

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR A LICENCE
REFERENCE:	2018/115
PREMISES:	Kalidonis Boutique Apartments 9 Daly Street DARWIN NT 0801
APPLICANT:	9 DLS Pty Ltd
NOMINEE:	Mr Nikolaos Pizanias
OBJECTOR/S:	Nil
LEGISLATION:	Section 26, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Kenton Winsley (Health Member) Ms Christine Hart (Community Member)
DATE OF HEARING:	16 January 2019
DATE OF DECISION:	18 January 2019

Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act* (“the Act”) the Commission has determined to refuse to grant a licence authorising the sale of liquor for consumption on or at the licensed premises to “9 DLS Pty Ltd”.

Reasons

Background

2. On 30 June 2016 an application was lodged by Mr Theofilos Kalidonis, (“Mr Kalidonis”) to the Director-General of Licensing NT (“the Director-General”) pursuant to section 26 of the Act seeking a licence for premises located at 9 Daly Street, Darwin. The proposed trading name at that time is different to that now proposed however the Commission considers this irrelevant for the purposes of this application. At the time of lodgement Licensing NT deemed the application was incomplete.

3. On 17 January 2017 Mr Kalidonis filed a second application form, this time naming the applicant as “9 DLS Pty Ltd” (“the Applicant”). Mr Kalidonis is the sole shareholder, director and secretary of 9 DLS Pty Ltd. The application again sought a licence for premises located at 9 Daly Street, Darwin.
4. The application was finalised for advertisement on 5 July 2017 and was advertised until 11 August 2017. A meeting was then held between Licensing NT and the Applicant on 9 October 2017 “to discuss further possible changes to the application”. However on 10 October 2017 the Applicant confirmed that they wished to continue with the application as advertised.
5. On 16 August 2018 pursuant to sections 28(1) and 50(a) of the Act the Director-General referred this application to the Commission to be determined by way of a public hearing. Notice was given to the applicant on 6 September 2018 that the matter would be listed for a public hearing on 24 October 2018.
6. When the matter came before the Commission on that date, the Commission advised the applicant that the Commission considered there were a number of deficiencies with the application in its then form. The applicant was given the opportunity to either seek an adjournment of the hearing to reconsider its application or to proceed with the hearing on that date. The applicant sought an adjournment.
7. At that time the applicant was also advised of the matters that the Commission considered needed to be further and better addressed. The Commission will return to these later in these reasons. As a result, the applicant sought further time to be able to address those matters. The application was therefore adjourned to 16 January 2019 for hearing.
8. On 3 December 2018 further materials were lodged with Licensing NT. These became exhibit 5 in the hearing. Unfortunately there was some delay in those documents being provided to the Commission. Nevertheless the documents included a further application form which maintained the applicant was seeking the licence for the premises located at 9 Daly Street, Darwin and to now be known as “Kalidonis Boutique Apartments” (“the premises”).
9. The premises are yet to be constructed, but on the material contained within the Amended Community Impact Analysis document dated “November 2018” it is intended to be:

“... located on the ground level of a 23 storey, 201 room high quality hotel complex, complete with alfresco dining, restaurant, bar, gaming and guest facilities such as a gym and pool”.
10. It is proposed that it:

“... will be a high quality, modern designed venue offering a broad range of entertainment options for patrons”.

11. The Commission notes that during the course of the hearing Ms Leanne Lane (“Ms Lane”), who appeared on behalf of the applicant, advised the Commission that in fact the premises proposed would now be 18 storeys, rather than the previously proposed 23 storeys.

12. The applicant also provided a document entitled “Business Plan” again dated “November 2018”. Within this document the applicant stated:

“The design of the premises situated at 9 Daly Street, the subject of this application has been revised to include 40 x 2 bedroom apartments, 37 studio apartments, gymnasium and kids play area, pool and restaurant, alfresco dining area, bar and gaming room”.

13. In terms of the operation of the premises the applicant stated that:

“The proposed restaurant and bar area will be similar to the Taverna style operation currently being conducted in another of our premises, the Kalidonis Taverna, aka Kalidonis Village. The focus is on traditional Greek cuisine utilising the freshest of ingredients to bring a family flavour to the dining experience all family members form.”

“Liquor and gaming are intended to be a complementary service to the accommodation and restaurant, not the primary focus.”

