

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE

REFERENCE NUMBER: LC2019/063

PREMISES: **Uluru Camel Tours**
10 Kali Circuit
YULARA NT 0872

APPLICANT: **Three Camels Pty Ltd**

NOMINEE: Lisa Evans

LEGISLATION: Part III, Part IV, Part V of the *Liquor Act 1978*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Ms Pauline Reynolds (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 28 May 2019

DATE OF DECISION: 12 June 2019

DECISION

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* (the Act) the Northern Territory Liquor Commission (the Commission) has determined to issue a licence on the application of Three Camels Pty Ltd as Trustee of the Three Camels Unit Trust (the Applicant) authorising the sale and supply of liquor for consumption on or at the premises of Uluru Camel Tours (the Business) subject to the following conditions:
 - a. The licensee is authorised to supply liquor seven days a week from noon until 12:59 hours
 - b. The licensee is only authorised to supply liquor to:
 - i. members of a camel tour provided by the licensee, as part of a tour package pre-sold by the licensee to the tour member; and
 - ii. invited guests at corporate functions hosted by the licensee, as part of the function package pre-sold to the corporate client
 - c. The general conditions applicable to an **Authority – On Licence**, licence shall apply.

REASONS

BACKGROUND

2. The Applicant is a Unit Trust. Its trustee is the company, which owns and operates the business, a camel farm, tourist enterprise and hospitality venue situated on the outskirts of the Ayers Rock Resort. The Applicant seeks to supply complimentary beer, wine and sparkling wine, along with non-alcoholic beverages and light food, to tour guests on return from a sunset camel tour; and to supply a broader range of liquor at corporate functions at which a buffet meal is also served.
3. On 26 October 2017 “Uluru Camel Tours” (the company’s registered business name) was granted a continuing Special Licence No. 20971/CSL to sell liquor, expiring on 27 October 2018. That licence included the following Director-General’s Instruction:

The licensee, running a commercial operation from the premises, is instructed to seek a ‘full’ Liquor Licence prior to the expiration of this Continuing Special Liquor Licence. Unless exigent circumstances exist, further Continuing Special Liquor Licences will not be issued.

4. On 25 September 2018, in compliance or attempted compliance with this Direction, the applicant lodged an application for a ‘full’ liquor licence. The application was incomplete, and following discussions between Licensing NT and the applicant, the completed application was lodged on 21 February 2019. Following community notification and consultation, and an assessment by Licensing NT of the application, on 9 May 2019 a Delegate of the Director-General of Licensing (the Director-General) referred the application to the Commission for hearing pursuant to sections 28(1) and 50(a) of the Act.
5. The Director-General provided the Commission with a brief of evidence (the Brief) including:
 - Completed application for liquor licence dated 21 February 2019
 - Affidavit for purposes of s26A of the Act deposed by Christopher Hill dated 22 February 2019
 - Community Impact and Public Interest Assessment statement in compliance with s6 and s6A of the Act
 - Applicant's Trust Deed established 9 November 2010 and associated documents
 - Documents certifying identity, managerial capacity, financial stability and character of Christopher Hill (the Applicant's executive officer) and Lisa Evans (the nominated manager)
 - The Applicant's financial statements for year ending 30 June 2018
 - The company’s business documents including a tour operator agreement, a lease agreement and a business plan
 - The company’s certificate of registration as a food business
 - Public notices of application for grant of a liquor licence, dated 19 and 22 March 2019
 - Correspondence between Licensing NT and: Department of Health; NT Police; NT Fire and Rescue Service and Central Land Council

HEARING

6. A public hearing of the application was conducted on 28 May 2019. Mr Hill and Ms Evans appeared (with leave, by telephone) on behalf of the applicant. Ms Chin appeared for the Director-General. The Commission thanks Mr Hill, Ms Evans and Mr Chin for their attendance and considerable assistance. The brief of evidence was tendered. No further evidence was adduced.
7. In the course of the hearing, it was suggested that it would be more appropriate for the company, rather than the applicant, to be granted a liquor license. Mr Hill, who is effectively the sole proprietor of the company and the sole beneficiary of the applicant trust, readily acceded to this suggestion. The Commission agrees. It appears that the sole function of the applicant is to distribute income generated by the business to the beneficiaries of the trust. For its part, the company operates and enters into contracts on behalf of the business, and, as noted above, has previously been the holder of a continuing special liquor licence for the business. As such, the Commission considers that the company is a more suitable body corporate than the applicant to be a licensee.

