

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2020/040

APPLICANT: The Castle Incorporated

PREMISES: Newcastle Waters Station
11 Drovers Drive
Newcastle Waters NT 0862

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

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 18 September 2020

DATE OF DECISION: 1 October 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 licence to The Castle Incorporated (“the applicant”).
2. The licence will be issued with a Community Club authority.
3. The conditions of the licence will be those authority conditions set out in Division 7 of the *Liquor Regulations 2019* (“the Regulations”).
4. The following additional conditions are fixed:
 - a. Liquor trading is permitted during the following hours:

Monday to Friday 17:00 hours to 21:00 hours

Saturday 17:00 hours to midnight

Sunday 17:00 hours to 20:00 hours

Public Holidays: 17:00 hours to 22:00 hours
 - b. The aggregate annual volume of alcohol that may be sold by the licensee is 1,000 litres Pure Alcohol Content (“PAC”) in a calendar year.

5. The licensed premises is the shed and adjacent outside area occupied by the applicant situated on Newcastle Waters Station and marked by the area bounded in red on page 104 of Exhibit One tendered at the hearing of the application (“the premises”).
6. In accordance with section 85 of the Act, the term of the licence will be for ten years.
7. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

The Application

8. Newcastle Waters Station, a 1 million hectare cattle station in the west Barkly region of the Northern Territory with a capacity of 65,700 head of cattle, is the largest of the nine cattle stations owned by Consolidated Pastoral Company (“CPC”). CPC employs 35 staff on Newcastle Waters, and has established, equipped and funded a Social Club to boost staff morale, and to provide recreation and sporting equipment and leisure facilities. Station staff live at or in the vicinity of the homestead, 28 km from the nearest town, Elliott.
9. In March 2020 the licensee was incorporated under the *Associations Act 2003* (NT), and on 22 June 2020 it completed an application to the Director of Liquor Licensing (“the Director”) for a liquor licence. On 11 August 2020 the Director referred the application to the Commission.

Consultation

10. As required by the Director pursuant to section 57 of the Act, notices of the application were published in the Tennant and District Times on 26 June and 3 July 2020.
11. In accordance with section 56 of the Act, notification was given to the Department of Health, NT Police and the Barkly Regional Council. The Director also consulted with the Northern Territory Fire and Rescue Service.
12. No objections were made, and none of the stakeholders who were consulted raised issues of concern regarding the application.

The licensee’s record of compliance

13. As a newly incorporated body, the applicant has never previously held a liquor licence.

The referral

14. The Director provided the following documents to the Commission with the referral (“the brief”):
 - a. Application for liquor licence
 - b. Affidavit and Declaration of Associates
 - c. Public Interest and Community Impact Assessment

- d. Applicant's registration as an incorporated association
- e. Applicant's constitution
- f. Documentation to establish the identity, qualifications, experience and character of Jeremy Scott, Kate Murphy, Paige Walling, James Beale and Simon Everingham
- g. Applicant's financial statements
- h. Consent by CPC for the applicant to supply and sell liquor
- i. Plan of premises
- j. Correspondence regarding notification of and consultation for the application

The hearing

15. 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.
16. On 18 September 2020 the application proceeded as a public hearing. Ms Kate Hughes, Ms Paige Walling and Mr Jeremy Scott appeared (by telephone, from Newcastle Waters) on behalf of the applicant. Mr Jeff Verinder appeared for the Director. The Commission thanks them all for their attendance and assistance.
17. The brief was tendered and admitted into evidence without objection.
18. In addition and also without objection, the applicant subsequently obtained and tendered letters dated 22 September 2020 from Maria Raymond, Eleanor Dixon and Raymond Dixon, residents of Marlinja Community, which is situated about 1 km from the premises.

ASSESSMENT OF THE APPLICATION

19. 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 club;
 - 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;
 - f. If the Commission considers it appropriate – whether each associate of the

applicant is a fit and proper person to be an associate of a licensee.