14. Further:

“The restaurant would be available for breakfast service from 6am to 10am, 11am to 3pm for lunch and then reopen for dinner service from 6pm and trade until late”.

15. The licence sought was that of a public hotel operating seven (7) days per week and offering “a full range of products, including light and mid-strength options as well as non-alcoholic products ... along with bar snacks”. It was further noted that “speciality craft beers from Australia and Internationally will be on offer as well as a selection of fine wines, spirits and cocktails”. The applicant also stated that as a result of “consultation with NT Police”; they sought to be permitted to trade under any licence granted under the Act “from 11am to midnight”.

16. It was stated in the public interest statement that the venue would not “be playing loud music nor having live bands” and that there would only be “pre-recorded background music” by way of entertainment.

17. The referral to the Commission noted that Mr Kalidonis had previously provided probity documents to Licensing NT when applying for another licence held by another of his companies where he is again the sole shareholder. It was noted that the applicant falls within the “Kalidonis Group” which the Acting Director-General stated “is well known throughout the Northern Territory”.

Disclosure of influential persons or potential beneficiaries

18. The Commission notes that section 26A(1) of the Act now 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 licence is granted. The applicant has filed such an affidavit.
19. Mr Kalidonis is the principal executive officer of the Applicant and pursuant to section 26A(2)(a) of the Act is the appropriate person to make the affidavit required under section 26A of the Act. Mr Kalidonis has disclosed that there are:

“... no other person/s ... who may 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 consumption of liquor”

And that there:

“...is no other person/s other than THEOFILOS KALIDONIS who by any lease, agreement or arrangement may expect any benefit from 9 DLS PTY LTD in relation to the sale of liquor or the sale and consumption of liquor”.

20. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, 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.
21. As earlier noted, Mr Kalidonis is known to Licensing NT through his other licensed premises, namely “Kalidonis Taverna” located at 87 Woods Terrace, Darwin. The referral to the Commission also noted that Mr Kalidonis “is also well established in not only the hospitality industry, but the construction and mining industry throughout the Northern Territory. There are no compliance issues in relation to this existing licensed premise”.

Advertising and Objections

22. Details of the application were advertised in the Northern Territory News on Wednesday 5 July 2017 and Wednesday 12 July 2017 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 11 August 2017. It is important to note that no objections were received in the objection period.
23. It is noted that section 27(3) 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.
24. The Commission was informed that such notice was given and there were no written responses received from the relevant stakeholders. An oral comment was made by the NT Police in relation to the originally proposed hours and the Commission was advised that in light of that comment, the applicant had subsequently amended the hours sought within their application so as to cease trade at midnight in line with what was apparently the preferred option of Police.
25. The Commission notes that the application was also forwarded to the Development Consent Authority (“DCA”) and the Northern Territory Fire and Rescue Service (“NTFRS”) for comment. In relation to NTFRS, the Commission was advised that there was no response received and this is not surprising given that the premises have not yet been built.
26. The DCA provided a response on 23 March 2016 indicating that consent had been granted to:
- “... the proposal to use and develop the abovementioned land for the purpose of a motel in a 24 storey building including ground level restaurant”.*
27. As a result of receiving that response and noting that the proposal before the Commission was not in fact for a “**motel**”, but instead for a “premium boutique apartment and **hotel** style property” (our emphasis added); the Commission sought further information from DCA on this apparent anomaly with the permitted use. An email was provided to the Commission from the DCA dated 11 January 2019 (exhibit 7 at the hearing) that stated (relevantly) as follows:

“The ground level tenancy/tenancies in both permits are approved for interchangeable uses including leisure and recreation, licensed club, office, restaurant or shop. “Restaurant” means premises (other than a shop, or part of a hotel or a motel) in which meals are served to the public whether or not the premises provides a drive-through service or requires a licence under the Liquor Act;

Also the definition of hotel: “hotel” means premises which require a licence under the Liquor Act and where, as a principal part of the business, alcoholic beverages are ordinarily sold to the public for consumption on the premises whether or not accommodation is provided for members of the public and whether or not meals are served, but does not include a licensed club, motel or restaurant;

Unfortunately I would suspect that the public hotel licence aligns more with the definition in our planning scheme of ‘hotel’ which is not the approved use of the ground floor. A hotel is a discretionary use in Zone CB and a further planning application would be required. It is worth noting also that the hotel use has a higher car parking requirement than the interchangeable uses.

