

Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A LICENCE
REFERENCE NO:	LC2018/038
PREMISES:	Stokes Beach House (aka Snapper Rocks Bar & Kitchen) Tenancy B2 7 Kitchener Drive DARWIN WATERFRONT NT 0800
APPLICANT:	BevCo SBB Pty Ltd
NOMINEE:	Mr David Jared Robinson
OBJECTOR/S:	Nil
LEGISLATION:	Section 26, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Kenton Winsley (Health Member) Mr Lindsay Carmichael (Community Member)
DATE OF HEARING:	7 June 2018
DATE OF DECISION:	15 June 2018

Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act* (“the Act”) the Commission has determined to issue a licence authorising the sale of liquor for consumption on or at the licensed premises to “BevCo SBB Pty Ltd”.
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 an on-licence authorising the sale of liquor for consumption on or at the premises to be known as Stokes Beach House (aka Snapper Rocks Bar & Kitchen).

- b. 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.
 - c. Those conditions set out at the conclusion of these reasons in addition to the general conditions included in an on-licence authority.
3. The licence will be issued immediately following the publication of this decision and, in accordance with section 31(1) of the Act, is subject to a condition that the licensee will not commence trade in the sale of liquor under the licence until such time as the proposed premises are constructed and a Certificate of Occupancy under the *Building Act* has been issued to the licensee authorising it to conduct the business of a restaurant and bar at the premises.
 4. The licence will become operative, subject to the normal condition associated with an on-licence once the applicant has presented evidence to the satisfaction of the Commission, or its delegate, that the premises have been satisfactorily constructed and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee.
 5. The applicant will also be required to obtain the necessary approvals from the Northern Territory Fire Service in respect of patron capacity and fire safety issues prior to commencing operation.

Reasons

Background

6. On 2 November 2017 an application was lodged by Mr David Jared Robinson, (“Mr Robinson”) as Director on behalf of BevCo SBB Pty Ltd (“the Applicant”) seeking a licence for premises located at Tenancy B2, 7 Kitchener Drive, Darwin Waterfront and to be known as Stokes Beach House (aka Snapper Rocks Bar & Kitchen) (“the premises”).
7. The premises are yet to be constructed, but are to be known as “Snapper Rocks Bar & Kitchen”. It is intended to be a restaurant and the concept was stated in the application to be “that the restaurant will provide an iconic beachside restaurant/bar theme”. It is anticipated that the venue will operate from 0800 hours to 2359 hours, seven (7) days per week, with liquor sales between 1000 hours and 2359 hours. During the course of the hearing Mr Robinson gave evidence that the theme was “modern Australian beach house with beach vibe”, it was to be “based around local produce, especially seafood”. The venue was to feel “light, bright, vibrant and airy” and was to have families present but a “more premium style venue”. Mr Robinson stated that the venue would have “background music”

with a “light casa del mar style” and there would be “no live entertainment”. The venue would also be completely “non-smoking”.

8. Unfortunately when the application was initially received it was deemed incomplete and request for further information was made. On 23 April 2018 all required materials to proceed with the application were finally received by the Director-General.
9. On 1 May 2018 pursuant to sections 28(1) and 50(a) of the Act the Director General of Licensing (“Director-General”) 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. The applicant is a new company and has no financial interest or history. There is therefore no compliance history with respect to the applicant. Mr Robinson however is well known to Licensing NT and these matters will be addressed further in these reasons.

