

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2021/020

APPLICANT: Blade Davies-Roundhill

PREMISES: ZERO870
21 Hartley St
ALICE SPRINGS NT 0870

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

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

DATE OF HEARING: 22 July 2021

DATE OF DECISION: 17 September 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 not to issue a licence to Mr Blade Davies-Roundhill (**the applicant**).
2. Section 21 of the Act provides that if the Commission is of the opinion that in order to protect commercial-in-confidence information it is not appropriate to conduct a hearing in public, it may conduct a hearing in private or by way of written submissions. In this instance, pursuant to section 21 of the Act, the Commission determined to conduct part of the hearing in private, and was also provided with private written submissions.
3. In these circumstances, the Commission has determined to issue a redacted version of this Decision Notice for the purposes of publication.

Reasons

The Application

4. The applicant seeks a liquor licence with a public bar and a late night authority trading on Thursdays, Fridays and Saturdays from 21:00 hours to 02:00 hours the following morning on premises in the Alice Springs Central Business District that formerly operated as a public bar that became defunct several years ago. The applicant proposes to refurbish and reopen the premises as “ZERO870”, a nightclub with DJs

playing dance music. This proposed smoke-free venue is aimed at young adults, with a particular focus on those who wish to party without drinking much if any alcohol. Accordingly, the applicant submitted that ZERO870 would promote the sale of zero and low-alcohol products, although it would also sell a range of full-strength beers, wines and spirits.

Consultation

5. As required by section 57 of the Act, notices of the application were published on the Department of Industry, Tourism and Trade website, and displayed at the site of the proposed premises.
6. In accordance with section 56 of the Act, notification was given to the Department of Health (**DOH**), NT Police and the Alice Springs Town Council (**ASTC**). Northern Territory Fire and Rescue Service (**NTFRS**) was also notified of the application.
7. The Director informed the Commission that:
 - DOH responded, stating that it had no adverse comment.
 - NT Police objected to the application.
 - ASTC did not respond to the application.
 - NTFRS did not respond to the application.

The objector

8. The police objected on the grounds, that issuing the licence would adversely affect the amenity of the neighbourhood of the proposed licensed premises, and health and public safety in the community of the proposed licensed premises.

The licensee's record of compliance

9. The applicant has never previously been a liquor licensee.

The referral

10. On 1 June 2021, pursuant to section 59 of the Act, the Director of Liquor Licensing (**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 22 July 2021.
11. 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. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act

- d. Evidence of registration of business name
- e. Evidence of applicant's identity, experience, character and qualifications
- f. Evidence of applicant's financial circumstances
- g. Heads of agreement of a proposed lease over the premises
- h. Applicant's risk management and security camera plan policies
- i. Business plan
- j. Site plan
- k. Covid-19 Safety Plan

The hearing

- 12. 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.
- 13. On 22 July 2021, the application proceeded as a public hearing. When commercial-in-confidence matters were raised, the hearing continued in private. The applicant appeared in person, Mr Wood appeared for the Director, and Superintendent Nobbs and Ms Nolan appeared on behalf of NT Police. The Commission thanks them all for their attendance and assistance.
- 14. The brief was tendered and admitted into evidence without objection. The applicant conceded that the objector was permitted by the Act to raise its objection and that the objection was on grounds permitted by the Act. Those concessions were appropriate.
- 15. At the conclusion of the hearing, the Commission formed the view that it was necessary to obtain further information in order to make a proper assessment of the application, and, accordingly, pursuant to section 59(5) of the Act, the Commission directed the applicant to provide further material in relation to his business plan. The Commission also made directions providing the Director with an opportunity to make further written submissions in response to any additional material produced by the applicant.
- 16. On 26 July 2021, the applicant filed further documentary material (**the applicant's supplementary material**) in support of the application, comprising:
 - a. A letter from Mr Patrick Honan of Moaz Security dated 23 July 2021
 - b. A three page document titled "ZERO870 Set up costs"
 - c. A statutory declaration by Mr Davies-Roundhill dated 23 July 2021
 - d. An extract of company 2019 and 2020 tax returns for the applicant's road transport business

On 6 August 2021, Mr Wood filed written submissions in response.