THE APPLICANT'S PREMISES

8. The proposed premises are an outback homestead style museum (the Museum) on the applicant's camel farm located on the eastern boundary of the Yulara campground approximately two kilometres south of the Ayers Rock Resort.
9. The museum is a focal point for the business, which comprises camel tours, a gift shop and the hosting of corporate events.
10. The company leases the premises occupied by the business from Voyages Indigenous Tourism Australia Pty Ltd (Voyages), which owns, manages and operates the Ayers Rock Resort. The lease has a renewable term of seven years commencing on 1 January 2019. A term of the lease is that there are on the premises at any one time no less than 30 camels.

THE APPLICANT

11. The Applicant is a unit trust established in 2010, with a sole trustee, the company. The trust initially had three unit holders, Black Enterprises Pty Ltd (20 units), Swindells Investments Pty Ltd (40 units) and V H Hill Pty Ltd (40 units). On 8 December 2017, all of the units in the trust were sold to V H Hill Pty Ltd, and all shares in the company were transferred to Christopher Hill, who was also appointed secretary of the company. The Commission notes that on 19 February 2019, in considering an application for a similar liquor licence by "Uluru Segway Tours", the Commission considered evidence of the probity and character of Mr Richard Black and Mr Mark Swindells, the principals of Black Enterprises Pty Ltd and Swindells Investments Pty Ltd respectively, and found them to be fit and proper persons to be a licensee under the Act.
12. The trust, the company and the business are all effectively owned, controlled and operated solely by Christopher Hill, who informed the Commission that he is effectively the sole beneficiary of the trust.

13. Mr Hill has provided evidence of his probity and financial stability to the Director-General. Mr Hill has had a career as a camel racer and tour operator for nearly thirty years. He has run Uluru Camel Tours since 2011, and in that period has been recognised for his contribution to the tourism industry both personally and through his long-standing association with the annual Uluru Camel Cup. Several of his business associates have provided references vouching for his professionalism, work ethic and contributions to the community. Mr Hill has also disclosed that he has a criminal record. In 2011 he was convicted by the District Court of Western Australia in Broome for dishonesty offences including the theft of \$70,000 worth of merchandise committed in the context of a commercial dispute with a former business partner. Fines of \$17,500 were imposed. Mr Hill informed the Commission that he promptly paid the fines.
14. 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. Christopher Hill affirms in his affidavit that there is no such person.

THE NOMINATED MANAGER

15. The applicant's nominated manager is Lisa Evans. Ms Evans has worked with Mr Hill for Uluru Camel Tours since 2014. She has significant tourism industry experience and qualifications, has RSA certification, and has no criminal record. Several referees attest to her competence and good character.

THE BUSINESS

16. The business doubled its turnover between 2012/13 and 2017/18. The Applicant's professionally prepared financial statements for the year ended 30 June 2018 show that the Applicant's liabilities are covered by its assets, and that the business operates at a profit. The Applicant's accountants attest that "Uluru Camel Tours is a very well managed business and is subsequently in a very strong financial position at 30 June 2018."
17. On 1 January 2019 the company entered into a seven year Tour Operator Agreement with Voyages to conduct camel tours in the vicinity of the Resort, to hire a venue for groups and business events, and to provide food and beverage services to the applicant's customers.
18. The company is a registered food business.

ADVERTISING AND NOTIFICATION

19. Details of the application were advertised in the Centralian Advocate on 19 and 22 March 2019. In addition, signage notifying the application was displayed at the premises for a period of 30 days. The objection period expired on 22 April 2019.
20. No objections to the application were lodged.
21. As required by s27(3) of the Act, the Director-General informed the Chief Executive Officer (CEO) of the Department of Health (DOH) and the Commissioner of Police of the application.

22. The Director-General also invited comment about the application from the Northern Territory Fire and Rescue Service (NTFRS) and the Central Land Council (CLC).
23. The Commission notes that the following responses were received:
- a. The DOH made “no adverse comment”.
 - b. The NT Police advised that they had “no objections”.
 - c. The NTFRS advised it did not raise any objections.
 - d. The CLC did not respond to the invitation to comment.

