



## Director-General of Licensing

### Decision Notice

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<b>Matter:</b>	Application for the grant of a Liquor Licence
<b>Proposed Premises:</b>	Three C's Cafe Shop 1, Captain Cook Shopping Centre Arnhem Road, Nhulunbuy
<b>Applicant:</b>	Mr Paul King and Mrs Patricia King
<b>Proposed Nominee:</b>	Mr Paul King
<b>Objectors:</b>	Mr Matt Brazier Ms Sarah Tam-Perez, on behalf of NT Police
<b>Legislation:</b>	Sections 29 and 47F to 47I of the <i>Liquor Act</i>
<b>Decision of:</b>	Director-General of Licensing
<b>Date of Decision:</b>	20 May 2016

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### Background

- 1) Mr Paul King and Mrs Patricia King ("the Applicant") have applied to the Director-General of Licensing ("the Director-General") pursuant to section 26 of the *Liquor Act* ("the Act") for a restaurant liquor licence for premises known as Three C's Café ("the Café"), located at Shop 1, Captain Cook Shopping Centre, Arnhem Road, Nhulunbuy. Three C's Café is a registered business name, owned and registered by Mr King and Mrs King on 3 November 2015.
- 2) Mr King has provided a detailed application including information regarding the relevant criteria referred to in section 6(2) of the Act and submits that the information provided demonstrates that the grant of the licence will be in the public interest. Mr King has also provided an affidavit pursuant to section 26A of the Act, identifying that there are no beneficiaries or other persons of influence in respect of the proposed business besides himself and Mrs King.
- 3) The Café is located approximately two kilometres from the Nhulunbuy town centre in a commercial area and is within a shopping centre which includes a hardware shop. Other businesses in the area include, army barracks, Mitwatji Health Aboriginal Corporation, Gove Motors, a bakery and motor dealers.
- 4) The Application is for a restaurant liquor licence and Mr King states that the business will continue to operate as an alfresco café, including the sale of take away food. The Gove Peninsula Apartments promotes the Café to their guests advising they can pre order evening meals to be delivered to their rooms through reception.
- 5) The application seeks authorisation for the sale of liquor for on premise consumption ancillary to a meal only. Patrons will be required to be seated and the Cafe has the capacity to accommodate 48 patrons. Proposed trading hours for the sale of liquor are from 11:30am to 2:00pm and from 5:00pm to 8:00pm seven days per week.

## Advertising

- 6) The Application was advertised in the Northern Territory News on Friday 19 February 2016 and Wednesday 24 February 2016 with the objection period expiring on 25 March 2016.

## Objections

- 7) Two objections were lodged during the statutory period for objections, from Mr Matt Brazier and Ms Sarah Tam-Perez on behalf of NT Police.

### Objection of Mr Matt Brazier

- 8) On 14 March 2016, Mr Brazier lodged an objection to the application pursuant to section 47F of the Act. Mr Brazier resides at 33 Banyan Road, Nhulunbuy and therefore has standing to lodge an objection to the application for a liquor licence. The objection was lodged within the statutory period for objections.
- 9) Mr Brazier submits that granting another liquor licence in an area which has experienced and is still subjected to ongoing social harm and alcohol related harm caused by the consumption of alcohol will continue to affect the health, public safety and social conditions of the community.
- 10) Mr Brazier also submits that a high percentage of the matters dealt with by the local police are related to alcohol with offenders either under the influence of alcohol or seeking to obtain it. He concludes that another licenced premise will not alleviate the problems associated with alcohol in Nhulunbuy but only intensify them.

### Response by Applicant to Mr Brazier's Objection

- 11) Mr King responded to the objection by advising that only minimal amounts of alcohol will be stored on the premises in a locked fridge. The premises will only purchase alcohol as and when required.
- 12) Alcohol will only be supplied with a meal twice a day at lunch time between the hours of 11:00am to 2:00pm and in the evenings from 5:00pm to 8:00pm. Mr King reiterates that the selling of food is the Café's primary business and that alcohol will only be available to compliment the food.