Extension of time

17. Pursuant to section 60(2)(c) of the Act, the Commission was required to make its decision in this matter by 25 June 2021, the date 28 days after the time allowed for the applicant to respond to objections to the application expired. It was not practicable for the Commission to make its decision by that date, as it did not receive a referral of the application from the Director until 1 June 2021, and the earliest convenient date to conduct the hearing was 22 July 2021. In the course of the hearing, the Commission formed the view that in order to properly assess the application it required additional material. The applicant provided further material, and the Director's material in response was received by the Commission on 6 August 2021.
18. The delay in delivering this decision notice between 6 August 2021 and 17 September 2021 is not attributable to the parties. Assessment of this matter was to some extent complicated by another application currently under consideration by the Commission for a licence and late-night trading authority at Bojangles, which is also a former licensed venue in the Alice Springs CBD.
19. In the circumstances, pursuant to section 318 of the Act the Commission has in the exercise of its discretion decided to extend time for the delivery of this decision to 17 September 2021.

The statutory provisions

20. Section 59(3)(f) of the Act requires that when considering an application for a licence or an authority, the Commission must consider "the financial stability, general reputation and character of the applicant." In addition, section 59(3)(i) requires the Commission to consider "whether the applicant... is a fit and proper person to hold a licence". There appears to be at least some overlap between these two matters.
21. After considering the application, the Commission is required by section 60 of the Act to decide whether to issue or refuse to issue the licence, in accordance with section 49. Section 49(1) provides that the Commission may only issue a licence if satisfied that:
 - (a) The applicant is a fit and proper person; and
 - (b) Issuing the licence is in the public interest; and
 - (c) The licence will not have a significant adverse impact on the community.
22. The term "fit and proper" is not defined by the Act. In *Qadir v Department of Transport* [2015] NTSC 86, Kelly J stated, at [52]:

A decision about whether an applicant is a "fit and proper person" for a particular role or purpose requires a consideration of the qualities necessary to fulfil the role or purpose. It would also generally require some consideration of the person's moral integrity and rectitude of character as well as the applicant's knowledge, ability and honesty as it relates to the role in question.

23. As stated above, there is an express requirement that the Commission consider the applicant's reputation and character, and that requirement is set out in conjunction with a requirement that the Commission also assess the applicant's financial stability. Obviously, consideration of whether an applicant for a liquor licence is a fit and proper person must include an assessment of the reputation and character of the applicant, which go to the applicant's integrity, rectitude and honesty.
24. Likewise, in the view of the Commission, consideration of an applicant's financial stability is also required in order for the Commission to determine whether or not it is satisfied that the applicant is a fit and proper person. In some but perhaps not all cases, financial stability will go to knowledge and ability. In any case, however, the Commission considers that financial stability is one of "the qualities necessary to fulfil the role or purpose" of a liquor licensee.
25. Section 49(2) sets out ten objectives that the Commission is required to consider when determining whether the issue of a licence is in the public interest. The Act does not expressly provide that the list of objectives in section 49(2) is intended to be exhaustive. None of the listed objectives expressly refers to the financial stability of an applicant, although section 49(2)(e) requires the Commission to consider how the licence would advance the objective of increasing cultural, recreational, employment or tourism benefits for the local community area. The Commission considers that consideration of an applicant's financial stability may be indirectly relevant to this objective: if a licence is issued to a person whose business subsequently fails because of the licensee's lack of financial stability, this objective will not have been advanced, and the public interest may not have been served.
26. Similarly, section 49(3) sets out an apparently non-exhaustive list of ten matters the Commission is required to consider to determine whether the licence would have a significant adverse impact on the community. Also similarly, none of the listed matters expressly refers to the financial stability of the applicant, although the matter set out at section 49(3)(e) is "the effect on culture, recreation, employment and tourism". In the view of the Commission, the financial stability of an applicant is usually of minor, if any, relevance to a determination of whether the issue of a licence would have a significant adverse impact on the community.
27. When performing its function of deciding whether to issue or refuse to issue a licence, the Commission is required by section 3(4) of the Act to do so in a way consistent with the primary and secondary purposes of the Act.
28. The purposes of the Act are set out in section 3, as follows:
 - (1) The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.
 - (2) The secondary purposes of this Act are:
 - (a) To protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor; and

