

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**REASONS FOR DECISION**

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**MATTER:** APPLICATION FOR MATERIAL ALTERATION AND NEW AUTHORITY

**REFERENCE:** LC2021/038

**APPLICANT:** CJ Lee & DJ Lee (family partnership)

**LICENCE:** 80518976

**PREMISES:** Little Miss Korea and The Loading Bay  
56 Smith Street  
DARWIN NT 0800

**LEGISLATION:** Part 3 Division 4 and Part 4 Division 2 of the *Liquor Act 2019*

**HEARD BEFORE:** Mr Russell Goldflam (Acting Deputy Chairperson)  
Mr Bernard Dwyer (Health Member)  
Ms Christine Hart (Community Member)

**DATE OF HEARING:** 8 November 2021

**DATE OF DECISION:** 17 November 2021

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**Decision**

1. On 17 November 2021, the Northern Territory Liquor Commission (**the Commission**) issued the following decision notice:
  1. In accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**), the Commission has determined to issue a small bar authority to Liquor Licence 80518976 (**the licence**) held by CJ Lee & DJ Lee (family partnership ABN 15 971 259 655) (**the licensee**).
  2. In accordance with section 97 of the Act, the Commission has determined to approve a material alteration to the licensed premises, and to attach an additional condition to the varied licence.
  3. The licensed premises are extended to the areas delineated in black on the plan at Appendix One to this Decision Notice (**the Appendix**).

4. The pre-existing restaurant bar authority and BYO authority, and the prescribed licence conditions set out in Divisions 16 and 3 of Part 4 of the *Liquor Regulations 2019* (**the Regulations**) to which the licence is thereby subject, apply only to the area shaded in yellow in the Appendix and marked “Little Miss Korea”.
5. The newly issued small bar authority and the prescribed licence conditions set out in Division 17 of Part 4 of the Regulations to which the licence is thereby subject, apply only to the area shaded in red in the Appendix and marked “The Loading Bay”.
6. The following additional condition is fixed:

The licensee must at all times trade in accordance with the terms of the Permit to Occupy Outdoor Dining Area (Licensed) issued to the licensee by the City of Darwin in relation to the premises as now in force and as may be varied varied from time to time (**the Permit**), noting that if the terms of the Permit impose conditions more restrictive on the licensee than the conditions prescribed by Division 17 of Part 4 of the *Liquor Regulations 2019* (NT), the terms of the permit shall prevail and apply.

7. The varied licence will be issued immediately following the publication of this decision notice.

### **Reasons**

2. The Commission notified the parties that it would issue and publish a statement of reasons for its decision, which now follow.

### **The Application**

3. The licensee, a family partnership comprising Ms Dianne Jayne Lee (**Ms Lee**) and Mr Chung Jae Lee (**Mr Lee**), operates Little Miss Korea, an established licensed restaurant, and The Loading Bay, a restaurant bar at the rear of the same premises, which are located in a hospitality and entertainment precinct in the Darwin CBD. Along one side of the premises is Austin Lane, a laneway the property of the City of Darwin. In furtherance of its “laneways and small streets activation strategy”, the City of Darwin is encouraging restaurants and bars to extend their premises into selected CBD laneways to provide an outdoor eating and drinking option for patrons. One of those laneways is Austin Lane.
4. To avail itself of this opportunity, the licensee made application to enable it to establish The Loading Bay as a small bar opening out onto Austin Lane.

## **Consultation**

5. As required by section 57 of the Act, notices of the application were published in the NT News on 22 and 25 September 2021. No objections were received.
6. As required by the Act, the Director notified the Department of Health (**DOH**), NT Police and the City of Darwin.
7. The Director informed the Commission that:
  - DOH responded, stating that it had no adverse comments.
  - NT Police advised that it had visited the site and had no objections.
  - The City of Darwin stated it did not have an objection. The City of Darwin had previously issued a Permit to Occupy Outdoor Dining Area (Licensed) to the licensee dated 1 August 2021, with a term of twelve months.

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

8. The Director informed the Commission that the licensee has a clear record of compliance with its licence conditions and with the Act.

## **The referral**

9. On 27 October 2021, 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 8 November 2021.
10. The Director provided the following documents to the Commission with the referral (**the brief**):
  - a. Licensee's application for issue of small bar authority and material alteration
  - b. An affidavit for the purpose of compliance with section 54 of the Act
  - c. Public Interest and Community Impact Assessment statement
  - d. Business operation details
  - e. Landlord consent for liquor licence
  - f. Lease over the premises
  - g. City of Darwin Permit to Occupy Dining Area (Licensed)
  - h. Site plans
  - i. Development Consent Authority documentation
  - j. Food Registration Certificate

## **The hearing**

11. On 8 November 2021 the application proceeded as a public hearing. Mr Giles appeared on behalf of the applicant, accompanied by Ms Lee. Mr Verinder appeared for the Director. The Commission thanks them for their attendance and assistance.

