

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**REASONS FOR DECISION**

---

**MATTER:** Application for a liquor licence with restaurant bar authority

**REFERENCE:** LC2022/040

**APPLICANT:** NTFG Pty Ltd

**PREMISES:** Café 21 Smith  
109 Smith Street  
Darwin NT 0800

**LEGISLATION:** Sections 52 and 97 of the *Liquor Act 2019*

**HEARD BEFORE:** Richard Coates (Chairperson)  
Elizabeth Stephenson (Health Member)  
Christine Hart (Community Member)

**DATE OF HEARING:** 20 July 2022

**DATE OF DECISION:** 20 July 2022

---

**DECISION**

1. For the reasons set out below and pursuant to section 60 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to refuse the application for a licence with a restaurant bar authority by NTFG Pty Ltd (**the Applicant**) for Café 21 Smith.
2. The Commission allows the Applicant to amend its application to include an application for a material alteration of its premises covered by the current liquor licence 80519330 with an attached restaurant authority. Pursuant to section 97 of the Act, the licensed footprint of the premises is extended to include the outdoor dining area at the front of the restaurant as depicted in Attachment L to this application.

## **REASONS**

### **THE APPLICATION**

3. On 9 June 2022, an application was lodged by Mr Brian Douglas Barnes on behalf of NTFG Pty Ltd seeking a new liquor licence with a restaurant bar authority for premises known as Café 21 Smith, located at 109 Smith Street, Darwin.
4. The Applicant is seeking a licence with the proposed liquor trading hours of:  
10:00 hours to 24:00 hours seven (7) days a week.
5. This application notwithstanding, NTFG Pty Ltd currently holds liquor licence 80519330 for the premises with a restaurant authority only, with liquor trading hours of 11:00 to 22:00 each day.
6. The application is aimed at replacing the existing restaurant authority with a restaurant bar authority and also includes the addition of an outside seating area at the front of the premises. The hours sought for the proposed restaurant bar authority are in line with the maximum prescribed by the *Liquor Regulations 2019 (the Regulations)*.
7. If the application is approved, the Applicant has agreed to surrender its existing liquor licence and restaurant authority.
8. The Applicant has provided all the necessary financial and probity documents. It has held a licence and restaurant authority over these premises for approximately five years and through a related company also operates another licensed Café 21 at the other end of Smith Street.
9. The Applicant has provided the following documents in support of the application:
  - Community Impact Assessment and Public Interest Criteria
  - Draft Public Notice
  - Food and Beverage Menu
  - Financial Letter – Rinaldi+Co Accountants
  - Lease and Landlord permission to hold liquor licence at premises
  - Copy of proposed liquor licenced area site plan including photos

### **PUBLICATION AND CONSULTATION**

10. The application was published in the NT News on Saturday 2 July 2022, and published on the Director's website for the required 14 days advertising period.
11. The Applicant displayed the required signage at the premises.

12. Copies of the NT News, photographs of the green sign erected at the premises and statement of display have been retained by Licensing Officers.
13. As a result of publication of the application, there were no objections received from any members of the public.

## **CONSULTATION**

14. The following stakeholders were notified of the application in accordance with section 56(4) of the Act and invited to provide comment on the application:
  - The Chief Executive of the Department of Health;
  - Northern Territory Police;
  - CEO, City of Darwin.
15. The Department of Health replied via email dated 4 July 2022, stating they have no objections.
16. The NT Police replied via email dated 11 July 2022, stating there are no objections to the application.
17. The City of Darwin replied via email dated 5 July 2022, stating they have no concerns.

## **THE REFERRAL**

18. The Director of Liquor Licensing (**the Director**) referred this application to the Commission on 18 July 2022. As this Applicant was involved in a similar application in respect of the other Café 21 situated in the Smith Street Mall which had been listed for hearing on 20 July 2022, the Commission offered the Applicant the opportunity of having both matters heard together. Mr Barnes, on behalf of the Applicant, accepted that offer so both matters proceeded as a public hearing on 20 July 2022.

## **THE HEARING**

19. At the hearing the Applicant was represented by Mr Barnes and Ms Jenny Um. Mr Jeff Paull appeared for the Director. The Commission is grateful for the assistance provided by all those present.

## **ASSESSMENT OF THE APPLICATION**

20. 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. No submissions were made to the Commission to this effect.

21. 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 applicant body corporate;
  - (d) The general reputation and character of the secretary and executive officers of the applicant body corporate;
  - (e) Whether the applicant is a fit and proper person to hold a licence; and
  - (f) Whether the nominees designated by the applicant are fit and proper persons to hold a licence.
22. The Commission is satisfied that the Applicant meets all the financial and probity requirements necessary to hold a licence. There is also no issue as to the suitability of the premises which have operated as a licensed restaurant for approximately five years.

