

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

REFERENCE: LC2020/028

PREMISES: 5 / 52 Marina Boulevard
LARRAKEYAH NT 0828

APPLICANTS: Ms Trudi Lee Duncan & Ms Kerri Ann Savidge

NOMINEE: Kerri Ann Savidge

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 Ms Trudi Lee Duncan & Ms Kerri Ann Savidge (the Applicants).
2. The licence will be issued with a special venture authority authorising the sale of liquor to patrons as an ancillary part of services provided to the patrons by the licensee.
3. In addition to the special venture authority conditions set out in Division 19 of the *Liquor Regulations 2019* (the Regulations), the licence shall be subject to the following specific conditions that:
 - a. Liquor may only be served in plastic containers at no more than one standard drink per serving and the container not replenished until it has been emptied;
 - b. The premises are the party bike vehicle and that internal part of the Applicants' leased shop at 5/52 Marina Boulevard, Larrakeyah which is depicted on page 121 of Exhibit 1 and marked "Liquor Sales";
 - c. Children must not be permitted on the premises when liquor is being sold, supplied or served.

4. In accordance with section 85 of the Act, the term of the licence will be from the date of the issue of the licence until 5 years.
5. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

6. On 9 March 2020, an application was lodged via the Territory Business Centre by the Applicants for a Liquor Licence with a Special Venture Authority to be situated at 5/52 Marina Boulevard, Larrakeyah, NT 0828 (the premises).
7. The Applicants seeks a liquor licence to sell liquor whilst operating “pedal tours” through a human powered with electric battery assisted bicycle that accommodates 15 people (including the Driver, 12 pedallers and 2 seated) plus a staff member who stands harnessed in the middle between the pedallers for food and drinks service. The concept is for the multi-passenger bicycle to traverse from Cullen Bay up through Darwin City along Mitchell Street returning via the Esplanade and to provide refreshments, food and alcohol included.
8. The Applicants have provided evidence of the registration of the business name of “Cheekies”, copy the certificate of Registration of a Food Business valid to 28 November 2020, copy of Profit and Loss Statement for T & K Ice Cream for period 1 April to 13 June 2020 and copy of Partnership Agreement dated 8 August 2020.
9. The Applicants propose to conduct 90 minute tours:
 - regularly in the “Dry Season”, Monday to Friday at 07:00, 09:00, 11:00, 13:00pm, 15:00, 17:00, 19:00pm and 21:00; and
 - during the “Wet Season” at similar times, weather permitting.
10. Tours will be available for persons over the age of 18 and cost \$79 - \$99, inclusive of the tour, food and drinks package.
11. The Applicants have confirmed that minors will not be permitted on the tour where alcohol is being sold, supplied or served with separate non-alcoholic child friendly tours to be organise prior to 10:00. Separate price packages will be available for under 18’s, discounts will apply to a “Sober Bob” and non-alcoholic drinks and packages will be available for events and individual customers.
12. The proposed liquor trading times are 10:00 to 24:00 on any day that the services are provided by the licensee, Monday to Sunday, including all public holidays.
13. The types of alcoholic beverages available for pre-purchase tickets will be beer (low, mid strength and full strength), wine and champagne, basic spirits (rum, scotch, vodka), cider, alcoholic slushies (upon business growth and demand). There will be a selection of soft drink, water, non-alcoholic drinks and fruit smoothies. Beverages will be served in plastic, reusable mugs. There will be no glass or bottles.
14. Pre-paid packages will include options of light bar snacks (for example chips, pretzels and nuts) and pies, sausage rolls, pre-made sandwiches and rolls and small picnic platters.

15. A driver of the tour bike will be responsible for driving the vehicle and the maintenance and cleaning of the vehicle.
16. Liquor will be stored in a locked cupboard during the tours and at the premises behind a locked shutter. The premises are also fitted with an alarm, panic button and stainless steel shutters.
17. The Applicants seek a five (5) year term licence, in line with the property lease currently negotiated with the landlord.

Advertising and Objections

18. The application was published in the NT News on Saturday, 18 and Wednesday, 22 April 2020 and the Applicants displayed the required "green sign" at the premises. No objections were received from the public in the objection period.
19. 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*;
 - b. the Commissioner of Police; and
 - c. if the application relates to premises within a local government area – the chief executive officer ("CEO") of the local council.
20. The Commission notes that the Director also forwarded a copy of the application to the Northern Territory Fire and Emergency Services ("NTFRS") for comment.
21. With respect to this application:
 - a. The DOH commented

"Health were not able to support an application of this nature where persons at various stages of intoxication are in control of a vehicle being propelled on city streets while occupants continue consuming alcoholic beverages. The proposed 5 drinks limit while on the bike would seem to flout the Responsible Service of Alcohol protocols in any event."
 - b. The NT Police advised:

"NT Police believe this could be good for tourism if safety, routes and mitigating factors, some of which are detailed in their application, are followed". A number of further considerations were listed.
 - c. The City of Darwin did not provide a response.
22. The NTFRS stated they supported the application "at this time" with the proviso that all Fire Safety requirements be implemented after inspection of the bike.
23. On 21 May 2020, the Applicants were notified of stakeholder responses and invited to respond to issues raised.

