

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** APPLICATION FOR A LICENCE

**LICENCE NUMBER:** LC2019/069

**PREMISES:** “Dom’s Bar & Lounge”  
Shop 7  
60 Aralia Street  
Nightcliff NT 0810

**APPLICANT:** Dominic Galen Wundke

**NOMINEE:** Dominic Galen Wundke

**OBJECTORS:** Paul Walsh  
Mark and Alex Kersemakers  
Liz Sims  
Peter and Rosanna Van Den Herik  
Susan Walsh  
Saini S Korodrau  
Kirrily Chambers and Dale Bennett  
Simon Niblock, Chair of Nightcliff Primary School Council  
Guy Dunne  
Monica Jeong  
Luisa Tuisava  
John and Anong Bell  
Robin Knox

**LEGISLATION:** Part III of the *Liquor Act 1978*

**HEARD BEFORE:** Mr Richard Coates (Chairman)  
Ms Elizabeth Stephenson (Health Member)  
Ms Amy Corcoran (Community Member)

**DATE OF HEARING:** 21 August 2019

**DATE OF DECISION:** 11 September 2019

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### DECISION

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* (**the Act**) the Commission has determined to grant Dominic Galen Wundke (**the Applicant**) an “On – Authority” liquor licence authorising the sale of liquor at Shop 7 and part of the arcade at 60 Aralia Street, Nightcliff (**the licensed premises**) on the following conditions:

- a. The licensee is authorised to sell liquor for consumption on the licensed premises with or without the consumption of food.
- b. The sale of liquor for consumption off the licensed premises is not permitted.
- c. The maximum number of patrons permitted to be on the licensed premises at any given time is 100 or less if the Northern Territory Fire Service (NTFS) assesses a lower maximum patron number for the licensed premises.
- d. Entertainment of a sexually explicit nature and entertainment involving fighting is not permitted.
- e. Meals or snack food must be made available at all times the licensed premises are open for the sale of liquor.
- f. The hours of operation will be:
  - i. for the area known as Shop 7:
    - 1. 1500 hours until 2359 hours Monday to Thursday inclusive;
    - 2. 1500 hours until 0100 hours the following day on Friday;
    - 3. 1100 hours until 0100 hours the following day on Saturday; and
    - 4. 1100 hours until 2359 hours on Sunday;
  - ii. for the arcade area but subject to sub paragraph (iii) below:
    - 1. 1500 hours until 2200 hours, Monday to Thursday inclusive;
    - 2. 1500 hours until 2230 hours on Friday;
    - 3. 1100 hours until 2230 hours on Saturday; and
    - 4. 1100 hours until 2200 hours on Sunday.
  - iii. the Applicant can only use the hours of operation for the arcade area if:
    - 1. the Applicant has exclusive control over who is entitled to enter and remain within the licensed area of the arcade;
    - 2. it is not being used as a public thoroughfare and appropriate signage is erected at the Cunjevoi Street entrance informing the public; and
    - 3. a barricade is placed at the end of the licensed footprint in the arcade to stop patron or public access through the arcade; and
  - iv. No trade on Good Friday and Christmas Day.
- g. Live music in the arcade area must be of an acoustic nature with only the vocalist amplified and must cease by 2200 hours.
- h. Pursuant to section 31 of the Act, the sale of liquor on the premises is not permitted until:

- i. the Applicant provides to the satisfaction of the Director-General all necessary statutory approvals relating to fire safety, building certifications and planning approvals authorising him to conduct the business of a hotel at the premises; and
- ii. the Director-General confirms in writing that trade may commence.

