

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR AN AUTHORITY

REFERENCE: LC2020/044

PREMISES: 33 Knuckey Street
DARWIN NT 0800

APPLICANT: Territory Tough Pty Ltd

NOMINEE: Edward McDonald James
Alexander Willem James

LEGISLATION: Section 52 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Elizabeth Stephenson (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 6 October 2020

DATE OF DECISION: 13 October 2020

Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (the Act) the Commission has determined to issue a small bar authority in respect of the premises of Territory Tough Pty Ltd (the Applicant) and the restaurant authority is now cancelled. The small bar authority is subject to the standard conditions as prescribed by Division 17 of the Liquor Regulations 2019.
2. The small bar authority is also subject to the special condition that, when open for business, a full meal must be available for purchase by patrons from Sunday to Thursday between the hours of 12:00 to 15:00 and 18:00 to 21:00 and on Friday and Saturday between the hours of 12:00 to 15:00 and 18:00 to 22:00.
3. The existing BYO and late night authorities continue to apply to this licence.

Reasons

Background

4. The Applicant is the holder of liquor licence number FLL1012 for the premises known as Good Thanks located at 33 Knuckey Street, Darwin. The licence has a restaurant authority, a BYO authority and late night authority attached to the licence. The premises have been open for some time for the sale and consumption of liquor.

5. On 2 July 2020, an application was lodged by Andrew Giles, HWL Ebsworth Lawyers on behalf of the Applicant for a new liquor authority to their existing liquor licence, being a small bar authority.
6. It was subsequently confirmed by the Applicant's solicitor that the Applicant was prepared to surrender the restaurant authority on the grant of a small bar authority but it wished to retain the BYO authority together with the late night authority permitting trade on Friday and Saturday until 02:00.
7. The Director of Liquor Licensing (the Director) did not require the Applicant or dual nominees, Edward James and Alexander James, to provide probity documentation in this application.
8. The Applicant has provided the following documents in support of the application:
 - Supporting document titled "Application for a new liquor licence authority" which includes a wide range of supporting material;
 - Community Impact Assessment;
 - Public Interest Responses;
 - ASIC company extract and business name registration.

Advertising and Consultation

9. The application was published in the NT News on Wednesday, 29 July 2020 and Saturday, 1 August 2020. The Applicant also displayed the required "green sign" at the premises of 33 Knuckey Street, Darwin and supplied two photographs of the sign erected in-situ and a signed Statement of Display.
10. The following stakeholders were notified of the application in accordance with section 56(4) of the Act and were invited to provide comment on the application:
 - a. the Chief Executive Officer ("CEO") of the Agency administering the *Public and Environmental Health Act 2011*;
 - b. the Commissioner of Police; and
 - c. the Chief Executive Officer, City of Darwin
11. There were no objections received from the public and no adverse comment from the Department of Health or City of Darwin.
12. The Northern Territory Police objected to the application on the basis that:
 - a. the current application poses a risk of harm from the excessive consumption of liquor;
 - b. there was a risk of noise disturbance to nearby residents; and

- c. the current limitation of liquor only being served ancillary to a meal was reasonable given the style, size and location of the premises.
13. The objection from NT Police was forwarded to the Applicant on 31 August 2020 inviting a response. The Applicant, via their legal counsel, provided a response on 7 September 2020.
14. On 15 September 2020, pursuant to section 52 of the Act, the Director referred this application to the Commission to fix a time and place for the hearing of the application.

The Hearing

15. The application was set down for hearing on 6 October 2020. Mr Ryan Sanders appeared for the Applicant. One of the nominees, Alexander James was also present to provide evidence on behalf of the Applicant. NT Police was represented by Senior Sergeant Mick Fields and Superintendent Angela Stringer. Mr Jeff Verinder appeared on behalf of the Director. The Commission is grateful for the assistance that was provided by all those who appeared.
16. The brief that had been provided to the Commission was admitted into evidence as Exhibit 1. No other documentary evidence was tendered. Mr James answered questions put to him by Commissioners and both Senior Sergeant Fields and Superintendent Stringer addressed the Commission on the concerns that NT Police held over the proposed change in authority.
17. Mr James assured the Commission that the Applicant would not be reducing the hours during which a full meal service was available. The restaurant side of the business had proved successful and they had been recognised nationally for the quality of their burgers. The Applicant now wanted to grow the business further and provide a bar service for those patrons who wanted to just drop in for a drink including allowing patrons to stand at the bar or in the small garden area to the rear of the premises.
18. Both nominees are involved in the Darwin music scene and have hosted a number of live music events on the premises over the past three years. Included within the application were a number of testimonials from local arts agencies. Hanna Illingworth of the Darwin Fringe Festival wrote:

“The space and energy offered by Good Thanks is perfect for our creative community all of whom flock to the authentic, good quality lounge room vibes that the business offers. Good Thanks is ultimately perfect for the incubation of culture, discussion and good times”.