24. On 25 May 2020, the Applicants responded to some of the issues raised. It did not address the adverse comments from Health. Although it was not technically an objector DOH was advised of the hearing date but indicated that it would not be taking any further part in these proceedings.
25. On 24 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 given to the Applicants that the matter would be listed for a public hearing on 2 July 2020.
26. In terms of the application before the Commission, it is noted that the Applicants 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. Lease Agreement to 14 October 2020 and proposed lease agreement for five (5) years
 - e. Various policies, registrations and plans.
27. 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 such submission was made to the Commission to this effect.
28. The public hearing commenced at 12.15pm on 14 July 2020. The Applicants appeared in person. 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

29. 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.
30. In view of the partnership, each partner was required to complete a declaration of associates. Ms Duncan and Ms Savidge have sworn affidavits. The Commission is satisfied that this criterion has been met.

Results of any investigation

31. 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

32. As earlier noted the Applicants provided supporting documentation regarding its operations, activities, financial circumstances and plans. 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 Applicants.

Fit and proper person

33. Section 59(3)(i) of the Act provides the Commission is also required to consider whether the Applicants, including the nominee designated by the Applicants, is a fit and proper person to hold a licence. In this regard, a number of probity documents were provided in relation to the Applicants and proposed nominee, Ms Kerri Savidge. Having considered the material, the Commission is satisfied that the Applicants are fit and proper persons to hold a licence and that Ms Savidge is a fit and proper person to act as nominee.

PUBLIC INTEREST AND COMMUNITY IMPACT

34. 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.

35. The Commission has already addressed the evidence and found the Applicants 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.”

36. 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”.

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

38. 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 Applicants must still satisfy this Commission of those matters.

39. In relation to the issue of the community impact assessment guidelines issued under section 50, it is noted that regulation 123 of the *Liquor Regulations 2019* (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 2019 Act are taken to be community impact assessment guidelines issued under section 50.

40. 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

	<ul style="list-style-type: none"> 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?

41. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicants 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”.

42. 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.

43. 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”.

44. In relation to the public interest and community impact assessment, the Applicants submitted that because it only catered for prearranged bookings and given the cost of participating in a tour, it was unlikely to attract at risk groups. They stressed that it would be a welcome tourist initiative which would also showcase restaurants and other tourist destinations in both the CBD and Cullen Bay.

45. 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 secondary to the tourism experience associated with the proposal 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:

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. The Applicants agreed with the Commission’s suggestion that all liquor served should be no more than one standard drink at a time.

- 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 special venture authority conditions. The Commission has also noted the policies and Business Plan provided by the Applicants and considers public order and safety to have been adequately safeguarded pursuant to that material. Although the Commission expressed some reservations over the route along Mitchell Street, we were assured by a representative of the Department of Infrastructure, Planning and Logistics who attended the hearing, that his Department would be having regard

to road safety considerations in determining the route the party bike would be ultimately permitted to traverse.

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

The Commission has consider the several policies developed by the Applicants applicable to the premises and considers these to adequately protect the safety, health and welfare of people who are likely to use the licensed premises during its hours of operation.

- 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 Applicants 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 Applicants 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. The Commission notes the relevant policies issued by the Applicants concerning the service of liquor and in particular that the Applicants will enforce the following measures:

- i no more than 1 standard drink per person per transaction;
- ii liquor to be served in reusable plastic containers only; and
- iii no liquor is to be taken away from the premises.

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

The Commission does not consider that the grant of this special venture authority licence to the Applicants is likely to result in a significant increase in anti-social behaviour.

46. 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 a significant risk of undue offence, annoyance, disturbance or inconvenience likely to be caused by the granting of the special venture authority licence.

- b. the geographic area that would be affected:

The special venture is proposed for Darwin's main tourism and entertainment area 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 special venture authority licence to the Applicants.

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

As previously indicated, the Commission finds that there will be positive recreation, employment and tourism benefits associated with this special 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 Applicants.

- 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 licence sought and the events involved.

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

Similarly, and for the same reason, 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.

47. Section 85 of the Act now requires the Commission to fix a licence term. The Applicants sought the grant of a licence for a five (5) year term in line with the proposed lease of the premises. The licence will be granted for five (5) years.
48. 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 authority identified as set out at the commencement of this Decision Notice.

Notice of Rights:

49. 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 Applicants; 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.
50. 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
14 July 2020

On behalf of Commissioners Coates, Stephenson and Corcoran