

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

REFERENCE: LC2019/120

PREMISES: **Wirib Store & Tourism Park**
1/13 Victoria Highway
TIMBER CREEK NT 0852

APPLICANT: **Wirib Aboriginal Corporation**

NOMINEES: Stephen Smith, Martin Hayler and Lyn Hayler

LEGISLATION: Section 24 and 29 of the *Liquor Act 1978*

HEARD BEFORE: Mr Richard Coates (Chairman)
Ms Elizabeth Stephenson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARINGS: 22 October 2019
18 February 2020

DATE OF DECISION: 26 February 2020

DECISION

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* (NT) (“the 1978 Act”) the Northern Territory Liquor Commission (“the Commission”) has determined to grant a licence authorising the sale of liquor for consumption on or at the licensed premises to Wirib Aboriginal Corporation.
2. The licence issued will be for a restaurant bar authority and the conditions will be the same as those that apply to a restaurant bar authority as defined by Division 16 of the Liquor Regulations 2019, made under the *Liquor Act 2019* (“the 2019 Act”) save and except that the hours of operation will be from 12:00 to 21:00 every day of the year.
3. Pursuant to section 31 of this Act it is a condition of this licence that the licensee not commence selling liquor until it provides written proof to the satisfaction of the Director of Liquor Licensing (“the Director”) that the premises have been constructed in accordance with the plans tendered at the hearing and a certificate of occupancy has been granted together with all other requisite statutory approvals.

REASONS

BACKGROUND

4. On 1 October 2018, an application was lodged by Wirib Aboriginal Corporation, (“the Applicant”), seeking an Authority ‘On’ Licence for premises known Wirib Store & Tourism Park, 1/13 Victoria Highway, Timber Creek NT 0852. At the time of lodgement, the application was deemed incomplete, and returned to the Applicant on 26 February 2019.
5. The application was re-submitted, and still deemed as incomplete. However, on 22 March 2019, Licensing NT, had sufficient information from the applicant to proceed with advertising the application.
6. The Applicant is applying for an Authority ‘On’ licence, for a family, friendly café style restaurant, for the community and tourists, offering a range of food from basic style readymade food, pre-made sandwiches, wraps and cakes. The sale and consumption of alcohol is as follows:
 - the sale of liquor is for consumption on the premises;
 - all alcohol will be served in cans or plastic receptacles and will include light, medium and heavy beers, cider, wine and spirits;
 - trading hours from 12.00pm to 9.00pm Monday to Sunday including all public holidays with the exception of Good Friday and Christmas Day; and
 - alcohol is not ancillary to a meal.
7. The application was accompanied by an affidavit from Mr Stephen John Smith, Company Secretary, for WIRIB Aboriginal Corporation, stating that there are no other persons other than the Secretary, Executive Officer, Members, Shareholders, Gunamu Aboriginal Corporation, and North Australia Aboriginal Corporation (trading as Aboriginal Investment Group) of influence in relation to the conduct of the business or the proposed licence.
8. The Applicant is registered with the Office of the Registrar of Indigenous Corporations (ORIC). An extract of Wirib Aboriginal Corporation, including the complete Rule Book have been provided. In addition an ASIC extract for Gunamu Aboriginal Corporation, and copy of the Rule Book have been provided.
9. Wirib Aboriginal Corporation, has eight Directors: Mr Duncan Bero, Mr Larry Johns, Ms Deborah Jones, Ms Lorraine Jones, Ms Margaret McDonald, Ms Clara Paddy, Ms Doris Roberts, and Ms Betty Smiler, with Mr Stephen Smith as company secretary.
10. In support of its application the Applicant provided a copy of its Services Agreement with the North Australian Aboriginal Corporation (trading as Aboriginal Investment Group). That entity is part of the Northern Land Council (NLC) and has had an ongoing relationship with the Applicant in the management of its food store and tourist park.

