

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2021/004

APPLICANT: Gardens Catering Pty Ltd

PROPOSED PREMISES: **Eva's Cafe**
The Manse Building
200 Gardens Road
DARWIN NT 0800

LEGISLATION: Part 3, Division 4 of the *Liquor Act 2019*

HEARD BEFORE: Ms Jodi Truman (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 22 February 2021

DATE OF DECISION: 3 March 2021

Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* ("the Act"), the Northern Territory Liquor Commission ("the Commission") has determined to issue a licence to Gardens Catering Pty Ltd (the Applicant).
2. The licence will be issued with:
 - a. a restaurant bar authority (section 47(1)(c) of the Act) authorising the sale and supply of liquor to patrons for consumption without the consumption of food on or in the premises located at Eva's Café, The Manse Building at 200 Gardens Road, Darwin ("the premises") and delineated by the area marked in red in Exhibit 2 tendered at the hearing of the application and entitled "proposed liquor licensed boundary in red"; and
 - b. a catering authority (section 47(1)(m) of the Act) authorising the sale, supply or service of liquor to patrons for consumption in conjunction with food being catered by the applicant on or in premises with the consent of the owner or occupier of the premises.

3. Subject to the conditions set out in paragraph 4 below, the conditions of the licence will be those authority conditions set out in Division 5 (“Catering authority conditions”) and Division 16 (“Restaurant bar authority conditions”) of the *Liquor Regulations 2019* (“the Regulations”).
4. The licensee must at all times trade in accordance with the terms of the permit or lease upon which it occupies the premises, such that if the terms of that permit or lease provide for conditions **less** than those provided for under the Catering authority conditions and/or Restaurant bar authority conditions, it shall be the terms of the permit or lease that shall take precedent and apply.
5. In accordance with section 85 of the Act, the term of the licence will be until close of trade on 31 March 2025.
6. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

7. On 13 October 2020, an application was lodged by Mr Andrew Giles of HWL Ebsworth Lawyers on behalf of the Applicant seeking a liquor licence in relation to premises known as “Eva’s Café” located at The Manse Building, 200 Gardens Road, Darwin.
8. The application was initially considered incomplete by the Director of Liquor Licensing (“the Director”) and additional material was lodged with a decision notice subsequently being issued accepting the application as at 18 December 2020. During the course of the hearing the Applicant confirmed it was seeking a restaurant bar authority and catering authority with the conditions of the licence to be those set out in Division 5 (“Catering authority conditions”) and Division 16 (“Restaurant bar authority conditions”) of the Regulations.
9. In support of the application the Applicant relied on a number of documents that were tendered into evidence before the Commission and became Exhibit 1. All of this material was considered carefully by the Commission during the course of the hearing and in determining the application.

Publication and Consultation

10. Pursuant to section 57(1) of the Act, notice of the application was published in the NT News on Saturday 7 and Wednesday 11 November 2020. In addition, the Applicant displayed the “Green Sign” on the front gate of the premises. Copies of the notices in the newspaper and photographs of the green sign erected at the proposed premises were provided. No objections were received to the application.

11. In accordance with section 56 of the Act, the Director informed the following of the application:
 - a. CEO of Department of Health (“the DOH”);
 - b. Commissioner Northern Territory Police (“NT Police”);
 - c. CEO of the City of Darwin (“DCC”).
12. Notice was also given by the Director to the NT Fire & Rescue Service (“NTFRS”).
13. The Director informed the Commission that:
 - a. DOH had no adverse comment;
 - b. NT Police had no objection;
 - c. DCC gave no reply in time; despite being provided the application on 4 November 2020; and
 - d. NTFRS advised they “support” the application.

The licensee’s record of compliance

14. The Applicant has not previously held a licence, however the Commission does note that the proposed nominee for this licence (and co-Director of the Applicant), Mr Dongsu Shin (“Mr Shin”), was the nominee for licence number 80819444 and there were no issues of compliance raised before the Commission with respect to that licence.
15. Further, the Applicant’s other Director is Mr Jason Hanna who is well known to the Commission with respect to a number of licences. In addition, the entity that holds the lease for the premises has both Mr Hanna and Mr Tho Thai as Directors. Both persons are well known to the Director and no issues were raised as to their suitability or concerns with respect to their involvement with other licences.
16. In addition, the Commission was informed by the Director that a number of special licences for events had been provided to the interested persons identified above with respect to these premises and there have been no adverse compliance history.

The referral

17. On 20 January 2021, the application was referred to the Commission by the Director to fix a time and place for the hearing of the application. As part of that referral, the Director provided numerous documents to the Commission which were all tendered into evidence as a bundle and became Exhibit 1.

The hearing

18. The Commission set down a hearing on 22 February 2021. Section 21(2) of the Act provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No submissions were made to the Commission to this effect.
19. On 22 February 2021, the application proceeded as a public hearing. Mr Hanna and Mr Shin attended with their solicitor Mr Andrew Giles (“Mr Giles”) on behalf of the Applicant. Mr Jeff Verinder appeared for the Director. The Commission thanks all persons for their attendance and assistance.
20. Pursuant to section 23 of the Act the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. The brief was tendered and admitted into evidence without objection.

