

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**AMENDED<sup>1</sup> DECISION NOTICE**

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**MATTER:** *APPLICATION FOR LIQUOR LICENCE FOR THE HOT BOX DARWIN* [2024] NTLiqComm 43

**REFERENCE:** LC2024/014

**APPLICANT:** Montes Lounge Darwin Pty Ltd

**PREMISES:** The Hot Box Darwin  
Lot 2328, Cnr Austin Lane and Spain Place  
DARWIN NT 0800

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

**HEARD BEFORE:** Mr Russell Goldflam (Chairperson)  
  
Professor Phillip Carson (Health Member)  
  
Mr Denys Stedman (Community Member)

**DATE OF HEARING:** 27 May 2024, 9 October 2024

**DATE OF DECISION:** 21 October 2024

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**Decision**

1. For the reasons set out below and in accordance with s 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Montes Lounge Darwin Pty Ltd (**the applicant**) with a public bar authority and late night authority.
2. The premises, to be known as “The Hot Box Darwin”, is situated within Lot 2328, Cnr Austin Lane and Spain Place, Darwin NT 0800 as depicted by the area bounded in red on the site plan marked Exhibit 17 admitted into evidence at the hearing of the application (**the licensed premises**).
3. The Commission approves the appointment of Mr Matt Mulga (**Mr Mulga**) as the licence nominee.
4. The conditions of the licence will be those authority conditions set out in Part 4 Divisions 1, 10 and 14 of the *Liquor Regulations 2019* (**the Regulations**).

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<sup>1</sup> This Decision Notice was amended on 28 October 2024 to correct the approved trading hours. Paragraph 5.a. was amended to include Sunday trading.

5. The following additional conditions are fixed:
- a. Subject to the restrictions on trading on Good Friday and Christmas Day prescribed by reg 75 of the Regulations, the trading hours of the licence shall be between:
    - Monday: 10:00 and 24:00
    - Tuesday: 10:00 and 24:00
    - Wednesday: 10:00 and 24:00
    - Thursday: 10:00 and 24:00
    - Friday: 10:00 and 02:00 the following day
    - Saturday: 10:00 and 02:00 the following day
    - Sunday: 10:00 and 24:00
    - Public holiday: 00:00 and 02:00
  - b. Patrons must not be permitted to enter the premises after 00:30 on days when trading is permitted until 02:00.
  - c. Noise:
    - i. No more than two loudspeakers may be used, and they must be located as close as possible to the wall on the north-western boundary of the premises.
    - ii. Before 24:00, the maximum permitted sound pressure level from each speaker shall be 94dB(C) when measured at 1 metre from the front of the speaker.
    - iii. After 24:00, no live entertainment is permitted and noise levels must be reduced so that on the premises ordinary conversation can be conducted unimpeded.
    - iv. The Director of Liquor Licensing (**the Director**) on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such sound attenuation and noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director's view a reasonable requirement in the circumstances then prevailing.
6. The licence will be issued immediately following the publication of this decision notice.
7. Liquor must not be sold under the licence until the Director gives the licensee written approval to do so, following the provision of documentary evidence to the satisfaction of the Director that the applicant has:
- a. confirmed that no pending strike-off action is afoot for the licensee;

- b. provided a revised site plan that includes tables and seating;
- c. obtained the necessary planning, fire safety and building approvals, including a certificate of occupancy, in respect of the premises;
- d. provided and implemented a smoking plan;
- e. installed and is operating a CCTV surveillance system that is in compliance with the Code of Practice for CCTV system in licensed premises; and
- f. provided and implemented a security officer plan that is in compliance with reg 59 of the Regulations.

