

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

REFERENCE: LC2018/124

PREMISES: Alice Springs Brewing Co
Lot 337 Palm Circuit
ALICE SPRINGS NT 0870

APPLICANT: Alice Springs Brewing Co Pty Ltd

NOMINEE: Kyle Pearson

OBJECTORS: Alice Goddard
Peoples Alcohol Action Coalition

LEGISLATION: Section 26, Part III, Part IV, Part V of the *Liquor Act*

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

DATE OF HEARING: 22 October 2018

DATE OF DECISION: 26 October 2018

DECISION

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act* (“the Act”) the Commission has determined to issue an “On Licence” licence authorising the sale of liquor for consumption on or at the licensed premises to Alice Springs Brewing Co Pty Ltd (“the Applicant”).
2. In accordance with section 31 of the Act, the licence shall be subject to the following conditions (in addition to the usual general and special conditions applicable to On Licence licences):
 - a. The trading hours shall be between:
 - i. Sunday and public holidays 1130 hours and 2359 hours;
 - ii. Monday 1130 hours and 2300 hours;
 - iii. Tuesday 1130 hours and 2300;
 - iv. Wednesday 1130 hours and 2300 hours;
 - v. Thursday 1130 hours and 2300 hours;

- vi. Friday 1130 hours and 2359 hours;
- vii. Saturday 1130 hours and 2359 hours.
- b. During trading hours snack foods and light meals will be available on request.
- c. The number of patrons permitted on the premises during trading hours shall not exceed 120, or such number as may be permitted in accordance with the Condition of the Licence titled "Fire", whichever is the lesser.
- d. Sufficient seating shall be provided for all the patrons present on the premises.
- e. No loud amplified music or entertainment such as rock bands is permitted.
- f. The Licensee shall not permit or suffer the emanation of noise from the area of the premises of such a nature as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises
- g. Pursuant to section 31(3) of the Act, the sale of liquor on the premises is not permitted until the Applicant has provided to the Liquor Commission or its delegate evidence that the following appropriate statutory approvals have been obtained:
 - A Certificate of Occupancy;
 - Registration of a Food Business Certificate regarding the storage, preparation and sale of food as required under the *Public Health Act* and the *Food Act*;
 - A Northern Territory Fire and Rescue Service Compliance Inspection Report.

REASONS

BACKGROUND

3. On 21 May 2018 an application was lodged by Mr Kyle Pearson ("Mr Pearson") on behalf of the Applicant, for a liquor licence over an area of approximately 480 square metres comprising a store room, an adjoining indoor public area and an adjoining enclosed outdoor area ("the Applicant's premises") situated on the south-east side of the Star of Alice Function Centre ("the Function Centre"), Lot 377 Palm Circuit, which is located in a semi-rural precinct zoned "Tourist Commercial" about 5 kilometres from the Alice Springs CBD.
4. On 7 September 2018 the Director General referred this application to the Commission pursuant to sections 28(1) and 50(a) of the Act.

THE APPLICANT'S PREMISES

5. LP Creations Pty Ltd ("LP") leases the Function Centre from the registered proprietor of Lot 733, Wykdem Pty Ltd ("Wykdem"). In June 2015, a Restaurant liquor licence over the Function Centre, including the Applicant's premises, was transferred from Wykdem to LP, which continues to trade pursuant to that licence from a cafe/restaurant adjacent to but separated from the Applicant's premises by a pre-existing internal wall. In previous years, LP has sub-let the Applicant's premises for other commercial activities not involving the sale or consumption of liquor, but until the Applicant took possession in mid-2018, the Applicant's premises had been unused for some time.

6. By a tenancy agreement executed on 11 April 2018, and with the consent of Wykdem, LP sub-let the Applicant's premises to the Applicant. In conjunction with the application the subject of this Decision Notice, LP applied for a material alteration to its liquor licence, namely to excise the Applicant's premises from its licence footprint. The Commission heard that application and the instant application on the same occasion, and has determined to grant LP's application.
7. The Applicant intends to use the premises as a bar and micro-brewery, and has commenced the development and fit out of the premises for that purpose. On 15 August 2018, the Northern Territory Development Consent Authority ("DCA") granted consent for this development, noting that it would be consistent with the primary purpose of the Tourist Commercial zone. The Authority further noted that:

The proposed change of use may be expected to contribute to the revitalisation of the surrounding tourism precinct, and diversity of restaurant and bar venues available to local residents and visitors.

