

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

REFERENCE: LC2020/025

PREMISES: Bullo River Station
9870 Victoria Highway
BAINES NT 0852

APPLICANT: Strawberry Hill Holdings Pty Ltd

NOMINEE: Ms Sarah Cooper

OBJECTOR/S: Nil

LEGISLATION: Part 3 and 4 of the *Liquor Act 2019*

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

DATE OF HEARING: 14 July 2020

DATE OF DECISION: 14 July 2020

Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (the Act) the Commission has determined to issue a licence to Strawberry Hill Holdings Pty Ltd (the Applicant).
2. The licence will be issued with a lodging authority and a special venture authority authorising the sale of liquor to patrons as an ancillary part of services provided to the guests of the Applicant.
3. The conditions of the licence will be those lodging authority and special venture authority conditions set out in Division 19 of the *Liquor Regulations 2019* (the Regulations).
4. The licensed premises is Bullo River Station situated at 9870 Victoria Highway, Baines NT 0852 but excludes the staff kitchen and quarters depicted on the plan of the Station's homestead (the licensed premises).
5. In accordance with section 85 of the Act, the term of the licence will be for twenty-five (25) years.
6. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

7. On 3 December 2019, an application was lodged by the Applicant for a liquor licence with both a lodging authority and special venture authority for part of the premises known as 'Bullo River Station' at 9870 Victoria Highway Bain, NT 0852 (the premises).
8. The Applicant seeks a liquor licence to sell liquor to guests whilst operating its tourism and pastoral business. The premises is a working cattle station that offers guests the unique experience of immersing themselves into life on a remote station. It has 12 guest rooms with a maximum capacity of 24 guests. The premises is 500,000 acres and located 3 hours drive from Kununurra, Western Australia, which is the closest town.
9. The concept involves guests paying a premium all-inclusive price per night for the experience that includes a personalised itinerary, allocating them time to plan their stay around their interests including cattle activities or exploring the property by horse, 4WD or boat.
10. Guests are served breakfast, morning tea, lunch, sunset drinks with nibbles and dinner. Alcohol is offered with lunch, sunset drinks and dinner. Lunch is currently served at the homestead or at 'Marlee's Bath', a designated BBQ site near a safe waterhole. Marlee's Bath as well as cooking facilities, also has bathroom and change facilities for guests.
11. Guests also have self-serve access to a small amount of alcohol (beer and wine only) and non-alcoholic drinks from a communal fridge in the guest accommodation area that is monitored and refreshed daily by staff.
12. Although the original application requested the homestead and Marlee's Bath to be the only areas licensed on the premises, after discussions at the hearing, the licensed area applied for was expanded to include the whole of the premises save for those areas set aside for staff. The Applicant submitted there was the occasional proposal by a guest with use of the helicopters and other special occasions that would give rise to the ability to serve alcohol in other areas of the Station. Notwithstanding this expansion of the licensed area, the Applicant advised that alcohol would generally just be served in the abovementioned areas given the facilities available to the guests in those locations.
13. The Applicant is a body corporate registered with ASIC which has two directors being Mrs Alexandra Burt and Mr Julian Burt (who is also the secretary). Both directors own the company in equal shares. The business name of "Bullo River Station" has also been registered with ASIC in the Applicant's name.
14. The proposed liquor trading times are as standard for the lodging authority and special venture authority pursuant to the Regulations.