- (b) 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
- (c) To facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and
- (d) To regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.

29. The Commission considers that the requirement to assess the financial stability of an applicant is relevant to the purposes of the Act as set out in section 3(2)(b) and 3(2)(c): to issue a licence to an applicant lacking financial stability may be inconsistent with both the responsible development of the liquor industry and stimulation of the tourism and hospitality industries.

30. For the above reasons, the Commission considers that following consideration of the financial stability of an applicant, it may refuse to issue the licence on the basis that the Commission:

- Is not satisfied that the applicant is a fit and proper person;
- Is not satisfied that issuing the licence is in the public interest;
- Is not satisfied that the licence will not have a significant adverse impact on the community; and/or
- Considers that to issue the licence would not be consistent with the purposes of the Act.

31. The Act does not define “financial stability”. The Macquarie Dictionary defines “stability” as “firmness of position”. If an inquiry into the firmness of an applicant’s financial position results in an assessment by the Commission that it is not satisfied that the applicant has the financial means, resources, experience, knowledge, skills and ability to successfully establish and then continue to operate the proposed licence, then having regard to the foregoing analysis it would be open to the Commission to refuse the application on that basis alone.

32. In its 2019 decision refusing an application for a liquor licence by James Ellis Pty Ltd for a small late-night whiskey bar in Darwin (“**the Uncle Tony’s Bar decision**”),¹ the Commission, while noting that it had no concerns regarding the general reputation and character of the principal officers of the applicant corporation, was not satisfied that the applicant “has sufficient financial resources or experience within the liquor industry to embark upon a venture such as is proposed”. It is noted that the Uncle Tony’s Bar decision was made under the *Liquor Act 1978*, and was also based on other grounds. However, the Commission considers that the approach taken to the issue of financial stability in the Uncle Tony’s Bar decision is consistent with the approach now taken, and that the two applications fall to be determined within statutory frameworks which are, for the purpose of this matter, substantially similar.

¹ Northern Territory Liquor Commission, *Application for a Licence* (2019/072), delivered 17 July 2019

33. A late night authority is classified as “very high risk” in Schedule Two of the *Liquor Regulations 2019*. The Director submitted that the Commission should apply “a heightened level of scrutiny” to its assessment of an application for a licence with a very high-risk category authority. The Commission accepts this submission.

Assessment of the application

34. Having considered the material provided to it, the Commission finds that the applicant has a good general reputation and is of good character. The Commission heard no evidence or submissions to the contrary.
35. However, having carefully considered the evidence and submissions regarding the applicant’s financial stability, the Commission is not satisfied that the applicant has the financial means, resources, experience, knowledge, skills and ability to successfully establish and operate the licence. As a consequence, for the purpose of section 49(1) of the Act the Commission is not satisfied in this instance that the applicant is a fit and proper person, and the Commission is not satisfied that issuing the licence would be in the public interest.
36. Accordingly, the Commission must refuse to issue a licence to the applicant.
37. The Commission has had regard to the purposes of the Act, and considers that its decision has been made in a way consistent with those purposes.
38. Section 59 of the Act also requires the Commission to consider a broad range of other matters. The Commission has given those matters due consideration, but in light of its decision to refuse to issue the licence for the reasons set out above, it is unnecessary to make findings in relation to the objections raised by NT Police that issuing the licence would adversely affect both the amenity of the neighbourhood and public safety. For the same reason, the Commission considers that it is unnecessary to make specific findings in relation to the other public interest objectives or to the community impact matters set out at section 49 of the Act.

