

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2020/117

APPLICANT: Jessica Ashley Thompson

PREMISES: Desert Sands Indoor Beach Volleyball
11 Kennett Court
Alice Springs NT 0870

LEGISLATION: Part 3 Division 1 of the *Liquor Act 1978*.

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 17 July 2020

DATE OF DECISION: 16 September 2020

Decision

1. For the reasons set out below and in accordance with section 29(1) of the *Liquor Act 1978* (NT) (“the Act”) the Northern Territory Liquor Commission (“the Commission”) has determined to issue a liquor licence to Ms Jessica Ashley Thompson (“the Applicant”) for Desert Sands Indoor Beach Volleyball (“the premises”), being the area at 11 Kennett Court, Alice Springs delineated by the orange line marked on page 99 of Exhibit One tendered at the hearing of the application.

CONDITIONS

2. The conditions of the licence will be those authority conditions set out in Part 4 Division 19 of the *Liquor Regulations 2019* (“the Regulations”).
3. The following additional conditions are fixed:
 - a) Liquor may be sold Monday to Sunday between 12:00 hours and 24:00 hours, except on Good Friday and Christmas Day.
 - b) All liquor must be sold in open cans.
 - c) No more than four (4) cans may be sold to any one person at any one time.

- d) The licensee must install and maintain video surveillance equipment for the licensed premises in accordance with the directions of the Director of Liquor Licensing (“the Director”).
 - e) Liquor may only be supplied or sold to persons who are bona fide spectators, players, team support staff or officials of volleyball games being played at the premises, and such persons are deemed to be customers of the licensee’s services who have booked those services in advance, for the purpose of Regulation 93(1) of the *Liquor Regulations 2019*.
 - f) The licensee must prominently display on the premises the “Maximum Patron Number” sign issued by Northern Territory Fire and Rescue Services and must comply with maximum patron numbers as determined by Northern Territory Fire and Rescue Services from time to time.
 - g) No liquor may be supplied or sold to persons who are spectating, officiating or otherwise involved with volleyball games where all players are under 18 years of age.
 - h) No liquor may be supplied or sold to persons who are spectating, officiating or otherwise involved with volleyball games where one or more players are under 12 years of age.
 - i) Any employee of Desert Sands Indoor Beach Volleyball or the O’Brien Family Trust is deemed to be an employee of the licensee for the purpose of compliance with the *Liquor Act 2019* and this liquor licence.
 - j) Within 28 days of the issue of the licence the licensee shall submit to the Director a plan for the management of risks to the safety and well-being of young people and children arising from the supply and consumption of liquor at the premises (“the risk management plan”).
 - k) If the licensee is informed by the Director that the risk management plan has been assessed by a member of the Commission to be unsatisfactory, the licensee shall, within 28 days, submit an amended risk management plan to the Director.
4. The Commission requests the Director to provide any risk management plan received from the licensee in accordance with Condition 3 (j) or 3 (k) above to either Member Goldflam, Member Reynolds or Member McFarland for that member to assess whether the plan is satisfactory.

Reasons

Background Preliminary Issues

5. This is an application for a liquor licence commenced on 11 June 2019, prior to the coming into force on 1 October 2019 of the *Liquor Act 2019* (“the 2019 Act”). Regulation 129 of the *Liquor Regulations 2019* (“the Regulations”) provides that in these circumstances, unless the applicant notifies the Director that it wishes to have the application determined under the 2019 Act, the application is to proceed and be

determined under the 1978 Act. The applicant elected to proceed under the 1978 Act, and accordingly, the application proceeded and is being determined under the 1978 Act. In accordance with Regulation 29, the applicant has notified the Director that it seeks to be issued with a special venture authority.

The Application

6. The applicant is a principal of the O'Brien Family Trust, the Trustee of which operates the premises in a light industrial and commercial area in Alice Springs.

Consultation

7. As required by section 27 of the Act, notices of the application were published in the Centralian Advocate on 19 and 23 July 2019. No objections were received.
8. Also in accordance with section 27, notification of the application was made to the Department of Health ("DOH"), the NT Police and the Alice Springs Town Council, as well as the Northern Territory Fire and Rescue Service ("NTFRS"), none of which raised any issues adverse to the application.

The licensee's record of compliance

9. A Continuing Special Liquor Licence authorises "Desert Sands Indoor Beach Volleyball" to sell and supply liquor on conditions similar to those sought in this application. The Director informed the Commission that during this period there have been no reported instances of non-compliance by the applicant with the conditions of its licence or the Act.

