

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER: APPLICATION FOR A LICENCE

REFERENCE: 2019/124

PREMISES: **The ARC Alyangula**
Bougainvillea Drive
Alyangula
GROOTE EYLANDT NT 0801

APPLICANT: Compass Group Remote Hospitality Services Pty Ltd

NOMINEE: Mr Jay Royle

OBJECTOR/S: Nil

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

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 28 November 2019

DATE OF DECISION: 9 December 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 grant a licence authorising the sale of liquor for consumption on or at the licensed premises to “Compass Group Remote Hospitality Services Pty Ltd”.
2. The authority attached to the licence will be a public bar authority and the following special conditions apply to the licence:
 - (a) Access to the premises is restricted to liquor permit holders, swipe card holders and temporary visitors to Groote Eylandt who do not ordinarily reside on Groote Eylandt Archipelago including Bickerton Island.
 - (b) Temporary visitors must produce photographic identification showing their residential address and must sign a guest register.

Reasons

Background

3. On 16 May 2019, an application for a liquor licence at Alyangula was lodged and deemed incomplete for a range of matters. On 1 July 2019, a fresh application was lodged by Commercial Licensing Specialists (CLS) on behalf of Compass Group Remote Hospitality Services Pty Ltd (the Applicant), seeking a liquor licence for premises proposed to be known as The ARC Alyangula and located at 1 Bougainvillea Drive, Alyangula, Groote Eylandt, NT. The liquor trading hours as reflected in the application form have been changed via email dated 31 July 2019 from CLS. Final documents for this application were received on 15 October 2019.
4. The Applicant is applying for a liquor licence - Authority - Public Hotel and intends to re-establish a licensed facility in Alyangula since the closure of the premises that previously operated as The Alyangula Recreation Club.
5. The Groote Eylandt Mining Company Proprietary Limited (GEMCO) has taken over the same premises, conducted renovations and wishes to re-open the facility with the Applicant managing the premises.
6. The Alyangula Recreation Club Incorporated, which previously occupied the premises, has an appointed administrator where the dissolution of the club is still ongoing. The Club's gaming machine licence has been surrendered but the appointed administrator is still to surrender the liquor licence.
7. The Applicant intends to establish a family friendly hotel providing a bar, bistro, private function rooms, public event space, sports bar, lawn bowls and live entertainment. A range of liquor and non-liquor products will be provided with all profits put back into the facility and community to improve facilities and services.
8. The proposed hours and conditions are:
 - Liquor trading hours of 11:00 hours to 23:59 hours seven days per week
 - Consumption of liquor not ancillary to a meal
 - Liquor Trading all public holidays
 - Access to the premises restricted to liquor permit holders, swipe card holders and temporary visitors to Groote Eylandt who do not ordinarily reside on Groote Eylandt Archipelago, including Bickerton Island
 - Temporary visitors must produce photographic identification showing their residential address and must sign a guest register
 - At the Request of the Anindilyakwa Land Council, only residents of Alyangula are to have access to the premises.
 - Minors are only permitted when attending a bona fide function, when accompanied by a responsible adult or guardian or for the purposes of consuming a meal in the bistro/dining area

9. The sale of takeaway liquor has not been applied for.
10. The Applicant is Compass Group Remote Hospitality Services Pty Ltd. This company is registered with ASIC where Lara Peake and John Sheridan are recorded as Directors. Ms Peake is also listed as the Secretary. This company has a total of 2 shares wholly owned by Compass Group (Australia) Pty Ltd. Compass Group (Australia) Pty Ltd is also registered with ASIC where Shelley Roberts and Michael Lambourne are recorded as Directors and Lara Peake recorded as Secretary. This company has 2,567,559 shares where Compass Group France Holdings SAS (located in France) hold 1,105001 shares, Seijo Food-Compass Group Inc. (located in Japan) hold 278,067, Compass Group Belgilux Sa (located in Belgium) hold 898,645 shares and Compass Group International BV (located in The Netherlands) holds 285,846 shares.
11. Also provided with the application is an ASIC document titled "Deeds of cross-guarantee and related documents - Class Order98/1418". This document outlines cross guarantees across a wide range of inter-related companies controlled by Compass Group (Australia) Pty Ltd, including the Applicant.
12. The business name The ARC Alyangula is registered with ASIC and registered to the Applicant.
13. Two Directors of the applicant provided the requisite probity documents including the section 26A Affidavit. The Director of Liquor Licensing (the Director) in his referral noted that the Applicant holds several interstate liquor licences where it and its Directors have previously been subject to probity examination in those states and that the Director-General was satisfied that there were no other probity documents that were required for the two Directors.
14. The Applicant has submitted the following supporting documents.
 - A document titled Public Interest Assessment
 - A document titled Community Impact Assessment
 - Copy of Special Purpose Lease 00392 and letter from Iain Jamieson outlining GEMCO approval to lease the premises and hold a liquor licence
 - Business Plan
 - Financial Reports
 - Site plans including proposed liquor licensed area site plan
 - Contract Variation between GEMCO and the applicant to operate the premises. Also included at this attachment is an email dated 30 September 2019 from CLS outlining that the applicant does not wish to provide a copy of Management Agreement
 - A list of liquor licences held by the applicant in South Australia, Tasmania, New South Wales, Australian Capital Territory, Queensland and Western Australia
 - Liquor Management Plan

