

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Application for the grant of a licence or authority
APPLICANT:	Top End Lodges Pty Ltd
PROPOSED PREMISES:	Finniss River Lodge
OBJECTORS:	Nil
LEGISLATION:	<i>Liquor Act 2019</i> - Part 3 and 4
DECISION OF:	Manager Licensing – Liquor, Gambling & Racing
DATE OF DECISION:	7 January 2022

BACKGROUND

1. Pursuant to section 52 of the *Liquor Act 2019* (the Act), Mr Andrew Giles of HWL Ebsworth as counsel for the applicant Top End Lodges Pty Ltd, lodged an application for a licence with a **special venture authority** and **lodging authority** on 1 December 2021, with the fee being paid on 17 December 2021.

CURRENT SITUATION

2. The application is for a licence to allow for the sale of liquor to patrons at the applicant's premises, the Finniss River Lodge located across three separate titles along Fog Bay Road and Zuleika Road being, NT Portions 3191, 4899 and 4015, Rakula in the Territory.
3. The premises are presently under construction and will be a high-end, luxury escape in the wilderness of the Northern Territory on the Finniss River, approximately 130km south west of Darwin. The applicant submits the lodge "...will offer the highest standards of luxury and indulgence combined with once in a lifetime experiences and adventure".
4. Access to the premises is by road or helicopter.
5. The premises are a working cattle station and guests will experience station life, wild adventures, airboat rides, barramundi fishing, and Aboriginal cultural tours, with a focus on experiential and immersive activities.

6. The applicant has provided the material prescribed in section 52 of the Act including:
 - an affidavit made under section 54;
 - a draft notice of the application;
 - evidence necessary to satisfy the onus specified in section 51;
 - a summary of the evidence suitable for publication; and
 - the application fee.
7. The applicant seeks the hours of operation for each authority as prescribed in the *Liquor Regulations 2019*, for 365 days of the year.
8. A comprehensive range of liquor and non-alcoholic products will be provided in conjunction with food and other catering services, including mid and low-strength alcohol.
9. The provision of liquor being ancillary and complimentary to the primary business of the tours and accommodation facilities.

NOTIFICATIONS, PUBLIC NOTICES AND OBJECTIONS

10. Amendments to the Act in November 2021 inserted section 57(2A) which provides the Director with a discretion to exempt an applicant from the public notice requirements if the Director is of the opinion that the application discloses no public interest issues.
11. Accompanying the application was a request by Mr Giles to exempt the applicant from the public notice requirements in pursuance of section 57(2A) of the Act.
12. I reviewed the materials provided and was satisfied the application did not disclose sufficient public interest to warrant public notices to be issued.
13. Accordingly, I exercised my discretion to exempt the applicant as requested, but noting the notification provisions prescribed in section 56(4) of the Act.
14. In pursuance of section 56(4) of the Act the application was notified to the Commissioner of Police and the Chief Executive of the Department of Health (Health).
15. The area does not fall within a local council area and therefore no notification could be provided to a relevant Chief Executive Officer.
16. Although not a statutory requirement, as is practice, notification of the application was sent to the Northern Territory Fire and Rescue Service.

17. Police did not provide a response to the notification.
18. On behalf of Health, Mr David Scholz, Director – Clinical Policy and Planning, Mental Health, Alcohol and Other Drugs Branch provided the following comment”

“There is not enough detail in the liquor application to comment on potential health impact.

The smoking management plan appears to be compliant with legislation, although need to have two exempt areas in a small lodge is questioned. Limiting it to one area would be positive from a health perspective.”

19. Station Officer Matthew Francis of NTFRS advised they would not be in a position to comment on the application, however requested the applicant contact them upon completion of construction to arrange for the necessary certifications.
20. These comments were provided to Mr Giles who responded on 21 December 2021 noting the following in relation to the comments from Health:

“The Application comprehensively addresses the matters which need to be considered by the Director of Liquor Licensing when determining whether the Application is in the public interest. We understand that the Department's comments relate only to the form of notice rather than the comprehensive nature of the Application. Given that the Department need only be given notice (not a copy of the Application), we submit that this comment should be disregarded”.

We note that the Department acknowledges that the Smoking Management Plan is compliant. We submit that this comment should otherwise can be disregarded as there is no factual basis to support the statement that "limiting it to one area would be positive from a health perspective".

21. With regards to the comments by NTFRS, Mr Giles submitted:

“We respond to the overall comment by directing the Director's attention to the fact that the Premises is currently under construction and the Applicant has sought that the Application be approved in accordance with section 60(5) of the *Liquor Act 2019* (NT) whereby trade under the liquor licence shall not commence until such time as the Applicant has obtained all of the necessary building, planning and safety approvals required by law. This includes any necessary approvals from Fire Safety Compliance. We submit that this comment should be disregarded at this point in time.”