The hearing

10. On 17 July 2020 the application proceeded as a public hearing. Ms Thompson and Mr O'Brien, her spouse, appeared on behalf of the applicant. Mr Wood and Ms Free appeared for the Director. The Commission thanks them all for their attendance and assistance.
11. The brief provided by the Director to the Commission under cover of his referral dated 24 September 2019 was tendered and admitted into evidence without objection. In addition and also without objection, the applicant tendered a bundle of documents that had been provided to the Commission under cover of an email dated 26 June 2020, and a further bundle of documents provided to the Commission under cover of an email dated 17 July 2020.

ASSESSMENT OF THE APPLICATION

12. The Commission has considered the application, the materials tendered in support of the application, the affidavit of Jessica Thompson dated 15 July 2020 in relation to the disclosure of influential persons or potential beneficiaries, and the results of the investigations conducted by the Director in relation to the application. The Commission has applied the public interest and community impact tests and considered the objects of the Act. Having done so, the Commission has determined to grant the application.

The applicant's premises

13. The premises, the home of indoor beach volleyball in Alice Springs for 16 years, comprise three playing courts and associated facilities located in a large shed in a cul-de-sac in a mixed light industrial and commercial precinct adjacent to a suburban residential area of Alice Springs.
14. In accordance with section 28(2)(a) of the Act, the Commission assesses the premises as being suitable for the supply and consumption of liquor in the manner set out in the application.

The applicant

15. Through the O'Brien Family Trust ("the trust"), the applicant, together with her spouse and his mother, acquired the business currently trading as Desert Sands Indoor Beach Volleyball in 2015. Since then, the applicant has managed the business on a part-time basis, while continuing in her role with the Northern Territory Department of Health as a Workplace Development Officer for the Remote Alcohol and Other Drugs Workforce.
16. Initially, the application was brought in the name of the trust. Section 25(1) of the Act provides that a body corporate shall not hold a liquor licence unless it is a corporation within the meaning of the *Corporations Act 2001* (Cth).
17. During the hearing of the application, doubt arose as to whether the trust is a corporation for the purpose of this provision, and accordingly, the applicant and Mr O'Brien, who, together with Mr O'Brien's mother Ms Hughes are the trust's trustees and principal beneficiaries, sought to amend the application by nominating Ms Thompson as the applicant. The Commission considered that this was an appropriate course, and allowed the application to be so amended.
18. Although the Commission has not heard fully developed legal submissions as to whether a trust can be granted a liquor licence, the Commission's tentative view is that a trust is not a body corporate, and cannot be granted a liquor licence. Section 9 of the *Corporations Act 2001* (Cth) provides that "corporation" has the meaning given by section 57A of that Act. In summary, section 57A provides that a corporation is either a company, an incorporated body corporate, or an unincorporated body corporate capable of suing and being sued. The *Corporations Act 2001* (Cth) does not define "body corporate". As a general proposition, in Australian law a trust is not regarded as a body corporate, but as a device that creates a relationship between trustees and beneficiaries regarding the management of the property of the trust.
19. On this analysis, the trust is not a body corporate, and section 25(1) is not engaged.
20. Section 4 of the Act defines a licensee as "a person who holds a licence...." Sections 17 and 24AA of the *Interpretation Act 1978* (NT) provide that the term "person" can include a reference to an individual, a body corporate or a body politic. The tentative view of the Commission is that only a person can hold a licence, and that the trust is not a "person".

21. The Commission notes that the business is registered with the Australian Securities and Investments Commission (“ASIC”) as a Business Name, the “Holder type” for which is an “unincorporated body”, namely “The Trustee for O’Brien Family Trust”, which has an ASIC registered Australian Business Number.
22. Schedule 1 of the Deed of the O’Brien Family Trust identifies Jennifer Hughes, Sean O’Brien and Jessica Thompson as “The Trustee”. The Commission does not express a view as to whether “The Trustee” of the O’Brien Family Trust is a body corporate or a corporation within the meaning the *Corporations Act 2001* (Cth).
23. The applicant has provided extensive documentation regarding her character, experience, qualifications and employment history; and regarding the operations, activities, financial circumstances and plans of the business.
24. The Commission assesses the financial stability, general reputation and character of the applicant to be suitable for the purpose of granting her a liquor licence, in accordance with section 28(2)(b) of the Act.
25. The Commission assesses the applicant to be a fit and proper person to hold a liquor licence, in accordance with section 28(2)(e) of the Act.