19. Mark Smith from Music NT also provided a reference in which he stated:

“Good Thanks has been a welcome addition to the Darwin CBD providing a vibrant positive outlet for the local food scene. We have held events within the space and have held discussions over a period of time towards the potential of this space to become a hub for the music scene.

The potential to extend their existing licence to a bar licence will definitely work towards this end by enabling the business to increase their focus on offering a small bar service which leads to a new outlet for live music within the city which is very much needed”¹.

20. James Gough, the Acting Chief Executive officer of the Darwin Festival also provided a letter of support in which he said:

*“We regularly visit and promote Good Thanks as it is a great place to meet with like-minded people in the arts community and they always provide excellent and professional service with a variety of food and drink options that you cannot find anywhere else in Darwin”.*²

21. The Police representatives acknowledged they had initially thought that the application involved a late night authority which would permit trade until 04:00 which is in fact not the case. They expressed concerns over noise disturbance to nearby residential apartment complexes. However, as Mr James explained, the nearest apartment complex is the Kube and between these premises and those residents is the Stone House wine bar which has a very large licensed outdoor area which is potentially a much more likely source of noise disturbance than Good Thanks. Mr James also assured the Commission that any live music performances at his premises would be confined to indoors.
22. The prime concern of Police was the existing unacceptable level of alcohol related crime in Darwin. The Commission shares those concerns. However, Police did concede that small establishments such as these which cater for the music and art scene are less risky than the mainstream bars on Mitchell Street. Their concerns were also allayed to some extent by Mr James’ assurance that the service of food would remain a core aspect of this business.

Assessment of the Matter

23. In determining whether to issue an authority the Commission is bound by section 49(1) of the Act which provides:

The Commission may only issue a licence or an authority if satisfied 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.

24. Section 51(3) of the Act also provides:

A licensee who is applying for an authority is assumed to be a fit and proper person, in the absence of evidence to the contrary.

¹ Exhibit 1 p38

² Exhibit 1 p 39

25. There is no negative compliance history alleged against the Applicant and there is no suggestion by the Director in his referral of any evidence that the Applicant is no longer a fit and proper person, so the Commission is satisfied that the Applicant meets the requirements of section 49(1)(a) of the Act.

Is Issuing the Authority in the Public Interest?

26. Section 49(2) of the Act provides:

To determine whether issuing a licence or an authority is in the public interest, the Commission must consider how it would advance the following objectives:

- (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.

27. The Applicant has developed a business plan which contains a "Risk Assessment Management Plan" which details its commitment to the responsible service of alcohol.³ Having regard to this together with the Applicant's unblemished compliance record, and the evidence of Mr James at the hearing, the Commission is satisfied that the following objectives in section 49(2) related to the responsible service of liquor will be adequately met by this Applicant:- (b), (c), (d), (f), (g), (h) and (i).

28. During the course of the hearing the Applicant readily accepted a suggestion by the Commission that the small bar authority be subject to a condition that the Applicant continue to provide a full meal service until at least 21:00 on Sundays to Thursdays and 22:00 on Fridays and Saturdays. This has persuaded the Commission that the core of the existing business model will be retained under a small bar authority and that the risk of harm through the consumption of liquor will be minimised as required by objective

³ Exhibit 1 p34

49(2)(a). We are also satisfied that given the history of the operation of these premises and the nature of its clientele that there is no risk of any increase in anti-social behaviour as a result of approving the application.

29. The Commission also finds that there will be appreciable cultural, recreational and tourism benefits for the Darwin community through granting this application. The Applicant has garnered positive support for this proposal from a number of important local arts agencies. The application is in line with both the NT Government and City of Darwin policy initiatives to revitalise the city centre. Having regard to the objectives specified in section 49(2)(e) as well as those previously referred to, the Commission is satisfied that granting a small bar authority on the conditions proposed would be in the public interest.

30. Section 49(3) of the Act provides:

To determine whether issuing a licence or an authority would have a significant adverse impact on the community, the Commission must consider the following:

(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.

31. Having had regard to the fact that these premises are located in the Darwin CBD in an emerging alternative nightlife precinct, the Commission is satisfied that issuing a small bar authority will not have a significant adverse impact on the community.

32. Having been guided by the Purposes in section 3 of the Act, the Commission has determined that the application should be granted and that a small bar authority be issued on the terms and conditions set out at the commencement of this Decision Notice.

Notice of Rights:

33. Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by NTCAT and the following persons (*relevantly*) may apply to NTCAT for a review:

- in all cases – the Director;
- in the case of a decision regarding a licensee or a licensee's licence, authority or licensed premises – the licensee;
- in the case of a decision regarding an application – the applicant; and
- in the case of a submission, complaint or objection that was the subject of a decision – the person who made the submission, complaint or objection.

34. In accordance with the substance of section 31 of the Act any application for review of this decision must be lodged within 28 days of the date of this decision.



RICHARD COATES
PRESIDING MEMBER
CHAIRPERSON
13 October 2020

On behalf of Commissioners Coates, Stephenson and Corcoran