20. 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

21. Section 53(1) of the Act requires that a body corporate shall not hold a licence unless it is a corporation within the meaning of section 57A of the *Corporations Act 2001* (Cth). The Commission finds that the applicant is such a corporation.
22. Section 53(2) of the Act requires that an association shall not be issued with a community club authority unless it is incorporated under the *Associations Act 2003* (NT). The Commission finds that the applicant is so incorporated.
23. The applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

24. 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.
25. The Commission considers that it is appropriate to consider whether each of the following persons, each of whom is an associate of the applicant for the purpose of section 55, is a fit and proper person to be an associate of the applicant:
- Jeremy Scott (an executive officer of the applicant, namely the President)
 - Kate Murphy (an executive officer of the applicant, namely the Secretary/Treasurer)
 - Paige Walling (an executive officer of the applicant, namely the Public Officer)
26. Having had regard to the ample material tendered by the applicant attesting to the character, experience and qualifications of the above-named persons, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.
27. 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

28. The premises are located within a fenced area on private property that is signposted as being private. It comprises a corrugated iron shed and shaded and fenced outside area with typical "beer garden" type seating. The shed is equipped with a cold room, a bar and a karaoke machine.
29. The Commission assesses the premises to be suitable for the sale, supply and consumption of liquor in the manner set out in the application.

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

30. The Commission assesses the applicant as being financially stable. The applicant has only recently been incorporated, but the Commission is satisfied that in that brief period it has acquired a good reputation amongst staff at Newcastle Waters Station, two of whom have provided written testimonials to that effect.

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

31. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officers and secretary, Jeremy Scott, Kate Murphy and Paige Walling, to be satisfactory.

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

32. 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

33. The applicant has nominated James Beale, Jeremy Scott and Simon Everingham as joint licence nominees. They each hold current RSA certification, and the applicant has provided appropriate documentation of their reputation, character and work history. The Commission assesses each of them to be a fit and proper person to hold the licence.

Public notice and consultation

34. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

Whether issuing the licence is in the public interest

35. 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.
36. In considering whether the issue of the licence is in the public interest, the Commission has particular regard to the following circumstances:
- a. The premises are on fenced private land in a remote location;
 - b. The premises are accessible only to staff and guests of Newcastle Waters Station;
 - c. The applicant has requested that the premises operate with limited trading hours;
 - d. Each of the three proposed joint nominees holds a senior management position with CPC, and all club members are CPC staff;
 - e. The applicant will not be authorised to supply liquor for consumption off the premises; and
 - f. The application has the support of senior members of the Marlinja community, the principal of the Newcastle Waters School, NT Police at Elliott, and health clinic staff at Elliott.
37. Having considered each of the prescribed objectives, the Commission 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

38. 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.

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

40. 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.

41. 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.

42. The guidelines 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 –</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 buildings, 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;

	<ul style="list-style-type: none"> • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <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. 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 and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

43. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state 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”.

44. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

45. In considering these issues, it is also important to keep in mind that the onus is on the applicant: section 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

46. Having considered all of these matters, and having particular regard to the matters set out at paragraph 36 above, 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.

The objects of the Act

47. 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.

48. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

49. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

Conditions

50. The applicant has applied for the issue of a community club authority, which the Commission considers is the appropriate authority in the circumstances of this application. Section 47(1)(l) of the Act provides for the establishment of this authority in the following terms:

Community club authority, which authorises the licensee to sell liquor to members of a club operated by the licensee, guests of members and visitors of the club, for consumption on or in the licensed premises, with a limit prescribed by regulation on the aggregate annual volume of alcohol that may be sold.

51. The Commission notes that no limit has yet been prescribed by regulation on the aggregate annual volume of alcohol that may be sold by a licensee who has been issued a community club authority. The Commission has however been informed by Licensing NT that it is intended to prescribe a limit of 1,000 litres PAC. Accordingly, this is the limit the Commission has determined to impose.
52. The Commission considers that the trading hours proposed by the applicant are appropriate, and has imposed a condition accordingly.
53. In accordance with the applicant's wishes as expressed at the hearing of the application, the Commission fixes a term of ten years for the licence.

NOTICE OF RIGHTS

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



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
1 October 2020

On behalf of Commissioners Goldflam, Reynolds and McFarland