The licensee’s associates

26. 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 affirms in her affidavits deposed on 19 September 2019 and 15 July 2020 that the only such persons other than herself are her business partners Jennifer Hughes and Sean O’Brien (who are also her co-trustees and co-beneficiaries of the trust), and Ricky and Gaynor Chambers, the owners of the premises leased by the business (“the lessors”).
27. Section 26A(3)(c) of the Act provides that not only must the deponent of the section 26A affidavit provide the name of each natural person she discloses, but also their address and date of birth. The applicant has not provided the dates of birth of the lessors, but the Commission considers that this breach by the applicant of section 26A(3)(c) is not significant.
28. The Commission assesses Jennifer Hughes, Sean O’Brien, Ricky Chambers and Gaynor Chambers to be fit and proper persons to be associates of the applicant, in accordance with section 28(2)(f) of the Act.

The nominated managers

29. The application originally nominated Jennifer Hughes and Sean O’Brien as co-managers, together with the applicant. In accordance with section 28(2)(h) of the Act, the Commission assesses these three persons, each of whom has provided appropriate documentation of their reputation, character and work history, to be a fit and proper person to manage the licence.
30. As stated above, however, in the course of the hearing, the application was amended to identify the applicant as the proposed licensee. Where the licensee is

a natural person, there is some doubt as to whether the Director can appoint another person to be a joint manager of the licence. Accordingly, during the hearing the applicant withdrew her proposal that there be nominated managers, and the hearing of the application proceeded on the basis that the licence would be issued in her name only.

Public notice and consultation

31. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 32A(4) and (5) of the Act.

Conditions

32. In fixing the Conditions set out at paragraph 2 and 3 above, the Commission has had regard to:
- a. The stated intention of the Director, in accordance with the stated wishes of the applicant, that when the licence is converted pursuant to section 324(6) of the *Liquor Act 2019*, the licensee will be issued with a special event authority;
 - b. The conditions in Licence No. 20970/CSL (the Continuing Special Licence to Sell Liquor currently in force at the premises);
 - c. The evidence adduced to the Commission at the hearing; and
 - d. The submissions of the parties at the hearing.

The public interest and community impact test

33. The Commission is required to consider each of the fifteen objectives in section 6(2).

34. (a) *Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised.*

The Commission accepts that consumption of liquor at the premises is ancillary to the principal activity of visitors to the premises, namely participation in the sport of indoor beach volleyball. As such, the Commission assesses the risk of harm or ill-health to people by the consumption of liquor at the premises to be low. However, the Commission is concerned that there may be a risk to young people and children who use the premises, and accordingly, the Commission has determined to impose the Conditions set out at paragraph 3 (g), (h), (j) and (k) above.

35. (b) *Liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner.*

The Commission considers that the Conditions it has determined to impose will appropriately mitigate the risk of irresponsible sale or consumption of liquor on the premises. The Commission accepts the evidence of the applicant that all staff involved in the sale and supply of liquor at the premises have undergone Responsible Service of Alcohol training and accreditation.

36. *(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.*

Having regard to the nature of the business, the Commission considers that the operation of the licence will not jeopardise public order or safety. The Commission accepts the applicant's evidence that on the relatively rare occasions when there are large gatherings at the premises, the applicant will contact neighbouring businesses in advance, and make appropriate arrangements to cater for the expected influx of patrons.

37. *(d) The safety, health and welfare of persons who use licensed premises must not be put at risk;*

The Commission considers that the applicant's successful management of the business over the last five years is a sound basis on which to infer that the continued operation of the business is unlikely to endanger the safety, health and welfare of patrons. The Commission notes that the conditions it has determined to impose include, at the request of the applicant, a prohibition of the sale of liquor in glass containers.

38. *(e) Noise emanations from licensed premises must not be excessive.*

Having regard to the location of the premises in a non-residential precinct, and the use of the premises, the Commission does not consider that this is an issue of concern. The Commission notes that the business provides amplified music during operational hours, but accepts the applicant's evidence that the volume is kept to an appropriate and reasonable level.

39. *(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.*

Having regard to the location of the premises in a non-residential cul de sac, the use of the premises, and the premises' operating hours, the Commission does not consider that this is an issue of concern.

40. *(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 2008; and

(ii) Provisions of or under the Planning Act 1999.

The Commission is satisfied that the applicant is duly authorised to occupy the premises pursuant to its lease, and that its use as an indoor sports venue is compliant with the *Planning Act 1999*.

41. *(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.*

The Commission is satisfied that the applicant and her staff are appropriately trained and qualified.

42. *(i) The use of credit in the sale of liquor must be controlled.*

This Commission accepts the evidence of the applicant that the use of credit in the sale of liquor is appropriately controlled at the discretion of the duty manager, and that credit is only extended for the duration of a single evening on production by the patron of a credit card and proof of identification.

