

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A LICENCE AND AUTHORITIES

REFERENCE: LC2022/031

APPLICANT: Ms Minnie Pty Ltd

PREMISES: Ella Darwin
Unit 20, 12 West Lane
DARWIN NT 0800

LEGISLATION: Section 47 and 52 of the *Liquor Act 2019*

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 17 June 2022

DATE OF DECISION: 21 June 2022

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (NT) (the Act) the Northern Territory Liquor Commission (the Commission) has determined to issue a licence to Ms Minnie Pty Ltd (the Applicant).
2. The licence will be issued with a restaurant bar authority and late-night authority subject to those authority conditions set out in Part 4, Division 1, 10 and 16 of the *Liquor Regulations 2019* (the Regulations) save and except for the following additional conditions to be imposed into this licence:
 - a. During the hours from 00:00 to 02:00 the area marked "Outdoor Area" must be closed:
 - i. All patrons remaining in that area at the commencement of that time shall be required to relocate into the area marked "Formal Dining and Function Space" inside the premises.
 - ii. There shall be no supply, service or consumption of liquor in that area.
 - iii. There shall be no music played in that area from the premises with any speakers located in that area to be turned off.

- b. The kitchen must remain open and full meals must be available for purchase by patrons during the hours of operation until 30 minutes before the close of the licensed premises.
3. The licensed premises is the area (the premises) depicted on the site plan annexed to this decision and bound in red (Annexure A).
4. The licence will be issued immediately following the publication of this decision notice.

REASONS

BACKGROUND

THE APPLICATION

5. On 4 May 2022, an application was lodged by Mr Andrew Giles on behalf of the Applicant seeking a new liquor licence with a Restaurant Bar authority and Late-Night authority. Payment of the application fee was made at the time of lodgement.
6. The Applicant is seeking a licence with proposed trading hours of:
 - a. 10:00 hours to 02:00 hours seven (7) days per week;
 - b. All other trading conditions as per the *Liquor Act* 2019 (the Act) and *Liquor Regulations* 2019 (the Regulations).
7. The Applicant is Ms Minnie Pty Ltd. This company is registered with ASIC where Ms Vindhya De Silva (Ms De Silva), Mr Seth Chin (Mr Chin), Ms Shir Kelly (Ms Kelly) and Mr Paul Lavender (Mr Lavender) are listed as Directors and Mr Chin is also listed as Secretary. This company has 100 shares where:
 - a. SCWC Pty Ltd holds 22 shares;
 - b. Minoli Cooks Pty Ltd holds 34 shares;
 - c. Paulies Goodtime Co Pty Ltd holds 22 shares; and
 - d. Ms Kelly holds 22 shares.
8. SCWC Pty Ltd is a company registered with ASIC where Mr Chin is listed as Director and Secretary and is sole shareholder.
9. Minoli Cooks Pty Ltd is a company registered with ASIC where Ms De Silva is listed as Director and Secretary and is sole shareholder.
10. Paulies Goodtime Co Pty Ltd is a company registered with ASIC where Mr Lavender De Silva is listed as Director and Secretary and is sole shareholder.
11. In relation to Mr Chin, Ms De Silva, Mr Lavender and Ms Kelly each have provided the following probity documents:
 - a. Copy of photo identification;
 - b. Copy of National Police Certificate based on name and fingerprint check;

- c. Resume;
 - d. Reference;
 - e. Copy of RSA Certificate.
12. The name of the proposed premises is Ella Darwin. This business name is registered with ASIC in the name of the Applicant.
13. The Applicant has never held a liquor licence, nor have any persons associated with the Applicant. They are therefore not known to the Director and have no compliance history. It is proposed that Mr Lavender will be the nominee. Mr Lavender has a history in hospitality interstate and overseas.
14. This application was supported by;
 - a. Affidavit in accordance with Section 54 of the Act
 - b. Declaration of Associates
 - c. Financial Stability documents
 - d. Copy of lease of the premises
 - e. Community Impact Assessment
 - f. Public Interest Responses
 - g. Registration of food business
 - h. Letter of support from Mr Paul Kirby MLA
 - i. Site plans
 - j. Company extracts.

