

Director-General of Licensing

Decision Notice

Matter:	Application for the grant of a liquor licence
Proposed Premises:	The Groove Train Casuarina Square Unit 369, 247 Casuarina Drive Casuarina NT
Applicant:	Groove NT Pty Ltd
Proposed Nominee:	Mr Sohilali Aghariya
Objectors:	City of Darwin
Legislation:	Parts III and IV of the <i>Liquor Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	13 July 2016

Background

1. On 1 February 2016 Mr Sohilali Aghariya submitted an application pursuant to section 26 of the *Liquor Act* (“the Act”) to the Director-General of Licensing (“the Director-General”) on behalf of Groove NT Pty Ltd (“the Applicant”) seeking a restaurant liquor licence for premises known as The Groove Train (“the Restaurant”).
2. The directors of the Applicant are Mr Sohilali Aghariya and Mr David Robinson. The Restaurant is located within the Casuarina Square shopping centre in the recently constructed entertainment precinct known as The Quarter. The new precinct features twelve restaurants and food outlets, including seven first to Darwin eateries with an outdoor playground, water play and civic space surrounded by large scale landscaping.

Current Situation

3. The Applicant seeks a restaurant liquor licence that authorises the service of alcohol without the requirement to purchase a meal. The Groove Train is a franchise business which currently operates from 24 locations across Australia and promotes itself as a family friendly restaurant offering a varied menu for breakfast, lunch and dinner with a strong focus on selling coffee. The Restaurant will provide dine-in and take away food service and in the evening the café/restaurant will change into a casual restaurant bar.
4. In accordance with section 26(3) of the Act, the Applicant has addressed the criteria relevant to the application, as set out in section 6(2) of the Act, and submits that the grant of the licence will be in the public interest. Both directors of Groove NT Pty Ltd have sworn an affidavit, in accordance with section 26A of the Act, attesting that there are no other persons able to influence the conduct of the business under the liquor licence if the application is successful.

5. It is proposed that the Restaurant will open from 8.00 am in the morning for breakfast trade and the Applicant initially sought authorisation for alcohol sales from 11.00 am to 11.59 pm seven days per week. The Applicant subsequently amended the application to commence trade in the sale of alcohol from 11:30 am in order to bring the Restaurant's alcohol trading hours in line with other restaurants in The Quarter and the area generally.

Advertising

6. The Application was advertised in the Northern Territory News on Wednesday 9 March and Friday 11 March 2016. The objection period expired on 16 April 2016 with one objection, lodged on behalf of City of Darwin, being received within the prescribed period.

Objection

7. On 24 March 2016, Ms Anna Malgorzewicz, General Manager, Community & Cultural Services, City of Darwin lodged an objection on behalf of Council. Council submit that the material lodged by the Applicant in support of the application are unclear as to whether the intention is to operate a restaurant or a bar and what area of business, food or alcohol, the premises intends to specialise in.
8. In addition Council raises concerns regarding the location of the Restaurant where patrons will be able to stand and consume alcohol adjacent to a children's playground and water park. In Council's submission the Restaurant is not an appropriate location for the sale of liquor without the requirement to purchase a meal and notes that The Quarter is promoted as a family friendly environment. Council submits that allowing patrons to consume alcohol without a meal, combined with allowing patrons to stand in the bar area from 11:00 am may adversely affect the amenity of the neighbourhood and health and or the education, public safety or social conditions in the community.
9. The objection was lodged within the prescribed period and City of Darwin has standing to lodge an objection to a liquor licence application within the Darwin local government area. The grounds on which the objection is based are valid in terms of section 47F(2) of the Act.

Applicant's Response to the Objection

10. By letter dated 26 April 2016 Mr David Robinson, one of the Directors of the Applicant, responded to the objection lodged on behalf of City of Darwin. Mr Robinson submits that the objection indicates that there is a misunderstanding of the use of the word "bar" in the materials supporting the application. He states that words "counter bar" would have been a better term to use, emphasising that the business will operate as a casual café bar restaurant.
11. Mr Robinson emphasises in his response that a major focus will be the food and coffee side of the business with the sale of alcohol being a secondary focus but presenting an opportunity the Restaurant requires to be competitive with the other restaurants located in The Quarter. Mr Robinson states that The Groove Train will be a casual café bar restaurant as opposed to a restaurant with a bar. He also notes that his existing licensed premises, The Coffee Club Darwin Waterfront and Hot Tamale, have licence conditions authorising the sale of alcohol without a meal and whilst that is a secondary part of those businesses it is a vital one that allows those premises to compete on a level playing field with the other restaurants situated at the Darwin Waterfront Precinct. Mr Robinson also notes that one of his competitors at the Casuarina Square location will be

Hog's Breath Café whose liquor licence authorises the sale of alcohol without the requirement to purchase a meal.

