

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	APPLICATION FOR A LICENCE
REFERENCE:	LC2018/034
PREMISES:	Darwin City Hotel 59 Smith Street DARWIN NT 0800
APPLICANT:	Ting Family Investments Pty Ltd (as the trustee for Ting Family Trust No.2)
NOMINEE:	Mr Richard Heng Dack Ting
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) Mrs Sandra Cannon (Community Member)
DATE OF HEARING:	16 May 2018
DATE OF DECISION:	16 May 2018

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 issue a licence to "Ting Family Investments Pty Ltd (as Trustee for Ting Family Trust No.2)".
2. In accordance with section 31 of the Act, the licence shall be subject to the specific condition (in addition to those general conditions of all licences) that:
 - a. The liquor shall be sold pursuant to an authority as a "Private Hotel" authorising the sale of liquor for consumption on or at the premises.
 - b. The liquor may be sold at any time to bona fide lodgers of the premises or invited guests of the lodger (in the presence of the lodger) by way of a Mini Bar.

- c. The licence shall be subject to and inclusive of such additional conditions as may at any time be:
 - i. Requested in writing by the Licensee;
 - ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and
 - iii. Notified in writing by the Director-General to the Licensee.

Reasons

Background

3. On 16 January 2018 an application was lodged by Mr Richard Heng Dack Ting (“Mr Ting”) on behalf of Ting Family Investments Pty Ltd (as the trustee for Ting Family Trust No.2) (“the Applicant”) seeking a licence for premises known as the Darwin City Hotel (“the hotel”).
4. The hotel is located at 59 Smith Street in the Darwin CBD and is described as a boutique hotel with a target market for “all corporate travellers and holiday makers to Darwin who are looking for quality and convenient accommodation in the heart of Darwin city”. The hotel has been operating since December 2017, some five (5) months as at the time of the hearing of this application.
5. The application is for a liquor licence to permit the applicant to supply and sell liquor via mini bar located in the guest’s hotel room or via 24 hour room service. The supply and sale of liquor is to be confined to bona fide lodgers only for consumption in the hotel. As the supply and sale is via a mini bar in the guest’s room, the proposed trading hours are from Monday to Sunday (i.e. seven (7) days per week) and 24 hours per day.
6. There is no material provided to the Commission which indicates that the applicant has ever held a liquor licence before in the Northern Territory. There is therefore no history with respect to the applicant.
7. On 27 April 2018 pursuant to sections 28(1) and 50(a) of the Act the Director General referred this application to the Commission to determine by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application.

Disclosure of influential persons or potential beneficiaries

8. 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.

9. As earlier noted, the applicant is “Ting Family Investments Pty Ltd (as the trustee for Ting Family Trust No.2)”. Mr Ting is the principal executive officer of Ting Family Investments Pty Ltd (as the trustee for Ting Family Trust No.2) and pursuant to section 26A(2)(a) of the Act is the appropriate person to make the affidavit.
10. Mr Ting has disclosed that the Directors of the applicant are the following persons:
 - a. Huak Ying Ting;
 - b. Mei Chieng Chung;
 - c. Heng Dieng Ting; and
 - d. Heng Ing Ting;

and that these are the only persons (other than Mr Ting himself) who may be able to influence any decision made by the applicant. Mr Ting has also sworn that such persons are the only persons who may expect any benefit from the applicant if the licence is granted.

11. 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.

Advertising and Objections

12. Details of the application were advertised in the Northern Territory News on Wednesday 24 January 2018 and Saturday 27 January 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 26 February 2018. It is important to note that in the objection period no objections were received.
13. 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.
14. That occurred with respect to this application. The Commission notes that the application was also forwarded to the Development Consent Authority (“DCA”) for comment.

15. With respect to this application:

- a. The DOH made no adverse comment.
- b. The NT Police supported the application.
- c. The City of Darwin advised (relevantly) that "... it has not identified any reason that would be grounds for objection under section 47(2) of the *Liquor Act* for the application".
- d. The DCA advised there were "no planning implications in relation to the application for a liquor licence".

Public Hearing

16. Pursuant to section 50 of the Act, the Director-General of Licensing ("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.

17. 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. The hearing was fixed for 10.00am on 16 May 2018 and notice was given to the applicant on 2 May 2018.

18. 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.