11. The nominee of the licensed premises that was originally proposed was Mr Peter James Castle, however at the hearing the Commission was advised that he was no longer able to take up that position and that alternate nominees would be proposed.
12. It was not until late December that the Applicant submitted details of the proposed new nominees together with the requisite probity documentation. That documentation was referred to the Director where officers carried out the necessary investigations in relation to the eligibility of the proposed nominees and advised the Applicant of the options available to it in relation to its proposed nominee.
13. On 17 December 2019 the Applicant confirmed that its proposed nominees were Stephen Smith, Martin Hayler and Lyn Hayler.
14. The Applicant has submitted a balance sheet dated 8 August 2018, an unaudited financial report year to date – 31 December 2019, Directors reporting quarter 4, 2018 Report, for Wirib Store & Tourism Park and an audited financial report for year ending 30 June 2018 in the name of WIRIB Pty Ltd. The applicant has advised that WIRIB Pty Ltd was transferred to a CATSI Act Corporation in August 2018. The ABN remains the same, it was only an incorporation change/name change.
15. The Applicant has provided the following:
 - An executed copy of the lease agreement between the current landlord, Gunamu Aboriginal Corporation, and Wirib Aboriginal Corporation, including a Services Agreement. Page 15 item 14(b) of the lease states the “Premises must be used as licenced café including the sale of hot meals and liquor”.
 - An overview of Wirib Licensed Café and in-depth business plan of Wirib Tourism Park, including a site plan and a copy of their policy guide in relation to the supply of liquor;
 - Certificate of registration of a food business for Wirib Store and Tourism Park issued by the Department of Health.

ADVERTISING AND CONSULTATION

16. The application was advertised in the Katherine Times, on 17 April 2019 and 24 April 2019. A green sign was displayed at the site for the required 30 day period. The applicant has supplied a photograph of the green sign erected at the site and also provided a Statement of Display. The objection period ended on 25 May 2019.
17. On 15 April 2019 an email was sent to the Director-General of Licensing from Fiona McDonald the proprietor of the Timber Creek Hotel expressing concern over the possibility of another licensed venue opening in Timber Creek. The email was sent prior to notice of the application being advertised and prior to the commencement of the period for objections (pursuant to section 47F(4)(d) of the 1978 Act). The email was not expressed to be an objection nor was it signed as required by section 47F(4)(b) of the 1978 Act.

18. Although the Acting Deputy Director-General in her referral described this email as an “Objection” neither in its substance nor form did it meet the requirements of section 47F of the 1978 Act. Accordingly, the Commission has taken note of the information provided by Ms McDonald but not treated her letter as a valid objection.
19. Pursuant to 32A(5) of the 1978 Act, on 10 April 2019, the following were informed that the application had been made, and provided with the opportunity to provide comment:
 - Chief Executive Officer of the Department of Health;
 - Commissioner Northern Territory Police; and
 - Chief Executive Officer of the Timber Creek Northern Land Council.
20. On 10 April 2019, the Department of Health provided a response by email confirming they had no adverse comment. However, it was asked that consideration be given to patron and community safety and amenity when determining this application. The Department of Health noted that its comments were provided on the understanding the Applicant is aware of their responsibility with regard to smoking compliance at the venue.
21. During the course of this hearing the Commission has cause to comment on the total inadequacy of the input into this inquiry from the Department of Health.
22. This “standard” response from the Department of Health may be understandable in the context of a low impact proposal within an urban setting. However given this application relates to a doubling of the licensed premises in a remote, largely indigenous community, we would have expected more enlightened input from a critical services provider in this remote community.
23. Northern Territory Health operate the Timber Creek Health Clinic and is uniquely placed to provide the Commission with the views of its professional staff working at the coal face on the level of alcohol abuse and its consequences in this community.
24. On 28 May 2019, the Northern Territory Police, provided a response that they did not support the application by advising one liquor outlet in Timber Creek is deemed sufficient for a small population. There has been number of deaths in the Town as a direct result of alcohol consumption and there are concerns that children will be present whilst people consume alcohol. The email from Police, was not expressed to be an objection nor was it signed. The Commission has taken into account the helpful information provided by Police, but not treated it as an objection.
25. The Applicant was afforded an opportunity to respond to the adverse comments from Police and Ms McDonald.
26. On 1 July 2019, a letter via email was received from the Applicant in response to the adverse comments.
27. In its response to the adverse comments from the Timber Creek Hotel, the Applicant noted these were from its only other commercial competitor. Whilst it acknowledged alcohol had not been well managed within Timber Creek in the past, it attributed much of the blame to poor management practices of the hotel. The applicant noted:

“Both owners do not benefit from any unrest in the community. It is a critical principle of the Board of Directors to present and lead the community in a responsible manner. Therefore it would be of utmost interest of the Directors to work with the Timber Creek Hotel and follow and join the hotel in any voluntary restrictions.”