## **REASONS**

### **THE APPLICATION**

2. On 6 February 2019 an application was lodged by Dominic Galen Wundke (the Applicant), seeking a liquor licence for premises proposed to be known as “Dom’s Bar and Lounge” to be located at Shop 7 as well as a portion of the arcade within the shopping centre, 60 Aralia Street in Nightcliff (the premises). This premises within the “Aralia Shopping Village” with the main entrance point via Cunjevoi Street, Nightcliff and a second access point through Aralia Street, Nightcliff during the trading hours of the Aralia Shops.
3. The premises is located at the back of the Shopping Village on a service road which runs parallel to Cunjevoi Street. Nightcliff Primary School is immediately across the road opposite the premises and a school pedestrian crossing is located directly across Cunjevoi Street lining up with the entry of the arcade. Neighbouring Shop 7 on the corner of Cunjevoi and Jacaranda Streets is 3 two-storey residential apartments.
4. There is ample off-street parking along the service road and on Cunjevoi Street.
5. The Applicant is seeking to establish a licensed venue within the Nightcliff area that has a local entertainment and cultural focus that will incorporate indoor seating within Shop 7 and ‘outdoor’ seating within the arcade walkway as negotiated within his lease agreement.
6. The application proposed that the bar will offer table service serving boutique wines, cocktails, beer including locally brewed craft beers and quality tapas with the following conditions of trade:
  - a. 1100 hours to 2359 hours Sunday, Monday, Tuesday, Wednesday and Thursday;
  - b. 1100 hours to 0200 the following day Friday and Saturday;
  - c. No trading on Christmas Day, Good Friday or New Year’s Day;
  - d. Tapas and snacks are produced at the premises, will be available at all times whilst the business is open for trade;
  - e. Sale and consumption of liquor will not be ancillary to a meal;
  - f. No takeaway.
7. Prior to the hearing and in response to some of the objectors’ concerns, the Applicant changed the proposed hours of trade from that initially applied for to:
  - a. 1500 hours to 2359 hours on Monday to Thursday inclusive;
  - b. 1500 hours to 0200 hours the following day on Friday;
  - c. 1100 hours to 0200 hours the following day on Saturday; and
  - d. 1100 hours to 2359 hours on Sunday.

8. The initial application included a proposed “smoking area” on the footpath in front of Shop 7 with tables and chairs. It is noted that this area was subsequently removed by the Applicant from the application and there is no longer a proposed smoking area on the licensed footprint.
9. Whilst the premises actually exist, the Applicant made an application to the Development Consent Authority (DCA) to change the use of Shop 7 from a shop to a hotel and will also need to refit the premises including undertaking some minor building works in Shop 7. The DCA approved the application to change the use of Shop 7 to a ‘hotel’ and a copy of the Development Permit dated 27 May 2019 was tendered by the Applicant at the hearing (Exhibit 7).
10. The Applicant submitted a plan of the premises depicting a bar with some seating, six tables inside and a further four tables in the arcade area. The Applicant estimates a patron capacity of 20 to 25 in Shop 7 and 30 in the arcade.
11. The Director-General of Licensing (Director-General) provided the Commission and all parties with a brief of evidence (the brief) including the following documents:
  - Director-General’s Referral to the Liquor Commission dated 24 May 2017;
  - Application for the grant of a liquor licence dated 4 February 2019;
  - Affidavit for purposes of section 26A of the Act deposed by Mr Dominic Wundke dated 31 January 2019;
  - RSA certification of the Applicant;
  - Community Impact and Public Interest Assessment statement pursuant to sections 6 and 6A of the Act;
  - Copy of proposed Site Plan;
  - Email from Department of Health regarding registration as a food business;
  - Public notices of application in NT News for grant of a liquor licence, dated 9 and 13 March 2019;
  - Objections from:
    - Paul Walsh, 2 April 2019
    - Mark and Alex Kersemakers, 4 April 2019
    - Liz Sims, 11 April 2019
    - Peter and Rosanna Van Den Herik, 9 April 2019
    - Susan Walsh, 11 April 2019
    - Saini S Korodrau and a list of petitioned names, 10 April 2019
    - Kirrily Chambers and Dale Bennett, 12 April 2019
    - Simon Niblock, Chair of Nightcliff Primary School Council, 12 April 2019
    - Guy Dunne, 9 April 2019
    - Monica Jeong, 12 April 2019
    - Luisa Tuisava, 12 April 2019
    - John and Anong Bell, 12 April 2019
    - Robin Knox, 8 May 2019
  - Correspondence between Licensing NT and Applicant regarding the objections;
  - Applicant’s response to public submissions, 29 April 2019;
  - Correspondence between Licensing NT and: Department of Health (DOH); NT Police and City of Darwin.
12. The Applicant is also the proposed nominee of the liquor licence application and the requisite probity documentation was tendered at the hearing (Exhibit 6).

