

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Application for the grant of a licence with catering authority
APPLICANT:	McArthur River Mining Pty Ltd
PREMISES:	Bing Bong Loading Facility Via Borroloola
OBJECTORS:	Nil
LEGISLATION:	<i>Liquor Act 2019</i> - Part 3 and 4
DECISION OF:	Manager Licensing - Liquor, Gambling & Racing
DATE OF DECISION:	13 December 2021

BACKGROUND

1. Pursuant to section 52 of the *Liquor Act 2019* (the Act), Ms Teresa Hall, Partner of Ward Keller as counsel for McArthur River Mining Pty Ltd, lodged an application for a liquor licence with a **catering authority** on 12 November 2021.
2. The license sought is to allow for private catering services by the licensee to residents of the loading facility, part of the mining projects operated by MacArthur River Mining Pty Ltd at their site at Bing Bong.

CURRENT SITUATION

3. The application is for a licence to allow for private catering at the location including food services and liquor through a bar facility.
4. The applicant will be providing all meals and liquor will only be sold to persons resident at the camp.
5. It is noted the application also sought a takeaway authority, the granting of which is statute barred until at least 31 August 2023.
6. The takeaway authority was sought to allow for liquor to be taken by the residents back to their accommodation for consumption, not for removal off-site as in traditional takeaway liquor.

7. The proposed licensed area includes the wet mess as well as the accommodation areas and therefore liquor may be taken back to their rooms without the requirement for a takeaway authority.
8. The applicant has provided the material prescribed in section 52 Of the Act including:
 - an affidavit made under section 54;
 - a draft notice of the applications;
 - evidence necessary to satisfy the onus specified in section 51;
 - a summary of the evidence suitable for publication; and
 - the application fees.

ADVERTISING AND OBJECTIONS

9. Recently section 57(2A) has been inserted to the *Liquor Act 2019* (the Act) providing a discretion to the Director to exempt an applicant from the public notice requirements if the Director is of the opinion that the application discloses no public interest issues.
10. The application is similar to several that have been approved for like facilities that operate throughout the Territory.
11. Each of these provide accommodation, meals and other services to their personnel who live on-site at the various mining locations on a fly-in fly-out basis.
12. No public access is permitted and only bona-fide residents are serviced by this method and importantly, there is no record of any like facility or licensee having breached their licence.
13. Accordingly, it was considered in the circumstances to exercise the discretion provided in section 57(2A) of the Act to exempt this applicant from the public notice requirements as there is insufficient public interest in the matter.
14. The application was notified to the Commissioner of Police, the Chief Executive Officer of the Department of Health and the Chief Executive Officer of the Roper Shire Council in accordance with the statutory requirements.
15. No stakeholder provided any materially adverse comments or objections to the application.
16. Mr David Scholtz, Director – Clinical Policy and Planning, Mental Health and Other Drugs Branch of the Department of Health did however provide a recommendation on the quantity proposed to be sold.
17. Mr Scholz recommended safe drinking guidelines should be displayed in the licensed area and consumption should be kept below four (4) standard drinks a day and 10 per week.

18. Mr Scholz expressed his concern the proposed limit of six (6) per person per day was exceeding the safe drinking guidelines.

APPLICATION

19. The applicant has provided a comprehensive suite of materials in support of the applications including all materials prescribed by the Act.

20. The authority sought by the applicant is in pursuance of section 47(1)(m) of the Act.

21. The determination of applications under section 60(1) of the Act has been conditionally delegated by the Liquor Commission to the Director of Liquor Licensing. The limitation including the authorities which may be granted under delegation includes a *catering authority*.

22. The Director further delegated these powers to the Manager Licensing – Liquor, Gambling and Racing by instrument dated 22 May 2020.

23. The applicant has sought the following conditions:

- Monday to Sunday:-
 - 06:00 hours to 08:00 hours
 - 17:30 hours to 18:30 hours
 - 19:15 hours to 20:30 hours
- Liquor to be sold only to persons resident at the camp
- No alcohol is to be brought into the camp from outside sources
- No children allowed on site
- Spirits only by way of pre-mix type
- No more than six (6) drinks may be sold to any one person per day
- Compulsory daily alcohol testing of all employees and residents prior to commencement of shift

24. The proposed hours of trade are significant however reflect the nature of the operation and the 'shift' culture traditional in these 'wet messes'.

25. I can understand the need for flexibility and those finishing a night shift would ordinarily seek liquor first thing in the morning as that is their 'afternoon and evening', however some fettering of the hours needs to be imposed.