Advertising and Objections

15. The application was published in the NT News on Wednesday, 19 February 2020 and Wednesday, 26 February 2020. The Applicant also displayed the required "green sign" at the premises. No objections were received from the public in the objection period.
16. It is noted that section 56(4) of the Act requires that the Director must inform:

- a. The Chief Executive Officer (CEO) of the Agency administering the *Public and Environmental Health Act 2011* being the CEO of the Department of Health (DOH);
 - b. The Commissioner of Police (NT Police); and
 - c. If the application relates to premises within a local government area – the chief executive officer (CEO) of the local council.
17. The Commission notes that the Director also forwarded a copy of the application to the Northern Territory Fire and Emergency Services (NTFRS) however, they were unable to provide comment.
18. With respect to this application:
- a. The DOH had no adverse comment.
 - b. The NT Police advised it had no objections to the application.
 - c. The Victoria Daly Regional Council did not provide a response at the time of the referral or hearing.
19. On 2 June 2020, pursuant to section 59 of the Act, the Director of Liquor Licensing (the Director) referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 14 July 2020.
20. In terms of the application before the Commission, it is noted that the Applicant provided the following documents in support of the application:
- a. Affidavit and Declaration of Associates pursuant to section 54 of the Act;
 - b. Community Impact Assessment (CIA) pursuant to section 51 of the Act;
 - c. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
 - d. Pastoral permits and lease; and
 - e. Various registrations and plans.
21. 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.
22. The public hearing commenced at 10.00am on 14 July 2020. Both directors of the Applicant being, Mr and Mrs Burt, appeared via teleconference. Mr Jeff Verinder represented the Director. The Commission is grateful to all those that appeared for their assistance in this matter.

Disclosure of persons of influence and potential beneficiaries

23. The Commission notes that section 54 of the Act requires an 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.
24. Each director was required to complete a declaration of associates. Mr and Mrs Burt have both sworn affidavits. The Commission is satisfied that this criterion has been met.

Results of any investigation

25. Section 58 of the Act enables the Director to conduct an investigation into an application as considered appropriate by the Director. The Commission has received no information to indicate there have been any adverse matters discovered as a result of any investigation by the Director.

Financial stability, reputation and character

26. The Applicant provided supporting documentation regarding its operations, activities and financial circumstances. As a result, pursuant to section 59(3)(g)(i) the Commission is satisfied on the material before it of the financial stability and business reputation of the Applicant.
27. Also under section 59(3)(g)(ii), the Commission must be satisfied of the general reputation and character of the executive officers and secretary of the Applicant. The company's two directors, Mr Burt (also secretary) and Mrs Burt have provided personal references that attest to their good character and extensive experience working within the tourism and hospitality industries and there has been no suggestion that either of them have nothing but impeccable reputation and character to be an associate of a licensee.
28. Under section 59(3)(e) the Commission must consider the suitability of the premises to be licensed. The premises provides a unique tourism and hospitality experience to the guests and the Applicant has been operating the business of both a pastoral station and tourism venture for a number of years now. The Commission is satisfied that the premises is suitable to be licensed.

Fit and proper person

29. Section 59(3)(i) of the Act provides the Commission is also required to consider whether the Applicant, including the nominee designated by the Applicant, is a fit and proper person to hold a licence. In this regard, a number of probity documents were provided in relation to the Applicant and proposed nominee, Ms Sarah Cooper. Having considered the material, the Commission is satisfied that the Applicant and its directors and sole shareholders Mr and Mrs Burt are fit and proper persons to hold a licence and that Ms Cooper is a fit and proper person to act as nominee.

PUBLIC INTEREST AND COMMUNITY IMPACT

30. Section 49 of the Act makes clear that 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.
31. The Commission has already addressed the evidence and found the Applicant to be fit and proper persons and now turns to consider the question of whether issuing the licence or authority is in the public interest. In this regard the Commission must consider section 49(2) and how the licence or authority “would advance the following objectives:
- a. Minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
 - b. Ensuring liquor is 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.”
32. 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”.

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

34. It is important to recall at all times that the Act makes clear under section 51 that it is the applicant who 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.

35. In relation to the issue of the community impact assessment guidelines issued under section 50, it is noted that regulation 123 of the Regulations provide 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.

36. Those matters therefore remain as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers.

	<p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>

<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?
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37. 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 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”.

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 highly relevant to this application whilst others are not as significant.