28. In response to the adverse comments from Police, the Applicant stressed that most of the alcohol related problems in this community emanated from the abuse of take away liquor. There would be no takeaway sales from this outlet. It argued “The café is there to offer the tourist and the community families and individuals a venue to come together, to socialise while responsibly enjoying non-alcoholic and alcoholic drinks and/or meals, a place to stay connected, build and maintain new relationships and grow together as a community”.

HEARING

29. The hearing was conducted in public and commenced on 22 October 2019. At the request of the Applicant the hearing was adjourned to a date to be fixed to enable the applicant to lodge further documentation in support of the appointment of alternate nominees. The matter was relisted briefly on 18 February 2020. The Applicant was represented by lawyer Andrew Giles and Mr Mark Wood, Representative of the Director with extensive knowledge of Timber Creek, appeared to assist the Commission. The Commission is grateful to all those that appeared for their assistance in this matter.
30. Prior to the hearing the Commission referred the parties to the Bowchung report, a 2015 review on licensed communities compiled by Gillian Shaw, Maggie Brady and Peter D’Abbs. That study was commissioned by the Commonwealth Government with the aim of appraising harm levels associated with the operation of licensed social clubs in indigenous communities and also identifying best practice governance structures for licensed indigenous social clubs.
31. The Commission acknowledged that what is proposed in this application is not an aboriginal social club within an Aboriginal Community. However the applicant is an indigenous corporation that is hoping to operate a licensed venue for the enjoyment of the local Aboriginal residents of Timber Creek as well as the tourists that visit the town. Both Maggie Brady and Peter D’Abbs have extensive research experience within the Northern Territory in relation to alcohol harm minimisation strategies and the Commission has been assisted by their observations and findings detailed in the Bowchung report.

ASSESSMENT OF THE APPLICATION

32. This application for a liquor licence commenced in October 2018, prior to the coming into force on 1 October 2019 of the 2019 Act. Regulation 129 of the *Liquor Regulations 2019* (“the Regulations”) provides that in these circumstances, unless the applicant notifies the Director that it wishes to have the application determined under the 2019 Act, the application is to proceed and be determined under the 1978 Act. The Applicant made no such notification, and accordingly, the application proceeded and is being determined under the 1978 Act.

33. As also required by Regulation 129, the Applicant notified the Director of the authority it seeks to have issued in conjunction with the licence, namely a Small Bar Authority, albeit with reduced trading hours. As this application is being determined under the 1978 Act, the Commission is not empowered to issue an authority or authorities in conjunction with this licence, and it is unnecessary for the Commission to express a determinative view as to which authorities should be ultimately be issued when the licence is converted and an authority or authorities are issued by the Director pursuant to s.52(4) of the 2019 Act. The Commission notes however that it has incorporated into the licence those conditions from the prescribed condition for Restaurant Bar Authority set out in regulations 82 and 83 of the Liquor Regulations 2019.

THE APPLICANT'S PREMISES

34. The Applicant tendered plans and architectural drawings (exhibit 3) which detail the renovations proposed for the old community store to convert it into a licensed restaurant/café. Funding for the renovation will be sought from Indigenous Business Australia (IBA) and it is estimated that at least \$750, 000 will be spent on the premises. If the renovation work is conducted in accordance with the plans submitted to the Commission the premises will be equipped with appropriate facilities for the preparation, sale and service of food and beverages including liquor.
35. In accordance with S.28(2)(a) of the 1978 Act, the Commission assesses the premises when constructed in accordance with the plans submitted as suitable for the supply and consumption of liquor in the manner set out in the application.

THE APPLICANT

36. The Applicant is managed by a Board of Directors. It is an Aboriginal Corporation registered with the Office of the Registrar of Indigenous Corporations (ORIC). The Corporation has eight Indigenous Directors and the secretary of the corporation and one of the proposed nominees is Mr Stephen Smith who gave evidence at the hearing of this application.
37. Each of the Directors of the Applicant corporation together with Mr Smith provided the Director-General with business and personal references together with a National Police Certificate or documentary proof that they had submitted a criminal history and fingerprint check. The Commission has not been provided with any evidence that would suggest that any of the Directors or other office holders of the corporations are not "fit and proper persons" to be an associate of the licensee.
38. The Applicant's financial statements that were lodged in support of the application revealed that it had sustained a loss of approximately \$300,000 in the last financial year. Mr Smith provided extensive evidence on the long term strategies that had been adopted in partnership with the Northern Land Council's Aboriginal Investment Group (AIG) to improve the financial viability of this tourism park and food security store enterprise. There has been a significant investment by AIG and the Commonwealth Government in capital infrastructure which has reduced overheads and that factor, together with changed management practices has resulted in the business now trading at a profit.