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 applicant has filed such an affidavit.
12. As earlier noted, the applicant is BevCo SBB Pty Ltd. The applicant is currently registered with the Australian Securities and Investments Commission (“ASIC”). Mr Robinson is both the Secretary and Director of that company. A review of the corporate structure shows that the applicant has a total of 100 shares and that those shares are held entirely by KDNT Enterprises Pty Ltd as trustee for KD Family Trust.
13. KDNT Enterprises Pty Ltd is also registered with ASIC. Mr Robinson is also listed as Secretary and Director of that company which also has 100 paid shares. Those shares are held equally by Mr Robinson and his wife, namely Mrs Kellie Anne Robinson (“Mrs Robinson”).
14. Mr Robinson has previously provided probity documents when applying for liquor licences in the Northern Territory and is the nominee of “Hot Tamale” also located at the Darwin Waterfront as well as being a Director of that licensed entity.
15. Mr Robinson is also the principal executive officer of the Applicant and pursuant to section 26A(2)(a) of the Act is the appropriate person to make the affidavit required under section 26A of the Act. Mr Robinson has disclosed that he is the sole Director of the applicant and that there are:

“... no other person/s who may will by any lease, agreement or arrangement be able to influence any decision made by the Director in relation to the sale of liquor or the consumption of liquor”

And that there:

“...is no other person other than the Director who by any lease, agreement or arrangement may expect any benefit from BevCo SBB Pty Ltd in relation to the sale of liquor or the sale and consumption of liquor” if the licence is granted.

16. 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.
17. As earlier noted, Mr Robinson is known to Licensing NT through his other licensed premises, namely “Hot Tamale” and “The Coffee Club” both located at the Darwin Waterfront. Mr Robinson is also the owner of two (2) other businesses (one of which is licensed in the northern suburbs), namely “The Groove Train” at Casuarina and “The Daily Grind” at the Royal Darwin Hospital Café. The Commission has been informed by Licensing NT that there are “no adverse compliance matters arising from any of the existing licensed premises”.

Advertising and Objections

18. Details of the application were advertised in the Northern Territory News on Saturday 11 November 2017 and Wednesday 15 November 2017 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 15 December 2017. It is important to note that in the objection period no objections were received.
19. 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.
20. That occurred with respect to this application and the following responses were received:
 - a. The DOH made “no adverse comment”.
 - b. The City of Darwin advised that “(u)nfortunately the Darwin Waterfront is outside of the city of Darwin’s municipality. The Darwin Waterfront Corporation is responsible for this area”.

21. The NT Police advised as follows:

“Upon assessment of the application NT Police wish to advise in principle our support for the application but **do not** support the granting of a licence where the sale of liquor is not ancillary to the purchase of a meal. Police have a standing policy of opposing the grant of liquor licences where it is proposed to sell alcohol without the requirement to purchase a meal, in efforts to provide for a safer more socially cohesive environment.

NT Police support the comments from the recent Alcohol Review *“in keeping with the concept of a restaurant and catering licence, it must be a condition of this licence category that liquor only be sold with the provision of a meal.”* And *“What we consider impermissible is a restaurant where patrons can attend the venue for the purpose of purchasing and consuming alcohol without intending to order a meal.”* (Pg. 52)

“To ensure the Territory continues to provide safe and vibrant entertainment precincts the chance for people to become engaged in anti-social and unsafe behaviors needs to be minimised. There are number of reasons why people engage in these sorts of behaviors with the primary reason being intoxication.” “It is vital that late night precincts remain first and foremost entertainment precincts and not become alcohol precincts”. (Pg. 87)

By having a meal ancillary to alcohol sales, this helps to minimise the consumption of liquor and maintain the liquor is sold and consumed in a responsible manner.

NT Police note that whilst it is desirable to have a variety of different dining venues at the Waterfront, there appears to be a high density of similar style premises in the area already.”

22. The Commission notes that the application was also forwarded to the Development Consent Authority (“DCA”), the Northern Territory Fire and Rescue Service (“NTFRS”) and to the Darwin Waterfront Corporation for comment. The following responses were received:

- a. The DCA advised on 21 February 2018 that “Department records indicate appropriate planning approval has been granted for the development and use on the above mentioned land and that the Development Consent Authority has no town planning concerns in relation to the application”.
- b. The NTFRS advised that they were “unable to provide comment until the fit-out has been completed, NTFRS & Private Building Certifier have inspected and an Occupancy Permit has been issued as per NT Building Act”.

