

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2022/024

APPLICANT: Circus Joseph Ashton Pty Ltd

PREMISES: The Darwin Showgrounds
1 Tate Place
Winnellie
NT 0820

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

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 11 May 2022

DATE OF DECISION: 16 May 2022

Decision

1. On 16 May 2022, the Northern Territory Liquor Commission (**the Commission**) issued the following decision notice:
 - a. Pursuant to section 21 of the the *Liquor Act 2019* (NT) (**the Act**), having formed the opinion that a public hearing is not appropriate in the circumstances of this application, the Commission has determined to conduct the hearing of this application by way of written submissions only.
 - b. In accordance with section 48 of the Act, the Commission has determined to issue a licence to Circus Joseph Ashton Pty Ltd (ABN 087 429 169), trading as Infamous The Show.
 - c. The licensed premises is the interior of the circus tent within the Darwin Showgrounds at 1 Tate Place, Winnellie NT 0820 designated by the star-shaped red area on the plan provided in Attachment C to the Memorandum dated 10 May 2022 from a delegate of the Director of Liquor Licensing (**the Director**) to the Commission.

- d. The Commission approves the appointment of Ms Maddison White as the nominee of the licensee.
- e. The licence will be issued with a public bar authority and an adult entertainment R-rated authority.
- f. The conditions of the licence will be those authority conditions prescribed by Part 4 Division 1, Division 2, Division 14 and Division 18 of the *Liquor Regulations 2019* (NT).
- g. The Commission fixes the following additional conditions:
 - i. The sale, supply and consumption of liquor on the premises is restricted to the following products: light beer, mid-strength beer, wine (including sparkling wine), RTDs and cocktails.
 - ii. Liquor must only be supplied in open containers.
 - iii. No more than one 750ml bottle of wine or four cans, stubbies or glasses of liquor may be sold to any one person at any one time.
 - iv. Persons under 18 years of age are not permitted to enter or remain on the premises during the hours of operation of the licence.
 - v. The sale of liquor must be by persons who each hold a Responsible Service of Alcohol certificate and are supervised by one or more persons nominated by the licensee.
 - vi. Trade under the licence must not commence until a fire safety inspection of the premises has been conducted by the Northern Territory Fire and Rescue Service (**NTFRS**) and the licensee has complied with any directions by the NTFRS arising from that inspection, including a direction regarding the maximum number of patrons permitted on the premises.
 - vii. The licensee must comply with any requirements or directions of the Northern Territory Chief Health Officer in relation to any COVID 19 declaration pertaining to the sale of liquor at public gatherings.
 - viii. All adult entertainment must be performed and supervised in accordance with the Northern Territory Government guidelines at <https://nt.gov.au/industry/hospitality/licensed-premises/adult-entertainment-in-licensed-premises>.

- ix. The licence nominee must be present during all trading hours and must ensure compliance with these conditions.
 - h. The hours of operation of the licence shall be from 18:30 to 22:30 each Thursday, Friday, Saturday and Sunday between 10 June 2022 and 9 July 2022 inclusive.
 - i. The licence commences at 18:30 on 10 June 2022 and expires at 22:30 on 9 July 2022.
2. The Commission indicated that it would publish reasons for its decision to issue a liquor licence. These are those reasons.

