

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A NEW AUTHORITY

REFERENCE: LC2020/054

APPLICANT: TNP Holdings Pty Ltd

PREMISES: Charlies of Darwin
Level 1, 56 Smith Street
DARWIN NT 0800

LEGISLATION: Section 52 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairman)
Mr Phillip Carson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 24 November 2020

DATE OF DECISION: 24 November 2020

Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (NT) (the Act) the Northern Territory Liquor Commission (the Commission) has determined to issue a producers' authority to TNP Holdings Pty Ltd (the Applicant) which will attach to its existing liquor licence FLL1057 for the premises known as Charlies of Darwin located at Level 1, 56 Smith Street, Darwin.
2. The conditions of the authority will be those conditions set out in Division 13 of the Liquor Regulations 2019 (the Regulations).

Reasons

Background

3. The Applicant was granted a licence for these premises to operate in accordance with a Public Bar Authority pursuant to section 29 of the *Liquor Act 1978* (the 1978 Act) on 11 June 2019 following a hearing by the Liquor Commission on 21 May 2019.
4. During the course of that hearing, Ms Bullen for the Applicant Company advised the Commission that she was proposing to operate a gin distillery from part of the premises once they were established. Although as the Applicant has pointed out, it would have been more convenient if it had been also granted a producers' authority at the time of the original hearing, there was no option under the 1978 Act for the Commission to authorise the sale of liquor produced by a licensee for consumption off the premises as is now provided for by section 47(1)(j) of the 2019 Act.

5. On 25 June 2020, an application was lodged by the Applicant for a producers' authority to attach to its existing licence. For reasons that are not detailed in the referral of the Director of Liquor Licensing (the Director), the application was assessed as being incomplete.
6. Although the application was expressed to be for a producers' authority it also sought extra conditions that would permit "take away, mail order and online sales of our distilled product".
7. The Applicant has provided the following documents in support of the application;
 - Cover letter;
 - Affidavit as required Section 54 of the Act;
 - Community Impact Assessment;
 - Public Interest and Community Impact Assessment Summary;
 - Copy of proposed extra condition required for advertising.

PUBLICATION AND CONSULTATION

8. The application was published in the NT News on Saturday 19 September 2020 and Wednesday 23 September 2020. The Applicant also displayed the required "green sign" at the premises and provided photographic evidence of the display.
9. As a result of publication of the application, there were no objections received from the public.
10. The following stakeholders were notified of the application in accordance with section 56(4) of the Act.
 - The Chief Executive of the Department of Health;
 - Northern Territory Police;
 - The Chief Executive Officer of the City of Darwin.
11. The Department of Health replied via email dated 18 September 2020 stating that it had no adverse comment provided that off premises sales are restricted to product produced only on premises.
12. The Northern Territory Police replied via email dated 21 October 2020 stating it did not support the application and had several concerns which were outlined in their response.
13. The City of Darwin sought approval to lodge their reply "out of time" with that request lodged prior to the closing date of the objection period. That request was approved by a Delegate of the Director. The Council replied via email dated 28 October 2020 stating the Council provide no formal response and that it supports the due process of the Liquor Commission.

14. Although the Police comments were not specifically claimed to be an objection, they were treated as such by Licensing Officers and the Applicant was given an opportunity to respond to the concerns that had been expressed by Police.
15. The NT Police in an email of 21 October 2020 stated the following:

NT Police's concern with this application relates to "the health, education, public safety or social conditions in the community of the licensed premises or proposed licensed premises" pursuant to Section 61(2) of the Liquor Act 2019.

The proposed change to Charlies of Darwin Liquor License would allow for the production of liquor and sale of said liquor on site and via on-line orders. The present license allows for sale of liquor 7 days a week from 10:00am to 2:00am. NT Police are not opposed to liquor being made on site. Our concern relates to what safeguards would be implemented by the applicant to avoid irresponsible consumption of liquor on-site. Specifically if patrons purchasing take-away liquor on-site, stay on-site consuming over the bar liquor on-site, possibly consuming take-away liquor on-site or alternatively leave the premises with the take-away liquor after consuming over the bar liquor.

There are multiple take-away liquor outlets in close proximity to the applicant's premises in addition to a large number of CBD bars. NT Police do not believe that this application is in the best interest of the community and without detailed safeguards to mitigate the possible risk to community members NT Police do not support to the applicant's request.

16. The Applicant's solicitor, Mr Thomas Richardson responded comprehensively and diplomatically to the concerns that had been raised by Police in a letter to the Director dated 12 November 2019.