19. The public hearing commenced at 12 noon on 16 May 2018. Mr Ting attended in person on behalf of the applicant. Ms Sally Ozolins as representative for the Director-General of Licensing was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks both Mr Ting and Ms Ozolins for their assistance.

Assessment of the Application

20. 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.

21. Despite there being no objections made to the application lodged by the Applicant, the Act now clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, section 6B of the Act makes clear 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.
22. 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.”

23. 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.”

24. 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”.

25. 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</p>

	<p>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>

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?

26. 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”.

27. 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”.

28. 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”.

- 29. The Commission notes there are no such matters prescribed by the Regulations.
- 30. 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.
- 31. 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. In particular the Commission notes that Mr Ting also appears to be a fit and proper person to be the manager.
- 32. The Commission further notes that the proposed premises appear suitable and 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.

33. In relation to the public interest and community impact test; the applicant provided written submissions advising (relevantly) of the following matters:

- a. "Alcohol will be sold to guests of the hotel only. The guests will be holiday travellers as well as corporate business guest.
- b. Liquor will be supplied in limited quantity from the mini bar. Is it not available for sale to non-hotel guest, i.e. not available for sale to public.
- c. There is no risk of public order and safety as alcohol sell is limited to hotel guests. Also the quality of alcohol available for sale will be limited to the mini bar supply only.
- d. Hotel management will be responsibility for the policy and procedures of the liquor license, due to the supply arrangement we do not anticipate any risks to hotel staffs.
- e. The sale of alcohol is limited to the hotel guest, hotel rules apply regarding noise restriction. Any guest failing to comply with noise will be requested to leave premise. Alcohol sale to guest is limited to the quantity available in the mini bar.
- f. Alcohol consumption is limited to hotel guest, guest will not be allow (sic) to consume or remove alcohol off the premises. Hotel guest comfort will take precent (sic) over any liquor sales, as this is the primary business.
- g. The licence holder has completed the necessary relevant training, Responsible Service of Alcohol (certificate is attached in this application).
- h. Credit sale of liquor will be limited what is offered as part of the daily mini bar limits.
- i. Hotel guests comfort and convenient (sic) is the paramount sell (sic) of alcohol is offered as part of the service offering, it is not the primary product sold by the hotel. Strick (sic) noise restriction (sic) apply for the comfort of all guest (sic). Guest (sic) failing to comply may be requested to leave the premise (sic).
- j. Alcohol includes standard strength and light beers, mini bottles of scotch, vodka, a red and white wine. To discourage irresponsible drinking, there will only be very limited daily supply of alcohol for the guest. It is in the interest of hotel to have responsible guests.
- k. Alcohol from part of the mini bar offering will be made available in the hotel guest rooms. Guest may consume their mini bar during their stay in the hotel.
- l. Spirit and wine will be sold in mini bottle format and beers/light beer in standard can sizes.

- m. Alcohol will form part of the mini bar services, along with soft drinks, snacks (chips, nuts, etc.). It will be sold as part of the hotel guest offering and consumed when the guests are in the room.
- n. The hotel has limited number of guest as part of the Commercial Visitor Accommodation Business.
- o. The only entertainment offered will be part of the hotel product offering, including tv (sic) and internet. There is no other entertainment provided by the hotel.
- p. There is no plan for the hotel to be offering free or reduced prices for alcohol. Interest of the hotel guest is paramount. Alcohol is provided as part of the mini bar, the goal is for the hotel to provide guest with a completed services and part of the product offering. Alcohol is to be consume (sic) in the guest hotel room only”.

34. In relation to the community impact assessment guidelines, the applicant also provided written submissions (relevantly) as follows:

“This application for liquor licence is to complement the new hotel’s mini bar, there will not be any social impact or any potential harm or health impacts to the local community. This is because alcohol will only be served to registered hotel guests from the minibar menu and to be consumed onsite in the hotel only. The sale of alcohol is strictly sold to registered inhouse (sic) guests. Non-house guests or external customers will not be able to purchase alcohol from the hotel.

Alcohol from the minibar will be available as part of the hotel room minibar service and may be sold over the reception desk to hotel guests. These distribution methods will limit the quantities available to the guests thus limit how much alcohol guests will be able to consume in the one sitting which can be monitored by RSA certified staff and also restricts underage drinking.

The targeted hotel guests are business travellers, holiday makers from Australia and international. Minibar will form a small but important part of the hotel product and services and allow us to maintain a high level of hotel services expected from our guests.