8. The Applicant submits that its premises can accommodate up to 120 patrons within the inside bar area (149 square metres of public space) and the fenced off outdoor area (approximately 90 square metres), and that it has the capacity to provide adequate seating within the Applicant's premises for this number of patrons. The Applicant informed the Commission that it has not yet obtained a Certificate from an Authorised Officer of the Northern Territory Fire and Rescue Service ("NTFRS") designating the number of persons permitted to occupy the premises.

THE APPLICANT

9. The Applicant is registered with the Australian Securities and Investments Commission ("ASIC"). Mr Pearson is the sole Director, the Secretary and the majority shareholder. Mr Craig Jervis and Mr Scott Lovett, both of Alice Springs, each holds more than 10% of the shares. There are two other minor shareholders.
10. Mr Pearson has been employed in positions of increasing responsibility in the Alice Springs hospitality industry over the past 14 years. He has been the General Manager and Nominee of the Gillen Club over the last three years. The Applicant's detailed Business Plan tendered to the Commission provides that Mr Pearson will personally manage the business. References tendered to the Commission by Mr Pearson indicate that he is held in high regard within the industry.
11. Section 26A of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. Mr Pearson, on behalf of the Applicant, affirms in his affidavit that there is no such person.
12. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, the Director-General must conduct investigations in relation to the application. Licensing NT informs the Commission that it has undertaken probity and police checks of the three major shareholders, all of whom are well known to Licensing NT through their business and professional activities, and that they are all persons of good standing with no record of criminal conduct or other adverse findings.

THE APPLICATION

13. The Application was supported by a Community Impact Assessment (“the CIA”), a Business Plan, Mr Pearson’s resumé and other documents establishing the status of the Applicant and of the Applicant’s premises, as outlined above.
14. The CIA asserts that despite its proximity to an alcohol rehabilitation facility, two schools, two town camps and a tavern/bottleshop, this venture will not cause harm by attracting problem or under-age drinkers, because its target market will be “a more affluent customer”, including tourists, interested in and willing to pay a premium for the “craft beer and high end spirits” on offer. The Applicant contends that its venture “will become a point of pride for the Alice Springs Community... the Alice Springs Brewing Co will promote a culture of thoughtful and exploratory consumption of alcohol... we will set out to achieve a laid back and relaxing environment rather than one geared towards heavy, mindless consumption.”
15. The Applicant’s Business Plan sets out a strategy to produce, promote and sell three “Core Beers” on the premises, a mid-strength (3% ABV) ale product, a full strength (5% ABV) ale product and a strong (6.5% ABV) ale product. Patrons will be served at an “industrial style” bar in view of the brewery equipment. Other premium liquor will be available, as will a “gourmet menu” of light meals and snacks. Mr Pearson will be employed as General Manager and brewer, supported by three other locally recruited staff. According to the Applicant’s Business Plan, its beer will be offered at between \$6 and \$10 per 425 ml schooner, a price which the Commission calculates is between about \$4 and \$6 a standard drink.
16. The Business Plan provides that a significant segment of the Applicant’s business will be wholesale and takeaway trading. The Commission notes however that the licence the subject of this Application does not permit either the takeaway or wholesale sale of liquor.
17. LP’s restaurant liquor licence over the Function Centre (including the Applicant’s premises) permits the sale and consumption of liquor from 1130 hours to 2300 hours from Monday to Thursday and from 1130 hours to 0200 hours the following morning from Friday to Sunday. According to its Business Plan, the Applicant intends to commence trading on three days a week, until 2200 hours, with trading hours to be extended as this new business venture attracts more patronage. Accordingly, the Applicant seeks to be licensed to trade at the same hours as the existing LP licence. Although the LP licence permits trading as late as 2 am on weekends, Lisa Perry, the principal of LP, informed the Commission that it is only rarely (twice a year, “if that”) that she actually trades until that time, and that usually her bar is closed by 12:30 am.
18. The Applicant’s Business Plan forecasts initial sales, while the Applicant is trading three days a week, of 1,100 serves of liquor per week.
19. Mr Pearson gave evidence that the Applicant does not plan to provide loud live music or other entertainment at the premises, other than perhaps a single guitarist on occasions.

