

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER: APPLICATION FOR A LICENCE

REFERENCE NUMBER: LC2019/019

PREMISES: **Beaver Brewery**
2/14 Tang Street
COCONUT GROVE NT 0810

APPLICANT: Beaver Brewery Pty Ltd

NOMINEE: Mr Christopher Brown

OBJECTOR/S: Nil

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

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Phillip Carson (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 19 March 2019

DATE OF DECISION: 19 March 2019

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 a licence authorising the sale of liquor for consumption on or at the premises located at Unit 2, 14 Tang Street Coconut Grove (**the Premises**) known as Beaver Brewery to Beaver Brewery Pty Ltd (**the Applicant**).
2. In accordance with section 31 of the Act, the licence shall be subject to the specific conditions (in addition to those general conditions of all such licences) that:
 - a. The liquor shall be sold pursuant to “On – Authority” liquor licence authorising the sale of liquor for consumption on or at the premises for the hours:
 - i. 1700 hours to 2200 hours on Fridays; and

ii. 1200 hours to 2200 hours on Saturdays.

except Christmas Day.

b. The licence shall be subject to and inclusive of such additional conditions as may at any time be:

i. Requested in writing by the Licensee;

ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and

iii. Notified in writing by the Director-General to the Licensee.

c. Those conditions set out at the conclusion of these reasons in addition to the general conditions included in an “On – Authority” liquor licence.

3. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

4. On 6 April 2018 an application was lodged by Mr Christopher Brown (**Mr Brown**) as Director on behalf of the Applicant seeking a licence for the Premises.

5. At the time of lodgement, a concurrent application for registration as a liquor wholesaler was lodged and has been processed and approved by a delegate of the Director-General of Licensing (**Director-General**).

6. It is noted the main reason for delay in this application coming before the Commission was compliance issues that came to light in relation to the correct class of building and other works required to be done by the Applicant to bring the Premises to the required standard. An Occupancy Permit dated 5 March 2019 was subsequently provided to Licensing NT by the Applicant on 7 March 2019.

7. The primary business to be conducted on the Premises by the Applicant is that of a micro-brewery for wholesale purposes, however, the Applicant is also seeking an “On - Authority” liquor licence where members of the public can attend and consume liquor on the Premises.

8. The Applicant seeks to be able to sell beer and cider brewed on the Premises only during the following trading hours:

a. 1700 hours to 2200 hours on Fridays; and

b. 1200 hours to 2200 hours on Saturdays.

9. The Applicant confirmed that non-alcoholic drinks will also be available and food will be available for purchase through a third party food van. The Applicant did not seek trade for public holidays, Good Friday or Christmas Day, however, at the hearing indicated he would be happy to trade on Good Friday and public holidays if the Commission was minded.
10. On 26 February 2019 pursuant to sections 28(1) and 50(a) of the Act, the Director-General referred this application to the Commission to be determined by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application. The application was listed for a hearing on 19 March 2019.
11. Licensing NT has no previous negative history on the Applicant or Mr Brown.
12. Mr Brown provided the following documents:
 - a. National Police Certificate
 - b. A resume
 - c. Personal and professional references
 - d. Copy of photographic identification
 - e. RSA certificate
13. The Applicant has also provided the following documents in support of the application:
 - a. Community Impact Assessment in accordance with section 6A of the Act
 - b. Public Interest Criteria in accordance with Section 6(2) of the Act
 - c. Financial report for Mr Brown and confirmation the Applicant is a start up company with no financial history
 - d. Lease for the Premises
 - e. Business Plan
 - f. Development Permits
 - g. Proposed liquor licence site plan
 - h. Registration of Food Business.

Disclosure of influential persons or potential beneficiaries

14. The Commission notes that section 26A(1) of the Act requires applicants to make 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 Brown on behalf of the Applicant, notes there is no such person.

