

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

REFERENCE NUMBER: LC2019/045

PREMISES: **Pop Rocket Café**
Katherine Hot Springs Top Park
Park Lot 1932, 78 Riverbank Drive
KATHERINE NT 0850

APPLICANT: Michael Craig Armstrong & Rebecca Ellen Gooley

NOMINEE: Michael Craig Armstrong & Rebecca Ellen Gooley

OBJECTOR/S: Nil

LEGISLATION: Section 26, Part IV and V of the *Liquor Act 1978*

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 15 May 2019

DATE OF DECISION: 20 May 2019

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 issue a licence authorising the sale of liquor for consumption on or at the licensed premises to “Michael Craig Armstrong & Rebecca Ellen Gooley”.
2. In accordance with section 31 of the Act, the licence shall be subject to the specific conditions (in addition to those general conditions of all such licences) that:
 - a. The liquor shall be sold pursuant to an authority as a Restaurant authorising the sale of liquor for consumption on or at the premises ancillary to a meal.
 - b. The trading hours shall be as follows:
 - i. During the period of 1 April to 1 December each year:

1. In school terms in accordance with the Northern Territory Public School system:
 - a. Monday to Friday 1700 hours to 2159 hours
 - b. Saturday, Sunday and Public Holidays 1200 hours to 2159 hours
2. In school holidays in accordance with the Northern Territory Public School system:
 - a. Monday to Sunday 1200 hours to 2159 hours
- c. Exception to trading hours is there shall be no trading on Good Friday or Christmas Day.
- d. The licence shall be subject to and inclusive of such additional conditions as may at any time be:
 - i. Requested in writing by the Licensee;
 - ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and
 - iii. Notified in writing by the Director-General to the Licensee.
- e. Those conditions set out at the conclusion of these reasons in addition to the general conditions included in a Restaurant authority.
3. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

4. On 9 November 2018 an application was lodged by Mr Michael Armstrong & Ms Rebecca Gooley as partners (“the applicants”) seeking a licence for premises located at Katherine Hot Springs Top Park, Park Lot 1932, 78 Riverbank Drive, Katherine NT and known as “Pop Rocket Café”(“the premises”).
5. At the time of lodgement the application was deemed incomplete by the Director-General of Licensing NT (“the Director-General”). The application was therefore not taken to have been lodged until 17 January 2019 when all required materials were received by the Director-General.
6. The applicants currently operate the premises at the Katherine Hot Springs Top Park providing a café from a converted for purpose shipping container. The Commission was informed that the café had been operating for the last three (3) Dry Seasons from 7.00am to 3.00pm weekdays and 7.00am to 2.00pm on

weekends and public holidays during the period of 1 April to 30 September. It is thereafter removed from the area for the Wet Season.

7. Currently the applicants provide breakfast and lunch meals but propose to expand their operations as follows:

“... to incorporate a second shipping container containing a purpose built commercial kitchen and cool room to cater for evening sessions 7 days a week.

The café will provide breakfast, lunch and dinner options as well as coffee, tea and cold drinks including alcohol options after 12pm expressly with the purchase of a meal.

The proponents are seeking a license for the sale and consumption of alcohol on the premises that is the café and for an area of 10m surrounding the café. The proponents intend to limit alcohol sales to boutique style beers including mid and low strength options as well as a selection of quality wines and spirits. Alcohol will only be available to customers who order a meal that is displayed on the menu and is prepared in the café kitchen and served seated with a knife and fork”.

8. During the course of the hearing the applicants confirmed that the proposed extended hours will be 7am-10pm 7 days a week including public holidays, save and except for Good Friday and Christmas Day. The licensed area around their café would be marked by a removable barrier that would be in place only during hours of trade. It was proposed that the style of food would be “small plate, share style” using “local produce” and “unique Territory flavours”. The alcohol proposed to be provided was “bottled beer of all strengths, wines, a selection of spirits, a limited number of cocktails, but no shots or shooters”.
9. On 8 April 2019 pursuant to sections 28(1) and 50(a) of the Act the Acting Deputy Director General (Operations) (“Acting Deputy”) referred this application to the Commission to be determined by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application.
10. There is no compliance history with respect to the applicants who are not known to Licensing NT.

Disclosure of influential persons or potential beneficiaries

11. The Commission notes that section 26A(1) of the Act now requires applicants to make 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 applicants have filed such an affidavit.
12. As earlier noted, the applicants are a partnership between Mr Michael Armstrong & Ms Rebecca Gooley. A partnership agreement giving the name of the partnership as “M.C. Armstrong and R.E. Gooley” was provided setting out the purpose of the partnership to be “café, coffee roasting, bike hire, adventure tours”. That partnership agreement was dated 9 February 2016.