28. As stated during the course of the hearing, it is not the role of the Commission to police the permits granted by the DCA. However the Commission notes that these anomalies are a further example of the ever changing proposals being made by the applicant with respect to these premises. We will return to this issue later in these reasons.

Public Hearing

29. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
30. As earlier noted, on 16 August 2018 the Director General referred this application to the Commission. 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. On 6 September 2018 notice was sent to the applicant advising the application would be listed for hearing to take place on 24 October 2018 at 10.00am.
31. 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.
32. As earlier noted, the public hearing commenced at 10.00am on 24 October 2018 which Mr Kalidonis attended in person on behalf of the applicant and Mr Philip Timney was present as representative for the Director-General to provide information and assistance to the Commission. The Commission advised the applicant that there were a number of deficiencies with the application in its *then* form that was cause for concern to the Commission.
33. It is the record of the Commission that in fact the Applicant was **specifically** advised that the Commission did not consider that the applicant had appropriately addressed the public interest and community impact criteria, in particular the applicant's attention was drawn to matters concerning:
- a. the Minister's Guidelines,
 - b. the impact on the community in the area, and
 - c. what (if any) benefits the application had for the local community area.
34. The Commission noted however that the applicant had lodged the application prior to the amendments to the Act and that as a result the Commission was willing to consider an application for an adjournment if this was the reason why the criteria had not been properly addressed.

35. The applicant was therefore given the opportunity to either seek an adjournment of the hearing to reconsider its application or to proceed with the hearing on that date. The applicant sought an adjournment and the matter was adjourned to 16 January 2019 for hearing.
36. On that day Ms Lane appeared together with Mr Pizanias (the proposed nominee) on behalf of the applicant. The Commission was informed that Mr Kalidonis had been required to travel overseas at short notice. The Commission inquired whether the applicant still wished to proceed in the absence of Mr Kalidonis and Ms Lane stated that the applicant wished for the matter to go ahead. Mr Timney again appeared on behalf of the Director-General.

Assessment of the Application

37. As earlier noted, there were no objections to this application. This is despite the fact that the applicant undertook its obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the Act. The objection process is specifically provided for under the Act at section 47F. That section clearly identifies those persons who may make an objection, the specific *kinds* of applications that may be objected to, the *grounds* upon which an objection can be made and *how* the objection is to be made.
38. Although no objections under that section were made that is not the end of the matter. The Commission is required under the Act to assess the application according to the Act. The Act clearly identifies and prescribes the process to be undertaken and in particular those matters to be considered (where relevant) under section 6, together with the Minister's guidelines issued under section 6A and the matters identified under section 6B of the Act.
39. In this regard it is important to recall at all times that the Act makes clear under section 6B 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. Even if there are no objections, the Applicant must still satisfy this Commission of those matters.
40. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, 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.”

41. 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.”

42. 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”.

43. 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. <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.

	<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 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?

	<ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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44. 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”.

45. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;

- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager”.

46. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

- 47. The Commission notes there are no such matters prescribed by the Regulations.
- 48. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.
- 49. In relation to this application; the Commission notes that there is no suggestion, nor any evidence to suggest, that the applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee. The Commission has already noted the contents of that affidavit in these reasons.
- 50. The Commission also notes that there are no issues of concern in relation to the business reputation and financial stability of the applicant and the general reputation and character of the secretary and executive officers of the applicant. In fact there appears to be evidence positively in favour of the applicant given the involvement of Mr Kalidonis in another licensed premises (which on all accounts is very successfully operated) and given the reputation of Mr Kalidonis in the construction and mining industry.
- 51. However, again, that is not the end of the matter. The Act makes clear that the Commission (as the decision maker with respect to this application) **must** apply the public interest and community impact test and that it is the applicant who **must** satisfy the Commission that the approval of the application meets the public interest and community impact test. It is also important to understand that the Act makes clear that the Minister’s community impact assessment guidelines form part of determining whether the application satisfies the public interest and community impact test. The wording of the legislation makes clear that this is not a matter of discretion for the Commission. The Commission **MUST** apply these tests and **MUST** be satisfied that they have been met.
- 52. In relation to the public interest and community impact test; the applicant provided written submissions as part of its original application. Despite the Commission directly raising with the applicant on 24 October 2018 that the Commission was concerned that the applicant did not appear to have appropriately attempted to address the public interest and community impact test within its original application; the applicant did not update its submissions addressing section 6 when filing its further material.