12. The brief was tendered and admitted into evidence without objection. In addition and also without objection the Commission received into evidence a copy of a plan of the premises that had been marked to show the boundary between the Little Miss Korea licensed restaurant bar and the area in which it is proposed that The Loading Bay small bar will operate.

### **ASSESSMENT OF THE APPLICATION**

13. In relation to the application for a small bar authority, 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. the financial stability and business reputation of the applicant;
- d. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

14. In accordance with section 49 of the Act, the Commission has also considered whether issuing the proposed authority and approving the proposed material alteration would be in the public interest, and whether this would have a significant adverse impact on the community.

#### **The applicant**

15. Ms Lee and Mr Lee are the applicant partners and are existing both nominees of the licensee.

16. They have provided satisfactory documentation regarding their operations, activities, financial circumstances and plans.

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

17. 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.

18. The Commission does not consider that it is appropriate to consider whether any person is a fit and proper person to be an associate of the applicant.

### **The suitability of the applicant's premises**

19. The Commission has been provided with detailed plans for the proposed extension to The Loading Bay and 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 applicant**

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

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

21. The Commission assesses the applicant to be a fit and proper person to be issued the authority.

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

22. The current licence nominees are Ms Lee, Mr Lee, Mungi Choi and Junyoung Lee. Section 51(3) of the Act provides that a licensee applying for an authority is assumed to be a fit and proper person in the absence of evidence to the contrary. Having heard no evidence to the contrary, the Commission assumes and finds that each of the current licence nominees is a fit and proper person.

### **Public notice and consultation**

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

### **The public interest**

24. To determine whether the issue of the authority, approving the material alterations and varying the licence conditions 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.

25. Having considered each of these objectives, and having particular regard to the increased recreational, employment and tourism benefits for the local community area that can be expected, the Commission is satisfied that it is in the public interest to issue the small bar authority and to approve the proposed material alterations.

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

26. To determine whether it is satisfied that the granting of the application would not have a significant adverse impact on the community, the Commission must consider the matters set out at section 49(3) of the Act:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;
- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;

- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50;
- (j) any other matter prescribed by regulation.

27. The Commission notes there are no such “other” matters prescribed by regulation.
28. 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.
29. 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.
30. Having considered these matters, the Commission is satisfied that the issue of a small bar authority to the licensee and the approval of the proposed material alterations will not have a significant adverse impact on the community.

#### **Additional conditions**

31. The Commission considered whether to vary the existing noise condition in the licence, which provides:

The licensee shall ensure that there is no excessive noise caused by the operations on the premises which effect (sic) the amenity of the neighbourhood.

This includes ensuring the delivery of stock or removal of rubbish is at appropriate hours and that patrons, whilst on the premises or in the course of leaving the premises (including after close of trading), are not rowdy or noisy and do not cause any disturbance to the vicinity of the premises.

32. The Commission’s concern was that once The Loading Bay starts trading in the laneway, patronage will increase, producing more noise, and adding to the total noise output in the neighbourhood of Austin Lane, where at least two other venues have also recently had licences extended to allow them to trade as outdoor venues.
33. The licensee, supported by the Director, submitted that no further noise condition should be imposed. The licensee informed the Commission that it is not a live music venue, and that it would continue to play music using its existing sound system.

34. In considering this issue, the Commission had regard to the following additional matters:

- No stakeholders had raised a concern about noise.
- There were no objectors, and the licensee has not previously been the subject of noise (or indeed any) complaints.
- The Darwin City occupancy permit issued to the licensee prohibits the playing of music in Austin Lane itself.
- The licensee is in any event required to comply with section 93 of the Act, which prohibits the licensee from causing or permitting undue and unreasonable noise that affects the amenity of the neighbourhood.
- A further noise condition may impose a burden on Licensing NT, which would be required to monitor and enforce compliance with the condition.
- In the event that a future noise complaint were made and upheld, the Commission could vary the licence conditions to address the issue.

35. Having considered these matters, the Commission determined not to vary the existing noise condition in the licence.

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

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

37. 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.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
10 December 2021

On behalf of Commissioners Goldflam, Dwyer and Hart