

DECISION OF THE CANNABIS LICENSING BOARD (the "Board")

January 3, 2020

IN THE MATTER OF AN APPLICATION BY:

ArcticPharm Retail Ltd. o/a ArcticPharm Retail

FOR:

Sub-class 2 Cannabis Retail Licence
Cannabis Control and Regulation Act, SY 2018, c. 4

PLACE AND DATE OF HEARING: 9031 Quartz Road, Whitehorse, YT
January 3, 2020 at 1:00 p.m.

PRESENT IN PERSON:

Board	David Sloan – Chair Mieke Leonard – Vice-Chair Shari Borgford – Member James Lindsay – Member John Farynowski – Member Jennifer Roach / Alice Purser – Secretary
Applicant(s)	Sarah Krauzig, President Karlo Krauzig, Property Owner / Landlord / Business Consultant
Yukon Liquor Corporation	Will Tewnion – Director, Regulatory Services Ken Howard – Inspector
Objector	Patricia Halladay

OVERVIEW

On July 10, 2019, the President of the Yukon Liquor Corporation received an application (the "Application") from ArcticPharm Retail Ltd. (the "Applicant") for a sub-class 2 Cannabis Retail Licence (the "Licence"). Pursuant to the Application, the Applicant is requesting the issuance of the Licence for ArcticPharm Retail at 201 Hawkins Street in Whitehorse (the "Licence Site").

The Application was deemed complete by the President on November 18, 2019. Accordingly, the President delivered a copy of the Application to the Cannabis Licensing Board (the "Board") and circulated public notice of the Application by placing ads in the Whitehorse Star on November 20, 27 and December 4, 2019. Public notice was also posted on the Yukon Liquor Corporation web page and

Yukon Liquor Corporation Facebook page, and letters were sent to the local municipality, City of Whitehorse, and to the local First Nation governments, Kwanlin Dün First Nation and Ta'an Kwäch'än Council.

Members of the public were given the opportunity to object to the Application during the four-week objection period, which ran until 3:00 p.m. on December 18, 2019.

Within the objection period, the President received one objection (the "Objection"). An objection from Patricia Halladay of Whitehorse was received by email on November 29, 2019.

The President delivered a copy of the objection to the Board. Upon receiving a copy of the objection, the Board served a notice to the Applicant, the Objector, and the President on December 20, 2019, that a hearing would be held on January 3, 2020 to consider the Objection.

Pursuant to section 32, the hearing proceeded as scheduled on January 3, 2020 at 1:00 p.m. Attending the hearing in person were the Director of Regulatory Services, Yukon Liquor Corporation; the Applicant representatives, Sarah Krauzig and Karlo Krauzig; and the Objector, Patricia Halladay.

No other information was received at the hearing and no other attendees were present.

ISSUE

Taking into account the Application, the relevant considerations set out in section 2 of the *CCRA*, the public interest, and the conformity of the Application to requirements set out in the *CCRA* and accompanying regulations, will the Board:

- (a) grant the licence;
- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence?

DECISION

Having considered the Application, the objection(s), the applicants' response to the objection(s) and taking into account the relevant considerations enumerated in section 1 of the *CCRA*, the requirements imposed by the *CCRA* and accompanying regulations, and after determining that a grant of the licence would be in the public interest, the Board has decided to issue a sub-class 2 Licence without conditions for the period from the date of the issuance of this decision until March 31, 2022 for the premises located at 201 Hawkins Street, Whitehorse, Yukon.

LAW

In reaching its decision on the issue, the Board considered the following legislation:

Cannabis Control and Regulation Act, SY 2018, c.4, and in particular sections 1, 2, 16, 17, 21, 25, 26, 27, 28, 29, 30, 32, 33, 53, 55, 57, 79, 80;

Cannabis Control and Regulation General Regulation, O.I.C. 2018/184, and in particular, sections 4, 7, 11, 12;

Cannabis Licensing Regulation, O.I.C. 2019/42, section 3;

Cannabis Licensing Regulation, O.I.C. 2019/43., and in particular sections 2, 3, 4, 5, 6, 7, 8, 10, 16, and

Cannabis Licensing Regulation, O.I.C. 2019/45, section 2.

