

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE AND AUTHORITY

REFERENCE: LC2020/051

APPLICANT: David Willing

PREMISES: Willing Distillery
1/31 Benison Road
WINNELLIE NT 0820

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 licence to David Willing (the Applicant).
2. The licence will be issued for the premises known as Willing Distillery situated at 1/31 Benison Road, Winnellie.
3. Attached to this licence will be a producers' authority permitting liquor produced by the licensee to be consumed both on the premises and away from the premises in accordance with the conditions prescribed by Part 4, Division 13 of the Liquor Regulations 2019 (the Regulations). Also attached to the licence will be a small bar authority permitting the sale of liquor for consumption on the premises in accordance with the conditions prescribed by Part 4, Division 17 of the Regulations.
4. In accordance with section 60(5) of the Act, and noting that a final fit out of the premises has not yet been completed, liquor must not be sold from the premises until such time as the Applicant has provided proof to the satisfaction of the Director of Liquor Licensing (the Director) that it has obtained all the necessary building and safety approvals.
5. In accordance with section 85 of the Act, the term of the licence will be for 99 years from the date on which it issues.

Reasons

The Application

6. On 4 August 2020, an application was lodged by the Applicant for a Liquor Licence with a small bar authority and a producers' authority allowing for on premises consumption at new premises located at 1/31 Benison Road, Winnellie.
7. The application was assessed as being incomplete with the Applicant supplying further documents a short time later.
8. The Applicant's proposal is for a liquor licence with a small bar authority and producers' authority for on premises consumption:
 - Sunday – Thursday 10:00 to 22:00;
 - Friday and Saturday 10:00 to 24:00.
9. The Applicant is proposing to conduct a craft distillery where gin and other spirits produced on the premises along with a range of liquor not produced on the premises to be sold for on premises consumption. As permitted under the Liquor Regulations the producers' authority permits the sale of takeaway liquor by patrons attending at the premises during trading hours but only between 10:00 to 22:00 every day of the year except Good Friday and Christmas Day.
10. The Applicant is also seeking a special condition to be inserted in the liquor licence to allow for online sales of products produced on the premises. A takeaway authority cannot be applied for due to the moratorium as outlined at section 84 of the Act.
11. The proposed licensee is David Willing as a natural person. Therefore there is no required company or ASIC company probity investigations.
12. Mr Willing has provided the following probity documents:
 - Photographic identification by way of NT Driver licence
 - National Police Certificate based on name and fingerprint check
 - Copy of Resume
 - Two signed references
 - Copy of RSA Certificate
 - Copy of purported General Certificate in Distilling Examination
13. The Applicant has registered the business name of Willing Distillery and supplied a copy of the ASIC Record of Registration for Business Name.
14. The Applicant has provided the following documents in support of the application:
 - Affidavit as required by section 54 of the Act;

- Community Impact Assessment;
- Financial Reports;
- Copy of Lease;
- Proposed site plan;
- Email dated 31 July 2020 containing email chain of advice from the Development Consent Authority to the Applicant;
- Copy of application receipt for Registration as Food Business;
- Business Plan.

PUBLICATION AND CONSULTATION

15. The application was published in the NT News on Wednesday, 16 September 2020 and Saturday, 19 September 2020. The Applicant also displayed the required “green sign” at the premises and provided photographic evidence of the display.
16. As a result of publication of the application, there were no objections received.
17. 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;
 - The Northern Territory Police;
 - The Chief Executive Officer of the City of Darwin.
18. Northern Territory Fire and Rescue Service were also notified of the application as part of the Director’s investigation into the application due to this being a new liquor licence application and venue. They replied via email dated 20 October 2020 stating it has no objections and have provided the maximum patron numbers for the venue.
19. The Department of Health replied via email dated 14 September 2020 stating that it had no adverse comment and that the Applicant was required to comply with COVID-19 Site Safety Plans.
20. The Northern Territory Police replied via email dated 15 October 2020 stating it had no objections.
21. 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.
22. The Development Assessment Services replied via email dated 21 September 2020 stating that the DCA advice provided to the Applicant remains relevant and they have no concerns about the application.