39. In accordance with s.28(2)(c) of the 1978 Act, the Commission assesses the Applicant as having a satisfactory business reputation and as being financially stable. In accordance with s.28(2)(e) of the 1978 Act, the Commission assesses the Applicant to be a fit and proper person to hold a licence.

THE SECTION 26A AFFIDAVIT

40. Section 26A of the 1978 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.
41. The original licence application was accompanied by an affidavit sworn by Peter Castle on 26 July 2018, the then proposed nominee, attesting that there was no person other than the applicant that would have any interest to be able to influence any decision on the sale of liquor as is required by section 26A.
42. On 7 August 2019 Stephen Smith, the Company Secretary of the Applicant swore an affidavit in accordance with section 26A correctly disposing that both the Gunamu Aboriginal Corporation and North Australia Aboriginal Corporation (trading as Aboriginal Investment Group) were persons able to influence the applicant. Evidence before the Commission establishes that Gunamu Aboriginal Corporation, is the corporate identity of the traditional owners of the region and the owner of the land on which the licensed premises will be located. The lease from Gunamu to the applicant was in evidence before the Commission.
43. Also in evidence before the Commission was a service agreement between the Applicant and North Australian Aboriginal Corporation detailing the services, including facilities management services that would be provided to the applicant in relation to the operation of the Tourism Park.
44. The Commission is satisfied that the applicant has complied with its disclosure obligations under section 26A of the 1978 Act.
45. The applicant has proposed as joint nominees Mr Stephen Smith the company secretary and Mr Martin Hayler the current store manager and Ms Lynette Hayler the current assistant store Manager. Each of these persons have lodged the required probity documentation with the Director who has raised no concerns over their suitability to manage licensed premises.
46. The Commission is satisfied that each of the proposed nominees, who each hold current RSA certification and have provided appropriate documentation as to reputation, good character and relevant work history to be fit and proper persons to jointly manage the licence.

PUBLIC INTEREST AND COMMUNITY IMPACT

47. The Commission is required to consider each of the fifteen objectives in section 6(2) of the 1978 Act. In doing so, the Commission has had particular regard to the licensee's public interest and community impact statement.

48. The Commission now turns to consider each of the section 6(2) objectives:

- (a) *Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised.*

The Commission considers that the grant of a licence authorising liquor to be sold for consumption at the premises on the conditions it has decided to impose will not raise a substantial risk of causing harm or ill-health to people or a group of people by the consumption of liquor. Food will always be available to patrons when the premises are open and liquor can only be consumed whilst patrons are seated.

- (b) *Liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner.*

The Commission considers that, if granted a licence on the above-mentioned conditions, the licensee is likely to sell liquor in a responsible manner, and that its patrons would generally consume it 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.*

On the evidence before the Commission, large numbers of persons are unlikely to attend the premises such that public order and safety are likely to be jeopardized.

- (d) *The safety, health and welfare of persons who use licensed premises must not be put at risk.*

The Commission does not consider that persons using the licensed premises would be exposed to a significant risk of harm.

- (e) There are no residential properties in close proximity to the premises. Given the low numbers of patrons expected to visit the bar/restaurant at any given time and the early closing hour, the Commission does not consider that the noise emanating from the premises is likely to be excessive, or that it is necessary to impose a special noise condition.

- (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.*

The Commission considers that the location and use of the premises is such as to effectively mitigate this risk.

- (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 2008; and*
- ii. Provisions of or under the Planning Act 1999.*

The Commission is satisfied that the applicant is aware of its responsibilities in this regard.

- (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.*

The Commission is satisfied that the applicant, and in particular its nominated manager, will appropriately manage and supervise service staff.

- (i) The use of credit in the sale of liquor must be controlled.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

- (j) Practices which encourage irresponsible drinking must be prohibited.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

- (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.*

The Commission considers that this objective can be achieved by the imposition of the conditions it has imposed.