## ADVERTISING AND NOTIFICATION

13. The application was published in the NT News on Saturday 9 March 2019 and Wednesday 13 March 2019. The Applicant also displayed the required “green sign” at the Premises for the required 30 day period. A “statement of display” was provided along with photographs of the green signs in-situ. There were two green signs placed at the proposed venue at dual access points for the public viewing.
14. As a result of the above publications there were 13 objections from the public received to this application.
15. It is noted that section 27(3) of the Act requires that the Director-General must inform:
  - a. the Chief Executive Officer (**CEO**) of the Department of Health (**DOH**);
  - b. the Commissioner of Police (**the NT Police**); and
  - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer of the council and in this case Darwin City Council (**Council**).
16. That occurred with respect to this application and the following responses were received:
  - a. Council provided advice via email on 15 May 2019 stating that it has “not identified any grounds for objection under section 47F(2) of the Liquor Act for the application of a New Liquor Licence from Dominic Wundke t/a ‘Doms’”.
  - b. DOH replied via email on 25 March 2019 stating it has ‘no adverse comment’, however requested that the Director-General of Licensing to consider patron and community safety and amenity when determining this application. DOH also requested the venue clearly displays signage to delineate the non smoking areas from the smoking areas.
  - c. NT Police replied via email on 28 March 2019 advising that they ‘neither object nor support’ this application. NT Police further stated they had met with Applicant and provided some advice around security considerations.

## OBJECTIONS AND RESPONSES

17. There were 9 initial objections, plus 4 additional objections received or brought to the attention of Licensing NT after the closing date of publishing of the application.
18. The following initial 9 objections which were received within the 30 day timeframe in response to this application were compiled and forwarded to the Applicant via cover email from Licensing NT dated 16 April 2019 as required under section 47G of the Act:
  - a. Paul Walsh, stating reasons for objection with regard to traffic, disturbance, noise emanation, anti-social behaviour and adverse school, health and community impact.
  - b. Mark and Alexandra Kersemakers, stating reasons for objection with regard to amenity of the neighbourhood, adverse effect to health, adverse effect to education, and adversely effect on social conditions.

- c. Elizabeth Sims and Michael Savage, objections to the grounds of noise from live music and patrons using the facility and the closing time of 2am on certain nights within a residential area.
  - d. Peter and Rosanna van den Herik, stating objections with regard to the impact on the amenity of the neighbourhood due to late night trading hours and the number of liquor licenced venues within the area along with adverse effects on education and public safety, health and the social conditions in the community area.
  - e. Susan Walsh, stating reasons for objection with regard to traffic, disturbance, noise emanation, anti-social behaviour and adverse school, health and community impact.
  - f. Saini S. Korodrau, cover letter and list of petitioned names opposing application on basis of safety, social and community environment of the neighbourhood.
  - g. Kirrily Chambers and Dale Bennett, objecting on the basis of noise impact, litter and other anti-social behaviour, unnecessary exposure to the school community and potential for accidents.
  - h. Simon Niblock, Chair of Nightcliff Primary School Council, opposing the application as it stands. The objections are raised in line with the trading hours during school hours and the proposal of smoking area at the front of the premises.
  - i. Guy Dunne, objection lodged as a community member and raised with regard to impact on environmental, health and social factors.
19. On 3 May 2019, it was brought to the attention of the Senior Licensing Officer handling the application that 3 additional objection letters were received from public members that had been held in another area of the Licensing NT office. Whilst these were all dated 12 April 2019, they were date stamped as being received 17 April 2019 at Licensing NT however, Licensing NT could not exclude that these letters were hand delivered to Licensing NT or left in a letterbox in the foyer of the building that is not checked on a daily basis.
20. These further 3 objections are referenced as follows:
- a. Monica Jeong, delivery receipt unverified, objections for consideration to safety, work, lifestyle and environment in the neighbourhood.
  - b. Luisa Tuisuva, delivery receipt unverified, stating reasons for objection with regard to noise, safety and anti-social behaviour.
  - c. John & Anong Bell, delivery receipt unverified, reasons for objections relating to noise impact on residents of the neighbouring apartments causing occupancy issues for him.
21. An additional late objection was received from Ms Robyn Knox (also an Alderman of Darwin City Council) via email dated 8 May 2019 opposing the operation of hours that will impact the community. Ms Knox confirmed her objection was made as a nearby resident and not as an Alderman.
22. In the Applicant's response to these objections, he initially challenged the validity of a number of them based on being submitted out of time or not signed as is required by section 47F(4)(b) of the Act. However, at the Directions Hearing which took place before the Commission on 3 July 2019, the Applicant advised that he did not wish to challenge the validity of any of the objections and would like instead to go to hearing as soon as possible. At the Directions Hearing, the Commission granted leave for any objectors who had not signed their objections to do so prior to the hearing and pursuant to section

127(2) determine to extend or abridge a time for the acceptance of the 4 late objections to allow those objections which were out of time.