COMPLIANCE HISTORY

17. The Applicant holds a Registration as a Wholesaler, number WLL1044, which was issued on 10 June 2020 where there is no recorded negative compliance history.
18. The owners and directors of the Applicant also hold liquor licence 80318998 where Northern Wines Pty Ltd is the licensee of premises known as Stone House Wine and Kitchen located at 33 Cavenagh Street, Darwin. There is no recorded negative compliance history for that venue.

REFERRAL TO THE COMMISSION

19. The Director referred this matter to the Commission on 12 November 2020. The same date that the Applicant's solicitor had provided its response to the Police objection. Pursuant to section 60(2)(c) of the Act, the Commission was therefore required to make a decision on the application within 28 days from 11 November, being the date by which the Applicant was required to respond to the Police objection.
20. On 18 November 2020 the Commission wrote to the parties advising them that the public hearing would be held on 24 November 2020.
21. In accordance with its usual practice, in order to achieve the most efficient use of its resources this was not the only matter listed for hearing on that day. Two other matters

were heard, including an application by Willing Distillery which was also seeking a producers' authority. As there were common issues associated with both applications, the Commission decided that both matters should be heard by the same panel.

22. The hearing commenced at 11:30 on 24 November 2020. Ms Bullen for the Applicant was present and was represented by Mr Richardson of De Silva Hebron Solicitors. Mr Jeff Verinder appeared to represent the Director. Superintendent Sheehan appeared on behalf of the Police. The Commission is grateful for the assistance provided by all those present.
23. 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. The brief was tendered as Exhibit 1 in the proceedings.

ASSESSMENT OF THE APPLICATION

24. In determining whether to issue an authority the Commission is bound by section 49(1) of the Act which provides:

The Commission may only issue a licence or an authority if satisfied 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.

25. Section 51(3) of the Act also provides:

A licensee who is applying for an authority is assumed to be a fit and proper person, in the absence of evidence to the contrary.

26. There is no negative compliance history alleged against the Applicant and there is no suggestion by the Director in his referral or any evidence that the Applicant is no longer a fit and proper person, so the Commission is satisfied that the Applicant meets the requirements of section 49(1)(a) of the Act.

Is Issuing the Authority in the Public Interest?

27. Section 49(2) of the Act provides:

To determine whether issuing a licence or an authority is in the public interest, the Commission must consider how it would advance the following objectives:

- (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. At the commencement of the hearing, the Commission complimented Mr Richardson, the Applicant's solicitor on the quality of the submissions he had prepared addressing the Public Interest Test and Community Impact Assessment requirements of the Act (see attachment M to exhibit 1). He comprehensively addressed each of the objectives listed in section 49(2) of the Act and stressed the proven record of the Applicant to manage licensed premises in a manner which effectively minimised the potential for harm caused by the service of alcohol.

29. In relation to objective (e) in section 49(2) which relates to increasing cultural, recreational, employment or tourism benefits; the Applicant submitted:

“(e) Increasing cultural, recreational, employment or tourism benefits for the local community area:

- (i) The Applicant intends for the alcohol produced at the Premises to be a reflection of the Northern Territory in as many ways as possible. The products are an amalgamation of flavours and botanicals sourced in the Northern Territory wherever possible, ensuring that the taste of the Territory is readily available to purchase by patrons.*
- (ii) The Applicant has committed to ensuring that all botanicals sourced in the Northern Territory are from sustainable and ethical sources. TNP has entered into supply agreements with local indigenous communities and the Darwin Botanical Gardens to ensure that all botanicals reflect the very best the Northern Territory has to offer.*
- (iii) Further to the above, it must be acknowledged that Charlies of Darwin is a purely Northern Territory based venture, providing employment opportunities to local residents not only at the venue, but in obtaining the ingredients used in production of the alcohol at the Premises”.*

30. Just as the Australian premium wine industry began to take off 50 years ago it is now clear that there is an emerging market both within Australia and elsewhere for our high end distilled spirits. The Applicant's proposal to produce and market a boutique gin with a particular "Territory flavour" is commendable and supports objective section 49(2)(e) of the Act whilst not compromising those other objectives aimed at minimising the harm that can be caused by the consumption of liquor. It is clear that the price point for this product will not make it popular with problem drinkers and it is more targeted toward providing a unique taste experience which will no doubt be enhanced by the customer being able to observe the distillation process via the copper still.

