

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR PERMANENT VARIATION OF THE
CONDITIONS OF LICENCE

REFERENCE: LC2019/034

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 and Mr Hyoun Ho Choi

OBJECTOR/S: Nil

LEGISLATION: Section 32A, Part IV and V of the *Liquor Act 1978*

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 15 May 2019

DATE OF DECISION: 27 May 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978* the Commission has determined to vary the conditions of the liquor licence for the premises known as “Little Miss Korea” by :
 - a. Reference to the “Authority” contained within the licence as “Authority - Restaurant” be deleted and replaced with “Authority – Restaurant Bar”.
 - b. That the terms set out within “Sale For Consumption On The Premises” be deleted in their entirety and replaced with the following:

“Subject to the conditions specified below this licence authorises the sale of liquor to patrons for consumption, without the consumption of food, in a small area of the premises licensed under a restaurant authority”.

- c. That the terms set out beneath the heading “Notice To Be Displayed” under dash point 4 be deleted in their entirety and replaced with the following:
 - “ - Liquor may be served without a meal provided that the premises shall at all times have the appearance of and trade predominantly as a Restaurant.”
- d. That the terms set out beneath the heading “Liquor To Be Sold With Meal” be deleted in their entirety.
- e. That within the specific reference to “Little Miss Korea” and the trading hours within the licence there be added the following:
 - i. “The trading hours may be extended to 1.00 am the following day on New Year’s Eve”.
- f. That there be included specific reference to “The Loading Bay” within the licence and identifying the trading hours as follows:
 - i. “Sunday 11:30 hours to 23:59 hours.
 - ii. Monday 11:30 hours to 23:59 hours.
 - iii. Tuesday 11:30 hours to 23:59 hours.
 - iv. Wednesday 11:30 hours to 23:59 hours.
 - v. Thursday 11:30 hours to 23:59 hours.
 - vi. Friday 11:30 hours to 23:59 hours.
 - vii. Saturday 11:30 hours to 23:59 hours.
 - viii. The trading hours may be extended to 1.00 am the following day on New Year’s Eve

Exceptions

- i. No trading on Good Friday or Christmas Day”.

- g. That there be included a further condition within the licence to be entitled “Appearance” which shall provide as follows:

“Appearance This licence allows for one (1) quality restaurant and ancillary bar. The premises shall at all times have the appearance of and shall trade principally as a restaurant”.

Consumption of Liquor Consumption of liquor without a meal will not be advertised or promoted.”

2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 27 May 2019.

Reasons

Background

3. 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 premises are known as “Little Miss Korea” and the dual nominees under the liquor licence are Dianne Jayne Lee and Hyoun Ho Choi. Mrs Lee has lodged this application on behalf of the partnership (“the applicant”).
4. On 6 December 2018 the applicant made application pursuant to section 32A of the *Liquor Act 1978* (“the Act”) for a permanent variation to its current licence conditions to:

“...permanently alter our license to be not ancillary to a meal as it currently stands, however food will still be on offer from the adjoining kitchen. We can see there is a high demand here where some patrons would just like to call in on their way home and just have one drink with a possible snack. The extension is a small area so considered a low risk. In the 3 years of operating LMK we have not had any trouble with alcohol and can proudly say our clientele are well behaved.

Ideally, we would like to alter the liquor license to an on license. Our concept would be to have patrons have a pre dinner drink in the bar then move to the restaurant for dinner where patrons just wanting that after work drink can do so in an orderly manner without having to consume a meal.”

5. Although the application was lodged at that time, it is apparent that further inquiries were made to ascertain precisely what it was that applicant was seeking to do in relation to the premises. The Commission was informed that in this regard the day after the application was received Licensing NT attended the premises to discuss and clarify the application and requirements of variation to the liquor licence.