23. The principal focus of all the objections was that the licence would cause undue annoyance, disturbance and inconvenience to persons residing in the neighbourhood; that there would be excessive noise emanations from the premises and from people leaving the premises; the amenity of the neighbourhood would be adversely affected by an increase in vehicles parking nearby and an increase in taxis and foot traffic. Further, concerns relating to the primary school located directly across the road was raised and their exposure to people drinking or intoxicated while walking home or through the arcade. Other concerns raised related to the toilet facilities, smoking and littering, increased risk of commercial break-ins and the number of licensed venues in the area.

## HEARING

24. The hearing was conducted in public on 21 August 2019 following notification to the Applicant and the objectors in accordance with section 53(1)(a) of the Act.
25. The Applicant appeared on behalf of himself. Ms Tania Chin appeared for the Director-General and the Commission's Legal Counsel, Ms Stephanie Monck, was also in attendance. In addition, the following objectors appeared:
- a. Paul Walsh on behalf of himself, Susan Walsh and Mark and Alexandra Kersemakers;
  - b. Simon Niblock on behalf of the Nightcliff Primary School Council;
  - c. Kिरrily Chambers on behalf of herself and Dale Bennett; and
  - d. John and Anong Bell.
  - e. Peter Van Den Herick

The Commission thanks them all for their attendance and assistance.

26. The hearing brief was admitted as evidence – Exhibit 4.
27. The Applicant tendered the following documents at the hearing:
- a. His opening statement – Exhibit 5
  - b. Documents provided to the Commission by email on 13 August 2019 – Exhibit 6:
    - Record of Registration of Business Name Dom's Bar & Lounge– Attachment D (name updated)
    - Start up costs and cash flow – Attachment E (a)
    - Personal financial documents – Attachment E (b)
    - Resume, personal references and supporting documents – Attachment F
    - Community Impact Assessment – Attachment G
    - Public Interest Test – Attachment H
    - Updated Business Plan –Attachment I
    - Copy of updated plan of the Premises – Attachment J
    - Copy of Lease - Attachment K
    - Camera Surveillance Plan – Attachment L
  - c. Bundle of documents provided to the Commission by email 19 August 2019 - Exhibit 7:
    - Images of site
    - Detailed architectural drawings

- 3 x letters of support – Dawn Lawrie AM, Michael Burgess AM and 3 residents (Troy Singleton, Baden Jones and Kate Walker)
  - Development Permit relating to Attachment B in Hearing brief
- d. Concept graphics – Exhibit 8
  - e. Staff position descriptions and draft employment contracts – Exhibit 9
  - f. Staff Handbook (opening pages) – Exhibit 10
  - g. Copy of menu, beer, wine and food list – Exhibit 11
  - h. Copy of quotes from local businesses for initial fit out including curtains, uniforms, roller shutters and signage - Exhibit 12
  - i. Email from Darwin City Council approving designated street food location in car park adjacent to the Premises – Exhibit 13
  - j. Images from current Arcade, including representing of boundary of licence area – Exhibit 14
  - k. Photos of friends and family providing assistance e.g. African mahogany benchtop – Exhibit 15
  - l. Copy of Building Permit of Project Building Certifiers (includes NTFRS and Department of Health) – Exhibit 16
  - m. Letter of support from Hon Paul Henderson AO – Exhibit 17
  - n. Copy of flyer posted on window of bar and copied to Aralia Street Supermarket – Exhibit 18
  - o. Copy of NT News OPINION PIECE "Go away NIMBYs" dated 30 March 2019 – Exhibit 19
  - p. Copy of Facebook digital media article and comments of support – Exhibit 20
  - q. Petition of support from community (approx. 130 signatures. Most signed at Nightcliff Seabreeze Festival - May 2019) – Exhibit 21

Leave was given by the Commission for the objectors present at the hearing to inspect these documents.

