a “restaurant”, but the Commission has fixed a condition, as set out at paragraph 2 above, calculated to ensure that the DCA has approved or consents to the use of the premises as a “restaurant bar”.~~

The Commission is satisfied that the applicant has obtained the requisite approvals from the DCA for a “restaurant”. The Commission is informed and accepts that the DCA has not, as of 2 November 2020, amended its procedures to accommodate the range of new uses established by section 47 of the *Liquor Act 2019*, which commenced on 1 October 2019. The licensee bears any risk that may arise in the event that on some future occasion the DCA decides that the use of the premises as a restaurant bar is not permitted².

- (h) *Each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business.*

The Commission is satisfied that the applicant would appropriately manage and supervise its service staff. The applicant has supported its application with details of its proposed training program for management and staff.

- (i) *The use of credit in the sale of liquor must be controlled.*

No issues have been raised with the Commission that led it to be concerned in relation to this objective.

- (j) *Practices which encourage irresponsible drinking must be prohibited.*

No issues have been raised with the Commission that led it to be concerned in relation to this objective.

- (k) *It may be necessary or desirable to limit any of the following:*

- (i) *The kinds of liquor that may be sold;*
- (ii) *The manner in which liquor may be sold;*
- (iii) *The containers, or number or types of containers, in which liquor may be sold;*
- (iv) *The days on which and the times at which liquor may be sold.*

The Commission considers that this objective can be achieved by the imposition of the conditions set out at paragraphs 1, 2 and 26 above.

- (l) *It may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee.*

No issues have been raised with the Commission that led it to be concerned in relation to this objective.

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- (m) *It may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee.*

The Commission accepts the applicant's assertion that it does not propose to have entertainment on the premises, other than recorded background music.

- (n) *It may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.*

No issues have been raised with the Commission that led it to be concerned in relation to this objective.

- (o) *Any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.*

The Commission, noting that there is already a tavern operating in the Pavilions precinct, does not consider that the grant of a liquor licence to the applicant is likely to result in a significant increase in anti-social behavior within the precinct.

The impact on the community

28. In considering the impact of the decision on the local community, the Commission must have regard to five matters set out at section 6(3)(a) of the Act, and in addition apply the community impact assessment guidelines.

- (i) *The harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor.*

The Commission does not consider that there is a high risk of harm caused by excessive or inappropriate consumption of liquor from a restaurant bar in a designated entertainment precinct.

- (ii) *The cultural, recreational, employment or tourism impacts.*

The Commission considers that the business will have a positive recreational and employment impact on the community. The Commission notes that Burger Urge proposes to initially hire 40 staff, including three full time salaried employees. The applicant promotes a model of food production that emphasises the use of natural ingredients, sustainability and recycling. A feature of Burger Urge's operations is its promotion of activities such as board games and trivia nights, along with paired food and beverage (including alcoholic beverages) tastings.

- (iii) *The social impact in, and the impact on the amenity of, the locality of the premises or proposed premises.*

The Commission considers that the proposed premises will have a beneficial social impact on the neighbourhood, and add an innovative option to the range of dining, drinking and recreational activities available to members of the Palmerston community.

(iii) The density of existing liquor licences within the community area.

The applicant has identified 30 liquor licensees in the Palmerston area, the population of which is currently about 34,000, and increasing. Approximately nine of these licences are restaurants or other on-licence establishments which also provide meals. Seven of them are liquor merchants or stores, selling liquor for consumption off the premises. Six are clubs, providing liquor and in some cases meals to members and their guests. Three, including one located in the Gateway precinct, are taverns. The Commission considers that having regard to the density of licences in Palmerston, and in particular the density of on-licence establishments in the Gateway Shopping Centre, the grant of a licence to the applicant is unlikely to result in a significant adverse impact on the local community.

(v) The volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application.

The Commission does not consider that this factor is of great significance in the circumstances of this application.

(vi) Any other prescribed matter;

No such matters have been prescribed.

29. Section 6(3)(b) requires that the Commission also apply the community impact assessment guidelines. The Commission has done so.

30. Having regard to the Objects as set out in section 3 of the Act, and the foregoing, the Commission is satisfied that approval of the application meets the public interest and community impact test. The onus is on the applicant to so satisfy the Commission, and the applicant has discharged that onus.

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

NOTICE OF RIGHTS

32. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.

33. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.

34. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.

A handwritten signature in blue ink, appearing to be 'R. Goldflam', written over a horizontal line.

RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
4 November 2019
On behalf of Commissioners, Goldflam, Cannon and Stephenson

Amended 2 November 2020