- (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.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

- (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.*

No issues have been raised with the Commission that raise concerns in relation to this objective.

- (n) *It may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.*

No issues have been raised with the Commission that lead it to be concerned in relation to this objective. The applicant's Alcohol Management Policy incorporates various measures that effectively address this issue.

- (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.*

The Commission does not consider that the grant of a liquor licence to the applicant is likely to result in a significant increase in anti-social behavior within the precinct.

THE IMPACT ON THE COMMUNITY

49. In considering the impact of the decision on the local community, the Commission must have regard to five matters set out at section 6(3)(a) of the 1978 Act, and in addition apply the community impact assessment guidelines.

- (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.*

The Commission accepts the evidence from Police that "Timber Creek residents and local Indigenous people are suffering greatly from the harm caused by alcohol consumption". However most of that harm is being caused by takeaway liquor sales from the nearby Timber Creek Hotel. The Commission is satisfied that by requiring the licensee to comply with the conditions of a restaurant/bar authority under the 2019 Regulations and reducing the opening hours that the risks associated with another licensed venue in Timber Creek can be satisfactorily mitigated.

(ii) The cultural, recreational, employment or tourism impacts.

The Commission considers that the issue of a licence will have a beneficial recreational impact for residents of Timber Creek who are looking for alternate dining options to those on offer from the hotel. It will serve a need for the increasing number of tourists visiting the area and it is noted that the applicant estimates that 75% of its clientele will be tourists. The Commission is also persuaded on the evidence that there will be beneficial outcomes in relation to increased employment if the licence is granted. The Applicant also raised the possibility of the Venue being used to showcase Aboriginal culture to the tourists who visit the Park although no concrete proposals were advanced.

(iii) The social impact in, and the impact on the amenity of, the locality of the premises or proposed premises.

The Commission considers that the renovations which are proposed for the cafe/restaurant will have a positive impact on the amenity of the Wirib Tourist Park. Although the Commission is concerned about the potential negative impact of another licensed venue in Timber Creek, the Commission commends the Applicant for having a detailed alcohol management plan and for agreeing through its Liquor Committee to closely monitor the operation of the premises and to apply a range of mitigation strategies to reduce any potential harm caused through the serving of alcohol.

During the course of this hearing the Applicant submitted that a licence more closely aligned to a small bar authority (as prescribed by Division 17 of the 2019 Regulations) would provide greater flexibility with no extra risk for the applicant in that patrons could stand whilst drinking. The Commission does not agree.

The proposal was advertised and presented to the Commission as a family friendly cafe/restaurant. Although the provision of alcohol will not necessarily only be ancillary to a meal, the Commission is convinced that the premises should have the atmosphere, facilities and focus of a restaurant. It has been suggested by the Applicant that it will only serve liquor in non-glass containers. The Commission is not convinced that it is necessary to impose such a condition on the licence where the applicant envisages that 75% of its clientele will be tourists and most of these "grey nomads." The Commission is prepared to leave the decision on what types of containers to serve alcohol, to the licensee who will no doubt listen to the views of its Liquor committee.

(iv) The density of existing liquor licences within the community area.

The granting of this licence will result in a significant increase in the number of licensed venues in Timber Creek. There will now be two, however given the relatively limited size of these premises, the restricted hours of operation and absence of take away sales the Commission does not consider that this factor is of such significance as to warrant rejection of the application.

- (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.*

Similarly, and for the same reason, the Commission does not consider that this factor is of great significance in the circumstances of this application.

- (vi) *any other prescribed matter;*

No such matters have been prescribed.

50. Section 6(3)(b) requires that the Commission also apply the community impact assessment guidelines. The Commission has done so.
51. Having regard to the Objects as set out in section 3 of the 1978 Act, and the foregoing, the Commission is satisfied that approval of the application meets the public interest and community impact test. The onus is on the applicant to so satisfy the Commission, and the applicant has discharged that onus.
52. For these reasons, the Commission has determined that the application should be granted, and that a licence be issued on the terms and conditions set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

53. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the 1978 Act. A decision to issue a licence pursuant to section 29 of the 1978 Act is specified in the Schedule and is a reviewable decision.
54. 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.
55. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the 1978 Act, the affected person is the Applicant.



RICHARD COATES
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
26 February 2020
On behalf of Commissioners Coates, Cannon and Stephenson