

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *SUGARBAG STREET ART FESTIVAL APPLICATION FOR A LIQUOR LICENCE WITH A SPECIAL EVENT AUTHORITY [2024] NTLiqComm 21*

REFERENCE: LC2024/015

APPLICANT: Air Raid Arcade Pty Ltd

PREMISES: 33 Cavenagh Street
DARWIN NT 0800

PROPOSED EVENT: Sugarbag Street Art Festival

DATE OF EVENT: 1 June 2024

NOMINEE: Mr Matt Mulga

LEGISLATION: Part 3 Division 4 of the *Liquor Act 2019*

DECISION OF: Mr Russell Goldflam (Chairperson)
Professor Phillip Carson (Health member)
Mr Denys Stedman (Community member)

DATE OF HEARING: 27 May 2024

DATE OF DECISION: 30 May 2024

DECISION

1. For the reasons set out below and in accordance with s 48 of the *Liquor Act 2019* (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Air Raid Arcade Pty Ltd (**the applicant**). The applicant will be issued with a special event authority attached to the licence authorising the sale, supply or service of liquor to patrons at the 2024 Sugarbag Street Art Festival (**the special event**).
2. The premises for the events (**the premises**) is the area within the private carpark at the rear of 33 Cavenagh Street, Darwin (**the carpark**) bounded in pink on the plan at page 35 of the brief of evidence provided by the Director of Liquor Licensing (**the Director**) to the Commission and marked as Exhibit Two in the hearing of this application.

3. Trading in liquor is permitted from 16:00 hours to 23:59 hours on Saturday, 1 June 2024.
4. The Commission approves Mr Matt Mulga as the designated nominee (**the nominee**).
5. In addition to the special event conditions set out in Part 4 Division 1 and Part 4 Division 18 of the *Liquor Regulations 2019* (**the Regulations**), the licence is subject to the following additional conditions:
 - a. At least one copy of this licence must be prominently displayed at the premises and a copy provided upon request.
 - b. All liquor must be sold in open containers.
 - c. No more than 4 containers of liquor may be sold, served or supplied at the event to any one person at a time.
 - d. Crowd Controllers are to be employed as per industry standards as follows: Two licensed crowd controllers for the first one hundred patrons and one additional crowd controller for each one hundred patrons thereafter.
 - e. The licensee must exclude or remove from the premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (aka bikie gang) or ask police to remove them if they feel unsafe doing so themselves.
 - f. Throughout the special event, and at the conclusion of the special event, the licensee must at its own cost keep the toilets, including the toilets at 33 Cavenagh Street within the portion of the premises leased to Northern Wines Pty Ltd, in a state of cleanliness, including the stocking of the toilets with toilet paper and handwash, and the removal of waste as required.
6. The licence will be issued immediately following the publication of this decision notice.

REASONS

BACKGROUND

7. On 14 May 2024 the applicant lodged an application with the Director for a liquor licence with a special event authority to permit the sale of liquor to

patrons attending the Sugarbag Street Art Festival. According to the applicant the event will be:

A unique block party that is a collaborative effort that celebrates the unity of diverse arts and cultures. With an incredible lineup of burlesque and drag performers, DJs, singers, and artists, inviting attendees into an unforgettable evening of live performances, art installations, and interactive experiences.

8. This unticketed free special event, a “sweet melting pot of art, inclusivity, and joy at the intersection of Street Art and Rainbow culture”,¹ is co-produced by the LGBTQIA+SB² led Sugarbag Festival, and the Darwin Street Art Festival.
9. The applicant seeks to trade on Saturday 1 June 2024 from 16:00 hours to midnight in the carpark, which opens onto Austin Lane in the Darwin CBD. The premises are owned by a company, which, together with the applicant company, is a member of a consortium, the principal executive office of which is the proposed nominee, Mr Matt Mulga (**Mr Mulga**).
10. The applicant expects a crowd of 400 people.