REFERRAL TO THE COMMISSION

23. There having been no objections lodged against the application, the Commission was required by virtue of section 60()(b) to make a decision on the application within 28 days of the 18 October 2020. However, it was not until 3 November 2020 that this matter was referred by the Director to the Commission. At the time of the referral the Commission was advised by Licensing Officers that there was another application being processed for a producers' authority on behalf of TNP Holdings Pty Ltd and that it may be advisable to hear both matters on the same day. The TNP Holdings matter was referred to the Commission on 12 November 2020 and on 18 November 2020 the Commission wrote to Mr Willing advising him that this matter would be determined by public hearing on 24 November 2020. The TNP Holdings application was also listed for hearing on the same day.
24. Prior to the date of the hearing the Chairperson noticed a deficiency within the materials lodged in support of the application. Apart from Attachment H to the Director's referral (which became Exhibit 1) which was a site plan dated 25 January 1999 for a motor body repair shop, there was no material upon which the Commission could be satisfied, as is required by section 59(3)(e) that the premises were suitable to be licensed.
25. While the arbitrary time limits now imposed by section 60 of the Act might be regarded as beneficial for applicants, I doubt if Mr Willing would have seen it that way if his application had been dismissed at hearing because he had failed to satisfy the Commission of a fundamental requirement of the Act. There is a tension between the imposition of time limits aimed at "cutting red tape" and an expectation on the part of unrepresented applicants that licensing officers are available to assist them and ensure they comply with the requirements of the Act.
26. Fortunately for this application the deficiency was identified by the Commission prior to the hearing and with the able assistance of Senior Licensing Officer Tania Chin, Mr Willing was able to file further documentation which detailed the proposed layout of the small bar and Gin Distillery.

THE HEARING

27. 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.
28. The application proceeded as a public hearing on 24 November 2020. Mr Dave Willing appeared and Mr Jeff Verinder was in attendance to represent the Director. The Commission thanks them both for their assistance in this matter.
29. The Director's referral brief was tendered by the Commission as exhibit 1 and the additional hand drawn site plans were tendered as a bundle and marked exhibit 2.

ASSESSMENT OF THE APPLICATION

30. 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;
- c) The applicant's financial stability, general reputation and character.

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

THE APPLICANT

32. The applicant is currently employed as Executive Director of Fire Rescue and Emergency Services for the Northern Territory. He has previously worked across a range of senior executive positions within the NT Public Service. He has undergone a National Police fingerprint check and produced references from two respected Territorians attesting to his good character. He holds a current responsible service of alcohol certificate (RSA) as well as qualifications as a Distiller of Spirits. He anticipates investing a significant sum in set up costs for the business and produced documentary evidence to prove that he had an approved credit facility with a bank to cover those costs.

33. Having regard to the material tendered by the applicant attesting to his character experience and qualifications the Commission is satisfied that he is a fit and proper person to hold a licence.

THE SUITABILITY OF THE PREMISES

34. The premises are a single storey warehouse/workshop located in the Darwin industrial suburb of Winnellie. There are no residential properties nearby and the Planning Authority has confirmed that the proposed use as a distillery bar is permitted within current zoning parameters. There are ample car parking spaces on the property and adequate toilets including a disabled toilet within the premises. The area where the still is located will not ordinarily be accessible to members of the public and there is a small bar area at the front of the building where liquor will be served and seating will be available. Mr Willing produced a digital photo of the current layout of the area where liquor will be consumed. It has polished concrete floors, stainless steel benches and corrugated iron walls with very high ceilings. It has a layout typical of many of the working wineries which provide cellar door sales to members of the public in other parts of Australia.

35. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

Whether issuing the Licence and Authorities is in the Public Interest

36. Section 49(2) of the Act provides;

49 Public interest and community impact

- (2) 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.

37. The applicant is a passionate advocate for developing a quality home grown distillery in the Territory. While he intends to commence producing Gin he hopes to be producing a single malt whiskey as well, within a year. The major part of these premises will be used for the manufacturing and bottling of the distilled craft spirits. As stated in the application;

“Ancillary to that is a 40m² “cellar door” to enable visitors to the distillery to taste the product and to purchase and take away the bottled product. While the cellar door is primarily for the display, tasting and sale of spirits manufactured onsite, the small bar license is to enable those accompanying patrons who may wish to drink a beverage I do not produce – such as beer, wine or cocktails which may contain other spirits”.