23. As to the Darwin Waterfront Corporation (“the Corporation”), it advised by letter on 21 November 2017 as follows:

“The Application is supported by the Corporation, noting:

- Trading hours of 10.00am to 11.59pm (noting Corporation policy recommends a trading limit of 11.30pm at the Waterfront for restaurants – however this has not been incorporated in any licence approvals to date and in the circumstances of this established and well regarded applicant, it does not appear necessary);
- Family Friendly, relaxed, breakfast and lunch service as well as dinner;
- No live, loud, disco or nightclub music is proposed (section 6(2)(m) of the Liquor Act); and
- Ambient music only (section 6(2)(m) & (3) of the Liquor Act)”.

Service and consumption of alcoholic beverages, without food, is sought in the Application and is consistent with other venues at the Waterfront. The Corporation supports this, particularly noting the family friendly and resort style theme to the beverages on offer.

The Applicant has operated two licensed venues at the Waterfront for a number of years. No issues of significant concern have arisen in this time and the applicant has an excellent working relationship with the Corporation and other stakeholders.

The Application, if approved, will require consistent and clear communication with the Adina and Vibe hotels to ensure no disruption occurs.

The Application proposes trading 365 days each year. This is supported given the applicant’s excellent history operating other venues at the Waterfront including Hot Tamale and Coffee Club.

The Corporation has approved in principle licensing of a strip of land in front of the proposed Stokes Beach House premises for use as additional alfresco space. The proposal does not involve significant infrastructure and it is proposed to be part of the liquor licence area. This is also supported”.

24. We will return to matters raised in the NT Police response and the Darwin Waterfront Corporation response later in these reasons.

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 1 May 2018 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. There were some delays in the Commission being able to secure a venue for the required public hearing. The venue was eventually confirmed on 15 May 2018 and notice sent to the applicant on 22 May 2018 advising of the hearing scheduled to take place on 7 June 2018 at 10.00am.
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 10.00am on 7 June 2018. Mr Robinson attended in person on behalf of the applicant. Mr Philip Timney as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks both Mr Robinson and Mr Timney for their assistance.

Assessment of the Application

29. As earlier noted, there were no objections to this application. This is despite the fact that the applicant undertook its 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, the response provided by NT Police raised a number of issues as set out above. It is noted that such issues were in fact raised in the context of the police stating they wished “to advise in principle our support”. It is difficult therefore to understand on what basis NT Police sought for the Commission to properly consider the matters which were then subsequently raised. The response was to provide “in principle” support and no formal objection was made, yet NT Police then chose to raise various matters and advised they “**do not** support the granting of a licence where the sale of liquor is not ancillary to the purchase of a meal”.

31. A further difficulty with the response from NT Police is that this application was clearly identified as being one for an “on-licence” authority. This was clearly stated in the letter sent to NT Police advising of the application. Yet the response from NT Police referred to the Alcohol Policy Review and comments made concerning “a restaurant and catering licence” and also the “late night precinct”. This is not an application for a restaurant licence and the proposed premises are not part of the “late night precinct”. The matters therefore raised in that context by NT Police are of little assistance to this Commission with respect to this particular application.
32. The Commission also wishes to make clear to the NT Police and any other “person, organisation or group” that the Act clearly identifies and prescribes the process to be undertaken to object to an application including an application such as this for the grant of a licence. If there is to be an objection then that process must be undertaken pursuant to section 47F of the Act. The NT Police on this occasion have determined not to undertake that process and have not lodged an objection. The matters raised therefore by NT Police are not considered to be an “objection” as that term is understood. The response will however be considered as part of those matters to be considered (where relevant) under section 6 and the Minister’s guidelines issued under section 6A of the Act.
33. In this regard 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.
34. 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;
- 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.”

35. 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.”

36. 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”.

37. 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

	<p>might be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> • 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; • 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. <hr/> <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</p>

	developed to address these potential issues.
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 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?

38. 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”.

39. 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”.

40. 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”.