53. In relation to the matters required to be considered under section 6(2), the applicant provided the following written submissions (noting that the relevant responses are italicised):

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;

We will ensure all of our staff will have the required qualifications and specialised training. We will only be serving standard size drinks and will always comply with the Dept of Health Regulations

- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;

We will only be serving standard size drinks, there will be no rapid excessive consumption of alcohol. We will only be responsibly selling alcohol.

- 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;

Due to the nature of the business we will not be attracting large numbers of guests, we will comply with WSH Regulations.

- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;

We will be complying with the regulations of the Liquor Licencing Act, along with the WSH Work Health and Fire regulations. We will be holding regular staff meetings and specialised training for all staff.

- e. noise emanations from licensed premises must not be excessive;

Due to the nature of the business we will not be attracting large numbers of guests, we are not a venue that will provide live music only pre-recorded back ground music.

- 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;

The situation of our venue is not near a school, hospital or church, we are not a venue that will be playing loud music or having live bands. We will only be serving standard size drinks and will minimise the noise levels when cleaning up at the end of the evening.

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;

We will at all times abide by the by-laws made by Local Government Act and 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;

All staff will hold RSA licences, go through induction processes and receive ongoing training. There will be regular staff meetings, fire drills and specialised training will also be available.

i. the use of credit in the sale of liquor must be controlled;

We will not allow patrons to setup credit accounts, all purchases will be paid for.

j. practices which encourage irresponsible drinking must be prohibited;

We will not be encouraging any incentives such as free drinks, we will only be serving standard size drinks, and there will be no rapid excessive consumption of alcohol. We will only be selling alcohol responsibly.

k. it may be necessary or desirable to limit any of the following:

- i. the kinds of liquor that may be sold;

We will only sell a standard range of beer, wine and spirits.

- ii. the manner in which liquor may be sold;

We will only be selling liquor as per our liquor licence.

- iii. the containers, or number or types of containers, in which liquor may be sold;

We will only be selling liquor as per our liquor licence and will only be serving standard size drinks.

- iv. the days on which and the times at which liquor may be sold;

We will at all times comply with our liquor licence.

- i. 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;

We will always abide by Liquor licence limit according to the acceptable amount of numbers allowed.

- 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;

Due to the nature of the business we will not be attracting large numbers of guests, we are not a venue that will provide live music only pre-recorded back ground music, we will not be having live bands and strippers.

- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;

Our intentions are to make money we will not be giving away any free drinks or promoting rapid excessive consumption of alcohol, we will not encourage irresponsible drinking.”

54. In relation to the community impact assessment guidelines issued by the Minister; the applicant provided written submissions as part of its original application. Again, despite the Commission directly raising with the applicant on 24 October 2018 that the Commission was concerned that the applicant did not appear to have appropriately addressed these guidelines; the applicant did not update their submissions and in fact simply provided what can only be described as a “cut and paste” from its original application.

55. True it is that the applicant provided to the Commission a document entitled “Amended Community Impact Analysis New Liquor Licence November 2018”, however this did not add a great deal to the matters required to be considered by the Commission pursuant to section 6A and the Minister’s Guidelines. In fact following direct questioning by the Commission, Ms Lane admitted during the course of the hearing that such a document was in fact a cut and paste of the community impact analysis that had been done by the applicant for the purposes of its application for a gaming machine licence with respect to these premises. Although this was admitted by Ms Lane, it was in fact patently obvious that this was the case from the document itself.

56. In relation to the criteria to be considered under the community impact assessment guidelines; the applicant provided the following submissions (noting that the relevant responses are italicised):

1. *“The potential harm or health impacts 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.*

The proposed premises are located in the centre of the Darwin CBD and the local area includes suburbs such as Stuart Park, Fannie Bay, The Gardens and Larrakeyah. This area is considered to have a relatively high proportion of persons employed in managerial or professional categories.

Recent analysis and reporting of the area for gaming machine applications found the area to be a high socio-economic pocket.