6. On 1 December 2018, a further organised meeting between Licensing NT and the applicant occurred; this time at the offices of Licensing NT, to review and discuss the application. Thereafter copies of all the building permits, certification and site plans lodged for the “Loading Bay” were sought due to what appeared to be differences to those originally supplied in the previous material alteration approved in May 2018 and those relating to this application.
7. Subsequently a meeting was held at the Licensing NT Offices on 14 December 2018 with the licensee to ensure that Licensing NT fully understood the application being made by the licensee. A follow up phone call from Licensing NT was made on 17 December 2018 to the licensee to discuss the building plans and permits as it was considered by Licensing NT that they did not reflect the current floor site plan of the Loading Bay as part of their application.
8. On 23 December 2018 the licensee emailed additional documentation. A further floorplan was emailed on 2 January 2019. Between 8 and 18 January 2019, Licensing NT reviewed all of the supporting documentation provided progressing the application to publication for the licensee.
9. Thereafter on 26 March 2019 the Director-General of Licensing (“the Director-General”) referred the application to the Commission.
10. At the hearing, the applicant stated that it did not wish to change the appearance of the restaurant and wanted to keep it predominantly as a restaurant but also wanted to be able to provide for customers who attended the restaurant that just wanted a small snack or just a drink before dinner, or to even meet for a social drink before going home. It was made clear however that the applicant wished to continue its proud reputation as a popular restaurant and not a bar. The applicant stated it felt somewhat “hamstrung” by the way the “authorities” under licences were currently termed and that was why it sought an “on licence” authority.
11. Following receipt of the referral the Commission listed the application for a hearing on 24 April 2019. It was apparent to the Commission on that date however that there was a complaint against the licensee which was still being assessed by the Director-General. The Commission was informed that the complaint asserted that the Licensee had breached section 110 of the Act, namely the sale of liquor on the premises not ancillary to a meal.
12. The Commission was informed that this was alleged to have occurred on 30 November 2018 prior to the application for variation. Given that the alleged contravention related directly to the matters the Commission would need to consider in the variation application, the Commission informed the applicant that it did not consider it appropriate to hear the application with an alleged and potentially extremely relevant contravention outstanding. The Commission advised the applicant that such an outstanding matter could have a negative impact on the application and asked the applicant whether they wished to proceed with the hearing at that time in such circumstances.

13. An application for an adjournment was then made by the applicant to enable the alleged complaint to be considered by the Director-General before the Commission heard the application for variation. That adjournment was granted and the hearing was rescheduled for 12 noon on 15 May 2019.
14. On 10 May 2019 the Commission received advice from the Director-General that the complaint had been accepted by the Director-General but that having considered all of the evidence the Director-General that:

“...whilst I am satisfied that there were grounds for making the complaint, I am not of the view that there is sufficient evidence to find that there has been a contravention of the condition of the licence which requires liquor to only be sold ancillary to a meal.

That being the case, pursuant to section 68(5)(a)(ii) I have determined to dismiss the complaint.”
15. It is not for the Commission to analyse the decision reached by the Director-General in this regard. The relevance of this decision is that although the complaint was accepted it has been dismissed. There are therefore no compliance issues for consideration by the Commission.
16. As noted by the Commission in a decision in 2018, the applicant has been operating in Darwin since 2015 and has a demonstrated capacity to be able to operate this venue and to comply with the conditions of its licence.

Disclosure of influential persons or potential beneficiaries

17. The Commission notes that section 32A(1A) of the Act requires applicants to make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the variation is granted. The applicant has filed such an affidavit from both Mr and Mrs Lee who each state that they are “the principal executive officer of Little Miss Korea”. Both have disclosed that

“... there are no other person/s other than the directors of Little Miss Korea who will by any lease, agreement or arrangement be able to influence any decision made by the director/s in relation to the sale of liquor or the sale and consumption of liquor.”

And:

“... that there is no other person/s other than the directors of Little Miss Korea who by any lease, agreement or arrangement may expect any benefit from Little Miss Korea in relation to the sale of liquor or the sale and consumption of liquor.”

18. The Act prescribes that upon the application being filed, together with the affidavit under section 32A(1A), there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

19. Details of the application were advertised in the Northern Territory News on Saturday 19 and Wednesday 23 January 2019 as well as having signage displayed at the premises for a period of 30 days. The Commission is advised that no objections were received in accordance with section 47F of the Act.

20. It is noted that section 32A(5) of the Act requires that the Director-General must inform:

- a. the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
- b. the Commissioner of Police; and
- c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.

21. That occurred with respect to this application and the following responses were provided:

- a. The DOH made no adverse comment.
- b. The City of Darwin did not provide a response despite having had an opportunity to do so since January 2019.