## **Reasons**

### **Background**

- 8. The applicant is one of a group of companies owned, directed and controlled by Mr Mulga, a well-known Northern Territory licensee who has established and managed several successful licensed venues, previously in Alice Springs, and currently in Darwin.
- 9. One of those venues, Babylon Berlin, is located on land owned by one of Mr Mulga's companies, Mulga Venture Pty Ltd, in Air Raid Arcade, which borders the Spain Place/Austin Lane precinct in the Darwin CBD. In its 2021 decision approving an application for a material alteration to Babylon Berlin, the Commission stated:<sup>2</sup>

Council has conducted extensive consultation amongst local businesses and other stakeholders over the merits of alfresco dining and liquor consumption associated with existing premises in the Austin Lane and Spain Place neighbourhood. Council has made an investment to improve the amenity of what was previously a run-down unattractive part of Darwin City with the intention of nurturing the emergence of a new entertainment precinct.

Whether this precinct achieves the popularity of similar initiatives in the laneways of Melbourne and Adelaide remains to be seen. However, Council and the participating small bars and restaurants are to be commended for their initiative in this co-operative endeavour to provide the citizens of Darwin and our visitors with a range of new low impact hospitality options.

- 10. Mr Mulga now seeks to establish an open-air late night venue serviced by a container bar and a food truck in an undeveloped block on a portion of the Mulga Venture Pty Ltd land abutting the intersection of Spain Place and Austin

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<sup>2</sup> Northern Territory Liquor Commission, *Air Raid Arcade Pty Ltd (Babylon Berlin) Application for approval of material alteration to licensed premises* (LC2021/033, 17 September 2021), at [20] – [21]

Lane. Most of this block is currently used as a carpark. Its north-eastern corner is occupied under licence granted by Mulga Venture Pty Ltd to Northern Wines Pty Ltd, the licensee of Stone House Wine Bar & Kitchen (**Stone House**), which uses it as an alfresco garden area as part of its licensed premises.

### **The Application**

11. On 13 February 2024 Mr Mulga lodged an application with the Director on behalf of Mulga Venture Pty Ltd on land it owns for a liquor licence with a public bar authority and late night trading authority trading as premises he now proposes to call "The Hot Box Darwin"<sup>3</sup> between two neighbouring licensed venues, Babylon Berlin to the northwest and Stone House to the east.
12. In contrast to most applications received by the Commission for new licensed premises, Mr Mulga does not plan to construct any buildings to accommodate The Hot Box. Instead, he proposes to establish outdoor premises that will operate predominantly in the dry season, at which patrons can purchase refreshments from a converted shipping container that the applicant has installed in the carpark, and fare from a food truck that the applicant has procured and fitted out for that purpose.

### **Consultation**

13. Notices of the application were published in the NT News on 9 March 2024, on the Director's website on 22 March 2024, and by way of signs at the boundary of the premises that were displayed on various dates in March and April 2024.
14. In accordance with s 56 of the Act, the Director notified the Department of Health (**DOH**), NT Police and the City of Darwin of the application. The Director also notified the Northern Territory Fire and Rescue Service of the application. With the exception of NT Police, none of these agencies objected to the application.

### **The objectors**

15. On 4 April 2024, NT Police lodged an objection to the issue of a late night authority to the application. On 9 April 2024, having been granted an extension of time by the Director, Ms Rebecca Bullen (**Ms Bullen**), the principal of the Stone House licensee, lodged an objection to the application.

### **The licensee's record of compliance**

16. The Director has informed the Commission that between 2001 and 2014 disciplinary action was taken on eight occasions arising from the operation by Mr Mulga of two licensed venues in Alice Springs. In addition, on 20 December 2019 the Director issued a formal warning to the licensee of Babylon Berlin, of which Mr Mulga is the licence nominee, for selling liquor on 2 and 4 August 2019 without having received approval to commence the sale of liquor. On 23 August 2023 a delegate of the Director issued a formal warning to the same

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<sup>3</sup> In the original application, the applicant proposed to trade under a different name. Nothing turns on this variation.

licensee, for selling liquor on four occasions on 21 May 2023 fifteen minutes after the prescribed closing time of 02:00.