- Three references relating to the applicant. Whilst not technically required in this application, they were supplied and are included for full transparency
- Letter from Anindilyakwa Land Council. This was supplied by the applicant as part of their application
- Email dated 27 June 2019 from Clint Roche (GEMCO). This includes an email chain with limited police data. Formal NT Police notification as required by Section 27(3) of the Act is included in the referral. This document was supplied a part of the supporting documents to the application
- A copy of Registration of a Food Business.
- Copy of proposed menu
- Copy of 22 photographs depicting various views within the proposed premises
- Copy of Certificate of Compliance for Electrical Safety
- Reports indicating compliance with Fire Detection and Alarm System

15. The proposed nominee is Jay Royle. In support of the application he has provided;
- Copy of photographic identification by way of NT Driver licence an Australian passport
 - Copy of resume
 - Copy of RSA Certificate
 - Copy of National Police Certificate
 - 2 personal references
 - 2 professional references

Publishing of Application and Consultation

16. Being located in a remote area of the NT, without a local newspaper, normal advertising requirements were not undertaken. Instead a delegate of the Director-General determined that notices of the application be published on the GEMCO Community Facebook Page. This was undertaken and published on the 26 August 2019 and 30 August 2019. The application was also published on the Groote Eylandt Buy Stuff, Sell Stuff, Tell Stuff Facebook page on the 26 August 2019 and 30 August 2019. The application was also published in the GEMCO Community Newsletter on the 6 September 2019 and 12 September 2019. The applicant also displayed the required "green sign" at the premises for the required 30 day period and provided a photograph of the green sign in-situ. A "statement of display" has been provided.
17. As a result of the publication of this application no objections were received from the public. It is noted that comments were posted on the Facebook pages but the Director of Liquor Licensing has ignored these comments as being "social media comments" which do not conform with, Section 47F of the Act.
18. In accordance with Section 27(3) of the Act the following agencies were notified of the application:

- The Chief Executive of the Department of Health
 - Northern Territory Police
 - Whilst not legislatively required, the Northern Territory, Fire and Rescue Service was also notified of the application
19. The Department of Health replied via email dated 26 August 2019 stating it has no adverse comment.
20. The Northern Territory Police advised via email dated 2 October 2019 stating it has no objections.
21. Groote Eylandt does not have any form of local or regional council and does not have any form of Development Consent Authority, therefore no notification is possible in accordance with the Act. However Mr Iain Jamieson of GEMCO has provided a letter outlining GEMCO's responsibilities under a Special Purpose Lease where GEMCO has local government responsibility for Alyangula and consents to the application.
22. The Northern Territory, Fire and Rescue Service replied via email dated 26 August 2019 that it supports the application.

Public Hearing

23. 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.
24. By letter dated 6 November 2019, in accordance with section 53 of the Act, the Commission gave notice to the applicant that the hearing would take place on 28 November 2019 at 10:00am.
25. 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.
26. The hearing commenced at 11:00am on 28 November. The applicant was represented by Mr Jay Royle and Mr Ian Jamieson who appeared in person together with Ms Melyanda Robinson from Commercial Licensing Specialists who attended by teleconference. Mr Mark Wood and Ms Tania Chin both appeared on behalf of the Director of Liquor Licensing. The Commission thanks all parties for their assistance.

Assessment of the Application

27. 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;

- I. 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.”

28. 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.”

29. 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”.

