

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC 2021/006

APPLICANT: NT Food Service Pty Ltd

PROPOSED PREMISES: **Ichi Gateway**
Shop R02 Gateway Shopping Centre
1 Roystonea Avenue
YARRAWONGA NT 0830

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

HEARD BEFORE: Ms Jodi Truman (Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 10 February 2021

DATE OF DECISION: 15 February 2021

Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) has determined to issue a licence to NT Food Service Pty Ltd (“the Applicant”).
2. The licence will be issued with a restaurant bar authority (section 47(1)(c) of the Act) authorising the sale and supply of liquor to patrons for consumption on or in the licensed premises without the consumption of food.
3. The conditions of the licence will be those authority conditions set out in Division 16 (“Restaurant bar authority conditions”) of the *Liquor Regulations 2019* (“the Regulations”).
4. The licensed premises is the area on the site plan of the premises situated at Shop R02 Gateway Shopping Centre, 1 Roystonea Avenue, Yarrawonga bounded by a red line on page 306 of the brief of evidence tendered at the hearing of the application (“the premises”).
5. In accordance with section 60(5) of the Act, and noting that the premises have not yet completed construction:

- a. liquor must not be sold under the licence until such time as the applicant has been given written approval to do so by the Commission subsequent to the applicant having provided written confirmation that it has obtained all the necessary building, planning and safety approvals, including a certificate of occupancy for the premises.
 - b. The Commission delegates to the Director of Liquor Licensing (“the Director”) the authority to grant the approval referred to in the paragraph above.
6. In accordance with section 85 of the Act, the term of the licence will be for ten (10) years.

Reasons

Background

7. On 22 October 2020, an application was lodged by Danny Nixon-Smith of DNS Specialist Services on behalf of the Applicant seeking a “Restaurant Bar Authority” liquor licence in relation to premises to be established as “Ichi Gateway” at Shop R02 Gateway Shopping Centre, 1 Roystonea Avenue, Yarrowonga.
8. In support of the application the Applicant relied on a number of documents that were tendered into evidence before the Commission and became Exhibit one. All of this material was considered carefully by the Commission during the course of the hearing and in determining the application.

Publication and Consultation

9. Pursuant to section 57(1) of the Act, notice of the application was published in the NT News on Saturday 14 and Wednesday 18 November 2020. In addition, the Applicant was directed to display the “Green Sign” at a prominent external area of the proposed premises. Copies of the notices in the newspaper and photographs of the green sign erected at the proposed premises were provided.
10. No objections were received to the application.
11. In accordance with section 56 of the Act, the Director informed the following of the application:
 - CEO of Department of Health (“the DOH”);
 - Commissioner Northern Territory Police (“NT Police”);
 - CEO of the City of Palmerston (“PCC”).
12. Notice was also given by the Director to the NT Fire & Rescue Service (“NTFRS”).
13. The Director informed the Commission that:
 - a. DOH had no adverse comment;

- b. NT Police had no objection;
- c. PCC had no objection; and
- d. NTFRS advised they were not able to provide a comment as the premises had not been issued with an Occupancy Certificate due to still being under development.

The licensee's record of compliance

- 14. The Applicant has not previously held a licence, however the Commission does note that the proposed nominee for this licence, Mr Kim Fai Sin ("Mr Sin"), is an associated party for the premises Ichi which holds licence number FLL1064 and which has an unblemished record of compliance with the conditions of its licence.

The referral

- 15. On 28 January 2021, the application was referred to the Commission by the Director to fix a time and place for the hearing of the application. As part of that referral, the Director provided numerous documents to the Commission which were all tendered into evidence as a bundle and became Exhibit 1.

The hearing

- 16. The Commission set down a hearing on 10 February 2021. Section 21(2) of the Act 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.
- 17. On 10 February 2021 the application proceeded as a public hearing. Mr Sin and Ms Sherine Lam ("Ms Lam") appeared on behalf of the Applicant. Mr Jeff Verinder appeared for the Director. The Commission thanks them for their attendance and assistance.
- 18. 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. The brief was tendered and admitted into evidence without objection.

Assessment of the application

- 19. 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.

