

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

REFERENCE: LC2018/024

LICENCE NUMBER: 80518976

LICENSEE: CJ Lee and DJ Lee

PREMISES: Little Miss Korea
Shop 17
56 Smith Street
DARWIN NT 0800

APPLICANT: Chung Jae Lee and Dianne Jayne Lee

NOMINEE: Mrs Dianne Jayne Lee

OBJECTOR/S: Nil

LEGISLATION: Section 119(2), Part IV and V of the *Liquor Act*.

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Mrs Sandra Cannon (Community Member)

DATE OF HEARING: 16 May 2018

DATE OF DECISION: 16 May 2018

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the applicant.

Reasons

Background

2. Mr Chung Jae Lee and Mrs Dianne Jayne Lee ("the licensees") currently hold a liquor licence in the name of "C.J. Lee and D.J. Lee" as a family partnership. The licence held is a Restaurant Liquor Licence authorising the sale of liquor for

consumption on or at the licensed premises ancillary to a meal. The nominee under the liquor licence is Dianne Jayne Lee.

3. On 28 January 2018 the licensees made application under section 119(2) of the *Liquor Act* (“the Act”) for approval to make a material alteration to the licenced premises known as “Little Miss Korea” (“the premises”). The term “material alteration” is defined under section 4 of the Act as follows:

“material alteration” means an alteration to licensed premises which:

- (a)increases or decreases the area used for the sale of liquor or the sale and consumption of liquor; or
 - (b)involves structural alteration; or
 - (c)alters access to or egress from the premises; or
 - (d)alters the external appearance or facilities”.
4. The substance of the application is to extend the existing liquor licensed premises to incorporate the adjoining first loading bay. The proposed extended licensed area will be approximately 10 metres x 6.5 metres. It is stated that the extension of the licensed area is to “facilitate the expansion of the dining and restaurant area”.
 5. In relation to the alteration it is proposed that a wall be erected, floor to ceiling in height, to separate the first and second loading bays. A new door will then be installed to create another entry off Austin Lane. Screens are also proposed to be erected to cover the existing electrical boards and a glass window will feature as a two (2) way vantage view for diners seated in the proposed dining area overlooking Austin Lane.
 6. There is no doubt that what is being proposed is a “material alteration” as defined. On 20 April 2018 pursuant to sections 119(6A) and 50(d) of the Act the Director General referred this application to the Commission to determine by way of a public hearing whether to approve the material alteration or to refuse to approve the same.

Brief history

7. According to the information provided to the Commission, “Little Miss Korea” has been operating since October 2015. It is a restaurant situated in Austin Lane in the Darwin CBD. It is described as a “unique Korean restaurant providing Korean BBQ meals and our chef is award winning nationally in this specialty cuisine”. The restaurant has won several awards for its food and innovation and provides a unique dining experience.
8. It was confirmed that it was intended that the restaurant would continue to operate in the manner in which has been successfully operating to date. The proposal of the application is said to be able to:

“... enhance the experience of visiting our Darwin CBD and Laneway eateries for both locals and tourists”.

And further:

“... to provide our customers with a unique space to wait whilst preparing to dine, a comfortable place to enjoy before being seated and also an extra place to dine with a different menu not too dissimilar to the existing one. Laneway style dining is an experience in all major cities across Australia and by having this extension we are following the trends and offering more in our Tropical City”.

9. It is also apparent from the material before the Commission that the restaurant has, since October 2015, continued to operate in compliance with the Act and its licence conditions. There was no evidence presented to the Commission of any breaches.
10. It is further noted that in that period the restaurant has also applied, and subsequently been approved, for special events both in 2017 and 2018 which it has undertaken appropriately, without compliance issues and apparently very successfully.

Advertising and Objections

11. Details of the application were advertised in the Northern Territory News on Saturday 17 February and Wednesday 21 February 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on Friday 23 March 2018.
12. It is important to note that in the objection period no objections were received.
13. It is noted that section 119(5) of the Act requires that if the application relates to premises within the area of a shire council or a regional council; the Director-General must inform the Chief Executive Officer (“CEO”) of the council that the application has been made. That occurred with respect to this application.
14. As is apparently the usual practice, the application was also forwarded to the Department of Health (“DOH”), the Commissioner of Northern Territory Police, Fire and Emergency Services (“NT Police”) and the NT Fire & Rescue service (“NTFRS”) for comment. In addition, the application was also forwarded to the Development Consent Authority (“DCA”) for comment.
15. With respect to this application the following responses were received:
 - a. The City of Darwin advised that “... it has not identified any reason that would be grounds for objection under section 47(2) of the *Liquor Act* for the application”.
 - b. The DOH made no adverse comment.
 - c. The NT Police advised that they supported the application “as long as there are no changes to their liquor licence”.

- d. The NTFRS had no objections to the application based on the following condition:

“This material alteration is required to go through a private building certifier as the alteration may directly affect any alternative solutions attached to the base building occupancy permit for this site (old Woolworths)”.

- e. The DCA advised that:

“Department records indicate that a development permit was issued on 24 April 2015 for the purpose of ‘refurbishment of an existing building to accommodate shops and restaurants for a temporary period of 7 years.’”

And further:

“I can confirm that appropriate planning approval previously has been granted for the existing development and use on the above mentioned land. However the proposal is to convert an existing loading/servicing space within the building. The applicant will need to lodge a new development application for the purpose of ‘extension to an extension to an existing restaurant’”.

16. The Commission notes that these responses were provided to the applicant. In relation to the response from NTFRS, the applicant stated it had employed a building certifier and in fact it was the certifier who was originally involved in the certifications for the building. It appears to this Commission that those matters raised by the NTFRS are therefore being appropriately addressed by the applicant.
17. In relation to the response by DCA, the applicant stated during the hearing that it had lodged the relevant applications with DCA and had been informed “last week” that “Town Planning has approved a permit with DCA”. Again, it appears to the Commission that those matters raised by the DCA are being appropriately addressed by the applicant.