### **The referral**

17. On 10 May 2024 the Director referred the application to the Commission to be determined by way of a public hearing. The Commission subsequently notified the applicant, the Director and the objectors that the matter would be listed for a public hearing on the earliest date convenient to the Commission and the parties, 27 May 2024.
18. The Director provided the Commission with a brief (**the brief**), which included the following documents:
  - a. Application for liquor licence
  - b. Affidavit and Declaration of Associates
  - c. Public Interest and Community Impact statements
  - d. Equifax and ASIC register extracts for applicant company
  - e. Accountant's letter confirming financial stability of Air Raid Arcade Pty Ltd (Babylon Berlin licensee)
  - f. Certificate of Title, Lot 2328, Darwin
  - g. Development Permit DP20/0077, 13 March 2020
  - h. Development Permit DP20/0077A, 17 March 2022
  - i. Proposed site plans
  - j. Correspondence with stakeholders
  - k. Objection from NT police, 4 April 2024
  - l. Objection from Stone House, 9 April 2024
  - m. Applicant's responses to objections, 23 April 2024
  - n. Notice from applicant to Stone House licensee to quit the alfresco garden area
  - o. Director's formal warning to Babylon Berlin licensee for trading after 02:00 on 21 May 2023.

### **The hearing**

19. On 27 May 2024 the public hearing of the application commenced. Mr Mulga appeared on behalf of the applicant accompanied by his wife, Ms Draude. Mr Wood appeared for the Director. Ms Bullen and Mr Gardiner appeared for Stone House. Ms Thompson instructed by Ms Shackle appeared for NT Police, accompanied by Acting Commander O'Brien. The Commission thanks them all for their attendance and assistance.
20. The hearing of this application was conducted in conjunction with a hearing of a separate application presented by Mr Mulga on behalf of Air Raid Arcade Pty Ltd for a liquor licence with a special event authority at the same premises on 1 June 2024. At the conclusion of proceedings on 27 May 2024, the Commission informed the parties that it had determined to allow that application.<sup>4</sup>

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<sup>4</sup> *Sugarbag Street Art Festival Application for a Liquor Licence with a Special Event Authority [2024]*  
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21. In relation to the Hot Box application, the brief was tendered and admitted into evidence without objection.

22. In addition and also without objection the following documents were admitted into evidence:

- a. Map marked with locations of 30 licensed premises, all of which trade with a late night authority within 500 m of the proposed premises
- b. Records of disciplinary action taken against the Babylon Berlin licensee in 2019 and 2023 (as described at paragraph 16 above)
- c. Sketch of proposed location of CCTV cameras
- d. Affidavit of Acting Commander James O'Brien, 23 May 2024
- e. Video surveillance footage of two late night disturbances in the vicinity of the proposed premises.

23. The Commission heard oral evidence, from Mr Mulga, Ms Bullen, Mr Gardiner and Acting Commander O'Brien, who were all cross-examined.

24. Mr Mulga's evidence included the following testimony:

- a. The container bar concept is new to Darwin, but increasingly popular down south and abroad, and well-suited to Darwin dry season conditions.
- b. The venue will accommodate up to about 300 patrons, subject to regulatory certification.
- c. The applicant has installed a semi-permanent ablution block in the carpark with four pans and four basins. There are also communal toilet facilities in the adjoining main building with five pans, two urinals and three basins.
- d. The premises are secured with 2 metre high fencing along Austin Lane and Spain Place, and an electronically operated gate accessible to approved users of the car park. Crowd controllers will be engaged as required, depending on the number of patrons.
- e. Further planning approval is required due to changes in the design of the premises.
- f. The applicant does not intend to open the premises until the 2025 dry season.

- g. Although the applicant does not intend to operate the premises seven days a week, and to usually open from around 17:00, it seeks a licence with earlier opening times to allow for the catering of special events.
- h. The plumbing work involved in installing the new toilet block has been certified.
- i. Babylon Berlin next door has operated for six years without attracting any noise complaints.
- j. If the premises are required to close at midnight, no patrons will enter the premises after 23:30.

25. Ms Bullen gave evidence that Stone House can accommodate up to 70 patrons in its main area, 40 in its tasting room and 80 in the al fresco garden area.