12. Mr Robinson states that the plans submitted with the application show a seated high bar/counter adjacent to the main service bar area. Patrons will be able to order meals while seated at the bar/counter, although the focus will be on table service in a traditional restaurant setting. Mr Robinson notes that the bar area is set back from the front of the restaurant and is raised from the front walkway, making it barely visible to members of the public, including children, using the water park and community areas.
13. Mr Robinson referred to the national income breakup for Groove Train franchises as clearly demonstrating that food is the key focus of the business model with alcohol sales contributing only 16% of the overall income of Groove Train restaurants located outside the Territory. Mr Robinson confirmed that the Applicant intends to operate a family friendly restaurant, not a pub. He reiterated that the concept of The Groove Train is family friendly restaurant with smoking on the premises prohibited.

Assessment of Objection

14. There is, in my opinion, no specific or identifiable risk that authorisation for the sale of alcohol without the requirement to purchase a meal will result per se in the Applicant conducting business as a tavern or hotel. Should the application be approved the licence issued will include conditions requiring the premises to trade as and appear as a restaurant. It is entirely a matter for the licensee to satisfy that requirement, regardless of the installation of an internal counter bar. I am not persuaded that a venue cannot trade as and appear as a restaurant simply because a small percentage of patrons elect not to consume a meal.
15. The building plans accompanying the application show that the Restaurant will include an L shaped bar/counter which is set back from the front of the building and has stools and table and chairs in front of it. The bar/counter area is approximately four metres in length and as such it would be difficult to have large numbers of patrons standing around at the bar, due to small size of the bar/counter and the furniture in front of it. Licensing Inspectors who conducted a site visit to the Restaurant report that visibility of the bar/counter from the children's play area will be very limited.
16. Mr Robinson's reference to the liquor licence attached to his Hot Tamale premises is of relevance. That restaurant holds a similar liquor licence to that applied for in this instance, namely a restaurant licence with authorisation for the sale of alcohol without the purchase of a meal (colloquially know as an "on-licence"). There were a number of objections to the grant of that licence on essentially the same basis as that of the City of Darwin in this instance. Namely that patrons would stand or sit at the bar drinking for hours at a time resulting in the premises operating as a de facto hotel or tavern and not as a restaurant.
17. To be frank, none of those concerns have materialised at Hot Tamale which has been in operation since 2012 and during that period the restaurant has not been subject to any adverse reports or disciplinary action in respect of irresponsible drinking or patron behaviour. Nor have the potential issues raised in the City of Darwin objection been evident at any of the many restaurants operating in the Darwin/Palmerston area with an "on-licence" condition.
18. I am not persuaded by the objection that Groove Train will become a drinking venue rather than a restaurant resulting in anti-social behaviour in the area simply because patrons will be able to enjoy a drink without consuming a meal. In any event the concerns in that regard, including those of the City of Darwin in this instance, can readily

be alleviated by including special licence conditions, which are in line with numerous existing restaurants with on-licence authority. Such conditions are:

- The concept of the premises will be a family friendly licensed restaurant providing quality food, beverages and service in a relaxed and casual atmosphere in the entertainment precinct of the major shopping centre in the Greater Darwin area;
- At all times the premises must have the appearance of a restaurant with the majority of patrons seated at traditional or communal dining tables; and
- There will be no advertising of the fact that alcohol may be purchased without a meal.

19. I am satisfied that the granting of a Restaurant Licence authorising the sale of alcohol without a meal, and incorporating the licence conditions outlined above, will ameliorate the concerns expressed on behalf of City of Darwin and achieve an appropriate balance between the mix of facilities, amenity and impact on visitors to Casuarina Square shopping centre. I am also satisfied that the type of licence applied for, with the Restaurant being located in an entertainment precinct incorporating numerous restaurants, is appropriate in order to allow The Groove Train to competitively vie for patronage against like premises, including the already licensed Hog's Breath Café, on a level playing field where equivalent licence conditions are in place.

