

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**AMENDED<sup>1</sup> DECISION NOTICE**

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**MATTER:** APPLICATION FOR LIQUOR LICENCE

**REFERENCE:** LC2021/027

**APPLICANT:** SGRD Café Pty Ltd

**PREMISES:** Bojangles Saloon and Dining Room  
80 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 Lewis (Health Member)  
Ms Christine Hart (Community Member)

**DATE OF HEARING:** 13 August, 17 September 2021

**DATE OF DECISION:** 29 September 2021

**NOTE:** ON 8 JUNE 2022 THE NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL SET ASIDE THIS DECISION AND SUBSTITUTED ITS OWN DECISION: see *SGRD Pty Ltd v Northern Territory Liquor Commission & Director of Liquor Licensing for the Northern Territory* (NTCAT File No: 2021-03381-CT)

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**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 refuse to issue a licence to SGRD Café Pty Ltd (**the applicant**).

**Reasons**

**BACKGROUND**

**The application**

2. Bojangles Restaurant and Saloon, with its wild-west-in-the-outback themed décor, has been an iconic Alice Springs entertainment venue for decades.

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<sup>1</sup> This Decision Notice was amended on 8 November 2021 to correct an error in the name of the Applicant, by omitting “SGRD Café Pty Ltd” and substituting “SGRD Pty Ltd”.

However, Bojangles closed on 24 March 2020 because of COVID-19 restrictions, and is yet to re-open: on 11 January 2021, following a series of serious breaches of the Act by the then licensee, the Commission cancelled the Bojangles liquor licence and disqualified the licensee from holding a licence for a period of ten years.<sup>2</sup>

3. By this application, a new licensee with no connection to the previous licensee seeks to re-open Bojangles as a family friendly contemporary pub offering breakfast, lunch and dinner, an extensive menu, a wide range of drinks, and evening and late-night entertainment.

### **The applicant**

4. The applicant is an Australian Proprietary Company registered since 2018. Ms Pearl Randhay is the applicant's sole Director and shareholder, and the Company Secretary. Ms Randhay is also a nominee of a liquor licence and restaurant bar authority recently issued by the Commission to SGRD Café's Pty Ltd over Alice Springs premises known as "The Locals" (formerly Piccolo's Café), which Ms Randhay has owned and operated with her husband Mr Rupinder Singh, since 2018. Both Ms Randhay and Mr Singh are Australian citizens.

### **Consultation**

5. As required by section 57 of the Act, notices of the application were published on-line on 15 and 19 May 2021, and displayed at the premises.
6. The Director of Liquor Licensing (**the Director**) notified the Department of Health (**DOH**), NT Police and the Alice Springs Town Council of the application. The Director also notified the Northern Territory Fire and Rescue Service (**NTFRS**).
7. The Director informed the Commission that:
  - DOH did not oppose the application.
  - NT Police objected to the application.
  - The Alice Springs Town Council did not respond. However, the applicant provided letters of support for the application from the then Mayor, the then Deputy Mayor and another member of the Council.
  - NTFRS stated it would liaise directly with the applicant regarding the permitted number of patrons in the event that the licence were granted.

### **The objectors**

8. In addition to NT Police, two further objections were received, from Mr Robert Cowan (the nominee of adjoining licensed premises, the Rock Bar) and Mr Patrick Honan, the proprietor of an Alice Springs based private security firm.

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<sup>2</sup> Northern Territory Liquor Commission, *Disciplinary action pursuant to Liquor Act and transfer of liquor licence application* (LC2020/058 and LC2020/052), 11 January 2021.

## The licensee's record of compliance

9. The applicant has only been trading as a liquor licensee for a brief period, as The Locals did not open for business until May 2021. No significant instances of non-compliance with the Act or licence conditions have been alleged in that period.
10. For about 18 months until mid 2016 the proposed nominee, Ms Randhay, managed the Eldorado Motel in Tennant Creek, which has a licensed restaurant. Ms Randhay was not the licence nominee, and was not responsible for the day to day operation of the licence, but during her period of management no issues of non-compliance were reported.