28. During the hearing it became apparent that the arcade area which formed part of the premises is used as a public thoroughfare through the shopping centre to either access the other retail tenancies such as the supermarket or even as a short cut by school children and families between Cunjevoi and Aralia Streets.
29. The Commission raised concerns that the Applicant would not be in control of that licensed area or have the ability to exclude persons including children from using the arcade as a thoroughfare during his trading hours. The Applicant advised that the supermarket closes either at 7.00pm or 8.00pm depending on the evening and the gates to the arcade are closed at that time.
30. As a result of this discussion, Ms Chin tendered an email she sent to the Applicant on 24 July 2019 which sets out how sections 106B and 106(1) work under the Act (Exhibit 22). Ms Chin advised that the general rule is that children are not permitted on a licensed premises (section 106B) except where the Director-General declares that a child may enter and remain on the licensed premises or part of it if in the company of a parent or guardian (section 106(1)(b)).
31. The objectors tabled the following documents:
  - a. Photo of Premises and residential apartments and 3 aerial photos of the Premises and proximity to residents in Nightcliff – Exhibit 23
  - b. Plan of the Premises from Planning Approval decision – Exhibit 24



- c. Letter to Mr Richard Lloyd, Department of Infrastructure, Planning and Logistics from Department of Environment and Natural Resources (“**DEANR letter**”) - Exhibit 25
- d. Report of Mr Richard Lloyd, Senior Planner, Development Assessment Services in relation to the Applicant’s DCA application for change of use (“**Lloyd Report**”) - Exhibit 26.

32. The DEANR letter states that:

“the proposed change to use as a bar and associated fitout activity have the potential to generate noise nuisance and impact the amenity of the surrounding areas...

To provide a balanced approach to noise management from entertainment venues, including noise from bars, the Northern Territory Environment Protection Authority (NT EPA) has adopted the agent of change principle. The agent of change is a person or developer / entity responsible for changing the status quo of an area by ... building a venue that introduces music close to residential or other receptors sensitive to noise.

For an existing sensitive noise reception (normally a resident), the agent of change principle provides continued protection of their amenity in the event of a change to an existing entertainment venue’s operation, or the development of a new venue. In these circumstances, the burden of any remedial or mitigation measures, such as noise attenuation or modified operating practices, falls upon the venue operator, as the agent of change.

Nose emanations causing environmental nuisance may lead to compliance action under the *Waste Management and Pollution Control Act ...*”

33. The following excerpt from the Lloyd Report was highlighted by the Objectors in the hearing:

“It is considered that the proposed hotel (small bar) is of a scale and character appropriate to the service function of the shopping arcade – subject to the application of appropriate measures recommended in this report, particularly restriction on when the bar is able to operate (essentially outside of school and business hours and also not to close late).”

34. The time suggested in the Lloyd Report as a reasonable time for closure of a bar in order to reduce the risk of late night noise and impact on the amenity of nearby residential areas was suggested as 11.30pm nightly for the Shop 7 area however, suggested the desirability of having the area in the arcade close earlier than 11.30pm either at 10.00pm or 10.30pm.

35. The Lloyd Report also suggested in order to limit the exposure of children from the school being to the licensed premises, it should not operate before 6pm on weekdays.

## **ASSESSMENT OF THE APPLICATION**

36. The Commission is required under the Act to assess the application according to the Act. The Act clearly identifies and prescribes the process to be undertaken and in particular those matters to be considered (where relevant) under section 6, together with the

Minister's guidelines issued under section 6A and the matters identified under section 6B of the Act.

37. In this regard it is important to recall at all times that the Act makes clear under section 6B that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test. Even if there are no objections, the Applicant must still satisfy this Commission of those matters.

38. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
  - i. by-laws made under the Local Government Act; and
  - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;

- k. it may be necessary or desirable to limit any of the following:
  - i. the kinds of liquor that may be sold;
  - ii. the manner in which liquor may be sold;
  - iii. the containers, or number or types of containers, in which liquor may be sold;
  - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

39. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
  - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
  - ii. the cultural, recreational, employment or tourism impacts; and
  - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
  - iv. the density of existing liquor licences within the community area; and
  - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
  - vi. any other prescribed matter; and
  - vii. apply the community impact assessment guidelines.”

40. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

41. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
<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"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul>

	<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 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"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are not available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

42. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear 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”.

43. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;
- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager”.

44. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

45. The Commission notes there are no such matters prescribed by the Regulations.

46. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.

## **The Applicant**

47. The Applicant is a natural person. The business name “Dom’s Bar & Lounge” is registered with ASIC in the name of the Applicant (Exhibit 6).