EVIDENCE BEFORE THE BOARD:

The Board considered the written Application submitted by the Applicant, the President's inspection report, the Objector's written Objection, and the Applicant's reply to the Objection.

ANALYSIS OF LAW AND EVIDENCE:

Section 33 of the *CCRA* directs the Board as follows:

Decision of board after hearing

33(1) After the hearing, the board must make one of the following decisions, taking into account the documents received under subsection 30(1), the relevant considerations and any representations of the persons served with notice of hearing:

- (a) to grant the licence, for the licence period that it determines, that contains no conditions additional to the statutory conditions, if satisfied that
 - (i) the requirements of this Act and the regulations have been complied with,
 - (ii) to grant the licence would be in the public interest,
 - (iii) it is not necessary for the licence to contain additional conditions;
- (b) to grant the licence, for the licence period that it determines, on the conditions additional to the statutory conditions that the board determines to be appropriate, if satisfied that
 - (i) the requirements of this Act and the regulations have been complied with,
 - (ii) to grant the licence would be in the public interest, and
 - (iii) it would be beneficial for the licence to contain those additional condition
- (c) to refuse to grant the licence, if not satisfied that
 - (i) the requirements of this Act and the regulations have been complied with, or
 - (ii) it would be in the public interest to grant the licence. (Emphasis Added)

The "documents received under subsection 30(1)" include:

Consideration of Application

30(1) Without delay after the service described in subsection 29(2), the president must give the following documents to the board, and a copy of them to the applicant:

- (a) any comments on the application or the applicant that the president may have, including with respect to the licence period of the licence applied for;
- (b) any objection served on the president within the four weeks referred to in subsection 29(1);
- (c) a report of an inspection or investigation arranged for under subsection 27(7);
- (d) any other relevant information of which the president is aware (Emphasis Added).

The "**relevant considerations**" referred to in section 33(1) of the *CCRA* are defined in section 2 of the *CCRA*:

"relevant considerations", in relation to an application for a licence, means the following:

- (a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,
- (b) the population of the area, including
 - (i) seasonal variations in the population, and
 - (ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,
- (c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,
- (d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of, Licenced premises in the area, including the need to serve the projected travelling public in the area,
- (e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,
- (f) whether the premises
 - (i) conform to the requirements of all relevant enactments,
 - (ii) are constructed so as to be sanitary and secure, and
 - (iii) are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,
- (g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a Licencee,
- (h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,
- (i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,
- (j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,
- (k) a matter prescribed to be a relevant consideration.

Taken together, these sections of the *CCRA* require the Board to grant or refuse a licence, with or without conditions, based on a review of the documents in its possession and representations of persons served with a notice of hearing, after taking into account the relevant considerations, determining that the requirements of the *CCRA* and accompanying regulations have been complied with, and deciding whether or not a grant of the licence would be in the public interest.

In accordance with the reasons that follow, and taking into account the relevant considerations prescribed by the *CCRA*, the Board is satisfied that the grant of this Licence is in the public interest, and that the Applicant has met or exceeded the requirements of the *CCRA* and accompanying regulations.

Relevant Considerations

(a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,

Several businesses operate with liquor licences near the proposed location, including Pickapeppa, North Dragon Restaurant, Sanchez Cantina, and Coast High Country Inn.

There are three cannabis licences in Whitehorse, where the nearest operational Licensee is Triple J's Canna Space located at 211 Wood St. This operational cannabis business is not within the 100 m retail restricted distance requirement. Ninetails Cannabis Inc., which is the closest (proximity) to the proposed location, was granted a licence but is not currently operational.