The Application

3. On 3 May 2022, Ms Maddison White (**the proposed licence nominee**) lodged an application with the office of the Director for a liquor licence with a special event authority on behalf of her employer, Circus Joseph Ashton Pty Ltd (trading as Infamous The Show) (**the applicant**). Infamous The Show, which the applicant describes as “an 18+ cabaret/cirque production”, has toured Australia for several years and is performed in a circus tent. The applicant proposes to present an evening season of Infamous The Show at the Darwin Showgrounds from Thursday to Sunday for a month commencing on 10 June 2022.
4. The Commission has previously delegated to the Director the power to assess and determine applications for special event authorities. This application, however, was unusual, in that the proposed event (or, to be more precise, series of events) includes acts that involve sexualised clothing and full nudity on the premises. Section 47(1)(t) and (u) of the Act establish respectively an adult entertainment authority (which authorises the licensee to have employees who work dressed in sexualised clothing) and an adult entertainment R-rated authority (which authorises the licensee to provide full nudity). Accordingly, the Director formed the view that if a liquor licence were to be granted to the applicant, it should be issued with an adult entertainment R-rated authority. The Commission agrees.
5. However, regulation 25(2) of the *Liquor Regulations 2019* (**the Regulations**) provides that “all adult entertainment authorities operate only in conjunction with a public bar authority”. The Commission has not delegated to the Director the power to determine public bar authorities. In these circumstances, the Director referred the matter to the Commission and invited the applicant to submit an application for a public bar authority, which the applicant promptly did by application dated 9 May 2022.

Consultation

6. Usually, the Director requires an applicant for a public bar authority to notify the public of the application. In the unusual circumstances of this matter, however,

in accordance with section 57(2A) of the Act, the Director formed the opinion that the application disclosed no public interest issues, and accordingly exempted the applicant from the public notice requirements of the Act.

7. In accordance with section 56 of the Act, notification was given to the Department of Health (**DOH**), NT Police and the City of Darwin. The Northern Territory Fire and Rescue Service (**NTFRS**) was also notified of the application. The only responses received to date have been from the Department of Health and NTFRS.
8. The Department of Health recommended that due to the size and duration of the event, a Smoking Management Plan and Outdoor Smoking Area be provided. The applicant has implemented this recommendation.
9. NTFRS supported the application subject to successful compliance with a fire safety check.

The referral

10. On 10 May 2022, pursuant to section 59 of the Act, the Director referred the application to the Commission. Noting the circumstances and urgency of the application, the Director provided a written submission that the Commission conduct the hearing “on the papers”.
11. The Director provided the following documents to the Commission with the referral:
 - a. Application for liquor licence with a special event authority;
 - b. Application for liquor licence with public bar and adult entertainment R-rated authority;
 - c. Affidavit and Declaration of Associates pursuant to section 54 of the Act;
 - d. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
 - e. ASIC company extracts;
 - f. Probity documents for the proposed licence nominee;
 - g. Letter from landlord consenting to the operation of a liquor licence;
 - h. Smoking Management Plan;
 - i. Various photographs and site plans.

The hearing

12. On 11 May 2022 the Commission convened and formed the opinion that it would not be appropriate in the circumstances to conduct a hearing of the application in public. The Commission formed this opinion for two reasons. Firstly, having regard to the circumstance that the members of the applicant’s cabaret/cirque troupe, including the proposed licence nominee, are currently in

Queensland, and propose to travel with their equipment, caravans and tent to Darwin by road for a performance season commencing in less than a month, the Commission considers that a public hearing would be likely to cause undue hardship to the applicant. Secondly, having regard to the limited duration of the proposed licence, which in most respects is akin to a special event authority matter (which would be determined by the Director, without a public hearing), the Commission considers that conducting the hearing in public would not be worthwhile.

13. Accordingly, pursuant to section 21 of the Act, the Commission accepted the Director's submission and determined to conduct the hearing by way of written submissions only.

Assessment of the application

14. At the outset, the Commission notes that it has approached the assessment of this application with less stringency than usual when considering an application for a liquor licence with a public bar authority. The reason is obvious: this licence is for a limited duration in the context of a limited series of events.

15. In accordance with section 59 of the Act, the Commission has considered:

- a. the applicant's affidavit required by section 54;
- b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
- c. the financial stability and business reputation of the body corporate;
- d. the general reputation and character of the secretary and executive officers of the body corporate;
- e. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;

16. In accordance with section 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

The applicant

17. 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.

The applicant's associates

18. 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.

19. The Commission finds that the proposed licence nominee is a fit and proper person to be an associate of the applicant.
20. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the applicant.