38. The proposal builds on the proven popularity of the existing craft breweries within the Territory and the growing number of boutique distilleries elsewhere within Australia. Due to the high excise tax on spirits manufactured in Australia and other factors, the Applicant estimates that the starting price for a 700ml bottle of spirits will be above \$80. At that price these locally produced craft spirits are unlikely to be attractive to problem drinkers particularly as the Thirsty Camel takeaway outlet is situated nearby with a full range of more competitively priced packaged liquor products.

39. The applicant estimates that his small bar/distillery will provide employment for at least 4 staff and will also “provide another uniquely Territorian location for tourists to visit”.

40. As was also the case in the TNP Holdings Pty Ltd application¹ this applicant was also seeking the inclusion of conditions within the producers' authority that would enable him to sell his manufactured spirit by mail order and on line. Having had the benefit of submissions from the applicant's legal counsel in the TNP case, the Commission ruled that it would not be an appropriate exercise of discretion to extend the limited takeaway facility within the producers' authority to mail order and online sales whilst the section 84(3) moratorium on any new takeaway authorities still applies.

41. Section 47(1)(j)

47 Authorities attached to licence

(1) The following authorities for licences are established:

(j) *“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”.*

42. Sales of the liquor produced by the licensee for consumption off the premises are clearly limited to “patrons visiting the producer's manufacturing premises”. For the same reasons that were provided in the TNP decision² the Commission refuses the application to include conditions within the producer's authority extending sales for consumption off the premises to mail order and on line purchaser's.

43. However for the same reasons that were advanced in the TNP case, the Commission recommends that when the Act is next reviewed that Government give consideration to extending the producer's authority to include mail order and online sales³.

44. Apart from the proposed inclusion of those additional conditions within the producer's authority the Commission is satisfied on the evidence that the applications for the licence, producer's authority and small bar authority are in the public interest. Although the applicant has sought trading hours from 10:00 hours to 22:00 hours Sunday to Thursday and until 24:00 hours on Friday and Saturday, the Commission considers it is appropriate to leave the hours of operation of both authorities to those prescribed by the regulations. Namely for the small bar authority 10:00 to 24:00 and the producer's authority 10:00 to 22:00, 7 days a week. The Licensee may well decide that it is not economical to trade across that whole range of hours, however that provides him with an option to sell liquor for on premises consumption until 24:00 hours 7 days a week and also makes it clear that there can be no sale of liquor for consumption off the premises after 22:00 hours.

¹ Northern Territory Liquor Commission, *TNP Holdings Pty Ltd (Charlies of Darwin) Decision Notice Disciplinary action pursuant to the Liquor Act 2019*: (24 November 2020) paragraph 38 to 43

² Northern Territory Liquor Commission, *TNP Holdings Pty Ltd (Charlies of Darwin) Decision Notice Disciplinary action pursuant to the Liquor Act 2019*: (24 November 2020) paragraph 43

³ Northern Territory Liquor Commission, *TNP Holdings Pty Ltd (Charlies of Darwin) Decision Notice Disciplinary action pursuant to the Liquor Act 2019*: (24 November 2020) paragraph 44

Whether the issue of this licence and authorities will have a significant adverse impact on the Community

45. 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 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.
46. The Commission notes there are no such “other” matters prescribed by regulation.
47. 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.
48. 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.
49. The guidelines are as follows:

Criteria	Matters to be considered
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>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"> • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;

	<ul style="list-style-type: none"> • 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; • 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.</p> <p>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</p>

	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"> • 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?

50. 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”.

51. 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.

52. 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”.

53. The Commission considers that if the application is granted, there is a low risk that it will have an adverse impact on the community. In reaching this view the Commission has had regard to the location of the premises in an industrial area, the limited number of patrons that will be permitted to visit the premises at any one time and the fact that liquor will only be supplied in the context of the applicant conducting a craft distillery business which will be marketing a relatively expensive “boutique “liquor product”.

54. Having considered all of these matters, 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

55. 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.
56. 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.
57. 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. At the conclusion of the hearing the applicant was advised that his application had been approved on those terms.

NOTICE OF RIGHTS

58. 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.
59. 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.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
4 December 2020

On behalf of Commissioners Coates, Carson and Cannon