20. 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

- 21. 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.
- 22. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

The Applicant's associates

- 23. 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.
- 24. The Applicant is an entity registered with ASIC and has a share structure of 200 ordinary shares. There are six (6) shareholders/members within the company structure and Cypress Falcon Pty Ltd holds 103 of the 200 shares, i.e. 51.5% of the shares.
- 25. The proposed nominee, Mr Sin, is the Director, Secretary and sole shareholder of Cypress Falcon Pty Ltd. Having had regard to the material tendered by the Applicant attesting to the character, experience and qualifications of Mr Sin, the Commission finds that he is a fit and proper person to be an associate of the Applicant.
- 26. 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

- 27. The Applicant will be operating the venue around the traditional Japanese style known as "Izakaya" which is a type of informal Japanese bar that serves alcoholic drinks and snacks. During the course of the hearing the Applicant advised that it had initially intended to apply for a Restaurant authority licence, however due to the smaller sized nature of the dishes, it had received advice that to "avoid misunderstanding it would be best to apply for a Restaurant bar authority".

28. The applicant confirmed that the focus of the premises would be on the food and that it's "major purpose would be serving lots of food". The Commission was satisfied that this certainly appears to be the main focus.
29. The Commission was not provided with any evidence of the actual number of patrons that could be accommodated within the confines of the premises. Ultimately this will in fact be a matter for the fire safety authorities to determine, however it is clear from the plans provided that the proposed venue layout is predominantly seated for the enjoyment of the food.
30. 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

31. 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

32. 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 sole Director and Secretary, Mr Sin, to be satisfactory.

Whether the Applicant is a fit and proper person to hold a licence

33. 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

34. The Applicant has nominated Mr Sin as the licence nominee. The Commission assesses Mr Sin 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

35. 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

36. 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

37. Having considered each of these objectives, and having particular regard to the nature of the restaurant bar proposed, together with its focus on food, as well as Mr Sin's involvement with another successful Japanese restaurant in Darwin that has an unblemished record on its own licence, 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

38. 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 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.

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

40. 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.

41. Regulation 123 of the Regulations also 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 2019 Act are taken to be community impact assessment guidelines issued under section 50. The guidelines are as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers.
	<p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions;

	<ul style="list-style-type: none"> • 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?

	<ul style="list-style-type: none"> • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?
--	---

42. 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 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”.

43. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. It is therefore clear that 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.

44. It is also important to keep in mind that section 50(3) of the Act provides clearly that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

45. The Commission notes that initially there was some concern about a restaurant bar authority and the need for such an authority to be granted. However the Commission was satisfied by the Applicant’s explanation and of the Applicant’s intentions to focus significantly upon the food. The Commission accepts that patrons who will be attracted to the premises will be persons who are interested in the food offering and that the supply of liquor will very much be ancillary.

46. The Commission notes that as the premises are within the Gateway Pavilion there is significant parking available, security, appropriate safeguards and also a significant separation between the premises and any residential areas.

47. Whilst the Commission notes that there are a number of community sites and licensed venues in the vicinity of the premises, the Commission does not consider that the issue of the licence will have a significant adverse impact on the community, particularly given the nature of the premises which the Commission considers will provide an attractive new venue in the local area.

48. 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

- 49. 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.
- 50. 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.
- 51. 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

- 52. 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 (seven years), and has determined ten (10) years to be an appropriate period noting no submissions were made before the Commission with respect to the length of the licence.

Extension of time

- 53. Pursuant to section 60(2)(b) of the Act, the Commission was required to decide whether to grant the application within 28 days of 16 December 2020, the day on which the objection period for the notification of the application expired. This application was not referred to the Commission however until 28 January 2021.
- 54. The Commission held a hearing within 2 weeks of that referral and made its decision and informed the applicant and the Director of its decision immediately following the hearing.
- 55. 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 13 January 2021 to 10 February 2021.

Notice of Rights

56. Section 31(1) read with section 60(3) of the Act provides that the decision set out in this decision notice is reviewable by 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.
57. 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.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
15 February 2021

On behalf of Commissioners Truman, Dwyer and Hart