THE REFERRAL

11. On 28 October 2019, the Commission delegated to the Director its powers and functions to determine and issue a liquor licence with a special event authority. However in this instance the Director declined to exercise that delegation, and on 21 May 2024 referred the application to the Commission. The Commission considers that it was appropriate for the Director to do so, having regard to the following unusual circumstances:
 - a. The Commission has already set down another application (**the Beer Garden of Eden application**) by a member company of Mr Mulga’s consortium for a liquor licence over a portion of the carpark for hearing, on 27 May 2024.
 - b. The Beer Garden of Eden application was subject to objections, including by Northern Wines Pty Ltd trading as Stone House Wine Bar (**Stone House**), a liquor licensee that trades from premises in 33 Cavenagh Street, which it leases from a company controlled by Mr Mulga.

¹ <https://www.sugarbagfestival.com.au/program/thesweethoneycollective>

² Lesbian, gay, bisexual, transgender, queer, intersex, asexual, sistergirl and brotherboy

- c. The application was not compliant with the requirements of s 52 of the Act.
 - d. Mr Mulga is the principal executive officer of various Northern Territory liquor licensees that have previously been the subject of disciplinary action on seven occasions between 2001 and 2014, and of three formal warnings between 2008 and 2023.
 - e. In 2022, five liquor licences with special event authorities were issued for “Car Park Tropicana”, a monthly dry season pop-event food, beverage and entertainment event in the carpark. The Commission has previously expressed concern when a series of special event liquor licences have been issued at short intervals for the same premises pending determination of an application for an on-going liquor licence.³
12. The Commission notes that the applicant’s proposed nominee, Mr Mulga, is the licence nominee for several other liquor licences. Section 51(3) of the Act provides that a licensee who is applying for an authority is assumed to be a fit and proper person in the absence of evidence to the contrary.
13. The applicant supplied supporting documents, including:
- a. Application for liquor licence with special event authority
 - b. Affidavit for s 54 of the Act and declaration of associates
 - c. Declaration by Mr Mulga that he has no criminal record
 - d. ASIC extract for Mulga Venture Pty Ltd
 - e. Accountant’s letter dated 12 February 2024 certifying Monte’s Lounge Darwin Pty Ltd is financially stable
 - f. RSA certificate for Mr Mulga dated 10 November 2022
 - g. Plan of proposed premises
 - h. Correspondence with stakeholders

PUBLICATION AND CONSULTATION

14. The Director does not require public notice to be given of applications for a liquor licence with a special event authority. The Commission notes that on this occasion the application was not lodged in time for the public to have been notified and lodge any objections.

³ Northern Territory Liquor Commission, *Application for a licence for Ella Darwin* (LC2022/031, 21 June 2022), at [52] – [54].

15. The following stakeholders were invited to provide comment on the application:
 - a. Department of Health
 - b. Northern Territory Police
 - c. City of Darwin
16. The first two of these stakeholders responded stating that they did not object to the application. The City of Darwin did not respond.

THE HEARING

17. The Commission set down the application to be heard as a public hearing in conjunction with the hearing of the Beer Garden of Eden application on 27 May 2024, the only practicable course available to the Commission to consider and determine the matter prior to the special event on 1 June 2024.
18. As noted above, the application was in some respects defective. Hearing it in conjunction with the Beer Garden of Eden application provided the Commission with the opportunity to receive oral evidence from Mr Mulga to supplement the materials provided to the Commission and “fill in the gaps”. Mr Mulga appeared at the hearing on behalf of the applicant. Mr Wood appeared on behalf of the Director. At the conclusion of the hearing the Commission informed Mr Mulga that it had determined to allow the application and issue a liquor licence with a special event authority.

A NON-COMPLIANT APPLICATION

19. As noted above, the application was not compliant with the requirements on applicants set out at s 52 of the Act. In these circumstances, s 56 of the Act requires the Director to either refuse to accept the application or to accept it provisionally if specified changes to the application are made within 28 days or such longer period as the Director allows. In this case, the Director took the expedient course of referring the non-compliant application to the Commission. In the particular circumstances of this matter, the Commission does not consider that the effect of the applicant’s non-compliance with s 52 (and, arguably, the Director’s non-compliance with s 56) invalidates the application, having regard to the provisions and purposes of the Act, and the consequences had strict compliance been required.⁴
20. On this occasion, faced with a non-compliant applicant, the Director responded in a supportively pragmatic manner. The Director could have simply refused to accept the non-compliant application. The applicant

⁴ See *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; 194 CLR 355 at [91], per McHugh, Gummow, Kirby and Hayne JJ

should assume that the Director, and the Commission, will not afford it similar latitude in the future.