43. *(j) Practices which encourage irresponsible drinking must be prohibited.*

The Commission considers that the Conditions it has determined to impose will appropriately mitigate the risk of irresponsible drinking, and accepts the evidence of the applicant that drinking games and drinking competitions are not permitted on the premises.

44. *(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.*

The Commission considers that such measures are desirable, and that the Conditions it has determined to impose fix appropriate limits. The Commission notes that under its Continuing Special Licence, the applicant's trading hours have been four week nights, from 17:00 hours to 22:30 hours, and Saturdays from 16:00 hours to 23:00 hours. The applicant seeks to expand trading hours to permit trading on every day of the week from noon until midnight. The rationale for this significant extension of trading hours is to accommodate the applicant's plans to expand the business, both by extending the days and times for indoor beach volleyball competition, and by offering its facilities as a venue for private functions such as birthday parties and Christmas parties. The Director has not opposed this extension of trading hours, and neither did any of the stakeholders with whom the Director consulted. The stakeholders and the public were notified of the proposed trading hours. In the circumstances, the Commission considers that it is neither necessary nor desirable to retain the previous limit on the days and times at which liquor may be sold.

45. *(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.*

The Commission has imposed the Condition set out at paragraph 3 (e) above in consideration of this objective. In addition, the Commission accepts the applicant's

evidence that it will adhere to the existing NTFRS requirement that no more than 320 patrons be on the premises.

46. *(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.*

Having regard to the location of the premises in a non-residential precinct, and the use of the premises, the Commission does not consider that this is an issue of concern.

47. *(n) It may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.*

The Commission does not consider that it is necessary or desirable to impose any such conditions in this instance.

48. *(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.*

The Commission does not consider that the grant of this licence is likely to lead to an increase in anti-social behavior, noting that a licence with similar conditions has operated at the premises for five years without, according to the evidence of the applicant, which the Commission accepts, any instances of anti-social behavior.

The impact on the community

49. In considering the impact of the decision on the local community, as it is required to do, the Commission must have regard to five matters set out at section 6(3)(a) of the Act, and in addition apply the community impact assessment guidelines.

50. *(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.*

The Commission considers that the risk of excessive or inappropriate consumption of liquor arising from the operation of this licence is low.

51. *(ii) The cultural, recreational, employment or tourism impacts.*

The Commission considers that the premises have a positive recreational and, to a minor extent, employment, impact. Over 500 Alice Springs residents play indoor beach volleyball at the premises during three 14 week seasons, during which matches are scheduled four nights a week. In addition, the premises are the venue for the Indoor Beach Volleyball competition at the biennial Alice Springs Masters Games, and the venue every second year for the Indoor Beach Volleyball NT Titles. The Commission considers that on such occasions the business also has a positive impact on tourism.

52. *(iii) The social impact in, and the impact on the amenity of, the locality of the premises or proposed premises.*

The Commission considers that the premises do not have a significant social impact

on the locality of the premises, but that they do have a positive social impact on, and contribute an amenity to the entire Alice Springs community, because the premises are the only venue in the town for this particular sport.

53. *(iv) The density of existing liquor licences within the community area.*

The Commission did not receive any evidence regarding the density of existing liquor licences within the community area, but given the limited scope of the application, the Commission considers that this aspect of the assessment of community impact is of little or no significance in this instance.

54. *(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.*

Similarly, the Commission did not receive any evidence regarding the volume of alcohol sales within the community area, but given the limited scope of the application, the Commission considers that this aspect of the assessment of community impact is of little or no significance in this instance.

55. *(vi) any other prescribed matter;*

No other matters have been prescribed.

56. Section 6(3)(b) requires that the Commission also apply the community impact assessment guidelines. The Commission has done so.
57. Having considered all of these matters, the Commission is satisfied, in accordance with section 6B of the Act, that the approval of the application meets the public interest and community impact test.

The objects of the Act

58. Finally, section 32A(7) of the Act provides that after considering the application, the Commission must have regard to the objects of the Act in deciding whether to approve or refuse the application.
59. Throughout its consideration of this application, the Commission has steadily borne the objects in section 3 of the Act in mind. The Commission is satisfied that the grant of the application is in accordance with the primary object of the Act.
60. For these reasons, the Commission has determined that the application should be granted, and that a licence be issued on the terms and conditions set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

61. 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 32A of the Act is specified in the Schedule and is a reviewable decision.

62. 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.
63. 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 the Director.



Russell Goldflam
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
16 September 2020

On behalf of Commissioners Goldflam, Reynolds and McFarland