

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *LITTLE MISS KOREA APPLICATIONS FOR MATERIAL ALTERATION AND NEW LICENCE [2023] NTLiqComm24*

REFERENCE: LC2023/022

LICENCE: 80518976

APPLICANT: Chung Jae Lee and Dianne Jayne Lee (family partnership)

PREMISES: Little Miss Korea
17/56 Smith Street
Darwin NT 0800

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

HEARD BEFORE: Russell Goldflam (Chairperson)
Phillip Carson (Health Member)
Ebony Abbott-McCormack (Health Member)

DATE OF HEARING: 16 August 2023

DATE OF DECISION: 16 August 2023

Decision

1. For the reasons set out below and in accordance with ss 48 and 97(2) of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to:
 - a. approve a material alteration to liquor licence 80518976 (**the existing licence**); and
 - b. issue a liquor licence with a small bar authority (**the new licence**) to Chung Jae Lee and Dianne Jayne Lee (family partnership) (**the licensee**).

The material alteration

2. The Commission approves the reduction of the footprint of the existing licence to the area shaded in yellow and labelled as “Little Miss Korea” in Northern Territory liquor licence 80518976 dated 6 June 2022.

3. In the event that the transfer of either the existing licence or the new licence from the licensee to another person is authorised, the Commission approves the removal of the door and doorway depicted by the black markings between the red and yellow areas on the plan exhibited as Exhibit Four at the hearing of this matter, and the filling in of the wall between these two areas.
4. In the event that the structural alterations referred to in the foregoing paragraph are made, no business is to be conducted in either the premises of the new licence or the existing premises unless and until arrangements for that business are approved by the Director of Liquor Licensing (**the Director**), following the provision of documentary evidence to the satisfaction of the Director that the licensee has obtained the necessary fire safety and building approvals in respect of both the existing and the new premises.

The new licence

5. The footprint of the new licence is the area shaded in red and labelled as “The Loading Bay” in Northern Territory liquor licence 80518976 dated 6 June 2022 (**the new licence**).
6. The conditions of the new licence will be those authority conditions set out in Part 3 Divisions 1 and 17 of the *Liquor Regulations 2019* (**the Regulations**).
7. In addition, the new licence shall be subject to the same conditions and hours of trade as the conditions applicable to the area shaded in red and labelled as “The Loading Bay” in Northern Territory liquor licence 80518976 dated 6 June 2022, save for the condition that “the premises shall at all the times have the appearance of and shall trade principally as a restaurant”, which is deleted.
8. The Commission approves the appointment as nominees of the new licence the same persons who are the nominees of the existing licence.
9. The new licence will be issued immediately following the publication of this decision notice.

Reasons

Background

10. The licensee operates two adjoining hospitality venues in the Darwin Central Business District, a licensed restaurant (**Little Miss Korea**) and a small bar (**The Loading Bay**). The two venues together comprise the footprint of the existing licence. Patrons and staff can walk freely between the two venues through a large opening in the wall that separates the venues. A sliding door is used when the licensee wishes to temporarily restrict access between the two venues. The licensee holds separate commercial leases from the same landlord over Little Miss Korea and The Loading Bay.
11. The licensee now wishes to reconfigure the combined premises by splitting the licensed area into two, so that The Loading Bay can operate as a stand-alone

business capable of being sold. The sale of The Loading Bay business would necessarily be contingent on the authorisation of the transfer of the liquor licence attached to those premises to the purchaser.

Preliminary Issues

12. The Act does not expressly establish a procedure for the splitting of an existing licence. Ultimately, the Director and the licensee approached this matter by referring to the Commission an application for material alteration, the primary feature of which was to excise the area of the premises occupied by The Loading Bay, in conjunction with an application for a new licence to be issued to the licensee over the area occupied by The Loading Bay, with the same conditions as the existing licence.
13. The Commission considers that in the unusual circumstances of this matter, this approach is appropriate. To the extent required, pursuant to s 318 of the Act, the Commission waives compliance with any time limits applicable to the Director or the licensee that may not have been observed in referring the applications to the Commission.

The Application

14. On 29 June 2023, the licensee lodged an application with the Director to vary the conditions of its liquor licence. Although, as is now apparent, that application was not in the correct form, the applicants provided an affidavit that clarified the intent of the application.