APPLICATION

22. The applicant has provided a comprehensive suite of materials in support of the application including all materials prescribed by the Act.
23. The authorities sought by the applicant are in pursuance of section 47(1)(f) and section 47(1)(i) of the Act.
24. The determination of applications under section 60(1) of the Act has been conditionally delegated by the Liquor Commission to the Director of Liquor Licensing. The limitation including the authorities which may be granted under delegation being a **special venture authority** and **lodging authority**.
25. The Director further delegated these powers to the Manager Licensing – Liquor, Gambling and Racing by instrument dated 29 November 2021.

DISCLOSURE OF PERSONS

26. Section 54 of the Act requires the applicant to make an affidavit disclosing each person who, if the licence is issued, may:
 - (a) be able to influence the applicant; or
 - (b) expect a direct or indirect benefit from the applicant.
27. Mr Robert Venturin is the Sole Director and Company Secretary and has sought to be the nominee for the premises.
28. I am satisfied with the materials provided by the applicant in relation to this requirement.

RESULTS OF INVESTIGATION

29. Section 58 of the Act enables the Director to conduct an investigation into an application as considered appropriate. No materials have been discovered or provided to indicate there are any adverse matters in relation to this application.
30. A fulsome Business Plan was provided detailing the exclusive nature of the premises and services to be offered. Although remote and a working cattle station, the Lodge will be luxury accommodation and services, individually tailored to the guest. This includes meeting with the chef on arrival to discuss their culinary likes and dislikes, adding to the tailored nature of the business.

FINANCIAL STABILITY

31. I am satisfied with the materials provided of the financial stability and business reputation of the applicant.

FIT AND PROPER PERSON

32. Section 59(3)(g)(i) of the Act requires the decision maker to consider whether the applicant and as the applicant is a body corporate, their nominated licensee, are fit and proper to hold a licence.
33. The applicant provided materials in support of this and Mr Robert Venturin is to be the licensee's nominee in pursuance of section 53(3) of the Act.
34. Having considered the materials provided I am satisfied the applicant and Mr Venturin are fit and proper persons to hold a licence and act as nominee.

PUBLIC INTEREST AND COMMUNITY IMPACT

35. Section 49 of the Act requires the decision maker to be satisfied the applicant is fit and proper, the licence or authority is in the public interest and will not have a significant adverse impact on the community.
36. The first branch of the requirement has already been addressed.
37. It remains to consider whether the application is in the public interest, to do so consideration must be given to the objectives prescribed in section 49(2) of the Act which include:
 - a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
 - b. ensuring liquor is to be sold, supplied, served and consumed on or in licensed premises in a responsible manner;
 - c. safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
 - d. protecting the safety, health and welfare of people who use licensed premises;
 - e. increasing cultural, recreational, employment or tourism benefits for the local community area;
 - f. promoting compliance with this Act and other relevant laws of the Territory;
 - g. ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
 - h. preventing the giving of credit in sales of liquor to people;
 - i. preventing the practices that encourage irresponsible drinking;
 - j. reducing or limiting increases in anti-social behaviour.

38. In determining whether there would be a “significant adverse impact on the community” section 49(3) of the Act prescribes the decision maker “must consider the following”:
- a. the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
 - b. the geographic area that would be affected;
 - c. the risk of harm from the excessive or inappropriate consumption of liquor;
 - d. the people or community who would be affected;
 - e. the effect on culture, recreation, employment and tourism;
 - f. the effect on social amenities and public health;
 - g. the ratio of existing liquor licences and authorities in the community to the population of the community;
 - h. the effect of the volume of liquor sales on the community;
 - i. the community impact assessment guidelines issued under section 50;
 - j. any other matter prescribed by regulation.
39. The Act is clear in that the applicant bears the onus of satisfying the decision maker of the relevant matters, irrespective of whether no objections were received as is the case in this matter.
40. In relation to the issue of the community impact and public interest, those matters have previously been published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the *Liquor Act 2019*, and are taken to be community impact assessment guidelines issued under section 50 of the Act.
41. Those matters remain as previously published in numerous decisions by the Liquor Commission and I am guided by these decisions.

CONSIDERATION CRITERIA

42. Consideration must be made of the applicant’s affidavit, the results of any investigation, objections and responses, the suitability of the premises along with the appropriateness of the applicant to be a licensee.

43. With regards to the matters raised in section 49(2) of the Act, I note the following:

- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised:

I am satisfied the provision of liquor is complementary to the overall tourism experience associated with the proposal and is not the significant attractor.

The nature of the business, including the price point would be a disincentive to persons seeking premises to consume liquor in a harmful or inappropriate manner.

- b. ensuring liquor is to be sold, supplied, served and consumed, on or in licensed premises in a responsible manner:

Having considered all the material, it is unlikely any liquor sold, supplied, served and consumed will be done so in an irresponsible manner. Complementing the facilities will be a bar, dining, kitchen and lounge area. The accommodation package includes meals and drinks, being high-quality Australian wines and boutique beers and spirits. Despite the inclusive package nature of the operation, the licensee will remain obligated to comply with the provisions of the Act in relation to service and prohibitions.