21. The material supplied by the applicant to satisfy the Commission that the applicant was financially stable, and not unduly affected by persons of influence or potential beneficiaries, was inadequate. The documents provided referred to various corporate entities apparently associated with each other and controlled by Mr Mulga, but without detail or clarity as to what those relationships were. When asked to explain these matters, Mr Mulga succinctly and simply responded by saying "It's all me". Having regard to the circumstance that this application is limited to seeking a licence for a single event on a single day, the Commission is satisfied for the purpose of this matter that the applicant is financially stable, and subject to control by a single person, namely Mr Mulga.
22. The applicant supplied scant material with this application capable of satisfying the onus on it specified in s 51 of the Act that issuing the licence is in the public interest and will not have a significant adverse impact on the community. However, the Commission has had regard to Mr Mulga's oral evidence and the material addressing these issues that was supplied with the Beer Garden of Eden application for a licence over substantially the same premises. In brief, Mr Mulga proposes to sell and supply liquor from a shipping container refitted to serve as a bar, serving patrons in a "beer garden" setting in the carpark, which has been fitted with appropriate furniture, paving and facilities for that purpose. Several similar licensed special events in the same location have previously been held.

THE STONE HOUSE EVIDENCE

23. Also present at the hearing were Ms Rebecca Bullen and Mr Phil Gardiner on behalf of Stone House. They were not objectors to this application, if for no other reason than that no public notice had been given of the application, and accordingly, no opportunity had been afforded to potential objectors to lodge an objection.
24. Section 22(1)(c) of the Act provides that a person who has not lodged a valid objection may appear at a hearing if granted leave by the Commission to appear. The Commission permitted Ms Bullen and Mr Gardiner to give evidence in relation to the application and was assisted by their evidence.
25. On 9 April 2024, Stone House lodged an objection with the Director to the Beer Garden of Eden application. In the course of that objection, Stone House stated (in part):

We have been adversely affected by special event liquor licences held in the past by Mulga Ventures [the Beer Garden of Eden

applicant] in the same area as the Proposed Licensed Premises including:

- (a) Lengthy queues for the bathroom by patrons of licenced events held by Mulga Ventures (noting such bathrooms typically requires no queuing at all) due to the number of patrons at such event which exceeded the capacity of the toilet facilities;
- (b) What appeared to be some form of improper use in the bathroom facilities due to large groups of patrons from licenced events held by Mulga Ventures attending toilet cubicles together for lengthy periods of time;
- (c) The state of disrepair and rubbish of the toilets after the licensed events held by Mulga were finished; and
- (d) The interruption the licenced events held by Mulga Ventures has caused in the past to the “quiet enjoyment” of the patrons of our client’s business, ... an up-market venue, and included negative online reviews, and caused patrons to leave our venue with complaints regarding the noise and disruption caused by patrons of the Mulga licensed event accessing the shared bathroom facilities.

- 26. Somewhat surprisingly, in his response to this objection Mr Mulga did not make the obvious point that although these previous special events had been conducted on his premises with his consent and support in 2022, neither he nor any of his companies had been the licensee for those events.
- 27. The operation of the previous special events did not attract complaints to Licensing NT, but the Commission accepts Ms Bullen’s evidence that she did complain to the then licensee, who took action to address the complaints.
- 28. It is necessary to describe the unusual arrangements regarding toilet facilities for the premises.
- 29. Stone House leases its wine bar from one of Mr Mulga’s companies, the proprietor of 33 Cavenagh St. According to Mr Mulga’s oral evidence, which is consistent with architectural drawings supplied by the applicant, the Stone House premises include an ablution block containing five WCs, two urinals and three hand basins. This ablution block is accessible to all tenants of 33 Cavenagh St, and is part of the building’s common area. Access to the

ablution block from the carpark is by way of a gate. The Stone House lease includes this term:

The Lessee must, at its own cost, keep the toilets (which toilets are located in the common area and accessed by all persons on the Land) in a thorough state of cleanliness at all times, including the stocking of the toilets with toilet paper and hand wash. The Lessee must also arrange, at its cost, for the removal of all waste as and when required.