## The referral

11. On 15 July 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 13 August 2021.
12. The Director provided the following documents to the Commission with the referral (**the brief**):
  - a. Application for liquor licence with public bar, BYO and late night authorities
  - 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. ASIC company extracts
  - e. Letters of recommendation for Ms Randhay and support for the application
  - f. Documents evidencing Ms Randhay's experience, qualifications and character
  - g. Documents evidencing the financial circumstances of Ms Randhay
  - h. Applicant's in-house policies and security management plan
  - i. Applicant's business plan
  - j. Lease and landlord's letter of support
  - k. Various registrations and plans
  - l. Correspondence with objectors and stakeholders

## The hearing

13. 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.
14. On 13 August 2021 the hearing of the application commenced as a public hearing. Ms Randhay appeared on behalf of the applicant with Mr Singh. Mr Wood appeared for the Director. Superintendent Nobbs and Ms Nolan

appeared for the NT Police. Mr Honan, an objector, attended. Mr Cowan, an objector, was unable to attend, but his business partner, Mr George, attended on his behalf. Also in attendance was Ms Ventura-Del Giacco, the proprietor of the premises. The Commission thanks them all for their attendance and assistance.

15. The brief was tendered and admitted into evidence without objection.
16. The Commission heard oral evidence from the applicant, Ms Ventura-Del Giacco, Superintendent Nobbs, Mr George and Mr Honan.
17. In accordance with section 21 of the Act, the Commission, having formed the view that because of the need to protect commercial-in-confidence information the hearing should continue in private, adjourned the hearing to 17 September 2021, on which date the Commission admitted into evidence three additional documents tendered by the applicant, namely an updated Business Plan, a Cash Flow Forecast and an updated Security Plan.
18. At the conclusion of the hearing on 17 September 2021 the Commission made its decision to refuse the application, and reserved its reasons. Those reasons now follow.

## **ASSESSMENT OF THE APPLICATION**

19. In accordance with section 59 of the Act, the Commission has considered:
  - a. the applicant's affidavit required by section 54;
  - b. the objections to the application made under section 61;
  - c. the responses provided by the applicant under section 62;
  - d. 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;
  - e. the financial stability and business reputation of the applicant, a body corporate;
  - f. the general reputation and character of the secretary and executive officers of the body corporate;
  - g. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;
  - h. if the Commission considers it appropriate, whether each associate of the applicant is a fit and proper person to be an associate of a licensee.
20. In accordance with section 49 of the Act, the Commission has 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**

21. 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.
22. The applicant has provided extensive documentation regarding its policies, activities, financial circumstances and plans.

## **The applicant's associates**

23. 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.
24. Ms Randhay intends to manage the business, and her husband intends to manage the kitchen operations. The Commission considers that Ms Pearl Randhay and Mr Rupinder Singh are associates of the applicant for the purpose of section 55, and that it is appropriate to determine whether each of them is a fit and proper person to be an associate of the applicant.
25. Having had regard to the ample material tendered to the Commission attesting to the character, experience and qualifications of Ms Randhay and Mr Singh both in the instant application and in their previous application for a liquor licence for The Locals, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.
26. 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 objections and the replies**

27. Section 61(4) of the Act prescribes the persons who are entitled to make an objection. The applicant properly conceded and the Commission is satisfied that Superintendent Jody Nobbs, in his capacity as a police officer, is a valid objector. The applicant properly conceded and the Commission is satisfied that Mr Cowan, being the occupier of land in the neighbourhood of the proposed licensed premises, is a valid objector. The applicant properly conceded and the Commission is satisfied that Mr Honan, being a person who works in the neighbourhood of the proposed licensed premises, is a valid objector.
28. Section 61(2) of the Act prescribes the grounds on which an objection may be made. The Commission is satisfied that the objections made by the three objectors are based on a permitted ground, namely that the issue of the licence would adversely affect public safety. The objection by NT Police is also based on a further permitted ground, that the issue of the licence would adversely affect the amenity of the neighbourhood.