The area is also a central hub for tourism and entertainment including food and beverage establishments catering to the local population as well as the tourist trade.

The local area includes nearby schools and child care centres however the premises are sufficiently removed from these community buildings to not be an attractor of those premises to enter or attempt to enter the licensed premises.

2. 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.

Within the local area, that being a 2km radius, there are 17 large licensed premises as well as a number of smaller restaurant type premises. Many of the larger premises are late trading and this is not what is sought by this application.

Overall crime statistics provided by NT Police show a slight increase in assaults in the Darwin region over the last 12 months, predominately domestic in nature. It should be noted these statistics are for the greater Darwin area, not only the CBD and local area.

3. Volume.

No takeaway sales are sought by this application. A full range of products, including light and mid-strength options as well as non-alcoholic products are to be available along with bar snacks.

Specialty craft beers from Australia and Internationally will be on offer as well as a selection of fine wines, spirits and cocktails.

Target audience is the residents of the premises and providing a service and local options for those in house.

4. Any cultural, recreational, employment or tourism benefits for the local community area.

The application will expand the company's existing business footprint within the Northern Territory. Kalidonis Pty Ltd was established in 2000 by Theofilos Kalidonis and plays a major role in the development of commercial, residential and civil infrastructure in Darwin. It also services the mining sector across the Northern Territory and Western Australia.

Along with construction and building personnel ongoing employment will result from the operation of the premises for the food and beverage and hotel operations personnel.

The licence is designed to be complementary to the residential aspect of the premises, attracting both short-term tourism and longer-stay residents.

5. 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.

The applicant has been involved in the hospitality industry for many years and takes the responsibility that flows from the sale of liquor seriously. All personnel will be qualified in Responsible Service of Alcohol and constant supervision will ensure compliance with the legislative requirements.

As written earlier the sale of liquor is not the primary business to be conducted, the primary business is providing accommodation, with the licence intended to be complementary to the accommodation.

The licence will service the residential or in-house patrons and also provide options to the general public. This is in keeping with the nature of the business to be conducted and other like accommodation and residential hotel operations in the local area and wider region.

57. As was indicated to Ms Lane during the course of the hearing, the Commission remains unsatisfied with the submissions made by the applicant addressing the public interest and community impact tests. This should have come as absolutely no surprise to the applicant as the submissions were in fact the very same submissions that were filed within the original application and about which the Commission warned the applicant were considered deficient in October 2018.

58. In relation to the criteria of potential harm or health impacts under the guidelines; the applicant seeks to highlight in its submissions that there is a "*relatively high proportion of persons employed in managerial or professional categories*" in the local community area. What the applicant fails to address in any manner (or even acknowledge) is the fact that in that same local community area, and only a matter of approximately 200 metres from the door of these proposed premises, there is a Department of Housing and Community Development Public Housing Complex. The applicant does not address this 'at-risk' group in any way.

59. The applicant also fails to address in any manner the well-known large number of itinerants that can be found at almost any time congregating in the park that is across the road from that accommodation and therefore virtually across the road from these proposed premises. The applicant also fails to address in any manner the well-known large number of itinerants that can also be found along the Esplanade that is also only a short distance from the proposed premises. Again, this is another 'at-risk' group that the applicant has failed to address in its submissions.
60. The applicant has referred to the fact that the "*local area includes nearby schools and child care centres*", however the applicant has then submitted that "*the premises are sufficiently removed from these community buildings to not be an attractor of those premises to enter or attempt to enter the licensed premises*". With respect to the applicant that is a nonsense. There are in fact two (2) child care centres in very close proximity to the proposed premises and there is nothing before this Commission to suggest there has been anything that could be remotely described as "sufficiently removed" about these premises in relation to those centres.
61. As a result of this failure to refer to these matters, the applicant has not provided to the Commission any policies or procedures it will implement to minimise any potential harm or health impacts to any 'at-risk' groups or sub-communities as required by the community impact assessment guidelines. The Commission in fact notes that reference to this particular aspect of the matters to be considered by the Commission was removed by the applicant from its submissions. The only material that the Commission has been provided with is the applicant's "Alcohol Management Policy" however the Commission notes this appears to be substantially a repeat of the obligations under the Responsible Service of Alcohol and makes no reference to addressing any potential harm or health impacts to any 'at-risk' groups or sub-communities.
62. The applicant noted within its submissions that "*there are 17 large licensed premises as well as a number of smaller restaurant type premises*" in the local area. It was acknowledged by Ms Lane during the hearing that it was likely (as suggested by Licensing NT) that there were at least 50 licensed premises in the local area. Despite this large number, the only submission made by the applicant to address this issue was "*(m)any of the larger premises are late trading and this is not what is sought by this application*". With respect to the applicant that does not address this issue at all and does not address the potential social impact of yet another licensed premises in that local area.
63. It also fails to address the fact that what the applicant is seeking in its application is a public hotel licence, not a restaurant licence, but a public hotel licence. This means that patrons could attend and consume alcohol at the premises without ordering any food whatsoever. Whilst the applicant might not be seeking to remain open until the early hours of the morning, this is still a licence the nature of which involves the consumption of liquor without a meal and that is a significant matter that could have a social impact upon the community and about which the applicant has provided no submissions whatsoever.