41. The Commission notes there are no such matters prescribed by the Regulations.

42. 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. 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.

44. The Commission further notes that there is nothing to suggest that the plans for the proposed premises appear unsuitable and there are no issues of concern in relation to the business reputation and financial stability of the applicant and the general reputation and character of the secretary and executive officers of the applicant. In fact there appears to be evidence to the contrary given the involvement of Mr Robinson in a number of other establishments.

45. In relation to the public interest test; the applicant provided written submissions as follows:

“We have +8 years trading history, in the precinct, with multiple liquor licenses. I believe, it would be fair to say that we have run respectable venues, that are very much part of the fabric of the Waterfront, and Stokes will be no different.

We have next to on (sic) issues as our venues are well managed and we do take care to ensure the public, patrons, residents, workers are all looked after.

All staff are thoroughly trained and we will be taking over our award-winning training program to Stoke. The award was for the 2017 AHA NT Training Award NT, of which we were a national finalist for.

There will be some noise coming from the venues, but most of it will be people noise, with some background music. The direction we are facing is toward the seawall, not the residents, so in all honesty, the impact should be extremely minimal on the residents.

We really will be a low risk venue. We will be a great venue for both Darwin and the Waterfront alike”.

46. In relation to the community impact test; the applicant provided written submissions as follows:

1. “The potential harm or health impacts 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.

- We feel that the potential harm and health impact of opening our new venue, Snapper Rocks, an upmarket beach-chic shack, is extremely low and we foresee Snapper Rocks adding positively to the local community. Being located at the Darwin Waterfront, there are very few ‘at-risk’ groups or sub-communities, as discussed in The Precinct Tavern hearing. We do have children and young people attending the area for both events and the Wave Pool, but

we are aimed at being a family friendly/focused venue. We are intending to be Darwin's premier family venue. We have an in-principle agreement with The Darwin Waterfront Corporation to lease 80 square meters of grass area out the front of the tenancy, which will be furnished with picnic tables, umbrellas and festoon lighting, where we will be encouraging families to enjoy. This will give the kids a chance to play at the Waterfront in a secure environment, while the parents are able to relax. We are also trying to activate a space which is the entrance to the Darwin Waterfront, located beside the lift from the city and the carpark entrance, it is intended we will give the Waterfront a more vibrant entry point. This will give the kids a chance to play at the Waterfront in a secure environment, while the parents are able to relax.

- We are including CCTV in our fit out and have 8 cameras planned, which are 4-megapixel camera, giving us great digital recording clarity.
 - We do have significant numbers of tourists in the area and the venue is designed both around the tourist and locals alike. We are looking at premium offerings, in regard to food and beverage, both non-alcoholic and alcoholic. The forecast for the area over the coming 2-3 years sees a significant increase in tourist traffic with the \$150,000,000.00 investment from Landbridge in the shape of the 240 room Westin luxury hotel and also the current EOI for the International Water Theme Park, which in the government led EOI, states could attract 260,000 – 330,000 visitors in the first years, catering for 2000 people a day.
 - We don't see any significant numbers of aboriginal people that reside within the community and, from experience over the last 8 years, there is little likelihood of travelling to the Darwin Waterfront from a dry community, for the reason of alcohol consumption.
 - The area, the Darwin Waterfront, is a premium destination and as such, we don't really see significant numbers of people from low socio-economic areas, or migrant groups from non-English speaking countries.
2. 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.
- The Darwin Waterfront is an interesting location. Although it is located in the Darwin CBD, or 400 meters away from the Smith St Mall, this distance is enough of a barrier to totally separate it from most of the anti-social issues we see playing out in Darwin. In the time since the launch of the Darwin Waterfront, in 2009, the only

property crime I can remember is a broken window at Chow. There has been a burglary at Oyster Bar and a few petty crimes, but this is a distinctly different situation to the commercial crime and general crime statistics in Darwin.