48. The Applicant is currently engaged in full-time employment and intends to continue to maintain this employment. Financial reports for Dom’s Bar & Lounge were not been provided as it is a start-up business. However, the Applicant has provided a financial overview with regard to estimated initial start-up costs for the business venture. The Applicant has provided a statement of his current assets (including copies of bank account records) and expenses, copies of payslips and an approval of a personal loan. A 12 month cash flow projection based on a business model upon commencement of trade if granted a liquor licence has also been supplied for review (Exhibit 6). The anticipated initial modest returns are realistic and the Commission was impressed with the detail contained in the business plan. The Applicant is to be commended for the effort and attention to detail that has gone into this application.

49. In accordance with section 28(2)(b), the Commission assesses that the general reputation, financial stability and character of the Applicant to be satisfactory.

50. In accordance with section 28(2)(e) of the Act, the Commission also assesses the Applicant to be a fit and proper person to hold a licence.

51. Section 26A 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 Applicant signed an affidavit dated 31 January 2019 in accordance with section 26A of the Act, stating that there are no other persons of influence in relation to the conduct of the business or the proposed licence.

52. It is also noted that the Applicant expressed, what we considered a genuine willingness, during the hearing to listen to the neighbouring resident concerns so as to minimise any inconvenience and disturbance to them. This attitude was also displayed prior to hearing when he revised his proposed trading hours after considering the concerns of objectors.

## **Objections**

### *School children and public thoroughfare*

53. Although the Applicant originally sought to commence trading each day from 11.00 hours, following the receipt of objections that was amended to 15:00 hours on weekdays so as to avoid any adverse influence on school children. During the course of the hearing the Commission raised with the Applicant our concern over his proposed use of the arcade area as part of the licensed premises whilst it was also being used as a thoroughfare by members of the public travelling between Cunjevoi and Aralia streets or wanting to access any of the other shops in the arcade including the supermarket. It was pointed out that he could be held responsible for having unaccompanied minors on licensed premises even though they may just be taking a short cut home through the arcade. He could also be accused of having intoxicated persons on his premises by

virtue of the fact that people walking down the arcade intending to purchase takeaway alcohol from the supermarket would be on his licensed premises.

54. Notwithstanding the Applicant's assurances that he would be vigilant in ensuring he complied with the conditions of any liquor licence, it is not realistic for him to exercise the level of control over the licensed premises that is contemplated by the Act when that same area is also open to and used by the public as a thoroughfare. In other "open" environments such as shopping malls, licensed premises can be delineated through the use of physical barriers such as fences to separate the licensed footprint from those areas open to the general public. The Applicant conceded that because of the relatively narrow dimensions of the arcade it was not feasible to "fence" the licensed part of it off whilst still maintaining the other part as a public thoroughfare.
55. Accordingly the Commission advised the Applicant that any grant of a licence in respect of the arcade would be conditional upon a physical barrier being put in place at the Northern boundary of the arcade's licensed footprint, together with appropriate signage so that the arcade would not be used as a thoroughfare at any time when liquor was being supplied in that area.
56. On hearing the Commission's view in relation to restricting liquor sales in the arcade, the objector, the Chair of Nightcliff Primary School Council, Mr Simon Niblock, advised the Commission that despite the Council having diverging views on the merits of the application, their principal concern over the wellbeing of students would be addressed by the imposition of a condition such as had been outlined by the Commission.
57. The Commission finds that having regard to the later opening times now proposed by the Applicant, the abandonment of the "smokers" bar on Cunjevoi Street and the foreshadowed condition preventing the use of the arcade as a thoroughfare whenever alcohol is being consumed, that granting the licence would no longer present an unacceptable risk to the wellbeing of children from the local schools.
58. A number of the objectors referred to the problems they had experienced in the past as a result of alcohol-fuelled anti- social behaviour. It is clear from the contents of their written objections and from the evidence of those objectors who attended the hearing that the primary cause of that adverse impact on the amenity of the local neighbourhood was the drunken behaviour of itinerants who had sourced take away liquor from the Aralia supermarket. The fact that there had been a significant reduction in that sort of behaviour was attributed to a more rigorous approach to responsible service of alcohol requirements by the current licensee.
59. Having regard to the evidence before us which includes the Applicant's oral evidence, his Business Plan (Exhibit 6), the expressions of support from prominent Territorians together with the very limited scale of the proposed small bar we have been persuaded that the target market of the business is not the risky drinker demographic. We find that approving the licence would not result in any appreciable increase in the consumption of alcohol or rise in anti-social behaviour within this locality.
60. The fact that these premises are open at night is more likely in our view to deter itinerant drinkers from congregating around the rear of the shopping centre and thereby decrease the risk of that past type of anti-social behaviour reoccurring.