(b) the population of the area, including

(i) seasonal variations in the population, and

(ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,

The population of Whitehorse area is 32,304; Yukon's population is 41,352. Both numbers are as of June 30, 2019 (YBS). Population of the downtown core is 3,076 (YBS).

It is estimated that from November 2017 through October 2018, there were 491,300 visitors to Yukon. 385,000 (78%) of visitors came to Yukon in the summer months of June through September (YBS).

A number of popular events occur annually in the Whitehorse area, examples include:

February – Yukon Quest and Yukon Sourdough Rendezvous.

March – Burning Away the Winter Blues, International Curling Bonspiel, and the Yukon Native Hockey Tournament.

April - Annual Rotary Music Festival, and Simapalooza

May – Yukon Trade Show

June – Yukon River Quest and various music festivals

June – July - Adäka Cultural Festival, Dustball Slo-Pitch Tournament, and Paradise Music Festival

In addition to annual events, Whitehorse, as the capital of Yukon, often hosts events that result in a population influx.

(c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,

The Board reviewed the information provided by ArcticPharm which details the following:

ArcticPharm Retail will employ at least 3 full-time and another 3-5 part-time staff. Included in this will be a full-time manager receiving a starting salary of \$60,000 plus benefits. Other full-time staff will begin at \$17 per hour plus benefits and part-time staff will start at \$15 - \$17 per hour. ArcticPharm Retail will also hire a bonded delivery driver on an as-is-needed basis. All of these jobs will be new to the employment market totalling over \$200,000 of extra economic income to local employment in Whitehorse.

ArcticPharm Retail intends to follow a "buy local" policy as a priority, once local products become available. This will further enhance the economic benefits of their business.

Profits from ArcticPharm Retail will remain in the Yukon and will be invested in further ArcticPharm businesses.

The addition of ArcticPharm Retail will further diversify the lease income generated by the landlord creating a division of income and therefore greater financial stability.

ArcticPharm Retail in partnership with the landlord plan to continue to invest in the building's exterior and upgrade its efficiency. Long-term goals are to carry through with plans to develop an additional floor which has already been previously engineered, blueprinted and approved.

(d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of, Licenced premises in the area, including the need to serve the projected travelling public in the area,

The Board was made aware of the public notification period which was held November 20, 2019 – December 18th, 2019. There was one objection received from a resident of Hawkins St.

Summary of objections:

- parking;
- proximity to park and seniors residence;
- property value;
- noise; and
- social issues.

The following organizations were notified of the public notification period:

- City of Whitehorse
- Kwanlin Dün First Nation
- Ta'an Kwäch'än Council

(e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,

The Board reviewed the presented budget submitted by the Applicant and reviewed the following information:

- Total start-up projected at \$143, 216
- One year operating capital projected at \$255,750

(f) whether the premises

- a. conform to the requirements of all relevant enactments,**
- b. are constructed so as to be sanitary and secure, and**
- c. are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,**

The City of Whitehorse Bylaw 2019-13 restricts the location of a licensed cannabis retailer to 100 m from temporary shelter services, substance abuse/youth at risk service provisions, parks with play structures, and retail service (restricted).

Estimated distances (direct distance) from proposed premises to:

Jim Light Park – 102m
Rotary Peace Park- 141m
Kaushee's Place- 266m
Wood Street School- 592m

Application identifies that the proposed premises will undergo renovations if approved; therefore, a sanitation inspection was not feasible at this time.

The Board has no reason to believe that the applicant is not otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way. The applicant has strong history in retail operations and it was noted during the hearing that their target market is an affluent clientele. The Vice-President of ArcticPharm, Christopher Comborough is the owner/operator of one of B.C.'s largest mortgage broker companies. Mr. Krauzig was a long-time resident of the Hawkins Street community and commented on the numerous businesses that have frequented the proposed location as well as his affinity for ensuring the safety of community members and customers.

(g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a Licencee,

The Applicant has ten years' experience in retail in the Yukon and has demonstrated compliance with business reporting requirements. The Vice-President also has a long history of operations, marketing, finances, and human resources.