22. In relation to the NT Police, a response was provided as follows:

“NT Police DO NOT SUPPORT this application.

The Variation to Liquor Licence will result in Little Miss Korea becoming a bar. The current licence is ancillary to being a restaurant. The sale and supply of food is the main business and alcohol sales enhances the food service. This is very similar to the corner store which provide a convenience service of food, groceries, bread, milk etc. and the liquor licence is ancillary and not main business of the store. These corner stores have changed over the years and the sale of alcohol is the main proportion of the store business.

This change will most likely result in decline in sale of food and increase in sale of alcohol. This then creates another bar in the Darwin CBD and further compounds the alcohol and anti-social behaviour issues currently being experienced in the CBD.”

23. This response was acknowledged by Licensing NT who requested that NT Police clarify if they were going to lodge an objection. Despite placing in capitals in the first response that “NT Police DO NOT SUPPORT this application”, the NT Police advised that they “will not make any formal objections”. No formal objection has therefore been received from the Commissioner of Police in accordance with section 47F of the Act. The Commission will return to the matters raised on behalf of the Commissioner of Police later in these reasons.
24. Notice of the application was also provided to the Northern Territory Fire and Rescue Service (“NTFRS”) who responded that they had “no objections” to the application.

Public Hearing

25. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under section 32A of the Act to the Commission. Therefore this application must be heard and determined by this Commission.
26. 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. As stated earlier, this application was referred to the Commission on 26 March 2019. The hearing was fixed for 10.00am on 24 April 2019 and notice was given to the applicant. However on that date an application for an adjournment was made by the applicant and was granted resulting in the matter being rescheduled for a hearing at 12 noon on 15 May 2019.
27. 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.
28. Mrs Dianne Lee and Mr Alex Bruce appeared on behalf of the applicant. Mr Phil Timney appeared 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 all persons for their assistance.

Assessment of the Application

29. As earlier noted, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, the Act clearly provides that the Director-General 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.

30. 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.”

31. 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.”

32. 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”.

33. Those matters are identified 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 • 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;

	<ul style="list-style-type: none"> • 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 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>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an

<p>additional liquor outlet will benefit the local and broader community.</p>	<p>additional outlet for the sale of liquor – this may include accommodation or dining?</p> <ul style="list-style-type: none"> • 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?
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34. 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”.

35. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. It is therefore noted that 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 variation.

36. It is also significant to recall that this is an application to permanently vary conditions of an existing licence that has been in place for almost the last 4 years having commenced operation since October 2015 and for which there has been no negative compliance history.

37. In relation to the public interest and community impact test the applicant provided written submissions and the Commission notes the following matters (relevantly) were highlighted:

- a. Minimise harm or ill-health caused by the consumption of liquor by ensuring their staff had *“RSA’s and we will conduct on going in-house training”*.
- b. Only sell liquor *“in open containers and in a manner that the Liquor License states. Any person showing signs on intoxication will not be served or supplied liquor. They will however be offered water and/or asked to leave the premises quietly.”*

- c. Ensure public order and safety was not jeopardised by having all of its staff *“trained and well informed in regards to the Liquor Licensing Act and our license. If we were to hold a larger function with larger amounts of patrons than usual then I may employ security so as not to breach our license.”*
 - d. Ensure safety, health and welfare of persons by following *“all necessary procedures and policies including OH&S and will maintain all essential safety equipment including First Aid Kits, Wet Floor Signage and making these visible and available at all times”*.
 - e. Ensure noise emanations were not excessive as *“(a)t this present moment we do not envisage hosting live entertainment, but in case we do the noise level will be controlled as per our license conditions”*.
 - f. Ensure that the business did not cause undue offence, annoyance, disturbance or inconvenience to persons as *“(o)ur opening/business hours will be strictly adhered to as per our license conditions which will be 11.30am – 11.59pm. The noise will be controlled by trained employees and as our premises is located in the Darwin CBD we are not in close proximity to residential properties”*.
38. In relation to those submissions the Commission notes that the applicant confirmed it intended to sell the same types of alcohol that it has been selling under its current licence and does not propose any change in that regard.
39. The applicant also provided submissions addressing the community impact assessment guidelines stating (relevantly) as follows:

“Community Impact

Little Miss Korea is a restaurant situated in Austin Lane Darwin City. The restaurant is situated in a Laneway within Darwin City. In the neighbouring streets there are numerous licensed restaurants, and there are taverns and hotels in the broader CBD entertainment precinct. The closest residential building is the Cube which is situated 100 metres away and we have never received any complaints from residents about our premises.

