

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR NEW LIQUOR LICENCE WITH SPECIAL VENTURE AUTHORITY

REFERENCE: LC2022/008

APPLICANT: BIRCH, CARROLL & COYLE LIMITED

PREMISES: **BCC Cinemas**
Casuarina Shopping Centre
247 Trower Road
CASUARINA NT 0810

LEGISLATION: Section 52 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 17 March 2022

DATE OF DECISION: 31 March 2022

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 Birch, Carroll & Coyle Limited (the Applicant).
2. The licence will be issued with a special venture authority.
3. The conditions of the licence will be those authority conditions set out in Divisions 19 of the Liquor Regulations 2019 (the Regulations).
4. The permitted hours of operation of the licence are between 12:00 hours and 24:00 hours every day of the year.
5. The authority is subject to the following special conditions.

SPECIAL CONDITIONS

- a) Service of liquor is limited to patrons who have purchased tickets to a screening or who are attending a pre-arranged private function.

- b) Liquor may only be sold and supplied from the right hand corner from the customer's perspective of the ticket sale counter away from the point of sale for tickets, food and non-alcoholic beverages.
- c) Liquor may only be sold in polycarbonate drinking vessels and only two drinks may be provided to any customer at the one time.
- d) Liquor may only be sold to patrons from the front counter one hour prior to and within one hour following the screening of the program for which they have purchased a ticket.
- e) Liquor may also be sold at private functions from "pop up" bar carts within an auditorium, which is not open to the general public or persons under the age of 18, but has been pre booked for a private function.

REASONS

BACKGROUND THE APPLICATION

6. On 26 October 2021 an application was lodged by law firm Minter Ellison on behalf of Birch, Carroll & Coyle Limited (The Applicant) seeking a new liquor licence with a special venture authority. Following advice from Licensing Officers, the conditions were clarified and changed slightly as confirmed by an email from the Applicant's solicitors dated 14 December 2021.
7. The Applicant is Birch, Carroll & Coyle Limited. This company is registered with ASIC where Mathew Duff, David Stone and Gregory Dean are listed as Directors. David Stone and Gregory Dean are also listed as the secretaries. This company has 6,689,752 shares and is registered as an unlisted public company.
8. The Applicant is the current holder of;
 - Liquor licence 80304395 and Gaming Machine Licence GM 259 for premises located at 76 Mitchell Street, Darwin and previously known as Ducks Nuts Bar & Grill. These premises have been closed while the owners contemplate future business plans for the premises.
 - Liquor Licence FLL1006 for premises known as Event Cinemas located at The Gateway Shopping Centre, Roystonea Avenue, Palmerston.

Being a current licensee they are not required to undergo any further probity examination.

9. Mathew Duff, company director, has supplied an affidavit in accordance with Section 54 of the Act. This affidavit has several annexures including company ASIC extracts, and lease agreements.

10. The name of the proposed premises is BCC Cinemas at 247 Trower Road, Casuarina Shopping Centre Cinema Complex. This business name is registered with ASIC in the Applicant's name.
11. Luke Robards is proposed to be the nominee. He is the current nominee at the Event Cinemas in Palmerston and therefore not required to provide any further probity documents.
12. The application was accompanied by;
 - Community Impact Assessment Summary
 - Combined Risk Assessed Management Plan for the Supply of Alcohol and Public Interest and Community Impact Assessment
 - Proposed licensed area site plan
 - Landlord Consent
 - Food Registration Certificate

PUBLICATION AND CONSULTATION

13. The application was published by way of a notice in the NT News on 22 January 2022. The application was also published on the Director of Liquor Licensing's applications webpage during the course of the advertising period. A green advertising sign was erected at the premises for the course of the advertising period. Copies of the NT News, photographs of the green sign erected in-situ and a signed statement of display have been retained by Licensing Officers.
14. As a result of publication of the application, there were no objections received from the public.
15. In accordance with the Act, the following were notified of the application.
 - The Chief Executive Officer of the Department of Health
 - The Commissioner of Police
 - CEO, City of Darwin
16. Being a new liquor licence application, the NT Fire & Rescue Service was also notified.
17. The Department of Health (DOH) responded by email dated 4 February 2022 providing a range of feedback and suggesting alternative liquor licence conditions. Those comments included:
 - Considered in isolation and from the perspective of an adult consumer, the application is unremarkable. However at a population level, the increasing availability of alcohol at more and more venues reinforces the image of alcohol as a socially acceptable, and indeed, essential commodity.
 - In summary, this type of proposal is more appropriate at venues appealing to the serious adult film-consumer rather than a general cinema catering to families with young children: or as part of a 'Gold Class' system (as in place in other jurisdictions). The type of films shown; the overall environment and

price of Gold Class type access can make the experience more adult – focused and alcohol availability more appropriate.

18. The NT Police replied via email dated 10 February 2022 supporting the application.
19. The City of Darwin did not make any response.
20. The NT Fire & Rescue Service replied via email dated 11 February 2022 supporting the application.
21. In response to comment from DOH the Applicant relevantly advised Licensing Officers via letter dated 18 February 2022 that it was prepared to delay the commencement of trading until 12:00 hours, limit the general consumption of liquor to one hour prior to and after a screening and to restrict the availability of liquor to two drinks per customer.