ASSESSMENT OF THE APPLICATION

24. Section 28(2) of the Act requires that in considering the application, the s26A affidavit and the investigations conducted in relation to the application, the Commission must assess certain matters.
25. Pursuant to s28(2)(a), the Commission assesses the premises as being suitable for the purpose of the application.
26. Pursuant to s28(2)(c), the Commission assesses the business reputation and financial stability of both the Applicant and of the company as sound.
27. Pursuant to s28(2)(h), the Commission considers that the nominated manager is a fit and proper person to be the manager.
28. Pursuant to s28(f), the Commission is required to assess whether the applicant is a fit and proper person to hold a licence. In this instance, as considered at paragraph 7 above, the applicant, a unit trust, has applied for another body corporate, namely the company, to be granted a licence. The Commission considers that an assessment of whether the relevant body corporate (whether that be the Applicant or the company, an issue which it is not necessary to decide) is a fit and proper person to hold a licence, depends entirely on whether Christopher Hill, the sole proprietor, director and manager of both bodies corporate, is assessed to be a fit and proper person to hold a licence.
29. Pursuant to s28(c), the Commission is also required to assess the general reputation and character of the Applicant's Secretary and Executive Officer. The Commission finds that Christopher Hill is the Secretary and Executive Officer of both the Applicant and of the proposed licensee, the Company.
30. Accordingly, the Commission is required to assess two closely related things: the general reputation and character Christopher Hill; and whether he is a fit and proper person to hold a liquor licence.
31. In the South Australian decision of *Nepeor Pty Ltd v Liquor Licensing Commission and Others* (1987) 46 SASR 205, Doussa J (King J and Bollen J concurring) held that the onus is on an Applicant to prove on the balance of probabilities that he or she is a fit and proper person to hold a liquor licence.
32. The expression "fit and proper" is not defined in the Act. So far as the Commission is aware, it has not been the subject of judicial consideration by the superior courts of the Northern Territory in relation to liquor licensing matters.

33. The expression "fit and proper" is defined in the *Agents Licensing Act*, s20 of which relevantly provides:

- (1) A natural person is a fit and proper person if the person:
 - (a) Is not a disqualified person as determined in accordance with this section; and
 - (b) Is a person whose general reputation in the community (which may include a place outside the Territory) is such that the Board is satisfied that the person will competently, conscientiously and honestly perform the duties of an agent in relation to the person's employees and clients; and
 - (c) Has completed the application for a licence frankly, comprehensively and honestly.
- (2) A person is a disqualified person for the purposes of subsection (1)(a) if the person:
 - (a) Has in the 10 years immediately before the person applied for the licence, been found guilty (whether or not in the Territory) of an offence that involves dishonesty.
- (3) The Board may determine that an offence referred to in subsection (2)(a) is not to be taken into account for the purposes of this section:
 - (a) Because of the time that has passed since the offence was committed; or
 - (b) Because the act or omission constituting the offence was trivial.

34. The *Agents Licensing Act 1979* regulates real estate agents, business agents and conveyancing agents, who are all routinely required to deal with substantial sums of money on behalf of their clients. Unsurprisingly, the *Agents Licensing Act 1979* identifies a record of proven dishonesty as a presumptive disqualification for fitness. However, the functions, responsibilities and duties of liquor licensees are dissimilar to those of real estate, business and conveyancing agents, and the Commission considers that s20 of the *Agents Licensing Act 1979* is of limited relevance in relation to liquor licensing matters. In particular, the Commission considers that a record of proven dishonesty is not necessarily a disqualification for fitness to hold a liquor licence.

35. Section 55 of the *Liquor Licensing Act 1997* (SA) is a provision in a different statutory licensing scheme, in a different jurisdiction. Nevertheless, the Commission considers it is of more assistance. It provides as follows:

Factors to be taken into account in deciding whether a person is fit and proper

- (1) In deciding whether a person is a fit and proper person for a particular purpose under this Act, a licensing authority must take into consideration;
 - (a) The reputation, honesty and integrity (including the creditworthiness) of the person; and

(b) The reputation, honesty and integrity of people with whom the person associates.

(2) If a licensing authority is to decide whether a person is a fit and proper person to supervise or manage, or to be involved in the supervision or management of, the business conducted or to be conducted under a licence, the licensing authority must also give consideration to;

(a) Whether the person has the appropriate knowledge, experience and skills for the purpose; and

(b) In particular whether the person has knowledge, experience and skills in encouraging the responsible supply and consumption of liquor.

(3) For the purposes of determining whether a person is a fit and proper person for a particular purpose under this Act, the Commissioner may cause the person's photograph and fingerprints to be taken.

36. The Commission is troubled by Mr Hill's prior criminal history. Mr Hill did not allay the Commission's concerns by glossing over the period of his prior offending in the material he provided in support of the application, which included the following statement:

I looked for my next camel venture and headed for Broome, Western Australia, in 2006 operating camel tours along famous Cable Beach. Another successful business ensued but this was still not where I ultimately want to be; Central Australia was in his [sic] heart and soul [sic].