Assessment of the application

21. .In accordance with section 59 of the Act, the Commission has considered:
 - a. the applicant's affidavit required by section 54;
 - b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
 - c. In relation to the applicant, a body corporate:
 - i. the financial stability and business reputation of the body corporate; and
 - ii. the general reputation and character of the sole executive officer of the body corporate;
 - d. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.
22. In accordance with section 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

The Applicant

23. The Commission finds that the Applicant complies with section 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
24. The applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

The Applicant's associates

25. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the Applicant has complied with the disclosure requirements of section 54.
26. The applicant is an entity registered with ASIC and has a share structure of 3,000 shares. There are two (2) shareholders within the company structure:
 - a. Mr Shin holds 2,000 shares; and
 - b. The Milestone Group Pty Ltd holds 1,000 shares.
27. As earlier noted, the proposed nominee is Mr Shin. He is one of two Directors of the Applicant. Mr Hanna is the other Director and is also the Secretary of the Applicant. With respect to The Milestone Group Pty Ltd; this is also an entity registered with ASIC and Mr Hanna is one of two Directors of that company and is also the Secretary. The other Director is Mr Tho Thanh Thai.
28. As earlier noted, both Mr Hanna and Mr Thai are persons well known to the Director by virtue of other licences held. It was submitted on behalf of the Director that given this prior knowledge and experience and the abundance of information previously provided from each person to the Director that the Commission should be satisfied of the character, experience and qualifications of both persons. The Commission is in agreement with this approach and finds both Mr Hanna and Mr Thai to be fit and proper persons to be an associate of the applicant.
29. In relation to Mr Shin; a copy of his Responsible Service of Alcohol ("RSA") certificate, statutory declaration concerning his criminal history, and various forms of identification were tendered. Having had regard to the material tendered by the applicant, the Commission finds that he is a fit and proper person to be an associate of the applicant.
30. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the Applicant.

The suitability of the Applicant's premises

31. The premises include an established café located in the historically significant (and heritage listed) building known as the Wesleyan Church. The premises are located in the George Brown Botanic Gardens ("the Gardens") which is a much loved area for locals in Darwin.
32. Since 2014, the premises have offered a wide variety of café and catering options to its clientele. The applicant stated that the:

“... core business is and will remain focussed on providing fresh cuisine within the ambience of the Gardens with a target demographic of local residents, tourists, visitors to the Gardens and those with special occasions being held in the Gardens”.

33. Highlighted within the application was the expansion of the premises which had been part funded under the “Turbo Charging Tourism” activation plan from the Northern Territory Government. As a result of the completion of those renovations it was submitted that the:

“... applicant is now well placed to expand its offering to dinner service and regular private functions with the option of a licensed bar”.

34. The Applicant submitted that the granting of a liquor licence will:

“...enable it to complement its core business which is focussed on a café and event space that caters to weddings, social gatherings and corporate events. If the Application is approved, the Applicant intends to expand on its current catering offering to properly service the multitude of private events held in the George Brown Botanic Gardens. The Applicant will be well placed to ensure its use is maximised and a full service offering complete”.

35. In terms of the nature of the venue if the licence were granted:

“The Applicant will celebrate and promote local producers and culture by committing to the buy local approach. An emphasis will not be placed on either food or beverage to ensure that the synergy can be realised and anti-social aspects of a licensed premises avoided. The café and restaurant will offer coffee and other non-alcoholic beverages (such as juices and shakes) to be accompany a selection of gourmet sandwiches and wraps, salads, finger food, seasonal main courses, desserts and sweet. With respect to the Catering component of the business, the Applicant will offer a range of different packages to suit every occasion and location within the Gardens”.

36. In terms of the target market the applicant submitted:

“The Applicant does not envisage that granting of the liquor licence will necessarily attract a new demographic rather it will provide existing clientele with a better service offering with alcoholic beverages used to complement food and function space.

The Applicant will be focusing on the following key demographics and markets:

- a. breakfast, lunch and dinner market from the greater Darwin region;
- b. local, interstate and international visitors to the Gardens (including dog walkers);

- c. local residents seeking a unique event space in which to hold their special occasion. The Applicant notes that the Application includes a request for inclusion of a "Catering" authority to enable it to provide licensed facilities in addition to catering for any events held in the Gardens. The Applicant has the support of Bryan Harty, Director of the George Brown Botanic Gardens ...; and
- d. private corporate events and functions."

37. During the course of the hearing, the Applicant's solicitor made it **very** clear to the Commission that the intention was that the premises would "remain a café" and there "would not be a 'bar' in the venue".
38. Concerns were raised by the Commission in terms of the Commission's awareness of previous break-ins to the premises. The Applicant advised that whilst this had been the case, there had been major renovations since that time and changes made to the premises with respect to security. The Commission does not consider it appropriate to outline those matters within its public decision, however as a result of those submissions the Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

The financial stability, general reputation and character of the body corporate

39. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

The general reputation and character of the applicant's secretary and executive officers

40. Having been provided with appropriate evidence regarding his reputation, character and work history, the Commission assesses the general reputation and character of the applicant's Directors and Secretary, Mr Hanna and Mr Shin, to be satisfactory.