Hotel policies and procedures will limit any of the “at-risk” groups or sub-communities within the locality by:

1. hotel policies that only allow guests 18 years and over to make bookings at the hotel;
2. alcohol can only be consumed onsite and hotel guests behaviour are monitored as part of hotel guests management;
3. restriction of sales and distribution will eliminate any risk hotel alcohol sales affecting dry area, child care centres, schools, refuge for young or disadvantaged people;

It is in the interest of the hotel to maintain overall hotel guest comfort over alcohol sales at the premise”.

Further:

“Darwin City Hotel is located on Smith Street in the Darwin CBD. It is a modernised hotel with all of the creature comforts of a 5 star hotel, whilst providing quality style accommodation to the guests. To the rear of the premises is Shadforth Lane, which accommodates other hotels, backpackers (sic) hostels and nightclubs. By providing the minibars this will have minimal social impact on the local community”.

And further:

“The liquor licence will be beneficial as it will create job opportunities in the hotel. It is also an extra service that majority of hotels have and is convenient for hotel guests who might just want to stay in their room to enjoy the facilities. Minibar will also have snacks and other items on it. Staff will be trained in RSA which is an extra skill/experience to learn. This establishment is a hotel, designed to cater for the tourist and business market of persons coming into Darwin, both nationally or internationally. It is a modern hotel with all of the creature comforts, and to assist in providing a more elegant, upmarket hotel, we are seeking to utilise the minibar facilities.

Darwin City Hotel currently employs 8 staff all of whom are local residents. Being a new hotel, we are hoping to create more jobs for our locals. Our business is made of up a catering department, cleaning staff, room attendants, reception (there are 2 staff in each department). By creating local jobs we are assisting in reducing the NT unemployment rate and contributing towards the local economy. The hotel is vibrant and will remain part of the Darwin area for a long period of time, contributing to the local economy, tourism and community.

The hotel is currently involved with assisting travel agents in bringing direct flights from China to Darwin. For our international hotel guests, the more complete package we can offer to our guests, this can only improve our image as a competitive holiday destinations for holiday makers”.

Finally:

“The license will create extra jobs and it would be beneficial to hire someone local to decrease staff turnover. The extra service provides tourist or locals with options for their accommodation experience. It will also benefit the local community by providing sustainable and affordable accommodation for people both living and working in Darwin, who might want a night out without breaking the budget, if they are in town on a night, attending one of the local restaurant for dinner or attending a show or event during the dry season, without risking the chance of drink driving. People attending the premises will be able to enjoy a couple of cold beverages at a reasonable price before heading out to the city pubs.

This application is for our minibar service which majority of hotels have. Some online travel agents have this as a requirement for your star rating. Alcohol is not being served to the outside public”.

35. During the course of the hearing further information was sought from Mr Ting as to where precisely it was proposed that liquor would be consumed that was sold via the mini bar. Although it is clear to the Commission that Mr Ting is hopeful to one day improve the services available at the hotel, Mr Ting made clear that his application before the Commission was for a liquor licence to permit the sale and supply of liquor as part of a mini bar service at the hotel and for consumption within the rooms of the hotel by bona fide lodgers of the premises or their invited guests in the presence of said lodger.
36. Having considered all of the evidence presented to this Commission and noting there are no objections to the application for a liquor licence, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the licence sought.
37. The applicant has in place appropriate measures to ensure liquor is sold in a responsible manner.
38. The Commission has received no information that would suggest there is likely to be an impact upon law and order, community safety or public amenity by virtue of this application.
39. The Commission is satisfied there will be no increase in noise such as to warrant this application being refused, or that the business to be conducted at the premises will cause undue offence, annoyance, disturbance or inconvenience to the neighbourhood.
40. The Commission notes the information provided as to the licensed premises in the local community area. The Commission notes given this is a licence for the sale of liquor via a mini bar that this will not provide any relevant increase in the number of licensed premises in the area.
41. The Commission was provided with information from the applicant as to anticipated sale volumes of alcohol should this licence be issued. The Commission does not consider such increase to be a significant increase in current alcohol consumption rates for the community area given the nature of the licence sought.
42. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the material alteration meets the public interest and community impact tests and the Commission has for the reasons outlined decided to approve the material alteration to the licensee’s licensed premises as sought and as outlined at the start of this Decision Notice.

Notice of Rights:

43. 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.
44. 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.
45. 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

21 May 2018