13. The applicant also provided an extract from the Australian Securities and Investments Commission (“ASIC”) identifying a Business Name of “Blast Coffee Group” having been registered on 29 March 2016 with the principal place of business being at the Katherine Hot Springs and having the applicants named as the “partnership” holding the business name with an ABN being 47 904 143 285.
14. The applicants also provided a “Record of Registration” from ASIC in relation to ABN 47 904 143 285, which provides that the business name associated with that ABN is “Pop Rocket Café” having been so registered on 14 March 2019. The business name holders are Mr Michael Armstrong & Ms Rebecca Gooley.
15. The applicants also provided a copy of the “Memorandum of Understanding” (“MOU”) between Katherine Town Council and Blast Coffee Group for the use of the land at the Katherine Hot Springs Top Park where the premises operate from. This MOU is in place until 30 June 2021.
16. The applicants confirmed in evidence that they were each seeking the licence as a partnership and the premises would be known by the business name of “Pop Rocket Café” as it currently operates.
17. The applicants have provided probity documents in support of the application including a letter from the applicants’ current accountant, namely Ms Sharon Anderson of “Xanthostemon Tax and Accounting” who stated as follows:

“The abovenamed are responsible and committed members of the community and meet their legal and financial obligations in a respectful, honest and timely manner”.
18. Both Mr Armstrong and Ms Gooley have also provided separately and affidavit pursuant to section 26A of the Act each disclosing that there:

“... is not any other person who may will by any lease, agreement or arrangement be able to influence any decision made by the applicant in relation to the sale of liquor or the consumption of liquor”

And that there:

“...is not any other person other than the applicant who by any lease, agreement or arrangement may expect any benefit from the applicant in relation to the sale of liquor or the sale and consumption of liquor”.
19. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

20. Details of the application were advertised in the Katherine Times on 30 January 2019 and 6 February 2019 as well as having signage displayed at the site for a period of 30 days. The objection period expired on 9 March 2019. It is important to note that in the objection period no objections were received.
21. 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; and
 - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.
22. That occurred with respect to this application and the following responses were received:
 - a. The DOH made “no adverse comment”.
 - b. The NT police made “no objection”.
 - c. The Katherine Town Council provided “support, as the landowner, for the Blast Coffee Group to apply for a licence to sell and supply alcohol for consumption on the ... premises”.
23. The Commission notes that the application was also forwarded to the Northern Territory Fire and Rescue Service (“NTFRS”) for comment who responded they:

“... have no objection as long as the following fire equipment is installed in the café:

 - 1 x 3A:40B:E fire extinguisher
 - 1 x Fire blanket (minimum size to be 1800 x 1200mm if using a deep fryer)

Note: NTFRS did advise owners to seek advice from Building Advisory Service on whether or not their café requires an occupancy permit under the Building Act (NT)”.
24. In relation to the response from NTFRS, the applicants advised they were in the process of obtaining this permit.

Public Hearing

25. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
26. As earlier noted, on 8 April 2019 the Director General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. This was done and notice sent to the applicants on 26 April 2019 advising of the hearing scheduled to take place on 15 May 2019 at 11.00am.
27. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
28. The public hearing commenced at about 11.30am on 15 May 2019. Mr Armstrong and Ms Gooley attended in person. Ms Tania Chin as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing.

Assessment of the Application

29. As earlier noted, there were no objections to this application. This is despite the fact that the applicants undertook their obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the Act. The objection process is specifically provided for under the Act at section 47F. That section clearly identifies those persons *who* may make an objection, the specific *kinds* of applications that may be objected to, the *grounds* upon which an objection can be made and *how* the objection is to be made.
30. Although no objections under that section were made 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.
31. 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 2008*; and
 - ii. provisions of or under the *Planning Act 1999*;
- 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.”

32. 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
- b. apply the community impact assessment guidelines.”

33. 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”.

34. Those matters are identified 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. <hr/> <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;

	<ul style="list-style-type: none"> • 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</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an

<p>additional liquor outlet will benefit the local and broader community.</p>	<p>additional outlet for the sale of liquor – this may include accommodation or dining?</p> <ul style="list-style-type: none"> • 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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35. 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”.

36. 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”.

37. 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”.