## *Planning Process*

61. Acting on the advice of Licensing NT staff the Applicant applied to the Development Consent Authority (DCA) for planning permission to use the proposed premises as a hotel. Most of the current objectors to this licence application also opposed the grant of planning permission and were given an opportunity to express their views at the DCA hearing. The Authority found:

“that the centre has previously contained a longstanding use as a licensed restaurant and presently provides for takeaway alcohol sales from the supermarket. Given the scale of the proposed use and the service function of the centre, the Authority considers that, in general terms, the proposed development is appropriate in this zone for this centre.”
62. Whilst the DCA has left the issues of trading hours and noise abatement for the Commission’s determination, it has clearly approved the proposed use of the premises as a hotel. Whilst some of the objectors seem to be suggesting that this site is inappropriate for any type of licensed bar, that decision has already been made in the affirmative from a town planning perspective.
63. As was pointed out to the parties by the Commission at the directions hearing, from 1 October this year this application would be dealt with as an application for a small bar authority. Given that a licensed restaurant or club are already permitted uses for these premises it is doubtful that the Applicant would have been required to seek any planning approval if he had described the premises as a small bar rather than hotel.
64. Although there appears to be a current hiatus in respect to the operations of the Asian Gateway restaurant it is relevant to note that it has been operating as a licensed restaurant within this shopping centre for over 30 years. It is currently licensed to trade until midnight 7 days a week. Whilst the current licensee is not trading under the licence, the owner of the building and one of the objectors, Mr Bell advised the Commission that it was his intention that those premises would remain licensed and he was hopeful that the restaurant would resume trading soon. That restaurant has in the past traded until midnight and it will not require the permission of either the Commission or DCA to resume operations to the full extent of the hours permitted by the licence.

## *The Premises*

65. In accordance with section 28(2)(a) of the Act, the Commission must make an assessment on the suitability of the premises for which the application is made having regard to any law which regulates the sale or consumption of liquor or the location, construction or facilities of that premises.
66. The Commission considers that the location of the premises is suited for a small licensed bar notwithstanding it is surrounded by some residential areas and a primary school. The premises is within a small suburban shopping centre precinct that has also been tenanted by a licensed restaurant for many years which had trading hours daily to midnight. Although the fit-out budget is modest the Applicant’s father, who attended the hearing to support his son, is a qualified builder and will be helping him with the work. The Applicant provided the Commission with plans and graphic representations of the interior layout of the bar together with concept drawings. We were also shown

photographs of some of the solid timber fittings in the process of construction. His proposed food menu, although limited was innovative and once again showed us that he had made an effort to provide something different within the constraints of a very confined food preparation area. It is also to the Applicant's credit that he has gone and spoken to a range of local residents including Mike Burgess, Dawn Lawrie and Paul Henderson and convinced them of the benefits of this project. The Commission is satisfied that the Applicant has a realistic vision for transforming this vacant shop and adjoining arcade area into an attractive small bar.

67. There is ample parking in the immediate vicinity as well as toilet facilities available to patrons in a well-lit arcade within the shopping centre.
68. Having taken into account all of the material it has received, and in particular these matters, the Commission assesses that part of the premises known as Shop 7 as being suitable for the purpose of operating the business proposed and the arcade area as suitable for the purpose only when it is not being used as a public thoroughfare and is in the exclusive control of the Applicant.