26. The Territory has numerous mining projects, each of which have resident patrons who work and live on-site and which operates 24 hours a day, seven days a week.

27. Examples of like operations and licences are the Campbells Country Club at the McArthur River Mine, which is perhaps the closest in position to these premises, and The Granites Social Club, a gold mine on the Tanami Highway.

28. The hours for the Campbells Country Club are:

Monday to Sunday - 06:30 to 08:30 and 18:00 to 20:45 hours

29. The hours for the Granites Social Club are:

Monday to Sunday - 06:00 to 09:00 and 18:00 to 23:59 hours

30. As with this applicant, both of those licensees have product purchase limits imposed as well as a restriction on sales only to residents of the site and Campbells Country Club is operated by this applicant.

31. The applicant has provided a fulsome Business Plan which also includes safety and compliance measures to ensure the safety of patrons, including a policy of 0.0% BAC at the commencement of any shift.

32. Meals are provided to all residents throughout the day with their shifts and the times for the sale of liquor align with meal times.

33. The applicant also responded to the comments of Mr Scholtz, stating they have in place a comprehensive company policy in relation to alcohol, all staff are tested prior to the commencement of shift and they have Taste Life Coordinators engaged at the site to promote healthy lifestyle choices amongst the employees.

DISCLOSURE OF PERSONS

34. Section 54 of the Act requires the applicant to make an affidavit disclosing each person who, if the licence is issued, may:

- (a) be able to influence the applicant; or
- (b) expect a direct or indirect benefit from the applicant.

35. I am satisfied by the materials provided by the applicant in relation to this requirement.

RESULTS OF INVESTIGATION

36. Section 58 of the Act enables the Director to conduct an investigation into an application as considered appropriate. No materials have been provided or discovered to indicate there are any adverse matters in relation to this application.

FINANCIAL STABILITY

37. The applicant is large publicly-listed company, already known to the Director and has provided sufficient materials to address this consideration.

38. I am satisfied they meet the requirements in relation to financial stability.

FIT AND PROPER PERSON

39. Section 59(3)(g)(i) of the Act requires the decision maker to consider whether the applicant and as the applicant is a body corporate, their nominated licensee, are fit and proper to hold a licence.
40. Ms Sambo has provided identification and probity documents, including character references, along with a clear criminal history check and work history.
41. Having considered the materials provided I am satisfied the applicant and Ms Sambo as the proposed nominee is a fit and proper person to be granted the authority and act as nominee.

PUBLIC INTEREST AND COMMUNITY IMPACT

42. Section 49 of the Act requires the decision maker to be satisfied the applicant is fit and proper, the licence or authority is in the public interest and will not have a significant adverse impact on the community.
43. The first branch of the requirement has already been addressed.
44. It remains to consider whether the application is in the public interest, to do so consideration must be given to the objectives prescribed in section 49(2) of the Act which include:
- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
 - b. ensuring liquor is to be 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 the practices that encourage irresponsible drinking;

- j. reducing or limiting increases in anti-social behaviour.
45. In determining whether there would be a “significant adverse impact on the community” section 49(3) of the Act requires 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.
46. The Act is clear in that the applicant bears the onus of satisfying the decision maker of the relevant matters, irrespective of whether no objections were received as is the case in this matter.
47. In relation to the issue of the community impact and public interest, those matters have previously been published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the *Liquor Act 2019* are taken to be community impact assessment guidelines issued under section 50 of the Act.
48. Those matters remain as previously published in numerous decisions by the Liquor Commission.

CONSIDERATION CRITERIA

49. With regards to the matters raised in section 49(2) of the Act, I note the following:
- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised:

I am satisfied the provision of liquor is for private residents of the site being catered by the applicant with a rigorous plan in place to ensure appropriate behaviours.

- b. ensuring liquor is to be sold, supplied, served and consumed, on or in licensed premises in a responsible manner:

Having considered all the material, it is unlikely any liquor sold, supplied, served and consumed will be done so in an irresponsible manner. The hours of trade are limited in nature and the company has a 0.0% BAC policy at the commencement of each shift.

- 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:

The nature of the catering makes it improbable that public order and safety are likely to be jeopardised by the operation of the licence, also the licensee has prepared a suitable business plan including processes to safeguard against harm.

- d. protecting the safety, health and welfare of people who use licensed premises:

The policies developed by the applicant applicable to the premises are considered to adequately protect the safety, health and welfare of people who are likely to use the licensed premises during its hours of operation, noting the premises are not open to the public.