26. Mr Gardiner expressed doubt that the premises' stormwater drains were certified.

27. The Commission summarises Acting Commander O'Brien's evidence as follows:

- a. Based on his 29 years of experience as an NT Police officer, including as Superintendent of the Darwin Division, in his opinion the issue of a late night authority to the applicant has the potential to increase the already high levels of late night alcohol-fuelled violence and anti-social behaviour in the Darwin CBD.
- b. In his experience, assaults in the Darwin CBD, particularly after midnight, are usually alcohol-related.
- c. The Northern Territory Alcohol Policies and Legislation Review Final Report (2017) (**the Riley Review**) found that research shows that late night trading venues are contributors to alcohol related anti-social behaviour and alcohol-fuelled violence.
- d. Due to the repurposing of the Darwin City watchhouse as a gaol, any person apprehended by police in the Darwin CBD has to be taken to the Palmerston watchhouse 20 km away, which prevents the apprehending officers from maintaining patrols in the Darwin CBD for about an hour and a half.
- e. There are already five licensed late night premises in the immediate vicinity of Austin Lane. An additional venue with a potentially large number of patrons will further stretch police resources, which are already stretched.

- f. From June 2019 to November 2023, 80% to 85% of the assaults and disturbances between midnight and 02:00 in the Darwin CBD were recorded as being on Mitchell St or at Mitchell St venues. The remaining 15% to 20% were recorded as being on streets and at venues adjacent to Austin Lane.
  - g. Police have recorded 13 incidents in Austin Lane in 2024 to date, none of which were classed as “disturbances”. There is no CCTV footage of alcohol-related incidents in Austin Lane.
  - h. There is a permanent CCTV camera monitoring the corner of Edmunds St and Austin Lane.
28. At the conclusion of the first day of the hearing the Commission indicated that it would be assisted by further documentary evidence from the applicant, and adjourned the hearing indefinitely to provide Mr Mulga with an opportunity to provide additional material.
29. On 9 October 2024, having been informed by Mr Mulga that he had provided all the additional material the applicant sought to rely on, the Commission reconvened the hearing. On this occasion, Stone House, which had already given its evidence and made its submissions, elected not to attend. NT Police were represented by Mr Crean of counsel.
30. The Commission received into evidence further documents, some of which were admitted on a confidential or redacted basis to protect commercial-in-confidence information, including:
- a. Building permit for 33 Cavanagh Street, Darwin, NT certified by Peter Dounas, 8 November 2023
  - b. Carpark and container facility stormwater management plan, approved by the City of Darwin, 15 May 2024
  - c. Lease for 33 Cavanagh Street, Darwin, NT from Gwelo Investments Pty Ltd to Northern Wines Pty Ltd, 7 March 2016
  - d. Environmental Noise Assessment, 27 May 2024
  - e. Email from Mr Mulga, 23 September 2024, with additional submissions and evidence
  - f. Smoking area plan



- g. Financial statements for Montes Lounge Darwin Pty Ltd for the 2023/2024 financial year
- h. Photograph of food van and Mexican style menu for “El Corazón”
- i. Food and beverage plan
- j. Amended site plan and concept drawing for proposed container bar
- k. Development Consent Authority Variation of Conditions, DP20/0077B, 16 August 2024
- l. Application to register a food business
- m. Registration of business name: The Hot Box Darwin, 22 August 2024
- n. Equifax report for Montes Lounge Darwin Pty Ltd, 30 September 2024
- o. ASIC Company Statement for Montes Lounge Darwin Pty Ltd, 6 August 2024
- p. Accountant’s letter certifying financial stability of Montes Lounge Darwin Pty Ltd, 4 October 2024
- q. Projected budget for The Hot Box Darwin for 2025 and 2026

31. As noted above, during the five months between the beginning and the end of the hearing, the applicant decided to change the name of the venue. Moreover, during this period Mr Mulga also decided to substitute the original applicant, Mulga Venture Pty Ltd, with Montes Lounge Darwin Pty Ltd, another company directed and controlled by him. The Commission considers this below.