PUBLICATION AND CONSULTATION

15. The application was published in the NT News on 7 May 2022, and also published on the Director's webpage during the advertising period. A green advertising sign was erected at the premises for the course of the advertising period. No objections were received.
16. In accordance with the Act, the following were notified of the application:
 - The Chief Executive Officer of the Department of Health
 - The Commissioner of Police
 - CEO, City of Darwin.
17. Being a new liquor licence application, the NT Fire & Rescue Service (NTFRS) was also notified.

18. The Department of Health replied via email dated 10 May 2022, stating it had no formal objection.
19. The NT Police replied via email dated 10 May 2022, stating it “supports” the application.
20. The City of Darwin replied outside of the objection period but did not object to the application. The Commission also notes that the City of Darwin is the landlord for the purpose of these premises.
21. The NTFRS replied via email dated 9 May 2022, stating it had no objections provided any building works went through the approval processes. The Commission was informed by the Applicant that there were no building works undertaken at the premises that required building approval.

COMPLIANCE HISTORY

22. As earlier noted, the Applicant has never held a licence before in the Northern Territory and therefore has no compliance history.

THE REFERRAL

23. As earlier indicated this application was lodged on 4 May 2022. On 26 May 2022, pursuant to section 59 of the Act, the Director referred this application to the Commission. The Commission pauses to note that this panel has not seen such a speedy turnaround of an application previously. On 27 May 2022, the Applicant was notified that the matter was listed for public hearing on 17 June 2022.

THE HEARING

24. 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. Section 21(2) 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.
25. On 17 June 2022, the application proceeded as a public hearing. Mr Giles of HWL Ebsworth appeared on behalf of the Applicant accompanied by Mr Lavender. Mr Verinder appeared for the Director.
26. The Director’s referral brief was tendered into evidence. So too were a number of additional documents in support of the application. Further evidence was provided in relation to the roles and duties performed by Mr Lavender who will be the nominee to this licence. The Commission is satisfied that despite Mr Lavender never having held a licence before he has the necessary experience to assist him in undertaking such a role.

ASSESSMENT OF THE APPLICATION

27. 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 body corporate;
- (d) The general reputation and character of the secretary and executive officers of the applicant body corporate;
- (e) Whether the applicant is a fit and proper person to hold a licence; and
- (f) Whether the nominees designated by the applicant are fit and proper persons to hold a licence.

28. 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

- 29. 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.
- 30. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.
- 31. 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.

THE SUITABILITY OF THE APPLICANT'S PREMISES

- 32. Much of the submissions made on behalf of the Applicant centred on these premises being the "first Master Chef restaurant". This is reference to a currently popular television program which, it was submitted, will mean it is a significant drawcard. Whether this is true or not remains to be seen, however it is clear that a significant amount of effort has gone into opening what appears to be a restaurant aimed at the higher end of the market. The premises have been renovated to fit with the Sri Lankan inspired theme and much has been done to "re-enliven a dead space" within the Darwin CBD.
- 33. The premises are situated in the West Lane in a location formally known as the "Magic Wok" which was once a well-loved Darwin establishment. A significant capital investment has been made into the premises and they have been renovated in keeping with what was referred to as "an innovative culinary experience in the form of a contemporary and trendy Sri Lankan inspired restaurant".
- 34. The Applicant holds a lease over the premises until 2 May 2027, however, the Commission was informed that it was intended to remain at those premises long term. 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

35. The Applicant has provided appropriate documentation regarding its operation, activities, financial circumstances and plans. 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

36. The Commission has assessed the general reputation, character and work history of the Applicant's Secretary and Directors as satisfactory.