Consultation

15. The Director exempted the licensee from notifying the public of the application. With respect to an application for a material alteration, s 96(4) of the Act does not require public notification unless the Director considers it to be in the public interest. Similarly, with respect to an application for a new licence, s 57(2A) provides that the Director may exempt an applicant from public notification if the Director is of the opinion that the application discloses no public interest issues.
16. In this case, the Director formed the opinion that no public interest issues were disclosed by the applications. With respect, the Commission agrees: in 2021, the Commission found that it was in the public interest to issue the licence in its current form, and the Commission accepts that the instant applications are unlikely to result in a significant change in the sale, supply and consumption of liquor at the premises of either Little Miss Korea or The Loading Bay, whether or not another licensee is one day authorised to sell liquor at The Loading Bay.
17. As required by s 96(6A) (with respect to an application for material alteration) and s 56(4) (with respect to an application for a new licence), the Director notified, albeit belatedly, the Department of Health, NT Police and the City of Darwin. The Director also notified NT Fire and Emergency Services (**NTFRS**) and (for reasons that will be referred to below) NT WorkSafe.

18. The Director received the following responses:

- The Department of Health had no objection to the splitting of the licence.
- NT WorkSafe stated that it had no comment or feedback to offer.
- NTFRS stated that it had no objections, but noted the requirement to comply with building and fire safety regulatory provisions.
- NT Police expressed a preference that the licence not be split, on the basis that if one of the split licences were sold, the incoming licensee might not be suitable.

19. The Commission accepts the Director's submission that the concern of the NT Police is unfounded: s 73(1A) of the Act provides that authorisation for the transfer of a licence may only be given by the Commission (or its delegate, the Director) if it is satisfied that the proposed transferee is a fit and proper person. Moreover, s 72(6) provides that as soon as reasonably practicable after receiving an application to transfer a licence, the Director must inform the Commissioner of Police.

20. Although no response was received from the City of Darwin, the Commission notes that on 1 August 2023 the City of Darwin provided the licensee with an Outdoor Dining Licence permitting the licensee to serve patrons seated in Austin Lane (which is City of Darwin property) in an area that comprises part of the proposed new licence footprint.

The licensee's record of compliance

21. The Director informed the Commission that the licensee, which has operated Little Miss Korea since 2015, has no history of non-compliance with the Act or its licence conditions.

22. The Director informed the Commission of a serious incident at Little Miss Korea on 7 September 2022, when several patrons suffered burns, allegedly as a result of the ignition of butane gas at a table at which they were using a barbecue grill. As a consequence, the licensee has been charged with offences under the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT).

The referral

23. On 4 August 2023, the Director referred a single application for a material alteration to the Commission, which the Commission listed for public hearing on 16 August 2023. On 15 August 2023, the Director replaced the referral of 4 August 2023 with two referrals comprising an amended application for a material alteration, and an application for a new licence. The Commission notes that the material provided under cover of the Director's new referrals was substantially the same as the material provided under cover of the Director's referral of 4 August 2023.

24. The Director provided the following documents to the Commission with the referrals (**the briefs**):

- a. Licensee's application of 29 June 2023
- b. Liquor licence 80518976 dated 6 June 2022
- c. Application for Little Miss Korea licence dated October 2015
- d. Commission approval of material alteration dated 16 May 2018
- e. Commission approval of small bar authority dated 17 November 2021
- f. City of Darwin Outdoor Dining Licence Agreement, August 2023
- g. Site plans
- h. Affidavit of Dianne Lee, 3 July 2023, stating purpose of the application
- i. Probity documents for Chung Jae Lee and Dianne Jayne Lee
- j. Lease for Little Miss Korea
- k. Lease for The Loading Bay
- l. NT WorkSafe report for incident 7 September 2022
- m. Correspondence with stakeholders

The hearing

25. On 16 August 2023, the application proceeded as a public hearing. Ms Dianne Lee appeared on behalf of the licensee. Ms Ganzer and Ms Sayers-Hunt appeared for the Director. The Commission thanks them for their attendance and assistance.

26. The briefs were tendered and admitted into evidence without objection, in addition to correspondence from NT Police and a plan of the premises marked with the position of the sliding door and doorway referred to in paragraph 3 above.