32. At the conclusion of the hearing the Commission reserved its decision.

### **ASSESSMENT OF THE APPLICATION**

33. In accordance with s 59 of the Act, the Commission has considered:

- a. the objections to the application and the applicant’s responses;
- b. the applicant's affidavit required by s 54;
- c. 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;
- d. the financial stability and business reputation of the body corporate;

- e. the general reputation and character of the secretary and executive officers of the body corporate;
- f. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;

34. 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.

### **An irregular but valid application**

35. The Commission finds that the applicant complies with s 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.

36. The proposed licensee is Montes Lounge Darwin Pty Ltd. Mr Mulga is the sole director. The sole shareholder is the previously proposed licensee, Mulga Venture Pty Ltd, of which in turn Mr Mulga is the sole director and majority shareholder.

37. Mr Mulga explained to the Commission that on the advice of his accountant he decided to substitute one of the companies he controls for another as the applicant, in order to more simply track the financial performance of Mr Mulga's various enterprises. The Commission considers that this explanation is satisfactory. Neither the Director or the objectors raised concerns about the change in applicants.

38. The scheme of Part 3 Division 4 ("Issuing licences and authorities") of the Act makes no provision for changing horses in mid-stream as Mr Mulga has done in this instance. The application is, accordingly, irregular.

39. In *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; 194 CLR 355, the plurality stated:<sup>5</sup>

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.

40. The Commission is satisfied that the irregularity of this application is not such as to render it invalid. Both Montes Lounge Darwin Pty Ltd and Mulga Venture Pty Ltd are substantially owned, directed and controlled by the same person, namely Mr Mulga. A component of the primary purpose of the Act is to contribute "to the responsible development of the liquor industry and associated

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<sup>5</sup> At [91], per McHugh, Gummow, Kirby and Hayne JJ

businesses in the Territory”. The Commission does not discern a legislative purpose that persons in Mr Mulga’s position be required to go back to square one and lodge a second substantially identical application from scratch. That said, the Commission encourages entrepreneurs to definitively settle the corporate identity of the proposed licensee before lodging an application for a liquor licence.

41. The Equifax report for the applicant that was received into evidence included a notation “Strike-Off Action In Progress”. Mr Mulga was unable to explain the significance of this notation, and accordingly the Commission has fixed the condition set out at paragraph 7(a) above.
42. Subject to compliance with that condition, the Commission is satisfied that the applicant is a valid applicant and that the application is valid.

### **The Stone House objection**

43. It is not in dispute that Stone House has standing as an objector, and the Commission considers that the grounds of its objection fall within the scope afforded by s 61(2) of the Act.
44. Mr Mulga’s response to the Stone House objection was dismissive in tone, and focussed on the objector’s status as a tenant of one of Mr Mulga’s companies, and his unresolved commercial dispute with the objector over its occupation and use under licence of the al fresco garden area within the carpark in which the proposed premises will operate.
45. The weight the Commission gives to the Stone House objection is somewhat reduced by the circumstance that the objector is, in effect, both a competitor and a tenant of the applicant, with a private commercial interest in being able to continue to ply its trade without the potential disruption of The Hot Box on its back doorstep. The Commission, by contrast, focusses its assessment of the application through the lens of the public interest, rather than the private interest of either the applicant or the licensee of a neighbouring venue.
46. Having considered the evidence and submissions of the objector and the applicant, the Commission summarises and remarks on the issues raised by Stone House as follows:
  - a. Previous licensed special events in the carpark run by Mr Mulga have exceeded the capacity of the communal toilets on the premises (which are maintained by Stone House).