WHETHER THE APPLICANT IS A FIT AND PROPER PERSON TO HOLD A LICENCE

37. 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

38. The Commission assesses the Applicant's nominee, Mr Paul Lavender, to be a fit and proper person to hold a licence.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

39. To determine whether the issue of the licence 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.

40. Having considered each of these objectives and having regard particularly to the concept of these premises and the estimation of a capacity of approximately 70 persons inside the premises and approximately 20 persons seated outside the premises, the Commission considers that the addition of this modestly sized venue to late night trading in the central business district is unlikely to lead to a substantial increase in the number of late-night drinkers or associated harm.
41. The Commission is satisfied that the manner in which these premises is proposed to be operated will mean it is not merely another place to drink liquor after midnight and that patrons will likely be attracted to these premises for the food predominantly.
42. The Commission is satisfied that it is in the public interest to issue the licence and authorities sought; together with those additional conditions set out at paragraphs 2(a) and (b) above which will ensure these premises remain, as the applicant says they are intended to remain, as a “high end” restaurant “where high end cuisine is the primary focus”.

WHETHER THE ISSUE OF THE LICENCE WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON THE COMMUNITY

43. 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 following 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.

44. 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, which 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 buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p>

social impact on the community. This includes information about the density of licensed premises within the community area.	This could also include traffic and pedestrian impact and any plans developed to address these potential issues.
Volume	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). The Commission will consider information available to it about the current alcohol consumption rates for the community area.
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

45. 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.

46. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state however that:

"...the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits".

47. In addition, section 50(4) provides that the guidelines "may have general, limited or varied application". Although there are many matters for the Commission to consider,

like any application, some of the matters are more relevant to this application than others.

48. In considering these issues, it is also important to keep in mind that the onus is on the Applicant. Section 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.
49. Having regard to the location of the premises in the heart of the Darwin CBD on West Lane and the new and unique nature of the premises, the Commission considers that the licence is likely to enhance the amenity in that area.
50. The Commission does consider however that given the extremely close proximity of persons who reside in the vicinity of the premises and also the Hilton Darwin that there is some risk of undue offence, annoyance, disturbance or inconvenience and therefore the Commission has included the condition set out in paragraph 2(a) above concerning the “Outdoor Area”.
51. 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 or authority is in the public interest; and
 - c. The licence or authority will not have a significant adverse impact on the community.

SALE, SUPPLY AND CONSUMPTION OF LIQUOR ON THESE PREMISES PRIOR TO THE ISSUING OF THIS LICENCE

52. During the course of the hearing of this application, the Commission was informed that these premises had, whilst this application was pending, received five (5) separate licenses with a Special Event Authority under the Act through the Director. The first of which was merely ten (10) days after the Applicant lodged this liquor licence application.
53. When the Applicant was asked what the “special event” for each of the five (5) licenses was, it was submitted on behalf of the Applicant that there had been some “media” events around “Master Chef” and the opening of the premises and some “testing” of the operation of the premises. The “vagueness” of these answers did not provide the Commission with any real understanding of any actual “special” event particularly with regards to the four (4) Special Event Authority licenses being issued to the Applicant to trade from Wednesday to Sunday each week from 10am to 2am for the past four (4) weeks.
54. This Commission is concerned about the use of “Special Event Authority” licenses in the manner they appear to have been used here by the Director and wishes to make clear for any future applicant/s that the Commission does not consider the use of the “Special Event Authority” license provided for under the Act to be one aimed at “testing” the operation of premises or for “events” which result in trade occurring for weeks on end. Should any future applicant/s believe that the issuing of such licences in this matter has set a binding precedent they should be dissuaded from that view. The Act is clear as to the appropriate use of such licenses and this should be kept in mind for any future applicant/s.

NOTICE OF RIGHTS

55. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
56. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Applicant and Director.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
21 June 2022

On behalf of Commissioners Truman, Dwyer, and Corcoran

ANNEXURE A