29. The NT Police objection focussed on the high prevalence of incidents emanating from Bojangles requiring the attendance of police in the two years prior to the closure of the premises in March 2020. Police noted that over the four years to that date, Bojangles accounted for over 20% of the total incident responses in the precinct within which Bojangles, the Rock Bar, Montes, the Alice Springs Town Council, the 24 Hour Store and KFC Alice Springs are located (**the precinct**).
30. Officer Nobbs is the Superintendent of the Crime Prevention and Engagement Division attached to the Southern Command, and the Commission accepts his authority and expertise to speak on behalf of NT Police in relation to these matters. In his written objection, he stated “the applicant’s submission offers no material difference to the previous models operated under past iterations of the licences... the granting of a new liquor licence on a substantially similar business model creates an unacceptable risk that the same social impacts and adverse effects on the amenity of the neighbourhood will result.” In his oral evidence, Superintendent Nobbs said that the precinct is not conducive to late-night trading.
31. Mr Cowan’s written objection drew the Commission’s attention to the “huge bottleneck of patrons on Todd Street after 2:00 am creating the issue of Public Safety, specifically on Friday and Saturday nights.”
32. Mr Honan’s objection was similar in substance to Mr Cowan’s. He supported the grant of a liquor licence to Bojangles without a late night authority.
33. On behalf of the applicant, Ms Randhay provided a written response to the objections. She noted the increase in alcohol-related offending in Alice Springs since the imposition of COVID-19 pandemic restrictions, and contended that it is “better to have people enjoy alcohol outside the home in a well-run license premises than drinking takeaway alcohol to excess in the home”. Ms Randhay stressed that if granted the licence, the applicant would operate the premises responsibly, lawfully and safely, unlike the previous licensee. Ms Randhay provided a letter of support from Mr Morgan Cunningham, the Operations Manager of Talice Security Service, asserting that his firm, which it is proposed will provide security services to the applicant, “has the training and capacity available to ensure the safe dispersal of crowds at 2:00 am”. Ms Randhay also provided letters from Mr Paramjit Sandhu, a Director of Alice Springs Taxis, and four other taxi operators asserting that there are sufficient taxis and drivers in Alice Springs to accommodate demand for transport at 2:00 am in the event that Bojangles is permitted to trade until that time.
34. In the course of the hearing, the applicant adduced evidence to support its contention that the objections of Mr Cowan and Mr Honan were primarily motivated by their own commercial interests rather than a concern for public safety. If the licence were granted, Bojangles would be in direct competition with its next-door neighbour, the Rock Bar, which is owned by Mr Cowan and his business partner Mr George. If the licence were granted, the licensee would engage the services of Talice Security Services, a direct competitor of Moaz Security Pty Ltd, which is owned by Mr Honan. The Commission accepts the

force of these submissions, and accordingly has determined to give limited weight to the objections of Mr Cowan and Mr Honan.

35. The Commission does however consider that the objection by NT Police is of substantial importance for the determination of the application, as will be discussed later in these reasons.

### **The suitability of the applicant's premises**

36. Bojangles has operated (albeit with intermittent periods of closure) as a bar and restaurant for a lengthy period. In the past it has been successful and popular, but by the time it shut its doors in March 2020, it had become a venue where unsafe, excessive and harmful drinking was commonplace. The Commission accepts that in the period prior to its closure, Bojangles had been badly managed, which was a major contributor to its decline.
37. Despite its current state of dilapidation, which the Commission is satisfied the applicant has the means to remedy, the premises provide substantial indoor and outdoor areas suitable for socialising, eating and drinking, and designed and equipped for that purpose.
38. The premises are well-equipped with a CCTV system.
39. The premises are situated in a hospitality and entertainment precinct in the Alice Springs CBD. There are nearby taxi ranks, and sufficient public parking. However, as police have highlighted, the precinct has become in recent times a hotspot for violence and anti-social behaviour, particularly in the early hours of the morning. This was graphically, albeit sensationally, depicted in a segment broadcast nationally on the Channel 9 network program *A Current Affair* in March 2021, titled "Anarchy in Alice Springs", showing disturbing scenes of late night violence on the Alice Springs Town Council lawns immediately across the road from Bojangles<sup>3</sup>.
40. Following police attendance at eleven incidents in the immediate vicinity of the Rock Bar next door to Bojangles between 1 and 28 August 2021, culminating in a large scale disturbance including simultaneous incidents of fighting amongst groups and a number of assaults on security guards at the premises at around 2:00 am on 28 August 2021, the Commissioner of Police, pursuant to section 258 of the Act, suspended the licence of the Rock Bar for 48 hours on the grounds that a breach of the peace and a threat to public safety had occurred or was likely occur in the vicinity of the Rock Bar.
41. In the course of the hearing, Mr Wood informed the Commission that he had attended the precinct at around 2.00 am on Saturday 11 September 2021. He described what he saw as "appalling". Mr Wood said there were carloads of people arriving to join the fights at 2:15 am, and patrons on the street from the Rock Bar, as well as from Epilogue and Uncles (two other nearby licensed

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<sup>3</sup> Bojangles was closed at the time these scenes were filmed, and clearly, none of the participants in these incidents had been drinking at Bojangles.

venues). The Commission accepts the account of these events given by Mr Wood, who is a highly experienced senior officer of Licensing NT.