The applicant has recently installed a toilet block which, in combination with the existing communal toilets in the adjoining building, appear to be sufficient to accommodate the toileting needs of the anticipated patron numbers.

b. Overconsumption of liquor

Mr Mulga's compliance record over many years and venues, although somewhat chequered, satisfies the Commission that his business has the capacity to observe Responsible Service of Alcohol principles and practices.

c. Noise disturbance

The Commission has determined to impose noise conditions substantially in accordance with the relevant regulatory standards, as will be discussed below.

d. Public disorder and lack of safety

The licence will be subject to the condition prescribed by reg 59 of the Regulations, requiring the employment or hire of at least two licensed crowd controllers after midnight (and more, if there are more than 100 patrons on the premises).

e. Lack of adequate fencing between the licensed premises and the carpark

The Commission accepts Mr Mulga's evidence that in addition to the two metre high fence around the perimeter of the carpark, there will be a 1.3 metre high fence between the licensed premises and the carpark.

f. Ratio of existing licences in the community

There are 30 liquor licences within a 500 metre radius of the proposed premises. In the view of the Commission, an extra licence, based on established scientific evidence, will only lead to a relatively small increase in both the number of drinkers and the amount of liquor consumed in this entertainment and tourism precinct.

g. Impairment of the character of this sophisticated precinct and disruption to the quiet enjoyment of Stone House patrons in the al fresco garden area.

The Commission expects that the establishment of The Hot Box is likely to affect the character of the Austin Lane precinct by making it less sedate and secluded, and more energetic and vibrant. The Commission does not find that this change is undesirable.

### **The NT Police objection**

47. NT Police did not object to the application as a whole, but did object to the issue of a late night authority. As Acting Commander O'Brien said in evidence, referring to the incidence of matters requiring police attendance in the Darwin CBD, "after midnight the stats go through the roof... the more venues and the

longer the hours, the more harm". The Commission has considered Acting Commander's evidence as previously summarised.

48. Mr Mulga complained that the police response was inconsistent: they had not objected to a late night authority being issued to Bar Kokomo. In reply, Ms Thompson explained that in contrast to The Hot Box, Bar Kokomo is a small bar (the capacity of which is limited by the regulations to 100 persons) which had previously held a restaurant authority, and is not in the immediate vicinity of Mayberry, which police have identified as being a large and well patronised high-risk late night venue.

49. NT Police submitted that having regard to the prevalence of other nearby venues, the benefits of allowing The Hot Box to trade after midnight are small. Police also submitted that conferral of a late night authority would be unlikely to increase tourism, and would only marginally contribute to employment.

50. The Commission summarises the applicant's response to the NT Police objection as follows:

- a. In a precinct with so many late night venues, one more will not lead to a significant increase in late-night drinking or consequential harm.
- b. An open air venue is safer than an indoor venue, because activities within it are more visible, including to passing police patrols.
- c. NT Police data shows that late night trouble in the Darwin CBD is concentrated in Mitchell St and Mayberrys. The Hot Box will attract patrons away from those venues, and thereby reduce the risk of trouble.
- d. Other enterprises operated by Mr Mulga have demonstrated his capacity to establish and maintain innovative, well-run, popular and safe licensed venues, including venues that operate after midnight.
- e. The premises will need its post-midnight trade to be a commercially viable venue, because if it has to close at midnight it will miss out on a lot of business.

51. Having considered the evidence and submissions of NT Police and the applicant, the Commission makes the following observations:

- a. NT Police refer to and rely on research from both Australia and abroad showing that reducing the hours at which on-premise outlets can sell alcohol late at night can substantially reduce rates of violence.<sup>6</sup> However, the bulk of evidence principally concerns restrictions on trading hours across the board in particular precincts, and not the effects

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<sup>6</sup> For example, Wilkinson C, Livingston M, Room R., "Impacts of changes to trading hours of liquor licences on alcohol-related harm: a systematic review 2005-2015" *Public Health Res Pract.* 2016 26(4), 2641644

of adding one more late-night licence in a precinct already densely populated by late-night venues.