64. In relation to the criteria addressing why the grant of this application is “in the public interest and how the additional liquor outlet will benefit the local and broader community”, the applicant relied upon its successful operation within the hospitality industry and submitted that the *“sale of liquor is not the primary business to be conducted”*. The applicant further submitted that *“(t)he licence will service the residential or in-house patrons and also provide options to the general public. This is in keeping with the nature of the business to be conducted and other like accommodation and residential hotel operations in the local area and wider region”*.
65. This is not the first time an applicant has attempted to rely upon the fact of other businesses in the area having a licence as some sort of basis for supporting the grant of yet another licence. This Commission noted previously in the Decision Notice relating to the application for a licence by BevCo SBB Pty Ltd that it is important that all applicants focus their minds on the matters raised within each of the tests and address each matter (where relevant to their application) specifically and with particular reference to *their* premises and what *their* application proposes, rather than what any other licenced premises is (or in some cases is not) doing pursuant to their licence.
66. The obligation to persuade the Commission is now fairly and squarely on applicants with respect to *their* application and *their* proposal and proper attention must be given to the requirements of the Act and the guidelines issued by the Minister. Simply because there are other “like” businesses in the area does not mean that there should be yet another licence granted.
67. During the course of the hearing the Commission repeated to the applicant a number of times its concern that despite being warned in October 2018 that the Commission did not consider that the application adequately addressed the community impact assessment guidelines; the applicant had failed to provide any further submissions addressing these important matters. Eventually it was stated by Ms Lane that she “did not put enough input and detail” into the community impact assessment.
68. Whilst Mr Timney suggested during the course of his submissions that perhaps a “lowering of the standard” for meeting these tests could be adopted by the Commission in relation to this application because it was an application for an “in principle” licence (i.e. a licence for premises yet to be built), the Commission does not consider that the standard can be lowered to such a degree that there can be a complete failure by an applicant to address these criteria and a licence is nevertheless still granted.
69. As stated on previous occasions there must be evidence before the Commission that an applicant has actually turned their mind to these matters and addressed the criteria that are required to be addressed. If there is no such evidence then quite simply the Commission cannot be satisfied that the public interest and community impact tests have been met. If the Commission is not satisfied that the approval of the application meets the public interest and community impact test

then the Act makes clear that the Commission must refuse the application for a licence.

70. During the course of the hearing there was discussion about the anomaly between what had been approved by the DCA for these premises and what the Commission was being asked to consider in terms of the nature of these premises. The Commission wishes to make clear that with respect to this application; whilst there was some confusion as to the nature of the plans for these premises, this was not considered to be fatal to this application. The Act enables applications to be made in respect of premises which are to be constructed and by a person who does not intend ultimately to carry on any business under the licence (see section 26(2)).
71. What was ultimately the issue considered by this Commission to be fatal to this application was the applicant's failure to adequately address the public interest and community impact test under the Act and the failure to satisfy the Commission that test had been met.
72. Given that the Commission is not satisfied that the applicant has met the public interest and community impact test as required under the Act; the Commission must refuse to grant the application on this occasion. The Commission notes that this does not prevent the applicant from making another application at a later date with respect to these premises, however on the material presently before the Commission the application must be refused.

Notice of Rights:

73. 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 issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
74. 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.
75. 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

22 January 2019