Stakeholder Consultation

20. The NT Department of Health was invited to comment on the Application. On 21 March 2016, Ms Frances Pagdin, Director, Alcohol and Other Drugs, submitted a letter advising that Health is not able to support the proposed commencement of trading hours from 10:30 am and allow persons to stand at the bar area. However, they are willing to support trading hours from 11:00 am requiring all person to be seated in the restaurant.
21. In response to the issue relating to trading hours, the Applicant voluntarily amended the trading hours applied for and agreed to commencement of trade in the sale of alcohol from 11.30 am daily. The applicant also confirmed that for patrons wishing to purchase only alcohol without a meal a limited number could stand near the bar/counter however the majority of patrons would be seated.
22. I am not persuaded to impose a licence condition requiring all patrons of the Restaurant to be seated at all times. Conditions of that nature impose a significant burden on licensees in terms of patron monitoring and have proven to be relatively ineffective in the past.
23. The submission from Health also requested that the Director-General consider patron and community safety and amenity when determining the application and that the venue clearly displays signage to delineate the non-smoking areas from Smoking areas. The Applicant has in fact confirmed that smoking will be prohibited in the Restaurant.
24. Northern Territory Police and the Development Consent Authority were also invited to comment on the application. No response was received from either agency.
25. NT Fire and Rescue Service was also invited to comment on the application. As per common practice, the Fire Safety Division will inspect the premises and determine the maximum number of patrons allowable for fire safety purposes.

Business Reputation and Financial Stability of Applicant Company & Manager

26. Mr Aghariya has provided adequate and appropriate identification. He has also submitted personal and professional references indicating good reputation and character. A National Police History Certificate confirms that Mr Aghariya is not subject to any discloseable court outcomes or outstanding matters recorded within the records of the police jurisdiction in Australia.
27. Mr Aghariya has demonstrated experience in the operation and management of a restaurant as manager/licensee of the Coffee Club Darwin Waterfront. His resume indicates suitable references from persons who attest to his managerial capability in the hospitality industry. On the basis of the materials presented with the application I am satisfied that Mr Aghariya is an appropriate person for appointment as manager/nominee for the Restaurant.
28. Mr Robinson is known to the Director-General as the Nominee/Manager of the Hot Tamale Restaurant which has operated at the Darwin Waterfront Precinct as a Mexican themed restaurant with an on-licence since 2012. Mr Robinson is also a director of KDNT Enterprises, the licensee for the Coffee Club Darwin Waterfront, a licensed restaurant also located at the Darwin Waterfront Precinct. Neither of those premises has been the subject of any disciplinary action or adverse comment in respect of the business conducted under the respective liquor licences.
29. The Applicants have furnished financial information indicating that the Applicant has sufficient assets and access to funding to operate the proposed business.

Summary and Assessment of the Application

30. The Applicant in this instance has submitted an extensive application which includes sufficient evidence to meet the requirements set out in the Act for the grant of a restaurant liquor licence. In general terms the granting of a restaurant liquor licence presents minimal risk to the safety, amenity and social conditions of the surrounding neighbourhood. With very rare exceptions, a restaurant licence is not the type of licence that results in alcohol related anti-social behaviour or other adverse outcomes.
31. The Casuarina Square entertainment precinct, known as The Quarter, is a new development which includes 12 restaurants, the majority of which hold a liquor licence. The Quarter will open daily for breakfast, lunch and night time dining and will incorporate a children's play area and water feature for the enjoyment of families and other patrons of Casuarina Square shopping centre.
32. The Applicant originally applied for a restaurant licence with trade in the sale of liquor to commence from 10.30 am. During the stakeholder consultation process the Applicant agreed to reduce the trading hours for the sale of liquor and commence trade at 11:30 am, despite the fact the vast majority of restaurant licences in the Northern Territory trade from 11:00 am.
33. The concerns raised by City of Darwin in respect of the "on-licence" component of the business have been addressed in some detail above. On the basis of information provided in support of the application, and taking note of the assessment above of the objection lodged by City of Darwin, there are no reasonable grounds that would persuade me to refuse to grant the liquor licence applied for which the Applicant has applied.

Decision

34. In accordance with section 29(1)(a) of the Act and on the basis of the information provided in respect of the application, and for the reasons set out above, I approve the issue of a Restaurant Licence, authorising the sale of alcohol without the requirement to purchase a meal, to Groove NT Pty Ltd for The Groove Train restaurant to be located within Casuarina Square at Unit 369, 247 Casuarina Drive, Casuarina.
45. A licence condition relating to the concept of the premises, as set out in paragraph 18 above, is to be included in the licence, The licence will also be subject to conditions relating to maintaining the appearance of a restaurant and the ban on advertising the service of alcohol without a meal, also as set out in paragraph 18.
46. The normal conditions attached to the licence include the conditions shown in Annexure A to this decision, being the draft liquor licence.

Review of Decision

47. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. An application for a liquor licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
48. 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. For the purpose of this decision, and in accordance with section 120ZB(1) of the Act, the affected persons are the Applicant and the City of Darwin.



Cindy Bravos
Director-General of Licensing

Date: 13 July 2016