- b. Although police have recorded 13 incidents in Austin Lane in 2024 to date, none of them was classified as a “disturbance”, and although there is CCTV surveillance of Austin Lane, no alcohol-related events in Austin Lane have been captured by CCTV. 80% to 85% of the post-midnight alcohol-fuelled violence and disorder in the Darwin CBD appears to be associated with Mitchell St venues.
- c. The Commission attaches little weight to Mr Mulga’s submission that late-night trading will be important for the viability of the proposed business. As stated above, the Commission is more concerned with the public interest than private interests.

### **The applicant’s associates**

52. Section 54 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. Following the conclusion of the hearing, Mr Mulga supplied the Commission with an affidavit dated 16 October 2024 to address this requirement. The Commission is satisfied that the applicant has complied with the disclosure requirements of s 54.

### **The suitability of the applicant’s premises**

53. A salient feature of the application is that neither food nor beverages will be served from within a building, but from a truck and a shipping container respectively. This is unusual for the Territory, but not entirely unprecedented, and is increasingly common in metropolitan hospitality venues both in Australia and elsewhere.

54. The Commission is satisfied that the applicant has obtained development approval for the premises as planned, and has also obtained approval for the plumbing and drainage facilities it has installed.

55. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

### **The financial stability, general reputation and character of the body corporate**

56. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable. The applicant has provided adequate documentation regarding its operations, activities, financial circumstances and plans.

## **The general reputation and character of the applicant's secretary and executive officers**

57. Mr Mulga is the applicant's secretary and only executive officer. The Commission assesses his general reputation and character to be satisfactory.

## **Whether the applicant is a fit and proper person to hold a licence**

58. The Commission assesses the applicant to be a fit and proper person to hold a licence.

## **Whether the licensee's nominee is a fit and proper person to hold a licence**

59. The applicant has nominated Mr Mulga as the licence nominee. The Commission is satisfied that Mr Mulga, who is well known to the Commission and the Director, is a fit and proper person to hold a liquor licence.

## **Public notice and consultation**

60. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with s 57 of the Act. This is despite the fact that there was some delay in posting notice of the application on the Director's website, and a complaint by Stone House that, firstly, the green sign posted at the premises was insufficiently conspicuous, and secondly, Mr Mulga had not consulted specifically or directly with Ms Bullen about the application.

61. In relation to the placement of the green sign, when this issue was raised by Stone House, a second sign was posted. The Director did not require the applicant to consult directly or specifically with its neighbours, and it was open to Mr Mulga to choose not to do so. In any event, Stone House became aware of the application, was given time in which to make an objection, attended the first day of the hearing, called evidence and cross-examined Mr Mulga. In the view of the Commission, Stone House was not ultimately prejudiced by the manner in which the public was notified of the application.

## **Whether issuing the licence is in the public interest**

62. To determine whether the issue of the license is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out at s 49(2) of the Act:

- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) ensuring liquor is 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 practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

63. Having considered each of these objectives, the Commission is satisfied that it is in the public interest to issue the licence. The Commission has particular regard to the increased recreational benefits it expects The Hot Box will bring. The venue is located at the heart of the "Austin Lane Activation Node", a project supported by the Northern Territory Government and the City of Darwin, which have invested significant amounts to upgrade these pedestrian thoroughfares, install street art and promote their use for markets, functions, festival events and as a tourism, entertainment and hospitality destination.

**Whether the issue of the licence will have a significant adverse impact on the community**

64. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must have consider the matters set out at s 49(3) of the Act:

- (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 s 50;<sup>7</sup>
- (j) any other matter prescribed by regulation.<sup>8</sup>

65. As set out above, the Commission has considered the competing submissions of NT Police and Mr Mulga regarding the anticipated effect of its proposed late night trading.

66. The Commission was concerned by the evidence of NT Police that persons in the Darwin CBD who are apprehended by police have to be taken to a watchhouse 20 km away, and that as a result apprehending officers are taken “off-line” for a lengthy period. With some hesitation, the Commission accepts that this is relevant to its consideration of s 49(3)(f), on the basis that the service provided by the police can properly be considered to be a social amenity. Accordingly, the Commission is not satisfied that The Hot Box will not have an adverse effect on social amenities. To put this more plainly, the Commission finds that there is a real possibility that already stretched police services will become more stretched by the late night operation of The Hot Box.