As written previously, the consumption of liquor will only be complimentary to the other services provided by the licensee.

- c. safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises:

The remote location of the premises makes it improbable that public order and safety are likely to be jeopardised by the operation of the licence, also the licensee has prepared a suitable business plan including processes to safeguard against harm.

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

The policies developed by the applicant applicable to the premises are considered to adequately protect the safety, health and welfare of people who are likely to use the licensed premises during its hours of operation.

- e. increasing cultural, recreational, employment or tourism benefits for the local community area:

The primary intention of the premises is to provide recreational, tourism and employment benefits associated with this venture.

- f. promoting compliance with this Act and other relevant laws of the Territory:

There are no materials provided which would suggest the applicant will not comply with the Act and any other relevant laws.

With reference to the comments by Health and the response of Mr Giles, the applicant complies with the requirements of the *Tobacco Control Act* and whilst I am not with Mr Giles in disregarding Mr Scholz's comments, I am satisfied the open-air, expansive nature of the premises and the provisions of that Act provide no impediment to having more than one smoking area.

Likewise, I do not disregard the comments by the NTFRS however note the provisions of section 60(5) of the Act as raised by Mr Giles.

- g. ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business:

I am satisfied the applicant will appropriately manage and supervise service staff.

- h. preventing the giving of credit in sales of liquor to people:

No issues have been raised to suggest there is any concern in relation to this objective.

- i. preventing the practices that encourage irresponsible drinking:

No issues have been raised to suggest there is any concern in relation to this objective.

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

No issues have been raised to suggest there is any concern in relation to this objective.

44. Turning to the matters under section 49(3):

- a. the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school:

There are no materials to suggest there is a significant risk of undue offence, annoyance, disturbance or inconvenience likely to be caused by the granting of these authorities.

- b. the geographic area that would be affected:

There are no other residents within the immediate vicinity of the premises and therefore no adverse impact will result from this licence.

- c. the risk of harm from the excessive or inappropriate consumption of liquor:

As previously indicated, there is no materials to suggest there will be excessive consumption of liquor.

- d. the people or community who would be affected:

Given the remote location of the premises it is unlikely there will be significant adverse impact on the community by the granting of these authorities.

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

As previously indicated, there will be positive recreation, employment and tourism benefits associated with this operation.

- f. the effect on social amenities and public health:

It is unlikely there will be any significant adverse impact on the social amenities and public health by the granting of this licence to the applicant.

- g. the ratio of existing liquor licences and authorities in the community to the population of the community:

There is one other licensed premises loosely within the vicinity of these premises, that being the Top End Safari Camp, a similar venture, similarly licensed. Both premises are very remote and isolated and will not impinge on each other's businesses. It is intended both operations will work collaboratively in providing the adventure tourism aspect of the businesses.

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

The minimal nature of the operation is unlikely to significantly increase the volume of liquor sales in the wider Darwin regional area.

- i. the community impact assessment guidelines issued under section 50:

These have been considered and referred to earlier in this notice.

45. Section 85 of the Act previously required a term of the licence to be fixed and it is to remain force until it expires or is abandoned, surrendered or otherwise dealt with. That provision has also been amended to remove the requirement for a term to be stated. A licence simply remains in force until it expires or is abandoned, surrendered, suspended or cancelled.

46. Having regards to the foregoing, I am satisfied that the issuing of the licence as sought is in the public interest and will not have an adverse effect on the community.

DECISION

47. On the basis of the information provided in relation to this matter and in accordance with section 48 of the Act, I have determined to issue a licence to Top End Lodges Pty Ltd.

48. The licence is to be issued with lodging and special venture authorities and in accordance with the conditions set out in Division 19 of the *Liquor Regulations 2019*.

49. I impose an additional condition in pursuance of section 60(5)(a) of the Act prohibiting the commencement of trade at the premises under this licence, until such time as the licensee has provided to the Director or a delegate, evidence of approvals from the NTFRS and a certificate of occupancy or other certification as required under the *Building Act 1993* (NT), and the Director or a delegate provide written approval to do so.

REVIEW OF DECISION

50. Section 27 of the Act provides for the applicant or a person who made a submission the subject of the decision, to seek a review of a decision made by the delegate of the Director.
51. The Director delegated the determination of applications made under section 199 of the Act by instrument to the person from time to time holding, acting in or performing the duties of the position listed in the Schedule of that instrument. This decision was made by a person referred to in that schedule.
52. An application for review must be lodged with the Director within 28 days after written notice of the decision is given to the person and must be in the form approved by the Director, stating the grounds for the review and the facts relied on to establish the grounds.
53. Accordingly, the affected persons in relation to this decision are Top End Lodges Pty Ltd, the Department of Health and the NTFRS.



Mark Wood
Manager Licensing - Liquor, Gambling & Racing
Delegate of the Director of Liquor Licensing

7 January 2021