- Liquor Licences in the area include;
 1. The Coffee Club Darwin City Waterfront – Restaurant Licence
11.30am – 2am, liquor without a meal is authorised.
 2. Chow – Restaurant Licence, *11am -11.30pm*
 3. Fiddlers Green – On Licence *10am – 11.30pm Liquor without a meal authorised*
 4. Oyster Bar – On Licence – *11am – 11.30pm Liquor without a meal authorised*
 5. Hot Tamale – Restaurant Licence *11.30am – 11.59pm liquor without a meal authorised*
 6. Wharf One Food and Wine – On Licence *11.30 – 2am liquor without a meal authorised*
 7. Antiquity (CLOSED) –
 8. Adina Vibe – Public Hotel Licence
 9. Curve - Public Hotel Licence *10am – 11pm without a meal, 11pm – 2am with a meal*
 10. Precinct Tavern - Tavern Licence *10am – 2am, including the alfresco area and the Deck 10am – 11.59pm, must have meal available between 12pm – 2pm & 6pm – 8pm.*
 11. The Darwin Convention Centre
 - The Darwin Waterfront Precinct has 340 residential apartment, many which are leased as short-term rental for both corporate and tourist alike.
 - There is no specific crime statistics I can find for the Darwin Waterfront, but it is well known that the Darwin Waterfront is a very safe precinct. In the eight and a half years I have had businesses down there, we have not had any significant issue. Adding to this, the area has roving security guards on 24 hours a day and has a significant level of CCTV coverage.
3. Any cultural, recreational, employment or tourism benefits for the local community area.

- This venue really will add to the mix of venues at the Waterfront, and further enhance its reputation as a premium dining destination. We will have a focus on fresh local produce and will hero our local seafood. We have made a significant investment in a Josper Charcoal oven, which will allow us to cook and showcase traditional flavours.
 - Employment will also be significant with the venue expected to have a team of around 33 during peak season.
 - The benefit for the local community is we are executing a venue that will be one of the best-looking venue in the Northern Territory. I expect that Tourism NT will use this venue to showcase Territory cuisine and dining
 - Update – As part of the Turbo Charging Tourism campaign, we have approval in principle for a grant, in the Visitor Experience Enhancement Program, subject to receiving a liquor licence by 30th September 2018.
4. 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.
- The grant of a liquor licence for this venue is in the interest of the local and broader community;
 - i. We are responsible operators, as shown by our other venues, Hot Tamale, The Coffee Club Darwin City Waterfront & Groove Train Casuarina
 - ii. We have created a venue that will open for breakfast, lunch and dinner. We are a premium restaurant, which only adds to the area, for both locals and tourists alike. Alcohol is definitely a part of the business plan, but our priority of food. We will have a premium wine and cocktail list but will also focus on coffee and fresh juices.
 - iii. We did a letter box drop to all residents in building 1, 2 & 3 at the Darwin Waterfront, outlining our Liquor Licence application and the proposed conditions. I made myself available for residents to discuss the application and ask questions and view images, on the 3rd of December, between 3-4pm. Not one turned up to discuss. Additionally we didn't have any objections to our application."

47. As was indicated to Mr Robinson during the course of the hearing, the Commission was not satisfied with the level of detail and analysis undertaken on behalf of the applicant in the written submissions addressing the public interest and community impact tests. It is important that all applicants focus their minds on the matters

raised and address each matter (where relevant to their application) specifically and with particular reference to *their* premises and what the application proposes, rather than what any other licenced premises is (or in some cases is not) doing pursuant to their licence. The obligation to persuade the Commission is now fairly and squarely on applicants and proper attention must be given to the requirements of the Act and the guidelines issued by the Minister.