15. The Applicant is a company registered with the Australian Securities and Investments Commission (**ASIC**). Mr Brown is both the Secretary and sole Director of that company. A review of the corporate structure shows that the Applicant has a total of 100 shares and that those shares are held entirely by Mr Brown. Mr Brown is also the proposed nominee for the licence.
16. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

17. Details of the application were advertised in the Northern Territory News on Wednesday 6 June and Saturday 9 June 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 9 July 2018. There were no objections received in the objection period.
18. It is noted that section 27(3) of the Act requires that the Director-General must inform:
 - a. the Chief Executive Officer of the Department of Health (**DOH**);
 - b. the Commissioner of Police (**NT Police**); and
 - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer of the council.
19. That occurred with respect to this application and the following responses were received:
 - a. The DOH made “no adverse comment” but asked for patron and community safety and amenity to be considered when determining this application. They also request the venue displays signage for the smoking areas. The signage has already been provided to the Applicant.
 - b. The NT Police advised that it supports the application after the Applicant confirmed by email that it will have food available when open.
 - c. The City of Darwin advised that it has not identified any grounds for objection.
20. The Commission notes that the application was also forwarded to the Northern Territory Fire and Rescue Service (**NTFRS**) for comment. The NTFRS initially advised that they object to the Applicant on the basis of incorrect classification of building and possibly uncertified works. These concerns were dealt with by the Applicant while the application was put on hold and NTFRS have since updated their advice indicating that they are in a position to support the application and that the previous non-compliance issues have now been addressed. NTFRS also confirmed issuing a maximum patron number for the venue.

Public Hearing

21. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
22. As earlier noted, on 26 February 2019 the Director General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10.00am on 19 March 2019 and notice sent to the Applicant on 6 March 2019 advising of the hearing scheduled to take place.
23. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
24. The public hearing commenced at 10:00am on 19 March 2019. Mr Brown attended in person on behalf of the Applicant. Mr Jeff Verinder as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanked them for their assistance.

Assessment of the Application

25. As earlier noted, there were no objections to this application. This is despite the fact that the applicant undertook its obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the Act. The objection process is specifically provided for under the Act at section 47F. That section clearly identifies those persons *who* may make an objection, the specific *kinds* of applications that may be objected to, the *grounds* upon which an objection can be made and *how* the objection is to be made.
26. It is important however to recall at all times that the Act makes clear under section 6B that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test. Even if there are no objections, the Applicant must still satisfy this Commission of those matters.
27. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the Local Government Act; and
 - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;

- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

28. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

29. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

30. Those matters are identified as follows:

Criteria	Matters to be considered
<p>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 availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • 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 building, 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

	<p>people may congregate or be attracted to.</p> <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 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>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>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.</p>	<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

	<p>and to minimise adverse impacts?</p> <ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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31. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear 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”.

32. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;
- (h) if the applicant has nominated a person under section 25(2) to

be its manager – whether that person is a fit and proper person to be the manager”.

33. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

34. The Commission notes there are no such matters prescribed by the Regulations.

35. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.

36. The Commission notes that there is no suggestion, nor any evidence to suggest, that the Applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee. The Commission has already noted the contents of that affidavit in these reasons.

37. The Commission further notes that the Applicant has been operating a brewery and wholesale licence from the Premises since 14 August 2018 without issue and there are no issues of concern in relation to the business reputation and financial stability of the Applicant and the general reputation and character of the secretary and executive officer of the Applicant.

41. Given the limited trading hours and the focus of this venue as a place to taste and appreciate in-house craft beers and ciders in a family friendly environment along with the availability of food, it is clear to this Commission that the proposal is at the lower end of the scale in terms of risk of alcohol related anti-social behaviour.

42. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the application for an “On - Authority” liquor licence meets the public interest and community impact tests. As outlined at the start of this Decision Notice, the licence will include the general conditions of an “On - Authority” liquor licence and will also include the following conditions:

“Appearance

The premises shall at all times have the appearance of and shall trade predominantly as a microbrewery and tasting room.

Consumption of Liquor

Consumption of liquor shall occur on or at the premises and must only be that liquor which is brewed / produced by the Licensee.

Meals	Meals must be available for purchase from the Premises.
Noise	The Licensee shall ensure that there is no excessive noise caused by the operations on the Premises which affect the amenity of the neighbourhood.
Outdoor Area	The licensed outdoor area must be clearly identified and delineated using a form of temporary or permanent barriers.”

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 person is the applicant.



RICHARD COATES
Presiding Member
Chairperson

29 March 2019