- 38. The Commission notes there are no such matters prescribed by the Regulations.
- 39. 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.
- 40. The Commission notes that there is no suggestion, nor any evidence to suggest, that the applicants are not fit and proper persons to hold the licence as sought. In fact there is evidence filed by way of character references that support a positive finding that each of the applicants **are** fit and proper.
- 41. The Commission further notes that there is nothing to suggest that the plans for the proposed premises appear unsuitable and in fact they appear to be supported by the owner of the land noted as the Katherine Town Council. It is worthy also to note that the business has been operating from the premises for 3 years prior to this application with this year being its first year of operating with an additional shipping container.
- 42. There are no issues of concern in relation to the business reputation and financial stability of the applicants. In fact there is evidence outlining the good reputation of the business and the accountant for the applicants’ asserts their financial stability.
- 43. In relation to the matters to be considered under the public interest and community impact test and the community impact assessment guidelines; the applicant provided written submissions as follows:

Are there any ‘at-risk’ groups or sub-communities	In the township of Katherine there are <ul style="list-style-type: none"> • Children and young people; • Aboriginal people • High tourist/visitor numbers. • People of low socioeconomic backgrounds
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within the locality?	
Are there any community buildings, facilities and areas within the locality?	<p>Within the locality of the Pop Rocket Café there are community buildings and facilities specifically they are</p> <ul style="list-style-type: none"> • Katherine South Primary School • JW church • Katherine Hot Springs • Katherine mountain bike trails
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>Liquor sales at the Pop Rocket Café will be strictly served on an ancillary to a meal basis from 5.30pm to 9.30 pm on school days and 12pm -9.30 pm on days that school is not operating including Public Holidays. All alcohol service at the café will be outside of school hours. The Pop Rocket café will apply the legislation, standards and principles for responsible service of alcohol at all times including service only to people over the age of 18. As part of the Hot Springs redevelopment there will be bright lighting and security cameras next to the café. There will be no alcohol stored on the premises during closing times. The café is located within two shipping containers with no glass or penetrable exteriors. The shipping containers are locked with tamper proof security locks.</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>Within the location of the Pop Rocket Café there are 2 licensed premises. The united service station (1km away) serving take away alcohol and the Boab caravan park (1.5km away) also serving take away alcohol</p> <p>The Pop Rocket is entering its fourth year of operation and to date has had no break-ins, graffiti or security incidents. The area where the Pop Café is located is a high visitation tourist destination. There are high numbers of vehicles and pedestrians which are catered for with a large carpark that includes disabled and large vehicle parking with bollards that prevent vehicles from mixing with pedestrians on specified walkways. There are also specified walk ways to the springs and public amenities. Local traffic enters into a one -way 40km/ hour zone from the school further minimising traffic congestion around the cafe and the Hot Springs.</p>
Volume	<p>The Pop Rocket Café will serve small volumes of high-end boutique beers wines and spirits to customers seeking a relaxed alfresco fine dining experience. There will be no sales of liquor for consumption without a meal or for off premises consumption. There will be no alcohol marketing,</p>

	happy hour or incentivised programs that provide access to cheap alcohol and encourage excessive drinking.
Any cultural, recreational, employment or tourism benefits for the local community area.	The Pop Rocket café is entering its fourth year of trading and has proven to be a popular place for tourist and locals to enjoy an alfresco breakfast and lunch experience. As well as this, the Pop Rocket café roast coffee inhouse and provide a bike hire facility for people seeking adventure on the local mountain bike trails. The Pop Rocket café has a 5-star rating on trip advisor and is often commended for the high quality of food and coffee service and the contribution this has made to improving the visitor and extending visitor stays. The café is surrounded by the Katherine Mountain bike trails and Katherine hot springs which bring high visitation to the area. Opening the café at night and providing a high-end alfresco dining experience is expected to further enhance the visitor experience to this area, increase employment and improve the profile of evening dining in the Katherine south area where there are currently very few options. The café employs 8 FTE (16 casual positions) during the trading season April to December. It is expected when the café opens for night trading that this will increase to 10 FTE
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • The Pop Rocket will provide an exciting dining experience? • The proposed licensed premises will provide additional choices of services and products that are not available in the area? • The Pop Rocket café will provide liquor in a manner known to be safe and to minimise adverse impacts? • The granting of the license will add value to an already successful and exciting Katherine experience. • The granting of the liquor license will contribute to the expansion of the Pop Rocket Café enterprise and consequently have a positively effect on the local Katherine economy.

44. Whilst there were some changes to the matters outlined in those submissions during the course of the hearing, such changes were not of substance and went merely to clarify exactly what it was that the applicants were proposing.

45. Having heard and considered all of the evidence presented to the Commission and noting there are no objections to the application for a liquor licence, the Commission finds on balance that there is no evidence to suggest 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.

Notice of Rights:

50. 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.
51. 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.
52. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN
Presiding Member
Deputy Chairperson