

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION FOR LIQUOR LICENCE

**REFERENCE:** LC2020/050

**APPLICANT:** Simply Korean Pty Ltd

**PREMISES:** 41 Gap Road  
Alice Springs NT 0870

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

**HEARD BEFORE:** Mr Russell Goldflam (Acting Deputy Chairperson)  
Mr Bernard Dwyer (Health Member)  
Mr Blair McFarland (Community Member)

**DATE OF HEARING:** 17 December 2020

**DATE OF DECISION:** 17 December 2020

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**Decision**

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Simply Korean Pty Ltd (**the applicant**). The licence will be issued with a restaurant authority and a BYO authority.
2. The conditions of the licence will be those authority conditions set out in Division 3 and Division 15 of the *Liquor Regulations 2019* (**the Regulations**).
3. It is a further condition of the licence that liquor may only be sold, served or consumed between 1130 hours to 2300 hours each day.
4. The licensed premises is the area on the site plan of the premises situated at 41 Gap Road, Alice Springs bounded by a red line on page 101 of the brief of evidence tendered at the hearing of the application (**the licensed premises**).
5. In accordance with section 85 of the Act, the term of the licence will be for five years, commencing on 17 December 2020.

## **Reasons**

### **The Application**

6. The applicant has operated Simply Korean, a family friendly fine dining restaurant on Gap Road, a main road adjacent to an Alice Springs residential suburb, since 2017. Simply Korean is the only restaurant in Alice Springs specialising in Korean cuisine. The applicant has applied for a liquor licence with a restaurant and BYO authority.

### **Consultation**

7. As required by section 57 of the Act, notices of the application were published online in the Alice Springs News on 22 September 2020 and 25 September 2020, and on a sign displayed at the premises for 28 days.
8. No objections were received to the application.
9. In accordance with section 56 of the Act, notification was given to Department of Health (**DOH**), NT Police and the Alice Springs Town Council (**ASTC**). The Director also notified the Northern Territory Fire and Rescue Service (**NTFRS**) of the application.
10. The Director of Liquor Licensing (**the Director**) informed the Commission that:
  - The DOH responded that they had no adverse comment.
  - NT Police advised that they had no objection to the application.
  - The ASTC advised that it had no issues with the application.
  - No response was received from the NTFRS.

### **The licensee's record of compliance**

11. The applicant has never previously held a liquor licence.

### **The referral**

12. On 3 November 2020, pursuant to section 59 of the Act, the Director referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 17 December 2020.
13. The Director provided the following documents to the Commission with the referral (**the brief**):
  - a. Application for liquor licence;
  - b. Affidavit and Declaration of Associates pursuant to section 54 of the Act;
  - c. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
  - d. Extract from ASIC company register for the applicant;

- e. Documents to establish the identity, character, experience and qualifications of Mr Sung Hyun Kim (**Mr Kim**), the proposed licence nominee;
- f. Letter from the applicant's accountant;
- g. Applicant's lease over the premises;
- h. Letter from landlord consenting to the grant of a liquor licence; and
- i. Various permits, registrations and plans.

### **The hearing**

- 14. 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. Section 21(2) 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.
- 15. On 17 December 2020 the application proceeded as a public hearing. Mr Kim appeared on behalf of the applicant. Mr Wood appeared for the Director. The Commission thanks them both for their attendance and assistance.
- 16. The brief was tendered and admitted into evidence without objection.

### **ASSESSMENT OF THE APPLICATION**

- 17. 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;
- 18. 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**

19. 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.
20. The applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

### **The applicant's associates**

21. 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.
22. The Commission has considered whether Mr Kim, who, as the sole director and shareholder of the applicant, is an associate of the applicant as defined by section 55(e) of the Act, is a fit and proper person to be an associate of the applicant.
23. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of Mr Kim, the Commission finds that he is a fit and proper person to be an associate of the applicant.
24. 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**

25. The premises can accommodate up to 106 seated diners in an indoor restaurant and adjoining alfresco dining area. The premises are situated in an area zoned for commercial use. Previously, the site was used as a tavern and dining area operated by a former tourism and hospitality business.
26. 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**

27. 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**

28. 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 executive officer, Mr Kim, to be satisfactory.

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

29. 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**

30. The applicant has nominated Mr Kim as the licence nominee. The Commission assesses Mr Kim, who holds current RSA certification and 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**

31. 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**

32. 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.

33. Having considered each of these objectives, and having particular regard to the relatively restrictive conditions that apply to a restaurant authority, 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**

34. 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 considered 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.

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

36. 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.

37. Regulation 123 of the Regulations 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 Act are taken to be community impact assessment guidelines issued under section 50.

38. The guidelines are as follows:

<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>Matters to be considered</p> <p>Are there any 'at-risk' groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <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>
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<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. 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). 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 additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

39. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state 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”.

40. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. 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.
41. In considering these issues, it is also important to keep in mind that the onus is on the applicant: section 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.
42. The Commission notes that the applicant initially applied for a restaurant bar authority. During the hearing of the application, the applicant made it clear that it did not wish to proceed with its application for a restaurant bar authority. The Commission considers that this was sensible. The Commission would have had concerns about the adverse effect on the community if it were to issue a restaurant bar authority, having regard to the limited availability of parking in the vicinity of the premises, and the increased likelihood of noise and anti-social behaviour in the neighbourhood. A restaurant bar would be authorised to serve not only diners, but also non-diners attending the premises for the sole purpose of drinking alcohol.
43. 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, the restaurant authority and the BYO authority is in the public interest; and
  - c. issuing the licence, the restaurant authority and the BYO authority will not have a significant adverse impact on the community.

### **The objects of the Act**

44. 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.
45. 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.
46. 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

47. 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 lease (one year, with options to extend by a further two years), and the circumstance that since the issue of this licence, the Commission has delegated to the Director the authority to issue restaurant authorities, without requiring the conduct of a hearing. The burden on the applicant in seeking an extension of the licence term will accordingly be considerably lighter than it has been for the applicant to obtain the current licence.

## Extension of time

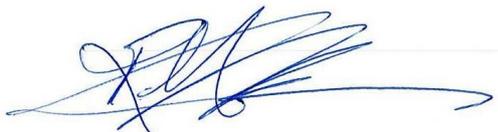
48. Pursuant to section 60(2)(b) of the Act, the Commission was required to decide whether to grant the application within 28 days of 24 October 2020, the day on which the objection period for the notification of the application expired. It was not practicable for the Commission to comply with that timeframe, because 17 December 2020 was the first available date on which the Commission was able to hear the application after receiving the Director's referral on 3 November 2020. The Commission made its decision and informed the applicant and the Director of its decision immediately following the hearing.

49. 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 21 November 2020 to 17 December 2020.

50. In accordance with section 60(3) of the Act, the Commission now issues this decision notice as soon as practicable after making its decision, namely on the first day following the opening of the Commission's offices following the 2020 Christmas period closure.

## NOTICE OF RIGHTS

51. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the 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. 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.



Russell Goldflam  
ACTING DEPUTY CHAIRPERSON  
4 January 2021

On behalf of Commissioners Goldflam, Dwyer and McFarland