

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2021/009

APPLICANT: SGRD Cafe's Pty Ltd

PREMISES: The Locals Alice Springs
Shop 1, 11 Todd Street
ALICE SPRINGS NT 0870

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

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 23 March 2021

DATE OF DECISION: 26 March 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 SGRD Cafe's Pty Ltd (**the applicant**).
2. The licence will be issued with a restaurant bar authority authorising the sale of liquor to patrons of licensed premises that appear to be a café, restaurant or eatery for consumption on or in the premises with or without the consumption of food.
3. The conditions of the licence will be those authority conditions set out in Division 16 of the *Liquor Regulations 2019* (**the Regulations**).
4. The licensed premises is The Locals café/restaurant situated at 11 Todd Street Alice Springs comprising the entire internal area depicted in the plan titled "Proposed Floor Plan" at page 192 of the brief exhibited at the hearing of the application.
5. The permitted hours of operation of the licence are between 11:30 and 22:00 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.

6. The Licensee is authorised to operate the licence until 24:00 for a special event, provided that the Licensee gives written notice of the event to the Director of Liquor Licensing (**the Director**) at least two business days before holding the event.
7. After 22:00, liquor may only be sold, served or supplied to persons on the premises who are attending a special event of which the Director has been notified in accordance with the foregoing condition.
8. In accordance with section 85 of the Act, the term of the licence will be for fifteen years from the date of issue of the licence.
9. The licence will be issued immediately following the publication of this decision notice.

Reasons

BACKGROUND

The Application

10. The applicant is a newly established Australian Proprietary Company limited by shares held solely by its two directors, married couple Ms Pearl Randhay and Mr Rupinder Singh (**the nominees**), Australian citizens who since 2018 have owned and operated Piccolo's Café, a successful unlicensed café/restaurant located in the Alice Springs CBD hospitality, entertainment, retail and commercial precinct. The applicant plans to refit and renovate the premises, and to rename and expand the business to become a more up-market family friendly licensed restaurant with modern Australian cuisine and decor.

Consultation

11. As required by section 57 of the Act, notices of the application were published in the on-line Alice Springs News on 21 and 22 January 2021, and by way of a sign displayed at the site for 28 days.
12. In accordance with section 56 of the Act, notification was given to the Department of Health, NT Police and the Alice Springs Town Council. The Director also notified the Northern Territory Fire and Rescue Service.
13. No objections were received, and none of the consulted stakeholders submitted any comments adverse to the approval of the consultation.

The Licensee's record of compliance

14. Neither the applicant nor the nominees have previously held a liquor licence. Both nominees currently hold Responsible Service of Alcohol certification.

The referral

15. On 24 February 2021, pursuant to section 59 of the Act, the Director referred this 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 the first conveniently available date, 23 March 2021.

16. The Director provided a brief to the Commission with the referral (**the brief**), including the following documents:
 - a. Application for a liquor licence
 - b. Affidavits and Declarations of Associates pursuant to section 54 of the Act, deposited by Pearl Deep Randhay and Rupinder Singh
 - c. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act
 - d. Evidence of payment of application fee
 - e. ASIC company extract
 - f. Material in support of the character, qualifications and experience of Pearl Deep Randhay
 - g. Material in support of the character, qualifications and experience of Rupinder Singh
 - h. Nominees' financial and business records 2018 to 2020
 - i. Lease over the premises and associated documents
 - j. Business plan
 - k. Architectural drawings of proposed remodelling of the premises
 - l. Registration of Food Business certificate
 - m. Correspondence with stakeholders

The hearing

17. 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.
18. On 23 March 2021 the application proceeded as a public hearing. Ms Randhay and Mr Singh appeared on behalf of the applicant. Mr Wood appeared for the Director. The Commission thanks them all for their attendance and assistance.
19. The brief was tendered and admitted into evidence without objection.
20. Ms Randhay, on behalf of the applicant, gave oral evidence to the effect that negotiations between the applicant and the landlord of the premises are well advanced

for entry into a new lease over the premises with a term extendable at the option of the applicant for a period of 15 years.

21. Following the hearing, and at the request of the Commission, the Director provided the Commission with notices of the application that had been published on-line. On receipt of this material, Acting Deputy Chairperson Goldflam sought and obtained further information from Ms Randhay and Mr Singh regarding the proposed hours of operation of the licence.

ASSESSMENT OF THE APPLICATION

22. 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.
23. 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

24. 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.
25. The applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

26. 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.

27. The only associates of the applicant that have been disclosed are the two nominees, Ms Randhay and Mr Singh, who are the sole Directors, office-bearers and shareholders of the applicant.
28. Having had regard to the ample material tendered by the applicant attesting to the character, experience and qualifications of Ms Randhay and Mr Singh, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.
29. 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 applicant's premises

30. The premises have operated as a café/restaurant for many years. In the immediate vicinity there are other hospitality and entertainment premises, including the Todd Tavern, Alice Springs Cinema, The Goods Café and The Bakery. There is ample parking across the road.
31. The applicant informed the Commission that works are about to commence for a refit of the premises, to be paid for in part by the landlord (who is supportive of the liquor licence application), in part by the tenant, and in part by way of a Government COVID grant. The applicant expects that the works will be completed in May 2021. The applicant plans not to commence trading as a Liquor Licensee until the completion of the works.
32. 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.
33. 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

34. 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 two 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

35. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's Executive Officers and Secretary, Ms Randhay and Mr Singh, to be satisfactory.