Little Miss Korea has been operating with a ‘Restaurant’ Authority for over three years, with no compliance breaches or complaints made against our operations.

Little Miss Korea is seeking to vary our current ‘Restaurant’ Authority liquor licence to that of an ‘On-Licence’ in order to meet our patron’s demands and preferences and to allow more flexibility in our operations, particularly for our new ‘Loading Bay’ space.

We will continue to operate predominately as a Restaurant under our new ‘On-Licence’.

We will continue to offer an extensive menu and snacks will be available at all times.

Only background music will be played throughout the venue.

Consumption of liquor without a meal will not be advertised or promoted.

The On-Licence will allow us to operate as a restaurant with an ancillary bar, as do many restaurants currently operate in Darwin.

As stated earlier, Little Miss Korea has been trading for 3 years with a full licence and is proud to say the service of alcohol has exceeded all standards and requirements of liquor licensing and is very excited to be growing our business in this tough economical time in the Top End.

We are situated in Austin Lane, which has been earmarked by the NT Government as an area they are keen to 'activate', with activities such as Laneway parties, street art and potentially a shade structure. This year we participated in the NT Major Events' 'Laneway Series', with only positive feedback from all stakeholders on the results of this event in bringing people into the CBD.

First and foremost, Little Miss Korea is an award winning Korean influenced restaurant, offering express lunches, modern a la carte dining for dinner, Korean BBQ and a function space for banquet or set menus.

At the 2018 Gold Plate Awards we were delighted to win the Best Asian Restaurant and Best Stand Alone Restaurant in the NT. With so many amazing restaurants all throughout the NT, you could image how happy and proud we were to win these Gold Plates, and to be able to provide both locals and visitors to Darwin with high quality food and service.

Owner and Head Chef, Chung Jae Lee, has taken out the Best Chef SA in 2013 and has published his own cookbook internationally in 2013.

Operations

We are not applying to alter our hours. They will remain, Monday to Sunday from 11:30am to 11:59, excluding Christmas Day and Good Friday.

We are not applying to vary our current licence area or capacity, with Little Miss Korea licensed for 110pax and 'The Loading Bay' licensed for 60 pax.

We will continue to operate our kitchen under the same conditions as we do currently."

The applicant also noted the following matters:

O) Any sale of additional liquor due to the grant of licence or the relaxation of restricted conditions will not increase anti-social behaviour.

We do not believe the granting of this variation to our current liquor licence will increase anti-social behaviour.

As mentioned previously we have not had any alcohol-related harm caused from our venue in the 3 years we have been trading.

The variation will be seeking, is the removal of liquor sales ancillary to a meal. This is in order to ensure we are equipped and licenced to cater for the wants and wishes of the community.

We will continue to trade predominately as a restaurant and ensure a full-service menu is available, as well as snacks being available at all times.

Concluding Remarks:

Tourism:

Our venue has been featured on Channel 10, Channel 9, SBS, Jetstar, Qantas, Tiger and National ABC Pod Cast so we are fast becoming a sought-out restaurant to visit when arriving in Darwin.

After recently being featured on Everyday Gourmet we have had the wealthier couples book a ticket to Darwin just to try one of our chef Chung Jae's Lobster Wontons, which is a huge compliment and amazing reaction for Little Miss Korea to be the ones enticing visitors to the Top End.

We are seeing more tourists come to our venue, as well as continued good trade from locals, and an increase in a younger generation (20-35yr olds) who work or live in the city, and wish to enjoy our licence premises and trendy spaces we have created, without the need to eat a full meal.

CBD Activation:

We believe that this application, if successful, will further enhance the vibrancy and mature offering provided to discerning patrons in Darwin's CBD. We believe it complements the NT Government's priorities of activation in the CBD and also changing the way Territorians interact with alcohol.

With our proven track record of compliance, ongoing focus on responsible service and effective security measures we believe and potential adverse impacts have been addressed and that on balance this application has a positive community impact in and around Austin Lane."