### Assessment of Objection of Mr Brazier

- 13) Mr Brazier satisfies the criteria set out in Section 47F(3) of the Act in respect of persons with standing to lodge an objection. The objection relates to the amenity of the neighbourhood and the public safety and social conditions in the community, which falls within the ambit of valid grounds for objection set out in section 47F(2) of the Act. As noted above, the objection was lodged within the required timeframe. Mr Brazier's objection is therefore valid in terms of the requirements of the Act.
- 14) Mr Brazier correctly highlights the fact that Nhulunbuy has a high level of problems related to alcohol misuse which adversely impacts on the community and utilises significant Police resources. Nhulunbuy has had a history of alcohol misuse and associated harm, which resulted in the Liquor Permit System being introduced in Nhulunbuy on 1 March 2008.
- 15) At present there are six other licenced premises in Nhulunbuy where people can consume alcohol on the premises. Two of the licensed premises do not provide food and for the other four premises patrons may purchase alcohol without a meal with the exception being the Walkabout Tavern where between 10:00am to 12:00 midday patrons may purchase and consume alcohol on the premises ancillary to a meal in the restaurant. Otherwise, alcohol trading hours in Nhulunbuy prominently are from 11:30am until 11:30pm with the exception of the Walkabout Tavern which is authorised for late night trading.

- 16) In this instance the Applicant's proposal is for a very restricted liquor licence in comparison to the other licenced premises operating in Nhulunbuy, opening only at lunch and dinner times and only supplying alcohol to patrons who purchase a meal. Those restrictive conditions are unlikely to be attractive to those in the community who abuse alcohol and engage in activities that require the intervention of Police.

### **Objection on behalf of NT Police**

- 17) On 24 March 2016, Ms Sarah Tam-Perez lodged an objection on behalf of NT Police. The objection states that the grant of a liquor licence sought by the Applicant will adversely affect the amenity of the neighbourhood where the Café is located and the health, education, public safety or social conditions in the community.
- 18) Police submit that the dynamics of the area would most likely to change in a negative manner as the Cafe is situated in an isolated area with little pedestrian traffic after dark. The objection raises concerns regarding the potential for commercial break-ins and anticipates the Café could be targeted by people seeking to steal alcohol, noting that the premises have limited security to manage the flow of patrons seeking alcohol.
- 19) The objection notes that the Café is essentially a takeaway food business that is mainly frequented during the day. Police believe there are adequate numbers of licenced premises in Nhulunbuy, including several diners, all of which are complaining about the economic down turn in trade due to the Rio Tinto refinery closure.
- 20) The objection on behalf of Police makes reference to Nhulunbuy being a dry area where alcohol permits are issued in an effort to manage alcohol related violence and other alcohol related issues including health.

### **Response by Applicant to Objection of NT Police**

- 21) In his response to this objection Mr King acknowledges the closure of the refinery and the decreasing population of Nhulunbuy has resulted in his business having to explore other avenues to improve its turnover. He submits that a liquor licence will allow them to venture more into a fine dining menu, offering a small selection of assorted wine and beers to compliment the food, which is hoped to increase business. Mr King emphasises that the venue will only be serving alcohol ancillary to the purchase of a meal.
- 22) In response to the issue of safe storage and security of alcohol, Mr King advises there is a heavy steel padlocked door at the front of the premises, and only small amounts of alcohol will be stored in a locked fridge. Alcohol that cannot be stored in the locked fridge will be transported to Mr King's residence and secured there.

### **Assessment of Objection of NT Police**

- 23) NT Police have standing to lodge an objection to the grant of a liquor licence and the objection on this instance concerns the amenity and public safety of the neighbourhood in which the business proposes to operate and therefore meets the criteria set out in Section 47F(2) of the Act. The objection was lodged within the statutory period.
- 24) The issues raised by Police in respect of alcohol related issues and anti-social behaviour in Nhulunbuy are appropriately made and noted. The consumption of alcohol in the Township is regulated by a long standing permit system as a means of regulating alcohol consumption by persons who engage in anti-social behaviour and violence when intoxicated.
- 25) However, against that background it must be taken into account that the Three C's Café is in an isolated area on a commercial estate, the nearest residential street from the premises is 550 metres in one direction and the Gove Peninsula Apartments (un-licenced) are situated 440 metres in the other direction. In my view the Café is unlikely to attract the persons referred to in the Police objection due to the requirement to purchase a meal in order to purchase alcohol. In addition, the very restricted hours for trade for which the

Applicant has applied make it very unlikely that patrons of the Café will remain on the premises for extended period of time and become intoxicated.

- 26) The issue of security of liquor after hours and the potential for criminal break-ins by people seeking alcohol is noted. However, I am satisfied that the risk in that regard is minimal on the basis only a small amount of alcohol will be stored on the premises and that will be secured in a locked fridge. Mr King has provided an assurance that any excess alcohol that is unable to be stored securely at the Café will be removed to his residential premises and secured.

### **Stakeholder Consultation**

- 27) Letters were sent to usual stakeholders, NT Police, NT Fire and Rescue Services ("NTFRS"), Arnhem Shire Council and Nhulunbuy Corporation advising of the application and seeking comment. As noted above, NT Police lodged a formal objection to the application.
- 28) Mr Colin Snowden, Officer in Charge of the Nhulunbuy Fire Station responded on behalf of NTFRS. Mr Snowden advised that the Three C's Café meets all building fire safety requirements and that NTFRS Nhulunbuy supports the liquor licence application for the outside al fresco dining area only, allowing for the seating for 48 patrons.