Public Hearing

18. Pursuant to section 50 of the Act, the Director-General of Licensing (“the Director-General”) must refer *inter alia* applications under section 119 of the Act to the Commission. Therefore this application must be heard and determined by this Commission.
19. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10.00am on 16 May 2018 and notice was given to the applicant on 1 May 2018.
20. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct

the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.

21. The public hearing commenced at 10.00 am on 16 May 2018. Both Mr Chung Lee and Mrs Dianne Lee attended in person as the applicant. Ms Sally Ozolins as representative for the Director-General of Licensing was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks both the applicants and Ms Ozolins for their assistance.

Assessment of the Application

22. As earlier noted, there were no objections to this application. This is despite the fact that the applicant undertook its obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the Act.
23. Despite there being no objections made to the application lodged by the Applicant, the Act now clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, section 6B of the Act makes clear that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
24. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;

- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the Local Government Act; and
 - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

25. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

26. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

27. Those matters are identified as follows:

Criteria	Matters to be considered
The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none">• children and young people;• Aboriginal people normally resident within the locality and those Aboriginal people that

	<p>might be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers.
	<p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to.
	<p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans</p>

	developed to address these potential issues.
Volume	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are not available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

28. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

“... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

29. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application to effectively increase the licensed footprint of the premises, thus increasing the area upon which liquor will be sold and consumed. As a result some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a material alteration.
30. In relation to the question of the “public interest”; the applicant provided written submissions that outlined that it would continue to operate in the manner in which it has successfully operated for the last few years. All of its existing policies would merely “be extended into the proposed area”. The applicant stated that it hoped:
- “... to see Austin Lane become a successful laneway as seen in other capital cities. A ‘go to’ venue for both locals and tourists. The extended area will have food readily available where menus will be displayed on tables and visible to all clientele as well as daily specials being handed around by staff. ... We have additionally applied for improved lighting in Austin Lane with the local government and Darwin City Council”.
31. It is apparent that what is being proposed is an increase in the licensed footprint area, but that the same restrictions would apply in relation to the sale of liquor being for consumption on the licensed premises ancillary to a meal.
32. During the hearing, the Commission received into evidence written submissions from the applicant seeking to address the issue of “Community Impact” as required under section 6A(1) of the Act. This provided evidence to the Commission with respect to the “groups” or “sub-communities” within the locality of the premises. With respect to the matters raised under that section, the applicant submitted as follows:
- “Little Miss Korea is a restaurant situated in Austin Lane, Darwin CBD. The restaurant is situated in a laneway within Darwin City and there are no current licensed venues within the immediate vicinity of our premises. The closest residential building is the Cube situated 100 metres away and we have never received any complaints from residents about our premises. This extension to Little Miss Korea will enhance the experience of visiting our Darwin CBD and Laneway eateries for both locals and tourists”.

Further:

“The surround (sic) community within Austin Lane is primarily businesses within the Air Raid Arcade currently unoccupied. There are nil schools, parks or religious facilities within the vicinity or (sic) our licenses (sic) premises. There are other licensed premises within the vicinity being a Restaurant and on premise license. As stated above the closest residential building is situated 100 metres away and this event will have minimal impact on the amenity of those residents. As the event has been ran (sic) successfully already there have been no complaints and in actual fact some have attended”.

And further:

"Little Miss Korea currently employ 14 staff who are Darwin Residents. This extension will give staff extra hours on top of their normal hours of employment, thereby promoting extra opportunities for the staff both monetary and experience".

In addition:

"This extension will assist in promoting tourism in Darwin and also giving the local Darwin residents a new experience".

33. Based on the evidence presented to this Commission, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the variation and material alteration sought.
34. The Commission notes the information provided as to the licensed premises in the local community area. Again the Commission considers it relevant that this application does not propose any increase to that number, but instead to increase the area upon which liquor can be sold and consumed.
35. The Commission has received no information that would suggest there is likely to be an impact upon law and order, community safety or public amenity by virtue of this application.
36. Whilst this Commission accepts that of course it is likely that there will be an increase in numbers attending at the premises should this application be granted, the Commission finds on balance that there is no evidence to suggest that there will be a social impact upon the community to such an extent that it would merit a finding against this application.
37. Whilst this Commission accepts that an anticipated increase in sale volumes of alcohol which would likely occur by virtue of an increase in the licensed footprint presents an increase in current alcohol consumption rates for the community area, the Commission finds that this increase is to an extent ameliorated by the accompanying increase in sales volumes for food. This is particularly so given that the licence that the applicant has is for the sale of liquor ancillary to a meal. The Commission also finds on balance that there is no evidence to suggest that any increase in volumes is to such an extent as to merit a finding against this application.
38. As earlier noted, there is no evidence before this Commission to suggest that the applicant intends to do anything to change the manner in which it provides liquor to its customers. The evidence before the Commission is clear that to date the applicant has provided liquor in a manner known to be safe and to minimise adverse impacts and has ensured its staff is properly trained in order to do so.
39. Although the material alteration sought by the applicant would mean an increased area for the sale and consumption of liquor, the Commission considers it is highly

relevant that the applicant has in the past demonstrated a good track record in respect of the operation of its business activities. This includes the special events it has undertaken both this year and last year.

40. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined decided to approve the material alteration to the licensee's licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights:

41. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
42. 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.
43. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the Applicant.



JODI TRUMAN
Presiding Member
Deputy Chairperson

21 May 2018