COMPLIANCE HISTORY

22. A check of records held at Licensing NT reveals that there are no negative or adverse compliance issues regarding the Applicant and the liquor licences connected to it.
23. The Director referred this application to the Commission on 23 February 2022.
24. On 7 March 2022, the Commission wrote to the Applicant advising that the application would be heard on 17 March 2022.

THE HEARING

25. 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.
26. On 17 March 2022, the application proceeded as a public hearing. Ms Freyer and Ms Jap solicitors appeared on behalf of the Applicant and the proposed nominee Luke Robards was also present. Mr Jeff Verinder appeared to represent the Director. The Commission is grateful for the assistance provided by all those present.

ASSESSMENT OF THE APPLICATION

27. In determining whether to issue a licence or authority the Commission is bound by section 49(1) of the Act which provides:

49 - Public interest and community impact

- (1) 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.

28. The Applicant currently holds other licences within the Northern Territory and elsewhere within Australia. There is no negative compliance history alleged against the Applicant and there is no suggestion by the Director in this 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

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

29. To determine whether the issue of the license 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.

30. In its Public Interest and Community Impact Statement the Applicant submitted:

Summary of public interest and community impact statement

The nature of the applicant's business is such that people will (in the vast majority of cases) only be attending the premises for the length of one movie. As such, it is not anticipated that patrons will have the opportunity to consume large proportions of liquor. In addition, the nature of the cinema environment (based on the applicant's extensive experience in the provision of these services in other jurisdictions both in Australia and overseas is that patrons, after already paying the price of admission for the movie, are unlikely to leave the viewing of the movie to purchase additional alcohol on more than one or maximum two occasions during the showing of the movie. The limited extent of time in which patrons will consume alcohol will therefore not put others at risk.

The applicant markets the sale of alcohol at its cinemas as a premium service offering. Pricing is not discounted and the applicant's prices are generally more expensive than a typical hotel or general bar, which does not promote rapid or excessive consumption of alcohol. This minimises the risk of excessive alcohol consumption. The supply of alcohol will only ever be an ancillary service the applicant offers at the premises to enhance the entertainment experience for adult customers. BCC Cinemas as a brand has no desire to turn its cinemas into a pub or hotel-like venue because in order to maintain viability and profitability its cinemas must be a family friendly environment that screens a high proportion of family and children's films.

The applicant will ensure its staff are appropriately trained at all times. It will put measures in place to ensure its staff do not serve alcohol to minors and will ask patrons to supply identification if they appear to be under 18 years of age. It will also exercise the responsible service of alcohol and ensure its staff are proactive in monitoring patron behavior at all times. CCTV cameras are also installed to monitor all points of sale, public entrances and exits to the premises and common areas. The premises is not one which will host large numbers of persons as any one time, nor are there any areas adjacent to the cinemas which would encourage patrons to extend their stay beyond that required to view the movie.

In applying for the liquor licence, the applicant has also consulted the landlord for the premises from which it proposes to sell liquor. The landlord has consented to the applicant's proposal and given the premises is a low risk venue, the applicant is confident it can manage its responsibilities both under the liquor laws and the terms of its lease¹.

31. The Commission has carefully considered the valid comments made by DOH in relation to the fact that the increasing availability of alcohol at venues “reinforces the image of alcohol as a socially acceptable and indeed, essential commodity”. However, it accepts that the Applicant has taken reasonable precautions to ensure that liquor sales will be conducted from a discrete area of the premises, and the products will be priced at a point that is not conducive to excessive drinking. The Applicant has been providing liquor at its former premises and at the Event Cinema in Palmerston without any apparent adverse consequences.
32. Although there is some merit in the suggestion by DOH that the provision of liquor should be limited to a “Gold Class” system as in place in some other jurisdictions it is difficult to see how such a division of patronage could be realistically implemented within this existing theatre. The Commission is also aware that there is an economic imperative for cinema operators to provide an enhanced recreational experience for patrons if they are to compete with the all-pervading home streaming services. The fact that the Applicant is still prepared to screen first release films, host film festivals and provide a facility at which private functions with a film related theme can be conducted in convivial surroundings will be regarded as beneficial by a range of local community members.
33. Having considered the adverse comments from DOH and each of the objectives set out in section 49(2) of the Act, the Commission is satisfied that it is in the public interest to issue the licence and special venture authority.

¹ Exhibit 1

WHETHER THE ISSUE OF THE LICENCE WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON THE COMMUNITY

34. 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 following 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;
35. 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, which 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 –</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;

	<ul style="list-style-type: none"> • 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>	<ul style="list-style-type: none"> • Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any

	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?

36. 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.
37. 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”.
38. 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.
39. 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”.
40. Having regard to the location of the premises in a non-residential area, designed and used for entertainment, hospitality and commercial activity, the Commission is satisfied that the risk management procedures proposed by the Applicant will ensure that issuing a licence in respect of these premises in the terms sought is unlikely to create any significant adverse impact on the community.
41. 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

42. 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.
43. 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.
44. 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. The applicant was informed of that decision at the conclusion of the hearing.

NOTICE OF RIGHTS

45. 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.
46. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the applicant and the Director.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
08 April 2022

On behalf of Commissioners Coates, Dwyer and Corcoran