

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2020/049

APPLICANT: Ting Family Investments Pty Ltd

PREMISES: Darwin City Hotel
59 Smith Street
DARWIN NT 0800

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

HEARD BEFORE: Mr Richard Coates (Chairman)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 2 November 2020

DATE OF DECISION: 2 November 2020

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 restaurant licence to Ting Family Investments Pty Ltd (“the applicant”) for the premises Darwin City Hotel.
2. The conditions of the authority will be those conditions set out in Division 15 of the Liquor Regulations 2019 (“the Regulations”).

Reasons

Background

3. Ting Family Investments Pty Ltd currently hold a full liquor licence FLL1024 with a Lodging Authority.
4. On 10 July 2020, an application was lodged by Richard Heng Dack Ting on behalf of Ting Family Investments Pty Ltd (the Applicant), seeking a Restaurant Authority to their existing Liquor Licence for the premises known as Darwin City Hotel, 59 Smith Street, Darwin NT. Following review of the application lodged, Licensing NT issued a Decision Notice accepting the application as a completed application dated 10 August 2020.
5. The Restaurant Authority is being sought for the shop located at the base of the hotel premises that will be available as part of the Hotel’s restaurant services. The applicant advises alcohol will be sold to both hotel guests and general public patrons. The guests will have to purchase food to be able to purchase alcohol.

6. Proposed trading hours are from 1000 hours to 2400 hours the following day, 7 days a week ancillary to a meal. Good Friday and Christmas Day trading will be 1100 hours to 2100 hours ancillary to a meal.
7. It is proposed the restaurant will sell a selection of Beer, Wine, Sake and Whiskey with the following conditions:
 - No more than two (2) standard drinks per person at any one time;
 - Wine to be sold per glass;
 - Sake and Rice Wine in a mini bottle format;
 - Full and light strength beers in standard can/bottle sizes.
8. The applicant has provided the following documents to support the application:
 - Food Registration
 - ASIC Company Extract
 - Registration of Business Name
 - Financial reports
 - Company statement
 - Affidavits
 - Draft Public Notice of application
 - Occupancy Permit and Commercial Lease Agreement
9. The applicant has submitted a Public Interest Statement and Community Impact Assessment. The applicant stressed the fact that the restaurant authority would complement the new hotel's restaurant and because of its comprehensive responsible alcohol management policies would not have any harmful, social impact on the community.
10. The licensee estimates that total alcohol sales for the whole of the hotel will not exceed \$30,000 p.a. It is important to note that the licensee is not seeking a public bar authority and is prepared to confine the sale of liquor to only those resident guests that patronise the hotel restaurant. In its community impact statement it said that a restaurant authority "will allow us to match our product offering to the majority of other 4.5 star hotels in the Darwin CBD".

ADVERTISING AND CONSULTATION

11. The application was advertised in the Northern Territory News on Wednesday, 2 September 2020 and Saturday, 5 September 2020. A "Green Sign" has been erected at a prominent external area of the proposed premises for the required 28 day period. The applicant has supplied a photograph of the notice displayed at the premises and provided a Statement of Display. The objection period ended on 2 October 2020.
12. No objections were received in relation to the application.
13. Pursuant to 27(3) of the Act, on 10 August 2020 the following were informed that the application had been made, and provided with the opportunity to provide comment.

- Chief Executive Officer of Health;
 - Commissioner Northern Territory Police;
 - Chief Executive Officer of Darwin City Council; and
 - Northern Territory Fire & Rescue Service
14. On 11 August 2020 via email Department of Health advised no adverse comment. However, Health asks the Director of Liquor Licensing to consider patron and community safety & amenity when determining this application. Health provided the comment on the understanding the applicant acknowledged the venue is a smoke free venue.
 15. On 11 August 2020 via email Northern Territory Police advised they have no objection to the application.
 16. By the time of the hearing Darwin City Council had advised that it had no adverse comment to make in relation to the matter.

The hearing

17. The matter was listed for a public hearing on 2 November 2020. On that date the licensee was represented by Mr Richard Ting and Mr Jeff Verinder appeared to represent the Director of Liquor Licensing. The Commission is indebted to them for the assistance they provided.

ASSESSMENT OF THE APPLICATION

18. The Applicant already holds a full liquor licence with a lodging authority. Section 51(3) of the Act provides;

51 Onus on applicant

- (1) An applicant for a licence or an authority must satisfy the Commission that issuing the licence or authority:
 - (a) is in the public interest; and
 - (b) will not have a significant adverse impact on the community.
- (2) An applicant must:
 - (a) provide any information to assess the application required by the Commission, the Director and the community impact assessment guidelines; and
 - (b) conduct any consultation on the application required by the Commission and the community impact assessment guidelines; and
 - (c) comply with any other application requirement determined by the Commission.
- (3) A licensee who is applying for an authority is assumed to be a fit and proper person, in the absence of evidence to the contrary.

There is no evidence before the Commission or suggestion by the Director that the applicant is not fit to hold a licence so the Commission is satisfied on the material

before it that pursuant to section 49(1)(a) of the Act the applicant is a fit and proper person.

19. To determine whether the issue of the authority is in the public interest, the Commission is required to consider how the issue of the authority 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.
20. In considering whether the issue of the authority is in the public interest the Commission had particular regard to the following circumstances;
 - (a) the authority is sought in respect of an existing café/restaurant within a new hotel;
 - (b) liquor will only be sold with a meal;
 - (c) the licensee has already demonstrated a capacity to manage licensed premises;
 - (d) the Licensee has a comprehensive policy in relation to Responsible Service Alcohol (RSA);
 - (e) guests of a 4.5 star hotel would have a justifiable expectation of being able to obtain liquor when dining within the hotel's restaurant
21. Having considered each of the prescribed objectives the Commission is satisfied it is in the public interest to issue the restaurant authority.
22. The Commission is also required to be satisfied that the issue of the authority will not have a significant adverse impact on the community. Section 49(3) provides

49 Public interest and community impact

- (3) To determine whether issuing a licence or an authority would have a significant adverse impact on the community, the Commission must consider the

following:

- (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.

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

24. 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.

25. 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.

26. The guidelines are 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 might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries;

	<ul style="list-style-type: none"> • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community buildings, 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. 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 additional liquor outlet will benefit the local and broader community.</p>	<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?
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27. 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”.

28. 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.

29. 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 authority or licensed premises in a community is not taken to be a benefit to the community”.

30. Having considered all of these matters, and having particular regard to the matters set out at paragraph 20 above, 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 authority is in the public interest; and
- c. The authority will not have a significant adverse impact on the community.

The objects of the Act

31. Finally, section 3(4) of the Act provides that in performing its function to decide whether to issue the authority, the Commission must have regard to the primary and secondary purposes of the Act.

32. 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 authority with the conditions imposed is consistent with the purposes of the Act.
33. For these reasons the Commission has determined that the application should be granted and that a restaurant authority be issued for this licence on the conditions set out at the commencement of this Decision Notice.
34. **NOTICE OF RIGHTS**
35. 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.
36. 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 licensee.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
23 November 2020

On behalf of Commissioners Coates, Dwyer and Hart