42. The Commission considers that Bojangles would be suitable premises for a restaurant, bar or pub during the day and evening. However, having considered the matters described above, the Commission shares the opinion expressed by Superintendent Nobbs that the precinct is not currently conducive to late-night trading. Accordingly, the Commission does not consider that the applicant's premises, located as they are in the heart of the precinct, to be suitable for late-night trading with a liquor licence.

### **The financial stability and business reputation of the body corporate**

43. The applicant is a Company that does not appear to have yet conducted substantial business. To assess the applicant's stability and reputation, the Commission has examined the stability and reputation of the applicant's associates, Ms Randhay and Mr Singh. The Commission has been provided with sufficient material to satisfy it that Ms Randhay and Mr Singh are financially stable and enjoy a good business reputation. Accordingly, the Commission considers that the applicant's financial stability and business reputation are satisfactory.

### **The general reputation and character of the applicant's secretary and executive officers**

44. Having been provided with appropriate evidence regarding her reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officer and secretary, Ms Randhay, to be satisfactory.

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

45. 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**

46. The applicant has nominated Ms Pearl Randhay as the licence nominee. The Commission assesses Ms Randhay, who holds current RSA certification and has provided appropriate documentation of her reputation, character and work history, to be a fit and proper person to hold the licence.

### **Public notice and consultation**

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



## Whether issuing the licence is in the public interest

48. Section 51 of the Act provides that the applicant bears the onus of satisfying the Commission that issuing the licence is in the public interest.
49. 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.
50. The Commission accepts that the applicant, if issued with a licence, would be likely to promote objectives (e), (f), (g) and (h) above. As is clear from the above discussion, however, in the circumstances of this application, the Commission is particularly concerned about objectives (a), (b), (c), (d) and (j) above.
51. As noted above, there is concern about what has been described as the “huge bottleneck of patrons on Todd Street after 2:00 am creating the issue of Public Safety, specifically on Friday and Saturday nights.” The Commission accepts the applicant’s estimate that up to 500 patrons can be accommodated at the premises. This is considerably more than the capacity of any of the other late-night venues in the neighbourhood, only two of which, the Rock Bar and Epilogue, appear to regularly stay open until 2:00 am.

52. On the one hand, the objectors have submitted that the operation of another large venue closing at 2:00 am would aggravate the existing problems in the precinct. The result, it is argued, would be more people and in particular, more intoxicated people spilling onto the streets, leading to an increased risk of public disorder, dangerous behaviour, anti-social conduct and harm.
53. Superintendent Nobbs' evidence was that another late-night licensed venue in a high-risk location would have an impact and strain police and emergency services. He said that crashes, assaults, injuries and deaths are at extremely high levels, and that there is an upwards trend of harm.
54. The Commission readily accepts that alcohol-related harm in Alice Springs is on the rise. In the twelve months to 31 July 2021, alcohol related assaults as recorded by police increased by 8.7% over the previous 12 months.<sup>4</sup> Perhaps even more concerning, the alcohol related assault rate per 100,000 in Alice Springs, which rose by a similar margin over the same period, is more than double the equivalent rate in Darwin. Even allowing for the fact that most alcohol-related harm is associated with the consumption of takeaway liquor, and that these statistics are for the town as a whole, and not confined to the precinct, they satisfy the Commission that the dismal picture painted by Superintendent Nobbs is accurate. That said, however, as Superintendent Nobbs observed, the current uptick in alcohol-related harm is coming off an unusually low base, as alcohol consumption and associated harm fell as a result of the COVID lockdown between March and August 2020, and may have been exacerbated by the increase in welfare payments (itself a temporary COVID response) in the second half of 2020.
55. On the other hand, the applicant submits that issuing a licence to Bojangles will not add to the problem of "the huge bottleneck", but alleviate it, in two ways. Firstly, an additional outlet would reduce some of the current pressure by mitigating the risk of concentrating too many intoxicated patrons into a narrow space, both when they are queuing to get into the Rock Bar from midnight onwards, and when they are leaving the premises at around 2:00 am. Secondly, the applicant submits that Bojangles would be managed more effectively and responsibly than its competitors, and that accordingly the exit of its patrons at closing time would be managed more safely.
56. One of the measures the applicant proposes to take is to institute a 12:30 am "lockout", by refusing to admit new patrons after that time. Although the Commission accepts that this measure is well-intentioned, the Commission has some doubts about how effective it would be. As the authors of a recent Australia review of research into this measure concluded:

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<sup>4</sup> NT Police, Fire and Emergency Services, *Alice Springs Crime Statistics*, accessed at <https://pfes.nt.gov.au/police/community-safety/nt-crime-statistics/alice-springs>

There is not good evidence that lockouts prevent alcohol-related harm, in contrast to what is known about stopping the sale of alcohol earlier, for which there is evidence of effectiveness.<sup>5</sup>

57. By contrast, there is strong evidence that earlier closing times do reduce alcohol-related harm:

A series of robust, well-designed studies from Australia demonstrate that reducing the hours during which on-premise alcohol outlets can sell alcohol late at night can substantially reduce rates of violence. Increasing trading hours tends to result in higher rates of harm.<sup>6</sup>

58. As stated above, in objecting to the application, police asserted that the applicant's business model would be similar to that of previous Bojangles licensees. The applicant vigorously disagreed, and its application focussed on measures proposed to make Bojangles family-friendly, with activities designed specifically for children during the day and early evening, pro-social recreational activities such as live music, bingo, stand-up comedians and quiz nights, and full-service restaurant food until 9 pm. The applicant provided impressively detailed evidence of its proposed Responsible Service of Alcohol principles and practices, which, Ms Rhanday submitted, would significantly reduce patron anti-social behaviour and intoxication.

59. Under cross-examination by Mr Wood, Ms Rhanday conceded that she has had very limited experience in operating a high-risk late-night venue. However, she said she was planning to undertake security officer training, and to arrange for other staff to do so as well. If an Bojangles patron became intoxicated, staff would call the on-duty RSA Marshall and a crowd controller to safely manage and remove the patron. If there were twenty intoxicated patrons, police would also be called. The duty manager would be in close contact with the security manager, who would bring in additional security staff at short notice if and when required. She said that Talice Security has the capacity to procure additional staff at short notice. Hygiene, clothing and intoxication standards would be utilised to prevent harmful drinkers from entering the premises.

60. The evidence of Mr Honan, who the Commission accepts is highly experienced as a provider of security services to a variety of Alice Springs licensed venues, was that he has seen lots of Alice Springs venues try to operate as a nightclub, and get into trouble. Although, for the reasons previously stated, the Commission regards the evidence of Mr Honan with some caution, it accepts his evidence on this point. As the Commission has recently observed:

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

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<sup>5</sup> Kypri, Pursey, Attia, Chikritzhs and Miller, "Effectiveness of lockouts in reducing alcohol-related harm: Systematic review" *Drug and Alcohol Review* Volume 7, Issue 4, pp 527-536 (May 2018)

<sup>6</sup> Wilkinson, Livingston and Room, "Impacts of changes to trading hours of liquor licences on alcohol-related harm: a systematic review 2005-2015" *Public Health Res Pract* 2016; 26(4)

repeated incidents of anti-social behaviour, irresponsible trading practices, accidental injury and/or violence.<sup>7</sup>

61. Having carefully considered the evidence and submissions on this issue, the Commission is not satisfied that the applicant would have the capacity to meet the very considerable challenge of safely managing the behaviour of Bojangles patrons in the early hours of the morning. This is not a criticism of the applicant. The Commission notes that even the highly experienced licensee of the well-established licensed premises next door appears to be struggling to successfully meet this challenge in the current environment.
62. The Commission is not satisfied that opening an additional late-night venue in a precinct already experiencing very significant alcohol-related late-night problems will ameliorate, rather than amplify, those problems.
63. The applicant strongly submitted that it is in the public interest to provide those citizens of a town of 27,000 people who want to enjoy a late night out a safe, friendly, well-run venue offering live entertainment, good food and an extensive selection of drinks. There is considerable force in this submission. In assessing this application, as the Act requires it to do, the Commission has given due consideration to the public interest objective of increasing cultural and recreational benefits, as well as the other public interest objectives set out in section 49(2) of the Act.
64. Having considered all of these objectives, the Commission is not satisfied that it is in the public interest to issue a licence that trades until 2:00 am in the precinct.
65. In response to a request by the Commission, the applicant provided a carefully prepared breakdown of its projected income and expenditure to operate Bojangles on the assumption that a licence would be granted requiring it to cease the sale of liquor at 10.00 pm, midnight and 2.00 am respectively.<sup>8</sup> No issue was taken by either the Director or NT Police with the applicant's cashflow analysis, which the Commission accepts.
66. In brief, the applicant's analysis shows that the business would be financially viable if the applicant were permitted to sell and supply liquor until 2:00 am, but that if the licensee were required to cease trading at midnight or earlier, the business would be non-viable. Accordingly, it appears to the Commission that the applicant is only seeking a liquor licence issue if it is supported by a late-night authority permitting trade to continue to 2:00 am.
67. The applicant conceded that if permitted to trade until 2:00 am, at least half of Bojangles' revenue would be from sales after 10:00 pm. As the restaurant