48. Further evidence was therefore obtained from Mr Robinson as to those matters during the course of the hearing. In particular Mr Robinson was asked to address why the grant of a licence on this occasion was in the public interest and how the additional liquor outlet would benefit the local and broader community? In this regard Mr Robinson highlighted that what he was proposing was a “new and unique” venue to “fill a hole” that he perceives exists in the market. Mr Robinson highlighted that often people (particularly tourists) ask “Where is the best seafood in Darwin?” and he considered that there was “no real place in Darwin” where that could be said. He noted there were places where there was seafood available as part of the menu, but no place significantly devoted to fresh local seafood and local produce. This was what he wished to provide with this venue and what he believed would be in the public interest.
49. Mr Robinson stated he also wished to focus on Australian spirits and to provide a higher market level to the kind of food he considered available in Darwin. Mr Robinson stated he was working closely with NT Tourism to also provide a venue that would be “iconic” at the Waterfront attracting locals and tourists alike. Mr Robinson provided evidence of the in principle support provided by the Department in this regard.
50. A significant issue did arise however during the course of the hearing as to precisely what was proposed in terms of the precise location of this venue. During the course of the hearing it became evident that there was a proposal for part of the grassed area outside of the tenancy to be included for this licence. The Commission notes that the applicant does not yet have a lease with the Darwin Waterfront Corporation but instead has an “in principle agreement”. The Commission also notes that the advertisement of this liquor licence application referred only to “Tenancy B2”. Whilst the Commission accepts that it could reasonably be assumed that interested persons would consider reference to the tenancy included the al-fresco area immediately outside the tenancy, i.e. on the already existing concrete area which is included in most other tenancies, the Commission does not consider that it would be assumed to include a portion of the grassed area which is now open to and in use by visitors at the Darwin Waterfront.
51. The Commission notes that under questioning Mr Robinson identified that his proposal was to include an area measuring 20m x 4m of what is presently grassed space open to all persons who attend at the Waterfront. This area was to have seating and picnic tables and was sought to be part of the licensed footprint with the same conditions as the remaining space.
52. Whilst the Commission understands Mr Robinson’s desire to include such a space as part of this venue, particularly considering its theme and the matters raised, the Commission is concerned that the inclusion of this area (and consequential

subsequent removal of that space to visitors) was not made clear in the proposal that was advertised. The Commission is well aware that such space at the Waterfront is considered very important to many users and therefore any proposal to reduce such open space needs to be, in the opinion of this Commission, something clearly identified as being part of what is being proposed.

53. It is for this reason that the Commission does not consider it appropriate to grant a licence that includes this space in circumstances where the Commission is not satisfied that this fact was made clear when the application was advertised and persons given an opportunity to consider whether they wished to lodge an objection. The Commission does not, therefore, propose to include this space within the liquor licence to be issued. Whilst the Commission recognises that this may mean that the applicant will have to make a further application to include such space should this be his desire, the Commission considers that it is important that the public be made fully aware of proposals and given an opportunity to lodge an objection before any decision is made by this Commission. It is regretful that this has occurred, however the Commission considers that as there has not been a clear advertisement of this proposed space, there is no alternative but to refuse to include that area at this time.
54. In relation to the remainder of the application however; having considered all of the evidence presented to this 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.
55. The applicant has in place appropriate measures to ensure liquor is sold in a responsible manner.
56. The Commission has received no information that would suggest there is likely to be an impact upon law and order, community safety or public amenity by virtue of this application.
57. The Commission is satisfied that with the concept of light background music as proposed, that there will be no increase in noise such as to warrant this application being refused, or that the business to be conducted at the premises will cause undue offence, annoyance, disturbance or inconvenience to the neighbourhood.
58. The Commission notes the information provided as to the licensed premises in the local community area and due to the failure to properly identify the inclusion of the grassed area, the Commission does not grant a licence that includes that area. However, all other proposals were clearly identified and no objection made and the Commission does not consider there to have been identified any negative impact upon the local community area such as to warrant refusal of the licence.
59. The Commission accepts that in granting such a licence this will obviously increase the number of licensed premises in the area, but given the proposal of premises that provides for a family friendly environment, promoting local food and alcohol in a premium style venue, the Commission considers this outweighs the fact of the increase and will provide an enhanced dining experience.

Notice of Rights:

62. 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.
63. 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.
64. 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