30. Ms Bullen gave evidence that Stone House is licensed to accommodate up to 190 patrons in three areas: a restaurant bar, a tasting room and an al fresco dining area in the northeast corner of the carpark. Ms Bullen stated that in the usual course of business the ablution block provides adequate facilities for staff and patrons of Stone House and other tenants of 33 Cavenagh Street.
31. The applicant has also installed four WCs and four handbasins on the north-east boundary of the carpark. These facilities were not available during the 2022 special events at the carpark.
32. The applicant submits that in accordance with the lease condition set out above, Stone House is responsible for maintaining the toilets in the ablution block. Stone House submits that when the carpark is being used as a licensed venue accommodating up to 400 patrons, the licensee of that venue should be responsible for providing and maintaining all the toilet facilities.
33. The Northern Territory Government web page titled "Public health and food safety at events" includes the following advice to event managers:⁵

Toilets

You must provide enough toilets for the number of expected attendees.

Consider the following:

- how long the event goes for
- types of crowds
- if the event is ticketed
- whether you will provide alcohol

⁵ <https://nt.gov.au/industry/hospitality/public-events/public-health-food-safety>

All toilets must come with toilet paper, bins, running water, soap, paper towels or a hand dryer.

Waste management

Make sure you have enough waste and recycling bins on site for waste disposal. Contracted staff need to check and empty waste bins throughout the event to prevent overflow.

Depending on the type of event, you might need to arrange for other kinds of waste and wastewater to be collected.

...

Cleaning

Make sure facilities are cleaned and maintained.

Toilets must be stocked with toilet paper, soap and paper towels for handwashing.

If toilets need regular pump-out, make sure they are monitored to avoid any overflows. Lack of cleaning or overflowing toilets can result in a public health nuisance occurring at the event.

34. In the view of the Commission, notwithstanding the terms of the Stone House lease, a liquor licensee bears primary responsibility for providing and maintaining toilet facilities for its patrons. Accordingly, the Commission has fixed the condition set out at paragraph 5(f) above.
35. The Commission is concerned that a combined total of nine WCs, two urinals and seven hand basins is barely adequate for two adjoining licensed premises with a combined capacity of 590 patrons, even allowing for the fact that in reality there may be no more than half that number of patrons on site at any one time. According to the “Safe and Healthy Mass Gatherings” manual issued by the Australian Institute for Disaster Resilience, a liquor licensed event of six to eight hours duration attended by 500 people should be serviced by 13 WCs, seven urinals and four hand basins.⁶
36. The Commission suggests that Mr Mulga give further consideration to these issues for the purposes of the Beer Garden of Eden application.

⁶ <https://knowledge.aidr.org.au/media/4455/manual-12-safe-and-healthy-mass-gatherings.pdf>, p. 38. The Manual notes that the number of WCs required can be reduced by using unisex facilities.

ASSESSMENT OF THE APPLICATION

37. In accordance with s 59 of the Act, the Commission has considered:
 - a. the applicant's affidavit required by s 54;
 - b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
 - c. the financial stability, general reputation and character of the applicant, and the general reputation and character of the applicant's executive officers; and
 - d. whether the applicant and the nominee are fit and proper persons to hold a licence;
38. In accordance with s 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.
39. The Commission is satisfied that issuing the licence with a special event authority and the conditions it has determined to impose is in the public interest and will not have a significant adverse impact on the community.
40. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act. The Commission considers that the issue of the licence and authority with the conditions imposed is consistent with the purposes of the Act.

NOTICE OF RIGHTS

41. Section 60(3) of the Act requires the Commission to give a decision notice to an applicant after making a decision under s 60(1). Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). In this instance the Director, the applicant and Northern Wines Pty Ltd are entitled to apply to NTCAT for a review of this decision.

42. In accordance with s 94(3) of the *Northern Territory Civil and Administrative Tribunal Act 2014*, any application for review of this decision must be lodged within 28 days of the date of this decision.



Russell Goldflam

CHAIRPERSON

NORTHERN TERRITORY LIQUOR COMMISSION

On behalf of members Goldflam, Carson and Stedman

30 May 2024