30. Those matters are identified as follows:

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

	What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these ‘at-risk’ groups or sub-communities
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>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>
Volume	<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>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are not available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?

	<ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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31. 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”.

32. 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”.

33. 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”.

34. The Commission notes there are no such matters prescribed by the Regulations.
35. 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.
36. In relation to this application; the Commission notes that there is no suggestion, nor any evidence to suggest, that the applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee. The Commission has already noted the contents of that affidavit in these reasons.
37. The Commission notes that there are no issues of concern in relation to the business reputation and financial stability of the applicant and the general regulation and character of the executive officers of the company. The Commission was impressed with the professionalism and competence of both Mr Royle and Mr Jaimeson who gave evidence before the Commission.
38. However, again, that is not the end of the matter. The Act makes clear that the Commission (as the decision maker with respect to this application) **must** apply the public interest and community impact test and that it is the applicant who **must** satisfy the Commission that the approval of the application meets the public interest and community impact test. It is also important to understand that the Act makes clear that the Minister’s community impact assessment guidelines form part of determining whether the application satisfies the public interest and community impact test. The wording of the legislation makes clear that this is not a matter of discretion for the Commission. The Commission **MUST** apply these tests and **MUST** be satisfied that they have been met.
39. In support of this application the Applicant submitted a comprehensive Community Impact Assessment which had been prepared by Commercial Licensing Specialists (CLS). The Commission commended Ms Robinson from CLS on the quality of the Community Impact Assessment which provided an analysis of all those factors we are required to have regard to in section 6 of the Act and the guidelines.
40. The evidence lodged with the application together with the oral evidence at the hearing establishes that there has been a paradigm shift in the operation of the GEMCO mine on Groote Eylandt. A decision some years ago to run the mine with a predominantly “fly in fly out” workforce has been reversed and mine management have embarked upon a process of re-establishing a significant resident workforce on Groote Eylandt. Housing stocks have been refurbished, the capacity of the local school has increased and workers are once again being encouraged to bring their families with them and permanently reside in Alyangula.
41. Re-establishment of an extensively renovated Alyangula Recreation Club as a family friendly venue is an integral aspect of GEMCO’s plan to re-engender a sense of

community in Alyangula. It is envisaged that the premises will provide a focus for entertainment, public events and community functions. The lawn bowls rink is being repaired and the venue will screen live sporting events. It is envisaged that the venue will host regular meetings and events for community sports and social clubs as well as major GEMCO functions and events.

42. The licensed premises will be operated on a cost neutral basis with any profits being invested back into upgrading facilities. As was relied upon in the CIA:

“Importantly the applicant’s emphasis is on building a strong community centre where the resident population can relax and enjoy themselves and not on revenue raising”

43. In order to minimise the risk of drink driving the Applicant will install a breathalyser at the exit of the premises so that patrons can check whether it is safe to drive home. If not then most residences of Alyangula are within a ten minute walk of the club. For major events it is planned that a courtesy bus service will be provided. The Applicant has also a well-documented comprehensive responsible service of alcohol protocol.

44. When questioned by the Commission in relation to securing the liquor stocks from external break-ins the Applicant was able to satisfy us that robust measures were in place to ensure that any attempted unlawful entry of the premises was unlikely to succeed and that potential offenders would be identifiable from the comprehensive network of security cameras that surround the premises.

45. In the course of preparing this Decision Notice a potential impediment to us granting the licence became apparent. Namely the fact that it appeared from the Director’s referral that the licence in the name of the former Alyangula Recreation Club Incorporated still attached to these premises. The Commission has previously expressed the view that there should not be more than one licence in respect of the same premises at the same time. The Commission accordingly contacted the Director and asked him to make urgent enquiries as to the current status of the pre-existing licence with a request that he also give consideration to cancelling that licence pursuant to section 47B(b) of the Act on the basis that the former licensee was an insolvent debtor.

46. The Commission received advice from the Director on 9 December 2019 that he had this day, cancelled the licence for the former Alyangula Recreation Club Incorporated. There is therefore now no other licence attached to these premises.

47. Having regard to all the factors we are obliged to consider we are satisfied that the application meets the Community Impact and Public Interest tests. Accordingly we have determined to grant the applicant a liquor licence in the terms and conditions specified in paragraphs 1 and 2 of this Decision Notice.

Notice of Rights:

48. 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.

49. 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.
50. 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.



Richard Coates
Chairperson
Northern Territory Liquor Commission
9 December 2019