### **Consideration**

- 29) The Applicant has provided sufficient evidence to meet the requirements set out in the Act for the grant of a liquor licence. As noted above, Licensing NT received two objections to the grant of the restaurant liquor licence applied for by the Applicant.
- 30) Both objections raise concerns regarding the misuse of alcohol and associated harm surrounding it in the Nhulunbuy Township, which has been subject to a liquor permit system since 2008 due to the misuse of alcohol and related antisocial behaviour on the part of a section of the community. Those issues and the resultant alcohol related harms that arise continue to be a major concern for the relevant authorities and for those who reside in Nhulunbuy.
- 31) In this instance the Applicant conducts a small business that has no doubt been impacted by the closure of the refinery and the resultant decline in population in Nhulunbuy. The Applicant has clearly stated that he is attempting to diversify his business and is considering different avenues to keep the business afloat in an area that is suffering from population decline.
- 32) The application under consideration is for a restaurant liquor licence with alcohol only being available ancillary to the purchase of a meal. Whilst there were two objections to the grant of the licence it must be noted that restaurant liquor licences, where alcohol is only available in conjunction with the consumption of a meal, are the least problematic licence type from a risk perspective and, with very rare exceptions, not the type of licence that results in alcohol related anti-social behaviour or other adverse outcomes.
- 33) In consultation with Licensing NT Mr King has agreed to alter the trading hours so as to align them with those of other licenced premises in Nhulunbuy. Mr King has agreed trade in the sale of alcohol will not commence until 11:30am each day. The Applicant is agreeable to the imposition of a licence condition prohibiting the advertising or promoting of the fact that venue has a liquor licence should the application be granted.
- 34) Should the liquor licence be granted the premises will trade for a total of 5 hours 30 minutes per day and, with the exception of a two hour trading period in the restaurant at the Walkabout Lodge, will be the only premises in Nhulunbuy where the sale of alcohol is ancillary to the consumption of a meal. The majority of the remaining liquor licences issued for Nhulunbuy permit trade in the sale of alcohol for significantly longer periods, approximately 38.5 hours a week on average.

- 35) The Three C's Café is located off the main public thoroughfare, surrounded by commercial properties and unlikely to attract significant foot traffic. It is also highly likely that the Café will be patronised by persons working in the location, locals out for a meal and guests staying at the Gove Peninsula Apartments. I am satisfied that there is a public need for the type of licensed premises proposed by the Applicant and that this application falls with the objects of the Act which include facilitating a diversity of licenced premises and associated services for the benefit of the community.
- 36) As noted in the assessment of the Police objection, I am satisfied that the Applicant will appropriately address the issue of securing alcohol appropriately as a deterrent to criminal activity and break-ins. The Applicant's agreement to not promote the Café as offering alcohol with meals and maintaining a limited stock on the premises will also assist in reducing the risk of the premises being subjected to break-ins. Whilst break-ins and criminal behaviour are genuine concerns of NT Police it is difficult to reconcile that fact that an element of the community will engage in that type of behaviour as a compelling reason to deny a licence to a person who wishes to conduct a lawful business in the difficult commercial circumstances that presently exist in Nhulunbuy.

## Decision

- 37) In all the circumstances I am satisfied that the granting of a restaurant liquor licence in this case presents minimal risk to the public or to the community of Nhulunbuy generally. The applicant has provided adequate details and information in support of the application to satisfy the requirements set out in the Act for the grant of a Restaurant Liquor Licence, pursuant to section 29(1)(a) of the Act, for the purpose of operating the Three C's Cafe. The Nominee (Manager) for the premises, and the person responsible for the day to day management of the premises and compliance with the requirements of the licence conditions and the Act is Mr Paul King who has been assessed as an appropriate person to manage a liquor licence.
- 38) In accordance with section 29(1)(a) of the Act, I have determined to grant a Restaurant Liquor Licence to the Applicant. The licence issued will be subject to conditions relating to the hours during which alcohol will be available for sale for consumption at the premises. A further licence condition will prohibit the advertising of the fact the Café is licensed to sell alcohol.

## Review of Decision

- 39) 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. A decision to grant or refuse an application for a liquor licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision. 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(c) of the Act, the affected persons are the Applicant and the objectors, namely Mr Matt Brazier and NT Police.



**Cindy Bravos**  
**Director-General of Licensing**

20 May 2016