37. The Commission accepts the explanations given by Mr Hill and Ms Evans that this statement was carelessly cut and pasted by Ms Evans from a document previously created for a different business purpose, and was not intended to deliberately mislead or deceive the Commission. Nevertheless, to submit this statement as the applicant has done does Mr Hill, as the executive officer of the applicant, no credit.

38. In addition, the Commission suspects that Mr Hill has continued to supply liquor without a licence following the expiry of his Continuing Special Licence on 27 October 2018. At the hearing, Ms Evans expressed the mistaken but apparently honest belief that the Special Licence was still in force. The Director-General did not bring this issue to the attention of the Commission, or, when it was raised, make any submissions about the matter. The applicant should have been more diligent and applied for a further Special Licence to cover the period of the pending application. For its part, Licensing NT should have been more diligent and brought to the attention of the licensee that its licence had expired and needed to be renewed, notwithstanding the lodgement of the new application. Pursuant to s115 of the Act, the sale of liquor that is not authorised by a licence is an offence punishable by up to 12 months imprisonment. However, no complaint has been made that such an offence has been committed in the course of the applicant's business, and no such offence has been proven. If such a complaint had been made, the defendant may well have pleaded a defence of honest mistaken belief. In all the circumstances, although the Commission considers that a breach of s115 is an inherently serious matter, the Commission considers that Mr Hill is entitled to the benefit of the doubt, and accordingly, has determined that this matter does not adversely affect its assessment of whether Mr Hill is a fit and proper person to hold a liquor licence.

39. The Commission takes into consideration the following matters in favour of Mr Hill:

- He is well regarded in the Northern Territory tourist industry and in Yulara.
- He has established and developed a highly successful business venture over the last eight years.
- He is a hard and dedicated worker.
- His record of prior offending, although objectively serious, arose from the failure of a business relationship which escalated into a corrosive personal dispute and a descent into criminal misconduct which resulted in the imposition of stiff fines, which have been paid. That offending appears to have been uncharacteristic.
- He does not have any other record of criminal offending.
- He is strongly supported by an associate, the nominated manager, who the Commission has had no hesitation in assessing as a fit and proper person to be the manager.
- The Commission has assessed two other associates of Mr Hill, his recent business partners, as persons of good character and financial stability, and as fit and proper persons to hold a liquor licence.
- There is no evidence or suggestion that Mr Hill associates with persons of poor honesty, reputation and/or integrity.
- He enjoys a good reputation within the industry and his community.
- He has the appropriate knowledge, skills and experience to supervise and manage the business.
- It may be inferred from the Applicant's business plan and public interest and community impact statement that he will encourage the responsible supply and consumption of liquor.
- No objections or adverse comments have been received by the Commission in response to the application.
- Licensing NT has not submitted that the Commission make an adverse finding in relation to Mr Hill's fitness or propriety.
- The Commission infers that there were no compliance issues with the operation of the now expired continuing special licence.

40. Having regard to the matters set out at paragraphs 28 to 39 above, the Commission assesses the general reputation and character of Mr Hill as being satisfactory and finds on the balance of probabilities that Mr Hill is a fit and proper person to hold a liquor licence.

41. Section 6B of the Act provides that the Applicant bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test set out in s6 of the Act. In considering and determining this application, the Commission has had regard to the objects of the Act and applied the public interest and community impact test by reference to the community impact assessment guidelines published by the Minister on 6 March 2018 pursuant to s6A of the Act. The guidelines are detailed and specific, but also state 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. The Commission is satisfied that the Applicant has met the public interest and community impact test. The Commission assesses the impact of the licence on the community as low, taking into consideration the following matters:

- Over the last three years, on average 20 adult guests have taken the sunset tour each day.
- The supply of liquor comprises service of complimentary drinks to guests as part of their pre-paid tour package, for a period of 30 minutes.
- Guests are then transported back to their hotels.
- The Applicant hosts an average of ten corporate functions a year, with on average 107 adult guests, who are served a meal and accompanying drinks over a period of four hours.
- The premises are located on the outskirts of a remote tourist resort.
- The Applicant employs five staff who have RSA certification.

NOTICE OF RIGHTS

43. 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.
44. 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.
45. 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.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

12 June 2019

On behalf of Commissioners, Goldflam, Reynolds and Cannon