ADVERTISING AND OBJECTIONS

20. Details of the application were advertised in the Centralian Advocate on 5 June 2018 and 9 June 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 8 July 2018.

21. Two written objections were received by the Commission within the objection period, from Ms Alice Goddard (“Ms Goddard”) and the People’s Alcohol Action Coalition (“PAAC”). The Applicant did not submit that either objector lacked standing, and the Commission finds that Ms Goddard, a local resident, has standing as an objector pursuant to s 47F(3)(a) of the Act, and that PAAC, a local action group, has standing as an objector pursuant to s47A(3)(f) of the Act.

22. Ms Goddard objected on the ground that the proposed licence would “adversely impact upon the peaceful and quiet enjoyment of local residents... in the form of noise pollution and increased late night traffic”. Ms Goddard suggested a reduction in the proposed late-night hours.

23. The Applicant’s response to Ms Goddard, which the Commission notes was conciliatory and courteous in tone, suggested that noise pollution would be minimal, as the outlet would primarily operate from inside the building forming part of the premises.

24. In summary, PAAC objected on the following grounds, supported by detailed reference to relevant research literature:

- The proposed licence would effectively convert the existing restaurant licence (which operates mainly during the day) to a primarily night-time pub or nightclub.
- There are already sufficient pub venues in Alice Springs (PAAC submits that there is one such outlet per approximately 1,500 residents).
- There is already one pub venue nearby, the Heavitree Gap tavern.
- The nearby riverbed is a “trouble spot” for drinkers, and the venue is close to an alcohol rehabilitation facility and a school.
- Opening another pub would send the “wrong message” to the community, which experiences high and possibly increasing rates of alcohol-related harm.
- The proposed licence may cause undue noise, anti-social behaviour and associated harm, and put pressure on police.
- The opening of a new pub venue trading late at night situated away from the CBD raises the risk of drink-driving and associated harm (which could be mitigated if the licensee provided a courtesy bus for patrons).
- Late-night trading is associate with increased violence and other harm, and accordingly trading after midnight should only be permitted with a last drinks policy, and no trade should be permitted after 1 am.

25. In summary, the Applicant’s response to PAAC made the following points:

- The venue will not trade as a pub or nightclub, but as a “Brewery Door Style” operation to promote “thoughtful” consumption of a locally made product at a premium price. Accordingly, the Applicant maintains, its premises will not become a harmfully hard or heavy drinking venue.

- The density of comparable outlets in the area is not so great as to pose a significant additional risk if the licence is granted.
- The venue will have no significant impact on either the nearby riverbed drinkers, the rehabilitation facility or the schools.
- The venue will not send the wrong message to the community.

26. On 20 September 2018, the Commission notified the objectors that they were entitled to attend the hearing listed for 22 October 2018. The Commission provided the objectors with copies of the following documents:

- The Director-General's referral of this matter to the Commission, which summarises the issues arising in relation to the application
- The Community Impact Assessment filed by the Applicant
- The Applicant's written responses to the objections

27. Neither objector sought additional information from the Commission in relation to the application, or attended the hearing.

28. Section 27(3) of the Act requires the Director-General to inform:

- a. the Chief Executive Officer ("CEO") of the Department of Health ("DOH");
- b. the Commissioner of Police; and
- c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer ("CEO") of the council.

29. In relation to this application, the Director-General also informed the NTFRS and the DCA.

30. The Commission notes that the following responses were received:

- a. The DOH made "no adverse comment".
- b. The NT Police advised that they it had "no objections".
- c. The Alice Springs Town Council advised that it had resolved not to object to the application.
- d. The NTFRS advised it had "no issues".
- e. The DCA response is referred to at paragraph 7 above.