The applicant’s financial stability

39. On the basis of evidence adduced by the applicant, the Commission is satisfied that in March 2021, when the applicant submitted his application, he had combined net assets of in the order of \$██████, including \$██████ in the bank, and a net annual income of about \$██████, after the deduction of daily living expenses.
40. The applicant has provided a credit report, but the Commission accepts the Director’s submission that little weight should be given to it, because it provides only very basic information.
41. The brief included a Business Plan submitted by the applicant setting out the proposed model of service in detail, but lacking any proper assessment of establishment and operational costs.
42. The applicant’s supplementary material estimates that about \$██████ will be required to “open the doors” of the premises. Even having regard to the fact that he does not intend to provide food at the premises, and will therefore not be required to incur the expense of renovating the existing derelict kitchen area, and assuming that it is

intended that ZERO870 will have spartan decor and sparse furnishings, the Commission considers that this amount is substantially less than would normally be required to fit out new premises.

43. The applicant gave oral evidence of a proposed agreement with the proprietor of the premises to provide him with free rent for [REDACTED]. However, this is not supported by independent evidence, and the Commission approaches this claim with some caution.
44. In his supplementary material, the applicant estimates operational expenses of about \$[REDACTED] a week, and a “break-even” number of patrons at [REDACTED] per night, based on the assumption that patrons will purchase on average [REDACTED] drinks at \$[REDACTED] per drink.
45. The Director submits that the applicant’s calculations only take into account staff and security costs up until proposed closing time. If allowance is made for the actual hours staff would be required to work, and assuming the cost of goods sold (COGS) is 30% (the applicant did not state how much he had allowed for COGS), on the applicant’s estimates of operational costs and assumptions of patron behaviour, the Director submits that the break-even point would actually be [REDACTED] patrons per night. The Commission accepts the Director’s submissions and calculations on this point.
46. The Commission also accepts the Director’s submission that the applicant’s estimates of \$[REDACTED] for annual cleaning costs and \$[REDACTED] for annual DJ hire and audio equipment maintenance are unrealistically low.
47. The applicant has no experience operating a nightclub, which is, as noted above, would be trading with an authority categorised as “very high risk”. The applicant has no management experience in the hospitality industry. He would be personally liable for operational costs such as labour, stock, consumables and general operational expenses, and accordingly his personal financial position would be more exposed than if the applicant were a body corporate rather than a natural person. In these circumstances, the Commission considers that there is a substantial risk that if the licence were issued and the applicant commenced to trade, the licensee would experience serious financial stress. The Commission considers, as the Director has submitted, that this would in turn place pressure on a licensee to “push the boundaries and possibly breach their obligations”.
48. Several former late-night venues in Alice Springs, including The Cage, Melankas, the Simpsons Gap Bar and, most recently, Bojangles, were closed down after becoming associated with repeated incidents of anti-social behaviour, irresponsible trading practices, accidental injury and/or violence. Bearing this troubled history in mind, the Commission approaches with particular caution its task of determining whether a fresh application for a late-night authority in this locality would be in the public interest.
49. The Commission commends the applicant for developing a service model aimed at reducing the pattern of harmful drinking that has long been a prominent feature of late-night venues in Alice Springs. However, ultimately, the Commission considers that the applicant’s business model is insufficiently robust, rigorous and realistic to satisfy the Commission that the applicant, despite being of good reputation and character, is a fit and proper person for the purpose of section 49(1)(a) of the Act. Furthermore, the Commission is not satisfied that issuing the licence is in the public interest.

50. Accordingly, the application is refused.

Notice of rights

51. 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.
52. 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, the applicant and NT Police.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
17 September 2021

On behalf of Commissioners Goldflam, Lewis and McFarland