- e. increasing cultural, recreational, employment or tourism benefits for the local community area:

As this is a private catering situation, this is not a relevant matter.

- f. promoting compliance with this Act and other relevant laws of the Territory:

There are no materials provided which would suggest the applicant will not comply with the Act and any other relevant laws.

- g. ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business:

I am satisfied the applicant will appropriately manage and supervise service staff.

- h. preventing the giving of credit in sales of liquor to people:

No issues have been raised to suggest there is any concern in relation to this objective.

- i. preventing the practices that encourage irresponsible drinking:

No issues have been raised to suggest there is any concern in relation to this objective.

- j. reducing or limiting increases in anti-social behaviour:

No issues have been raised to suggest there is any concern in relation to this objective.

50. Turning to the matters under section 49(3):

- 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:

There are no materials to suggest there is a significant risk of undue offence, annoyance, disturbance or inconvenience likely to be caused by the granting of this authority. The sites are extremely remote and closed to the public.

- b. the geographic area that would be affected:

The location is remote and closed to the public.

- c. the risk of harm from the excessive or inappropriate consumption of liquor:

As previously indicated, there is no materials to suggest there will be excessive consumption of liquor.

- d. the people or community who would be affected:

Given the nature of the catering it is unlikely there will be adverse impact on the community by the granting of this authority.

- e. the effect on culture, recreation, employment and tourism:

As previously indicated the private catering nature of the operations that are closed to the general public, make this consideration moot.

- f. the effect on social amenities and public health:

It is unlikely there will be any significant adverse impact on the social amenities and public health by the granting of this authority to the applicant.

- g. the ratio of existing liquor licences and authorities in the community to the population of the community:

This is of no relevance to this matter.

- h. the effect of the volume of liquor sales on the community:

The minimal and restricted nature of the operation is unlikely to significantly increase the volume of liquor sales in the wider Roper regional area.

- i. the community impact assessment guidelines issued under section 50:

These have been considered and referred to earlier in this matter.

51. Section 85 of the Act has previously required a term of the licence to be fixed and it is to remain force until it expires or is abandoned, surrendered or otherwise dealt with.

52. This section has since been amended to simply hold a licence to remain in force until it expires or is abandoned, surrendered, suspended or cancelled.
53. Having regards to the foregoing, I am satisfied that the granting of the authority as sought is in the public interest and will not have an adverse effect on the community.

DECISION

54. On the basis of the information provided in relation to this matter and with reference to sections 48 and 60 of the Act, I have determined to issue the licence with a **catering authority** to McArthur River Mining Pty Ltd, for the premises situated at the Bing Bong Loading Facility, Bing Bong via Borroloola.
55. The conditions applicable to the licence are in accordance with the relevant regulations and as follows:
- a. The hours of trade are to be Monday to Sunday between the hours of 06:00 to 08:00 and 17:30 to 18:30 and 19:15 to 20:30, each day of the year.
 - b. Liquor is to be sold only to persons resident at the camp.
 - c. No alcohol is to be brought into the camp from outside sources.
 - d. No children are to be allowed on site.
 - e. Spirits may only be sold by way of pre-mix type.
 - f. No more than six (6) drinks may be sold per person per day.
 - g. All other liquor is to be opened at the time of sale.
 - h. Compulsory daily alcohol testing of all employees and residents prior to the commencement of shift.
 - i. The licensee is to erect suitable educational materials in relation to the consumption of liquor in line with the safe drinking guidelines.

REVIEW OF DECISION

56. Section 27 of the Act provides for the applicant or a person who made a submission the subject of the decision, to seek a review of a decision made by the delegate of the Director.
57. The Director delegated the determination of applications for a **catering authority** made under section 52 of the Act by instrument to the person from time to time holding, acting in or performing the duties of the position in the Department of the Attorney-General and Justice specified in Schedule 2 of the instrument. This decision was made by a person referred to in that schedule.
58. An application for review must be lodged with the Director within 28 days after written notice of the decision is given to the person and must be in the form approved by the Director, stating the grounds for the review and the facts relied on to establish the grounds.

59. Accordingly, the affected persons in relation to this decision are, McArthur River Mining Pty Ltd, NT Police and the Department of Health.

A handwritten signature in blue ink, appearing to read 'Mark Wood', is positioned above the printed name and title.

Mark Wood
Manager Licensing – Liquor, Gambling & Racing
Delegate of the Director of Liquor Licensing

13 December 2021