HEARING

31. The hearing was conducted in public on 22 October 2018. Mr Pearson appeared on behalf of the applicant. Mr Philip Timney appeared for the Director-General. The Commission thanks both Mr Pearson and Mr Timney for their attendance and assistance.

32. Although as stated above, neither of the objectors appeared at the hearing, there was no requirement for them to do so, and the Commission carefully considered the objections received. The Commission thanks Ms Goddard and PAAC for their significant contribution to the process of determining this application.

33. Pursuant to section 53(1)(b)(iii) of the Act, the Commission is not bound by the rules of evidence but may inform itself in the manner it considers appropriate.

34. At the commencement of the hearing, the Commission declared that two of its members, Commissioner Goldflam and Commissioner McFarland, had been active members of PAAC prior to their appointment to the Commission, that the Applicant had been previously placed on notice of this, and that the Applicant had been provided with an opportunity to apply to Commissioners Goldflam and McFarland to withdraw from hearing the matter. The Applicant declined to make such an application, and the hearing proceeded.

ASSESSMENT OF THE APPLICATION AND OBJECTIONS

35. Section 6B of the Act provides that the Applicant bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test set out in s6 of the Act. In considering and determining this application, the Commission has had regard to the objects of the Act and applied the public interest and community impact test by reference to the community impact assessment guidelines published by the Minister on 6 March 2018 pursuant to s6A of the Act. The guidelines are detailed and specific, but also state 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.

36. In addition to those matters, the Commission has had regard to s28(2) of the Act, which relevantly requires the Commission to assess the suitability of the Applicant's premises, the Applicant's business reputation and financial stability, and whether the Applicant's manager is a fit and proper person to be a manager.

37. With respect to s28(2), the Commission is comfortably satisfied, in the absence of any evidence or submission to the contrary, that the Applicant's premises are suitable, that the Applicant's business reputation and financial stability are sound, and that Mr Pearson is a fit and proper person to manage the Applicant's business.

38. With respect to s6, the Commission is satisfied that the Applicant has met the public interest and community impact test. In particular, the Commission is satisfied that, if the licence is granted (subject to the conditions set out at paragraph 2 above, and discussed below), the risk of harm or ill-health caused by excessive or inappropriate consumption of liquor will be outweighed by the opportunity to provide economic, cultural, recreational and employment benefits, and additional services and products to the local and broader community.

39. In coming to this conclusion, the Commission has had particular regard to the matters set out at paragraphs 7, 14, 15, 18, 24, 25 and 30 above.

40. The Commission has carefully considered the competing contentions of PAAC, that the Applicant is seeking to open a late-night pub or nightclub type venue; and of the Applicant, that it will instead operate a "Brewery Door style operation". There is no evidence to suggest that the venue will operate as or even resemble a nightclub. Neither however will it be typical of a brewery or cellar door venue, which characteristically offers product tastings, relies primarily on takeaway trade, and does not trade after midnight. The Commission considers that the venue will likely operate as an upmarket (by Alice

Springs standards) bar. Although the Commission accepts that the venue seeks to target affluent, thoughtful and discerning drinkers, the Commission also considers that, as with any bar, there is a strong likelihood that some patrons will drink to excess.

41. Accordingly, the Commission also considers that there is substance in the matters raised by the objectors, and that conditions should be imposed to limit noise emanations from the licensed premises, and the times at which liquor may be sold.
42. In coming to this view, the Commission has had particular regard to the matters set out at paragraphs 17, 19, 21, 22, 23 and 24 above. In addition, the Commission notes that in the course of the hearing, the Commission foreshadowed the imposition of a restriction on trading hours, and provided the Applicant with an opportunity to make further submissions on this issue. Mr Pearson responded by conceding that there was a proper basis to limit trading hours as foreshadowed.

NOTICE OF RIGHTS

43. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
44. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
45. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the applicant and the persons who made an objection during the process that resulted in the decision being made, namely Ms Goddard and PAAC.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

30 October 2018

On behalf of Commissioners, Goldflam, Reynolds and McFarland