Whether the applicant is a fit and proper person to hold a licence

41. The Commission assesses the applicant to be a fit and proper person to hold a licence.

Whether the licensee's nominee is a fit and proper person to hold a licence

42. The applicant has nominated Mr Shin as the licence nominee. The Commission assesses Mr Shin has provided appropriate documentation of his reputation, character and work history, to be a fit and proper person to hold the licence.

Public notice and consultation

43. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

Whether issuing the licence is in the public interest

44. To determine whether the issue of the license is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:
- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
 - b. ensuring liquor is 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 practices that encourage irresponsible drinking;
 - j. reducing or limiting increases in anti-social behaviour.
45. Having considered each of these objectives, and having particular regard to the nature of the restaurant bar and catering licence proposed, together with the continued focus of the venue as a café, as well as Mr Hanna's involvement with other very successful venues in Darwin that have their own licences, the Commission is satisfied that it is in the public interest to issue the licence.

Whether the issue of the licence will have a significant adverse impact on the community

46. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must have consider the matters set out at section 49(3) of the Act:
- 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.

47. The Commission notes there are no such “other” matters prescribed by regulation.

48. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.

49. Regulation 123 of the Regulations also provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the 2019 Act are taken to be community impact assessment guidelines issued under section 50. The guidelines are as follows:

Criteria	Matters to be considered
<p>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>	<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 might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or

	<ul style="list-style-type: none"> • communities that experience high tourist/visitor numbers. <hr/> <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. <hr/> <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 developed to address these potential issues.</p>
<p>Volume</p>	<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 no 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?

50. 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 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”.

51. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. It is therefore clear that although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

52. It is also important to keep in mind that section 50(3) of the Act provides clearly that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

53. The Commission notes that it did in fact have some concern about the granting of a restaurant bar authority for the premises in such an iconic location which is well known for its peace and tranquillity being the George Brown Botanic Gardens. This was particularly with respect to the issue of noise and anti-social behaviour in the area and the impact upon the social amenities of the area.

54. Having heard from the Applicant of its awareness that it is precisely those aspects that make these premises so popular, the Commission is satisfied that the Applicant will do all it can to ensure as little impact as possible is caused by virtue of having a license issued to the premises. The Commission notes also the evidence provided

as to the calibration of the audio-visual equipment to be installed at the premises, with constant monitoring of the noise levels so that they are not offensive or disruptive.

55. The Commission notes that given the size of the premises is not to change that there is no issue as to whether there is significant parking available and further that the applicant will continue to monitor the premises with security.
56. Whilst the Commission notes that there are a number of community sites and licensed venues in the vicinity of the premises, the Commission does not consider that the issue of the licence will have a significant adverse impact on the community, particularly given the nature of the premises which the Commission notes the applicant has stated will “at all times maintain the appearance of a restaurant and has no intention of moving away from its core trade of coffee and food”.
57. Having considered all of these matters, the Commission is satisfied, in accordance with section 49 of the Act, that:
 - a. the applicant is a fit and proper person; and
 - b. issuing the licence with the restaurant bar authority and the catering authority is in the public interest; and
 - c. issuing the licence with the restaurant bar authority and the catering authority will not have a significant adverse impact on the community.

The Objects of the Act

58. Section 3(4) of the Act provides that in performing its function to decide whether to issue a licence, the Commission must have regard to the primary and secondary purposes of the Act.
59. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
60. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

The licence term

61. Section 85 of the Act requires the Commission to fix the term of the licence. In doing so the Commission has considered the term of the applicant’s permit (expiring on 31 March 2024). During the course of the hearing the applicant’s solicitor noted that the terms of the permit were still being negotiated but the only terms that were sought to be changed were the hours of operation. No reference was made to any change to the expiry date.

62. In these circumstances the Commission and has determined a licence until 31 March 2025 to be an appropriate period noting no submissions were made before the Commission with respect to the length of the licence and further noting this will give the applicant sufficient time to make the necessary application for renewal should they be granted a further permit.

Extension of time

63. Pursuant to section 60(2)(b) of the Act, the Commission was required to decide whether to grant the application within 28 days of 9 December 2020, the day on which the objection period for the notification of the application expired. This application was not referred to the Commission however until 20 January 2021.
64. The Commission held a hearing as soon as possible upon the referral of the matter. In the exercise of its discretion conferred by section 318 of the Act, the Commission extends the time limit specified in section 60(2)(b) of the Act from 7 January 2021 to 2 March 2021.

Notice of Rights

65. Section 31(1) read with section 60(3) of the Act provides that the decision set out in this decision notice is reviewable by Northern Territory Civil and Administrative Tribunal ("NTCAT"). Section 94(3) of the NTCAT Act provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
66. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the applicant.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
3 March 2021

On behalf of Commissioners Truman, Winsley and Hart