The suitability of the applicant's premises

21. The Commission assesses the Darwin Showground as suitable for the supply and consumption of liquor in the manner set out in the application. The Showground is well away from residential areas, and has the capacity to accommodate a large circus tent.
22. The Commission notes that the applicant's tent is equipped with video surveillance equipment, as is required by regulation 76 of the Regulations.

The financial stability, general reputation and character of the body corporate

23. The applicant has not provided details of its financial affairs, but the Commission is satisfied that it is sufficiently stable and reputable for the purposes of assessing this particular application. The proprietor and sole director of the applicant is a prominent member of the Ashton family, which has operated circuses throughout Australia continuously since the mid-nineteenth century. The Commission is satisfied that, having toured Australia for over five years (with enforced interruptions because of COVID), Infamous The Show, which has recently played to capacity audiences in North Queensland, is a viable enterprise.

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

24. The Commission assesses the general reputation and character of the applicant's sole director and secretary, Mr Joseph Ashton, to be satisfactory.

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

25. 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

26. The applicant has nominated Ms Maddison White as the licence nominee. The Commission assesses Ms White, 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.

Whether issuing the licence is in the public interest

27. 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.

28. Having considered each of these objectives, and having particular regard to the limited duration of the events the subject of the licence, and the cultural and recreational benefits to the community, the Commission is of the view that this not a high-risk application, and is satisfied that it is in the public interest to issue the licence.

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

29. 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 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.

30. The Commission notes there are no such “other” matters prescribed by regulation.

31. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters. The Commission has considered these matters.

32. Although Infamous The Show includes sexualised clothing and brief periods of full nudity, the Commission is comfortably satisfied that the comic and edgy character and style of the show are consistent with contemporary community standards for adult entertainment. The Commission is satisfied that this burlesque production will not have an adverse effect on the Darwin community.

33. The Commission is satisfied, in accordance with section 49 of the Act, that:

- a. the applicant is a fit and proper person; and
- b. issuing the licence or authority is in the public interest; and
- c. the licence or authority will not have a significant adverse impact on the community.

Licence conditions

34. When, as in this instance, a licence is issued with a public bar and adult entertainment R-rated authorities, the prescribed conditions set out in Part 4 Division 1 (“Standard operating conditions”), Division 2 (“Adult entertainment authorities conditions”) and Division 14 (“Public bar authority conditions”) are imposed by force of the Regulations. In addition, the Commission has determined to impose the conditions set out at Part 4 Division 18 (“Special event authority conditions”).

35. Furthermore, the Commission has determined to impose a number of other conditions.

36. Firstly, the Commission has limited the type of liquor that may be sold, in accordance with the product types proposed by the applicant.¹

¹ See paragraph 1(g)(i) above

37. Secondly, the Commission has imposed a condition limiting the amount of liquor that may be sold in a single transaction, a condition that liquor be sold in opened containers, and requirements for supervision of the sale of liquor by staff trained in the Responsible Service of Alcohol. It is common for such conditions to be imposed by the Director or the Commission for events of this nature.²
38. Thirdly, having regard to the R-rated nature of the entertainment on offer, the Commission has fixed a condition prohibiting entry to the premises by persons under the age of 18, and requiring the applicant to comply with the Director's published guidelines regarding adult entertainment.³ Based on the detailed description of the adult entertainment to be provided by the applicant, the Commission anticipates that the applicant will have no difficulty in complying with this condition.
39. Fourthly, the Commission has imposed conditions to ensure that the applicant complies with both fire safety and COVID safety requirements.⁴
40. The Commission has fixed the hours of operation that the applicant has applied for.

The objects of the Act

41. Finally, 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. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

Russell Goldflam



ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
23 May 2022
On behalf of Commissioners Goldflam, Dwyer and Hart

² See paragraph 1(g)(ii), (iii), (v) and (ix) above

³ See paragraph 1(g)(iv) and (viii) above

⁴ See paragraph 1(g)(vi) and (vii) above