#### **WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST**

23. 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.
24. To determine whether the issue of the licence 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.
25. Section 51 of the Act clearly imposes an onus on an applicant to satisfy the Commission that issuing the licence or authority, is in the public interest and will not have a significant adverse impact on the community. Section 50 (3) of the Act also provides that "The mere addition of a new licence or licence premises in a community is not taken to be a benefit to the community".
26. In the hearing of this matter, as was also the case with the other Café 21 application, the community impact statement was inadequate. The only justification advanced for the change in licence was the following entry in the standard departmental application form:
- "I don't think there will be any negative impact on the local community. Essentially, we will still be operating as a cafe/restaurant and are just seeking to have the option for our patrons to be able to purchase a beverage without ordering a meal.*
- Presently alcohol accounts for about 2-3% of our sales and we don't think that will change a lot. Persons wanting to consume a lot of alcohol are more likely to seek a different venue than a cafe.*
- We have patrons sit outside and thus including this area within the licenced area means they may enjoy an alcoholic beverage with their meals as well. This outside area has been upgraded so that it is fully enclosed and delineated from the outside public areas."*<sup>1</sup>
27. The Applicant also relied on the fact that the owners of the business next door had no concerns about the proposed licence changes. However as Ms Um conceded during the hearing, Uncle Sam's, the takeaway food shop next door is owned by her family members so their support for the proposal was hardly objective.
28. The Applicant has made a significant effort to improve the ambience of these premises however they are located in an area which has historically attracted a number of itinerants as well as late-night revellers in search of takeaway food. It is an area that has been subject to regular episodes of antisocial behaviour as well as alcohol fuelled violence. It is telling that the Applicant has recently erected heavy duty steel bars and gates along the whole of the front of this building. While some type of barrier would have been necessary to delineate the proposed new outdoor licensed area from the public car park such a foreboding

---

<sup>1</sup> Page 31, Exhibit 1

security structure can only have been installed because of concerns over the safety of staff and patrons as well as the risk of damage to the premises.

29. The Applicant has not articulated any real public benefit that will arise through patrons being able to purchase liquor without consuming a meal at this Café. There are other licensed premises in close proximity, such as the Traders Bar, Nirvana and Smoke and Oak, which offer specialty cocktails or live music to their clientele. There have been no surveys conducted of the current restaurant patrons or local residents as to whether they would see any benefit in these premises offering the option of liquor without a meal. There have also been no letters of support adduced in evidence before the Commission.
30. As the Commission observed during this hearing, if the case put forward by this applicant was sufficient to warrant the grant of a restaurant\bar authority then there is no real reason why all other restaurants should not be afforded the same flexibility to serve liquor without providing a meal.
31. The Commission is not satisfied on the evidence before it that the Applicant has established that a new licence with a restaurant and bar authority is in the public interest.

#### **WHETHER THE ISSUE OF THE LICENCE WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON THE COMMUNITY**

32. 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 following 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.
33. 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, which are 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 – children and young people;</p> <ul style="list-style-type: none"> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• Migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to</p>

	these 'at-risk' groups or sub-communities?
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>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>
Volume	<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>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

34. As previously indicated, 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.



35. The price point at which the Applicant is currently selling liquor to diners is not much more expensive than the prices charged for liquor in public bars. There is a risk that some of the unruly people who currently congregate in this area at night might be persuaded to stay around and drink at these premises because of the not unreasonable liquor prices. This could lead to an increase in the current levels of antisocial behaviour and risk of disturbance in this area.
36. On the evidence before it, the Commission is also not satisfied that issuing a restaurant bar authority will not have a significant adverse impact on the local community.
37. On being advised that its application for a restaurant bar authority would be refused, the Applicant with the support of the Director's representative sought to amend the current application to include an application for a material alteration to the existing licence footprint to include the outdoor dining area.
38. The public advertisement and stakeholder notification included details of the proposed extension of the licensed dining area which raised no objections.
39. The new dining area is extremely well delineated by a floor-to-ceiling steel grill, whilst not to everyone's taste, it should protect diners from unwanted intrusion from non-patrons.
40. The Commission is satisfied that the material alteration meets the public interest and community impact requirements and accordingly approves the extension sought.

## **NOTICE OF RIGHTS**

41. 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 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
42. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Applicant and Director.



Richard Coates

CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
3 August 2022

On behalf of Commissioners Coates, Stephenson and Hart