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<sup>7</sup> Northern Territory Liquor Commission, *Application for liquor licence* (LC2021/020), delivered 17 September 2021

<sup>8</sup> This part of the hearing was conducted in private to protect commercial-in-confidence information. With the consent of the applicant, leave was granted to the Director and NT Police to attend and participate in the closed hearing.

would shut at 9:00 pm, and full meals would not be available after that time, the Commission infers that the bulk of revenue after 10:00 pm would be from the sale of liquor. The applicant projects that if permitted to trade until 2:00 am, gross revenue would be 87% higher than if it were required to close at midnight. Ms Randhay stressed, and the Commission accepts, that this does not imply that nearly half of the venue's revenue would be generated in trading after midnight, but rather reflects the fact that patrons who attend a venue that they know will stay open after midnight are more likely to stay there than to move on to another late-night venue. Nevertheless, in the view of the Commission, the unavoidable inference to be drawn from the applicant's own analysis of its proposed business is that a very substantial portion of its trade would be the sale of liquor between midnight and 2:00 am. Having reached that conclusion, the Commission accepts, insofar as it applies to the trading period between midnight and 2:00 am, the NT Police submission that the applicant's business model would be similar to that of previous Bojangles licensees.

68. Having found that it is not satisfied that it would be in the public interest for a licence to issue permitting trade to continue to 2:00 am, and having regard to the "2:00 am or not at all" position effectively adopted by the applicant, the Commission is not satisfied that it would be in the public interest to issue a liquor licence to the applicant.

### **Whether the issue of the licence will have a significant adverse impact on the community**

69. 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 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;
  - (j) any other matter prescribed by regulation.
70. The Commission notes there are no such "other" matters prescribed by regulation.
71. 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.

72. In the light of the Commission's finding in relation to the application of the public interest test, it is unnecessary to make findings in relation to the community impact test. The Commission has however considered the matters set out at section 49(3) of the Act, and observes that in relation to the instant application, key elements of the two tests are substantially similar.

73. Having considered all of these matters, although the Commission is satisfied, in accordance with section 49 of the Act, that the applicant is a fit and proper person, the Commission is not satisfied that issuing the licence or authority is in the public interest. Accordingly, the Commission is obliged to refuse to issue the licence.

### **The objects of the Act**

74. 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.

75. 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 its refusal to issue the licence is consistent with the purposes of the Act.

### **Extension of time**

76. Section 60(2)(c) of the Act requires the Commission to make a decision whether to issue a licence or refuse to issue a licence within 28 days of the expiration of the period allowed for the applicant to respond to objections. The Director received the applicant's response to objections on 13 July 2021. Accordingly, the Commission was required to make its decision by 10 August 2021. It was not practicable for the Commission to do so. The Director referred the application to the Commission on 15 July 2021, and the first available date to commence the hearing was 13 August 2021. To make a proper assessment of the application, the Commission required additional information from the applicant, and to afford fairness to the parties, the Commission allowed time for the applicant to provide the additional information, and fixed the matter for a further hearing day to hear evidence and submissions arising from it. The first available date for the further hearing day was 17 September 2021. After hearing further evidence and submissions, the Commission delivered its decision on that day. The Commission is required by section 60(3) of the Act to give a decision notice to the parties as soon as practicable after making its decision.

77. The Commission considers that the delay in issuing the decision in this matter is reasonable, and accordingly, pursuant to the power conferred on it by section 318 of the Act, the Commission has determined to extend the time allowed to issue its decision to 17 September 2021. Having regard to the complexity of

this matter, the Commission considers that this decision notice has been given as soon as practicable after making its decision.

## **NOTICE OF RIGHTS**

78. 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.

79. 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 the objectors.

A handwritten signature in blue ink, appearing to read 'R. Goldflam', with a long horizontal flourish extending to the right.

Russell Goldflam

ACTING DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
29 September 2021

On behalf of Commissioners Goldflam, Lewis and Hart