40. In relation to the issues raised on behalf of the Commissioner of Police, the applicant provided the following written submissions:

"We understood Attachment K to be the NT Police reiterating their standing policy of not supporting licence applications where the removal of 'ancillary to a meal' is being requested.

As per our reading of all of the materials in the submission before the Liquor Commission, specifically page 4 and 5 of the Director General's covering brief and Attachment K and Attachment L, we understood that whilst the Police wanted to bring to the Liquor Commission's attention their policy in this regard they were not willing to press further by way of formal objection to the application."

41. In relation to this issue, unfortunately the response by the Commissioner of Police does not make their position clear. It is noted that the Commissioner of Police also did not appear at the hearing and therefore no inquiries could be made to attempt to clarify the relevant issues.
42. In addition, with respect to the submissions from the Commissioner of Police and those in response by the applicant, the Commission notes as follows:
 - a. The Commissioner of Police has **not** lodged a formal objection despite an invitation being made to do so on a number of occasions in relation to this application.
 - b. Although the applicant has referred to the NT Police having a “standing policy of not supporting licence applications where the removal of “ancillary to a meal” is being requested”; the Commission is not aware of such a “policy”. The Commission does however find that the response provided on behalf of the Commissioner of Police, like many others that have come before this Commission, appears general in nature and not with any reference to the particular circumstances of this application or of this applicant.
 - c. The Commission agrees with what can only be interpreted to be the general concern expressed that this variation will mean that the premises will become a bar. However, the Commission also reminds itself that provision of a meal with liquor is not the only way in which the consumption of liquor can be minimised. The appropriate application of the responsible service of alcohol requirements is another way and it is clear that this applicant has successfully complied with those requirements for a period of time.
 - d. The Commission also does not accept the attempt on behalf of the Commissioner of Police to relate the nature of this application with that of the corner store. If there is such a correlation then it would be expected that the Commissioner of Police would see fit to ensure that it attended the hearing and properly set out the nature of that correlation to enable the Commission to properly consider the matters sought to be raised. As noted however the Commissioner of Police has not seen fit to do that and therefore there is very little that the Commission is able to do with respect to the statements made in this regard without proper support and explanation on behalf of the Commissioner of Police.
43. During the course of the hearing the Commission made clear to the applicant the concern that the applicant was undertaking “licence creep”. In response to this concern the applicant stated it wished to remain a restaurant but wished to have a small area associated with its restaurant where it could serve alcohol without the requirement of a meal in order to accommodate its customers. When this was made clear, the Commission outlined to the applicant the kinds of conditions anticipated to be in the new Act authorising what is currently likely to be referred to as a “Restaurant Bar”. When these conditions were discussed with the applicant, the applicant confirmed it would prefer to have a licence that held those types of conditions rather than one which was for an on-licence.

44. As was identified during the course of the hearing; the Commission accepts the submission made on behalf of the applicant that the premises are a very popular **restaurant** venue. The premises have been successful and are well known, particularly for the quality of the food. It is in such circumstances that the Commission does not wish to see changes made to the licence that effectively enable a “creep” into conditions such that the venue eventually becomes another bar where patrons are seen standing around drinking in amongst the tables of those persons who have come to dine. This concern was acknowledged by the applicant and it is apparent that this was not the kind of venue sought to be operated by the applicant.
45. With these reassurances in mind and the detailed submissions made by the applicant addressing the relevant matters with respect to the public interest and community impact test and guidelines, the Commission considers a variation to be appropriate, but that it should be a variation that makes the licence more akin to what is likely in future to be referred to as a “Restaurant Bar” rather than what is now commonly known as an “On-licence”. Whilst the Commission recognises that this authority does not yet exist under the Act, neither do any of the authorities as they are presently referred to under the current Act. The Commission therefore does not consider this to be an impediment in referring to such an authority within the terms of the current licence.
46. In all of the circumstances and the concession made by the applicant that it wished to maintain itself as a restaurant with a small bar area, the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence. Therefore, for the reasons outlined and having regard to the objects of the Act the Commission has decided to permanently vary the conditions of the licence as outlined at the commencement of this Decision Notice.

Notice of Rights:

47. 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 vary the conditions of a liquor licence pursuant to section 32A 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.
49. 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