The Board has reviewed the financial information provided and is confident regarding the financial responsibility of the applicant as well as their character to keep and operate the premises and to be a Licencee.

(h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,

The Board has reviewed the signed lease commencing July 1, 2019 to June 30, 2024, for a period of five year term at the proposed location. The lease allows for cannabis retail or other forums relating to the business.

(i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,

The Applicant has no liquor or cannabis licences held in the Yukon or other jurisdictions based on the application. The Applicant has held several reception permits for customer appreciation events held at the current business, Bella Home Décor. No records of non-compliance were on file.

(j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,

The applicant has an extensive business history and as such, the applicant has provided detailed information regarding restricted access by intoxicated and/or underage persons, sight and sound, inventory control and management, transportation of cannabis, security and video surveillance systems, record keeping, reporting and retention, training, staffing, diversion from the illicit market, signage, returns and restriction of consumption on site.

Statutory Requirements

Generally, and based in large part on the considerations in the above portion of this decision, the Board finds the Application to be in conformity with the requirements of the *CCRA* and the accompanying regulations.

The Objections

The President received a written objection from Patricia Halladay on November 28, 2019.

The Objector attended the hearing on January 3, 2020 at 1:00 p.m. Her objection(s) can be summarized/reproduced as follows:

- proximity to parks;
- property value;
- parking;
- noise;
- social issues & impairment; and

- concerns for senior residents.

Issues Raised By the Objector(s)

The Board understands the Objection(s) to consist of the following elements: zoning and social concerns.

The Objector did not raise additional issues during the hearing and read directly from the letter submitted on November 28, 2019.

Analysis of the Objection(s)

1. Zoning

It was discussed at the hearing that parking at the proposed location is problematic for multiple individuals and businesses operating or living on Hawkins Street. The Applicant acknowledged the short term parking (15 min) and made note of several other parking options around the proposed location, such as the nearby church parking lot and the adjacent parking lot at the Yukon Government Main Administration Building.

Currently, the proposed location is properly zoned for the commercial use and has been for multiple years. The proposed location is also within the City of Whitehorse bylaw requirements for proximity to parks with play structures (102 m).

Densification was discussed at the hearing and it was acknowledged by both the Applicant and Objector that this is a municipal issue.

2. Social Concerns

It was mentioned by the Applicant that observations were conducted both in Whitehorse and Vancouver at various retail cannabis businesses and the Applicant observed that there were no instances of impaired individuals loitering around cannabis businesses and customers were in and out with their purchase in an expedient manner. It was the view of the Applicant that any loitering and/or poor behaviour will not be tolerated at the proposed location. The Applicant acknowledged the nature of the neighbourhood and gave an undertaking to deter any unwanted social behavior in the area. The Applicant also expressed the opportunity for access to seniors in the area if they choose to purchase cannabis products.

Although noise concerns were minimally raised during the hearing, it was noted that there are several open air establishments in the area that may contribute to noise in the area, however, given the proposed hours of the store, the impact of noise from the proposed location would not be overly disruptive.

It is the view of the Board that the issues presented by the Objector are primarily municipal issues and beyond the purview of the Board and its governing statutes and mandate. The Board has little reason to

believe based on the information currently available and experience to date in Whitehorse that social issues would be exacerbated by the issuance of this Licence.

Public Interest

The Board is satisfied that on balance, and taking into consideration all of the evidence before it, including the Objection reviewed in this decision, public interest will be served by granting the licence to the Applicant.

CONCLUSION

Based on the information provided by the Yukon Liquor Corporation and the testimony of the participants of the hearing, which led to the Board reaching its final decision to grant a sub-class 2 licence without conditions to the Applicant for the period from the date of the issuance of this decision until March 31, 2022 for the premises located at 201 Hawkins St, Whitehorse, Yukon.

Signed on behalf of the Board:



David Sloan

Chair, Cannabis Licensing Board