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

36. The Commission assesses the applicant to be a fit and proper person to hold a licence.

Whether the Licensee's nominees are fit and proper persons to hold a licence

37. The applicant has nominated Ms Randhay and Mr Singh as the joint licence nominees. They both hold current RSA certification and have provided appropriate documentation of their reputation, character and work history. The Commission assesses them both to be fit and proper persons to hold the licence.

Public notice and consultation

38. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

39. The Commission commends the Director for taking the initiative to establish a website for the future publication of such notices. This will both save considerable expense for future applicants, and address the inconvenience of effecting public notification in towns such as Alice Springs where there is no longer a locally published print newspaper.

Whether issuing the licence is in the public interest

40. 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.

41. Having considered each of these objectives, and having particular regard to the restricted basis on which liquor will be served in the context of the applicant's operation of a restaurant, 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

42. 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;

43. 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
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	Are there any 'at-risk' groups or sub-communities within the locality? This may include – children and young people;

<p>availability and accessibility of an additional liquor outlet.</p>	<ul style="list-style-type: none"> • 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 • 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>
<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>	<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>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable)</p>

	<p>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?

44. 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.

45. 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”.

46. 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.

47. 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”.

48. In this instance, the Commission considers that the location of the premises in a non-residential area designed and used for entertainment, hospitality and commercial activity, is of particular significance in assessing the impact that issuing the licence will have on the community. The nearby Todd Tavern operates a liquor licence with a restaurant authority, takeaway authority, lodging authority, public bar authority and late night authority. The nearby Alice Springs Cinema operates a liquor licence with a special venue authority. There are no other licensed premises or restaurants in the immediate vicinity of the premises. The Commission considers that the issue of the licence is likely to enhance the amenity of the precinct.
49. 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 authority

50. The Commission has given careful consideration to issuing a restaurant authority instead of the restaurant bar authority as sought by the applicant (with the encouragement and support of the Director).
51. The applicant appeared to be under the misapprehension that if issued with a restaurant authority, patrons would only be permitted to purchase and consume liquor in conjunction with a full meal. The Commission informed the applicant that this is incorrect: a restaurant authority permits the sale, service and supply of liquor to anyone who is also consuming food on the premises, whether it be a full meal, a light meal, a snack or even just a complimentary bowl of nuts.
52. However, the applicant maintained its application to be issued with a restaurant bar licence, submitting that it does not wish to offer products such as peanuts, because this would entail a lowering of the high standard of fare and service it proposes to offer. Furthermore, the applicant submitted that it wishes to provide service to those patrons who stop off on their way to another venue and wish to purchase, for example, a cocktail or aperitif without any accompanying food.
53. The Commission accepts these submissions. The Commission had concerns that the Licensee might exploit the more lenient conditions attached to a restaurant bar licence to operate as a de facto bar. However, the Commission is satisfied that in the circumstances of this particular application, those concerns are addressed, having regard to the following considerations:
 - The lack of standing room inside the premises, which will be fitted out so as to provide seating for all patrons;
 - The relatively high price point that the Licensee will fix for liquor;

- The Licensee’s intention to cease trading relatively early (except for special events such as pre-booked birthday parties);
- The restriction of the area of the licensed premises to the interior of the restaurant (see below);
- The existence of a single public point of entry and exit to the premises; and
- The applicant’s clear and well-articulated plan to operate the premises as an upmarket family-friendly restaurant.

The term of the licence

54. On behalf of the Director, Mr Wood submitted that the licence should be granted in perpetuity. The Commission 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 take that course, and that the Commission is required to fix a definite term.
55. The Commission accepts the evidence of Ms Randhay that the applicant is likely to acquire a contractual right to occupy the premises for 15 years. Accordingly, the Commission has determined to fix a term of the licence for that period.

The extent of the licensed premises

56. During the hearing, the applicant submitted that the footprint of the licensed premises should be extended from the interior of the restaurant to include an adjacent area on the public footpath where the applicant currently has approximately four outside tables that are used by its patrons.
57. The outside area, the subject of this late submission was not clearly defined or delineated to the Commission. The Commission has not been informed of the attitude of the Alice Springs Town Council to the proposal to serve and consume liquor on a footpath that is apparently Council property. The Commission was not informed that the applicant proposes to secure, define or delineate the proposed outside drinking area by the installation of fencing, screening or other barrier. The proposed area is adjacent and open to a portion of Todd Mall open to vehicular traffic. Regrettably, Todd Mall is commonly frequented by indigent persons who importune diners and drinkers sitting at tables in Todd Mall. The proposed area would only accommodate a small proportion of the total number of patrons allowed on the premises. Having considered all these matters, the Commission has determined not to accept the applicant’s submission to include the external area in the footprint of the licensed premises.

The objects of the Act

58. 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.

59. 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.
60. 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.

Extension of time

61. Section 62 of the Act requires the Commission to make its decision in this matter by 19 March 2021, the date 28 days after the expiration of the objection period that commenced with public notification of the application. Although the Director processed the application rapidly, it was impracticable for the Commission to comply with this requirement, as is often the case. Section 318 of the Act permits the Commission to extend time for the making of this decision. The Commission has determined to extend time by seven days, to 26 March 2021.

NOTICE OF RIGHTS

62. 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.
63. 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.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
26 March 2021

On behalf of Commissioners Goldflam, Reynolds and McFarland