67. It is readily foreseeable that some Hot Box patrons will drink too much, and that harm will ensue. Mr Mulga has argued that if those patrons don’t drink at the applicant’s establishment, there are numerous other late night liquor licensees nearby for patrons to quench their thirst for alcohol. The Commission accepts that this will somewhat mitigate the risk of harm from the excessive consumption of liquor resulting from the operation of The Hot Box. The Commission has imposed conditions that further mitigate this risk by limiting late night trading at the premises to two nights a week and by imposing a lockout at 00:30.

68. The Commission is not satisfied that The Hot Box will not lead to an increased risk of harm from the excessive consumption of liquor, but it is satisfied that the increased risk will be modest, and that the risk will be adequately mitigated by the licence conditions the Commission has determined to impose, a course that is facilitated by s 49(4) of the Act.

69. Similarly, the Commission is not satisfied that the operation of the licence will cause no annoyance, disturbance or inconvenience to persons who reside or work nearby. However, the Commission is satisfied that, with the noise mitigation conditions it has determined to impose, any such annoyance, disturbance or inconvenience will not be so undue as to constitute a significant adverse impact on the community. The Commission notes that the premises are located in a tourism and hospitality precinct, and that the closest residential

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<sup>7</sup> The Commission considers that no such guidelines are currently in force.

<sup>8</sup> The Commission notes there are no such “other” matters prescribed by regulation.

accommodation are the short-stay Darwin City Chic@Kube Apartments at 39 Cavenagh Street.

70. Having considered all of the s 49(3) matters, the Commission is satisfied that the issue of the licence with a late night authority will not have a significant adverse impact on the community.
71. Having considered all of these matters, the Commission is satisfied, in accordance with s 49 of the Act, 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.

### **Conditions**

72. The Commission has determined to fix the additional conditions set out at paragraph 5 above.
73. In order to mitigate the risks of late night trading adverted to by NT Police, the Commission has determined to impose a “lockout”, the intended effect of which is to prevent the number of patrons at the premises accumulating after 00:30.
74. The Commission has imposed a noise mitigation condition based in large part on the acoustic report commissioned by the applicant and provided to the Commission, and also with reference to the *Northern Territory Noise Management Framework Guideline* published by the Northern Territory Environment Protection Authority. The acoustic report recommended that the licensee install a noise limiter device on its sound system, a course Mr Mulga opposed. The Commission accepts Mr Mulga’s submission that this measure is unnecessary. The condition the Commission has imposed does however leave the door open for the Director to require the licensee to install a noise limiting device if the Director considers that this has become a reasonable requirement. The Commission expects the Director to take this measure if investigations show that the specified noise limit the Commission has fixed is being breached.
75. Finally, the Commission has imposed a condition requiring the licensee to satisfy the Director of various matters before trading will be permitted to commence under the licence.

### **The objects of the Act**

76. 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.

77. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

78. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

### **Extension of time**

79. Section 60(2)(b) of the Act provides that the Commission must make a decision whether to issue the licence and authority within 28 days of the expiry of the 14 day period allowed for the applicant to respond to objections lodged with the Director after public notification of the application. In this case, the response period expired on 24 April 2024. However, the Commission was unable to make a decision within 28 days of that date, primarily because the applicant did not provide all of the material required by the Commission to properly assess the application until October 2024. The Commission scheduled the application to complete the hearing at the first reasonably available opportunity. The Commission considers that the applicant was not prejudiced by the delay, as it does not intend to commence trade until the commencement of the dry season in about April 2025.

80. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision until the date of this decision notice.

### **NOTICE OF RIGHTS**

81. Section 31(1) read with s 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal. Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

82. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director, the licensee, Northern Wines Pty Ltd and NT Police.



Russell Goldflam

CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
21 October 2024

On behalf of Commissioners Goldflam, Carson and Stedman