31. The initial concerns that had been raised by Police were largely assuaged by Mr Richardson's letter in response. It became clear that it was not in the Applicant's interest to allow patrons to consume any liquor on the premises which had been purchased for consumption away from the premises. Furthermore, as the hours of operation for a producers' authority cease at the same time as a takeaway authority it is unlikely that patrons will purchase an expensive bottle of gin just so they can keep drinking, when they are entitled to remain drinking on the premises until 02:00 or if they leave before 10:00 they can purchase liquor for consumption at home more economically from one of the nearby takeaway outlets.
32. At the hearing, Superintendent Sheehan fairly conceded that the initial Police objection was made prior to them being able to form a proper appreciation of the actual extent of this novel application.
33. Having regard to all objectives specified in section 49(2) of the Act, the Commission is satisfied that granting a producers' authority to the Applicant would be in the public interest.
34. Section 49(3) of the Act provides:

To determine whether issuing a licence or an authority would have a significant adverse impact on the community, the Commission must consider the following:

 - (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.*
35. Once again Mr Richardson made comprehensive submissions covering all of these considerations. The Applicant relies on the fact that it is currently operating these licensed premises in a safe and responsible manner without any adverse impact on the local community. There have been no compliance issues raised by the Director.

36. In relation to any potential concern that approving the application could result in an increase in the volume of alcohol consumed within the Northern Territory the Applicant submitted:

(h) *Volume:*

i. The Applicant does not believe that the grant of the Producer's Authority will increase the consumption and volume of alcohol consumed in a significant way. The alcohol produced by TNP will be sold as a local alternative to the number of products currently sold at the venue. It is expected that patrons will consume the locally made liquor instead of choosing other mass-produced brands from interstate and overseas.

37. On the basis of the evidence before us we are satisfied that allowing a producers' authority at these premises will not have a significant adverse impact on the community

MAIL ORDER AND ONLINE SALES?

38. Both this Applicant and the applicant in the Willing Distillery matter which was also heard on the same day, sought the inclusion of special conditions for the producers' authority which would permit mail order and online sales of its product both within and outside of the Northern Territory.

39. Section 47(j) of the Act establishes a :

"Producers' authority, which authorises the licensee to sell amounts of the liquor prescribed by regulation produced by the licensee to patrons visiting the producer's manufacturing premises for consumption on or off the premises".

40. On the clear wording of the section, sales for off premises consumption are limited to those patrons who are visiting the producer's premises.

41. As has been referred to earlier, prior to the introduction of section 47(j) a producer of liquor was not entitled to sell liquor to a person who intended to consume that liquor off the premises unless it held a licence that permitted take away sales.

42. Section 84(3) of the Act which was first introduced in the 1978 Act provides:

"No takeaway authority may be created or issued until after 31 August 2023 or any later date extended under subsection (4)".

43. That moratorium on new take away outlets was a critical recommendation of the Riley Review and the Commission does not consider it is open to it, or that it would be an appropriate exercise of discretion to expand the conditions of a producer's authority to create what in effect would amount to a new take away authority against what would appear to be the express intention of Parliament to limit off premises consumption solely to product purchased during a visit to the premises.

44. However, having heard the arguments presented with some passion by both this Applicant and Mr Dave Willing in relation to the proposed Willing Distillery, the Commission believes there could be merit in allowing the Territory's new distillers to compete on a level playing field with the rest of Australia and sell their produce by mail order or online. Due to the inevitable time lapse between order and delivery, together

with the premium price differential, we consider that there is little risk that such a facility would encourage irresponsible drinking. It would allow these distillers to tap into a broader market and also showcase a distinctively Territory taste experience to the rest of the nation. The Commission recommends that when the Act is next reviewed that consideration be given to extending the scope of the producers' authority to include sales by delivery.

TIMELINESS

45. At the conclusion of the hearing on 24 November 2020, the Applicant was advised that the application had been approved. On that basis the Commission has clearly complied with the guidelines imposed by section 60 of the Act. A public hearing was scheduled, heard and determined within 12 days of the Commission becoming seized of this matter.

NOTICE OF RIGHTS

46. Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by NTCAT and the following persons (relevantly) may apply to NTCAT for a review:
- a. in all cases – the Director;
 - b. in the case of a decision regarding an application – the Applicant;
 - c. in the case of a submission, complaint or objection that was the subject of a decision – the person who made the submission, complaint or objection.
47. In accordance with the substance of section 31 of the Act any application for review of this decision must be lodged within 28 days of the date of this decision.
48. Section 60(3) of the Act requires the Commission to give a decision notice to the applicant and each person who lodged an objection to the application under section 61.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
7 December 2020

On behalf of Commissioners Coates, Carson and Cannon