Assessment of the application for a material alteration

27. The Commission considers that the proposed reduction in the area of the premises, together with the potential change to an entrance or exit from the premises constitute material alterations pursuant, respectively, to s 95(1)(e), (d) and (c) of the premises.

28. The Commission is required by s 97(1)(c) to consider the public interest and community impact requirements of the alteration. The applicant relies on the previous findings of the Commission that it was satisfied that the issue of the existing licence was in the public interest and would not have a significant adverse community impact.¹ The Commission is satisfied that the proposed splitting of the licence will not result in a significant change to the sale, supply or consumption of liquor on the premises of either Little Miss Korea or The

¹ See *Reasons for Decision LC2021/038*, 10 December 2021

Loading Bay. The Commission has no reason to depart from its previous findings in relation to the public interest and community impact for the premises, and now adopts those findings.

29. The Commission has structured its decision to enable the licensee to undertake the physical alterations referred to at paragraph 3 above without having to make a further application to the Commission, in the event that the licensee does in due course divest itself of The Loading Bay business and obtains authorisation to transfer the liquor licence for those premises to the purchaser.

Assessment of the application for a new licence

30. Section 59 of the Act requires the Commission to consider:

- 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 body corporate;
- d. the general reputation and character of the secretary and executive officers of the body corporate; and
- e. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

31. The applicant submits that the Commission should proceed by adopting its previous findings in relation to the above matters for the purpose of assessing the proposed new licence at The Loading Bay premises.² The Director supports that submission, and the Commission accepts it.

32. The Commission also adopts its previous findings in relation to the public interest and community impact requirements. The Commission has taken into account that the proposed new licence will not be subject to the current condition that the premises maintain the appearance of and trade predominantly as a restaurant. However, the Commission accepts the Director's submission that, based on Licensing NT officers' observations of liquor trading in Austin Lane, the establishment of The Loading Bay small bar as a stand-alone business is unlikely to result in a significant change to the sale and consumption of liquor in this relatively up-market precinct.

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

33. The Commission has previously assessed the licensee to be a fit and proper person to hold a licence. It is reasonably foreseeable that the licensee will sell the business. If and when that occurs, as explained at paragraph 19 above,

² See *Reasons for Decision LC2021/038*, 10 December 2021

the transfer of the liquor licence can only be authorised if the decision-maker is satisfied that the transferee is a fit and proper person to hold the licence.

34. The Commission considers that the pending charges against the licensee referred to at paragraph 22 above are of marginal if any relevance to the assessment of this application. Firstly, at this stage the licensee is presumed to be innocent of any wrongdoing. Secondly, on the information provided to the Commission, there is no indication that the incident the subject of the charges was alcohol-related. Thirdly, the Commission accepts Ms Lee's evidence that the use of table barbecues at Little Miss Korea has been discontinued, and all food served is now cooked in the restaurant kitchen. Fourthly, in the event that the licensee is one day found to have committed an offence that brings into question whether it is a fit and proper person to continue to hold a liquor licence, the Director will have the opportunity to initiate complaint proceedings against the licensee.
35. The Commission has regard to s 50(3), which provides that the "mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community". In this case, although the Commission has determined to approve the issue of a new licence, it does so in the unusual circumstance that the new licence will simply replace an existing licence, without any anticipated appreciable increase in either the amount of liquor sold and consumed on the premises, or any associated harm.
36. Having considered all of these matters, the Commission is satisfied, in accordance with s 49(1) of the Act, that:
- a. the applicant is a fit and proper person; and
 - b. issuing the licence or authority is in the public interest; and
 - c. the licence or authority will not have a significant adverse impact on the community.

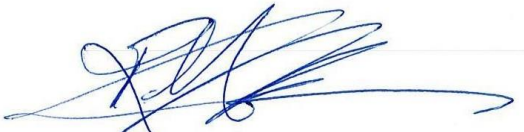
The objects of the Act

37. Section 3(4) of the Act provides that in performing its functions, the Commission must have regard to the primary and secondary purposes of the Act. The Commission has done so, and considers that its determinations in this matter are consistent with the purposes of the Act.

NOTICE OF RIGHTS

38. Section 31(1) read with ss 60(3) and 97(4) 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.

39. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director and the licensee.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
22 August 2023

On behalf of Commissioners Goldflam, Carson and Abbott-McCormack