39. In considering these issues, it is also important that it be kept in mind that section 50(3) makes clear that the “mere addition of a new licence or licensed premises in a community if not taken to be a benefit to the community”.

40. In relation to the public interest and community impact assessment, the Applicant submitted that the hospitality side of the business was an extension of the full guest experience at the premises and life on a working station.

41. Turning to the matters under section 49(2):

- a. Minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised:

The Commission is satisfied that the provision of liquor is ancillary to the tourism experience provided by the Applicant and that there will be no excessive consumption of liquor.

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

The Applicant stated that it was extremely mindful of maintaining a safe environment given the remote location of the premises. Having considered all the material, the Commission considers that the licensee is likely to ensure that any liquor sold, supplied, served and consumed will be 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:

The Commission considers that public order and safety are unlikely to be jeopardised by the operation of the licence subject to the lodging authority and special venture authority conditions with pre-paying guests limited to 24.

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

The Applicant confirmed it had a large team in relation to the number of guests with 8 staff in the tourism team and 8 to 10 in the cattle team and the Commission considers that this, as well as other material provided by the Applicant, adequately protects the safety, health and welfare of people who are likely to use the premises.

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

The Commission is satisfied there will be recreational, tourism and employment benefits associated with this venture.

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

The Commission is satisfied that the Applicant will comply with the Act and any other relevant laws during the period of its licence.

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

The Commission is satisfied that 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 with the Commission that lead it to be concerned in relation to this objective.

- i. Preventing the practices that encourage irresponsible drinking:

No issues have been raised with the Commission that lead it to be concerned in relation to this objective.

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

The Commission does not consider that the grant of the lodging authority and special venture authority licence to the Applicant is likely to result in any significant increase in anti-social behaviour.

42. 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:

The Commission does not consider that there is any risk of undue offence, annoyance, disturbance or inconvenience likely to be caused by the granting of the lodging authority and special venture authority licence given the remoteness of the premises.

- b. The geographic area that would be affected:

As mentioned above, the premises is extremely remote and as such there should be minimal additional adverse impact on residents.

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

As previously indicated, the Commission is satisfied that there will not be excessive consumption of liquor.

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

For the reasons highlighted above, the Commission does not consider there is likely to be significant adverse impact on the community by the granting of a lodging authority and special venture authority licence to the Applicant.

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

The Commission finds that there will be positive recreation, employment and tourism benefits associated with this venture.

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

The Commission does not consider there is likely to be significant adverse impact on the social amenities and public health by the granting of a special venture authority licence to the Applicant.

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

The Commission does not consider this to be a relevant matter in this application given the nature of the venture and the remoteness of the premises.

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

For the same reasons as above, the Commission does not consider that this factor is of great significance in the circumstances of this application.

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

These have been considered by the Commission in determining this application and referred to earlier in these proceedings.

43. Section 85 of the Act now requires the Commission to fix a licence term. The Applicant did not seek a specific term for the licence in its application however, after discussions at the hearing, sought the grant of the licence for a twenty-five (25) year term. Given the nature of the venture and capital required to operate the venture, the Commission will grant the licence for twenty-five (25) years.
44. Having regard to the foregoing, the Commission is satisfied that the issuing of the licence as sought is in the public interest and will not have an adverse effect on the community. As a result, the Commission intends to issue the licence with the authorities identified at the commencement of this Decision Notice.

Notice of Rights:

45. Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by NTCAT and the following persons (*relevantly*) may apply to NTCAT for a review:
- a. In all cases – the Director;
 - b. In the case of a decision regarding an application – the Applicant; and
 - c. In the case of a submission, complaint or objection that was the subject of a decision – the person who made the submission, complaint or objection.
46. In accordance with the substance of section 31 of the Act any application for review of this decision must be lodged within 28 days of the date of this decision.



RICHARD COATES
PRESIDING MEMBER
CHAIRPERSON
29 July 2020

On behalf of Commissioners Coates, Stephenson and Corcoran