#### *Noise and amenity*

69. Tensions are often likely to occur between the interests of those wishing to operate a business within a commercial zone and those of the residents whose homes, whilst zoned residential are closest to the business centre. We need to try to strike a balance between the rights of this Applicant to conduct a business which is recognised within the objects of the Act whilst preserving as best we can the amenity of the local neighbourhood.
70. We do not accept the complaints by objectors that there will be any significant increase in traffic and littering if the application is granted. The legitimate area of concern raised by objectors is the risk of an unacceptable level of noise emanating from the premises. We do not consider that given the concrete block construction of Shop 7 and the fact that the Applicant will be installing heavy curtains inside over the windows and also roller shutters externally over the window that he is prepared to have down at night, that there will be any significant noise emanating from Shop 7 itself. We do find however that some of the objectors have a legitimate cause for concern over the prospect of noise emanating through the open shutters under the arcade roof and to a lesser extent the noise occasioned by patrons leaving the premises late at night.
71. Having visited the site the Commission can understand why Mr And Mrs Walsh of 35 Cunjevoi Crescent have fears over the impact of the proposed bar on the quiet enjoyment of life in their tropical home which is the closest dwelling within a residential zone to the site.
72. Mr and Mrs Bell own three flats at 58 Aralia street which are part of the same building as the Asian Gateway restaurant. Those older style flats, which are of concrete block construction are the closest residences to the proposed development. The Bells, together with the tenants of two of the units, lodged objections. Whilst the Bells confined their complaint to the risk of noise because of the proposed trading hours, the tenants as well as complaining about the potential noise disturbance also expressed concerns about safety issues due to drunken people congregating in the area.

73. In relation to the objections from 58 Aralia Street it is relevant to note that these residences are located within a Business zone and that the Bell's own licensed restaurant is entitled to trade 7 days a week until midnight and is even closer to their flats. Residents who choose to live in a commercial zone, possibly attracted by lower rents, should be prepared to accept a greater level of activity within their immediate locality than those people who live in an exclusively residential zone. As previously indicated we do not accept that approving this application will lead to any reoccurrence of anti-social behaviour by itinerant drinkers so we do not consider the objections related to safety issues have any substance. Having regard to the solid construction of the flats and the fact that they are air conditioned and can be shut up we find that the risk of undue noise disturbance to these residents can be mitigated with appropriate licence conditions particularly in relation to live or loud music.
74. We find that the other objectors who complained about noise from the proposed venue having an adverse impact on their amenity do not live close enough to be personally affected by noise emanating from the bar. Perhaps the strength of their objections on these grounds was motivated by their concerns for the welfare of their neighbours, the Walsh family. We think their concerns that drunken revellers walking or driving home from the bar will cause them disturbance are overstated given the limited scale of the venture. We find that there will in fact be little or no more pedestrian or vehicular traffic because of the bar than already exists.
75. There is a need to balance the interests of the Applicant with those of the Walsh family. We accept that the Applicant is aware that he will need to operate his business in a way that does not cause undue disturbance to the Walsh family. At the hearing he said that he knew from his past dealings with Mr Walsh that he would not tolerate any breach of his licence conditions and that he would be doing all in his power to ensure he established a harmonious relationship with his neighbour. In the hope of encouraging a positive relationship and taking into account the "agent of change" principle referenced in the Lloyd Report, we have determined to reduce the proposed hours of trade on Friday and Saturday nights to 1:00 am and to also restrict the hours of trade within the arcade area to 10.00pm from Sunday to Thursday and 10.30pm on Friday and Saturday as well as restrict the type of live music that can be played in the arcade to acoustic instruments and amplification for the vocalist only.
76. Having heard and considered all of the evidence presented to the Commission by the Applicant and objectors, the Commission finds on balance that there is no evidence to suggest:
- a. any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the licence sought;
  - b. there is likely to be an impact upon public order and safety as consequence of the licence sought; and
  - c. the safety, health and welfare of persons who use licensed premises will be put at risk.
77. The Commission is satisfied that the Applicant has in place appropriate measures to ensure liquor is sold in a responsible manner.

78. On the basis that the Commission's has reduced the proposed hours of trade of the bar in both Shop 7 and the arcade and also restricted music in the arcade as referred to in paragraph 75, the Commission is satisfied that noise emanating from the premises will not be significantly greater than that which already occurs within this neighbourhood . Although at this instant there may be less noise in the area than previously because of the temporary closure of the Asian Gateway restaurant, we have made our assessment of current noise and amenity levels on the basis that it will resume trading. We do not find that the noise emanating from the proposed premises will be excessive in the circumstances such as to warrant a licence being refused, or that the business to be conducted at the premises will cause undue offence, annoyance, disturbance or inconvenience to the neighbourhood.
79. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the application for an "On - Authority" liquor licence on the conditions as set out at paragraph 1 of this Decision Notice meets the public interest and community impact tests.

## **NOTICE OF RIGHTS**

80. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
81. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
82. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the Applicant and Objectors.



RICHARD COATES  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION

11 September 2019

On behalf of Commissioners Coates, Corcoran and Stephenson