

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR A LICENCE
REFERENCE:	2019/114
PREMISES:	Kalidonis Boutique Apartments 9 Daly Street DARWIN NT 0801
APPLICANT:	9 DLS Pty Ltd
NOMINEE:	Mr Nikolaos Pizanias
OBJECTOR/S:	Loyd Beynon and Viv Auxford, David Yueng, Frank Fulham, Jeff Norton, Joan Hoyle, Janely Seah and Samuel Niam, Sze Yee, and Tim Hoyle
LEGISLATION:	Section 26, Part IV and V of the <i>Liquor Act 1978</i> .
HEARD BEFORE:	Mr Richard Coates (Chairperson) Ms Elizabeth Stephenson (Health Member) Ms Sandra Cannon (Community Member)
DATE OF HEARING:	22 October 2019
DATE OF DECISION:	22 October 2019

Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* ("the Act") the Commission has determined to grant a licence authorising the sale of liquor for consumption on or at the licensed premises to "9 DLS Pty Ltd".
2. The authorities attached to the licence will be a public bar authority and a lodging authority.
3. Pursuant to section 31 of the Act it is a condition of this licence that the licensee not commence selling liquor until it provides written proof to the satisfaction of the Director of Liquor Licensing that the premises have been constructed and a certificate of occupancy has been granted together with all other requisite statutory approvals.
4. This licence will lapse within four (4) years of the date of this decision unless the Applicant has erected the premises and commenced trading under the licence unless

the Licensee satisfies the Commission that it would be in the public interest to grant it an extension of time to enable it to complete the building works and obtain the necessary approvals.

Reasons

Background

5. On 30 June 2016 Mr Theofilos Kalidonis, (“Mr Kalidonis”) first lodged an application with the Director-General of Licensing NT (“the Director-General”) seeking a licence in respect of premises he proposed building at 9 Daly Street Darwin.
6. That application was deemed incomplete at the time of its lodging and a further application in the name of 9 DLS Pty Ltd, a company wholly owned by Mr Kalidonis was lodged in respect of the same premises on 17 January 2017.
7. It was not until 16 August 2018 that the Director- General referred that application to the Commission. The Commission, constituted by different panel members to those presiding over this application, commenced hearing the matter on 24 October 2018. On that day the Commission advised the Applicant that there were a number of deficiencies with the application; in particular the public interest and community impact criteria had not been properly addressed.
8. Despite granting the Applicant an adjournment until 16 January 2019, the deficiencies remained and the Commission by decision dated 18 January 2019 refused the application.
9. On 20 March 2019 a further application was lodged with the Director-General by Theofilos Kalidonis, on behalf of 9 DLS Pty Ltd (the Applicant) seeking a licence for premises known as Kalidonis Boutique Apartments located at 9 Daly Street Darwin.
10. The Applicant is intending to build an 18 floor building to include a restaurant, sports bar, alfresco area, and gaming room on the ground floor, and apartments on the other floors. It is seeking a Public Hotel liquor licence for the sale and consumption of liquor;
 - On premises only
 - Restaurant Liquor trading hours 11.00 hours – 23:59 hours 7 days a week including all public holidays
 - Sports Bar and Gaming Room Liquor trading hours 11:00 hours - 23:59 hours 7 days per week, no liquor trading Good Friday or Christmas Day, meals available in the sports bar until close of business.
 - Mini bar service to apartments 24 hours per day, 7 days per week including all public holidays for bona fide lodgers and their guests
 - Liquor Consumption not ancillary to a meal in all areas
 - Takeaway liquor has not been applied for.
 - It is also noted that they have applied to the Director-General for an exemption in accordance with Section 104(3)(g) to allow persons on the premises from 7:00am – 11:00am for the purposes of consuming food and non-alcoholic drinks. This will be issued if this application is approved.

11. The Application was accompanied by an affidavit from Theofilos Kalidonis stating that there are no other persons of influence in relation to the conduct of the business or the proposed licence apart from the Directors of the Applicant.
12. The Applicant is 9 DLS Pty Ltd. It is currently registered with ASIC and a review of their corporate structure shows that they have one Director and one secretary with Theofilos Kalidonis holding both positions. The Applicant has a total of 30 shares with Theofilos Kalidonis owning all shares. A registered ASIC business name "Kalidonis Boutique Apartments" has been provided but is registered against Kalidonis Hospitality Group Pty Ltd and not 9 DLS Pty Ltd. This has been provided on the basis that the name is a working/concept title only pending completion of the building works in several years' time. Once the building is nearing completion the business name can be transferred to the Applicant, or a new business name formulated and registered.
13. The Applicant has provided a list of associated companies where Theofilos Kalidonis is the sole director under the banner of The Kalidonis Group. The Kalidonis Group Pty Ltd provides management over all other underlying companies. Kalidonis Hotels Pty Ltd manages the rental properties and Kalidonis Taverna and Kalidonis Pty Ltd manages the construction aspects. Financial statements for all three companies have been provided to provide an overview of the overarching companies on the basis that 9 DLS Pty Ltd has limited financial trading history. Rinaldi & Co. have provided a Net Assets Certificate indicating that that the group has net assets above \$50,000.
14. It is noted that an associated company of the Applicant, 87 WDS Pty Ltd, is the licensee for liquor licence number 80518418 Authority - Restaurant for premises known as Kalidonis Taverna located at 87 Woods Street, Darwin.

Publishing of Application

15. The application was advertised in the NT News on Wednesday 19 June 2019 and Saturday 22 June 2019. A green sign was requested to be displayed at the premises for a period of 30 days with the advertising period ending on 22 July 2019. A Statement of display of the green sign was supplied by the Applicant indicating the sign was displayed at the premises for the required period.
16. As a result of the publication of the application, nine objections were received from members of the public.

Objections

17. Nine objections were received from the public in relation to this application. They are from;
 - Sze Yee, no residential address provided, received 21 July 2019
 - David Yeung 38/108 Mitchell Street, Darwin, lodged 21 July 2019. An email was sent to David Yeung on 25 July 2019 attempting to clarify if he had forgotten to attach any supporting documents. A reply has not been forthcoming.
 - Jeff Norton, 23/108 Mitchell Street, Darwin, lodged 22 July 2019
 - Janely Seah & Samuel Niam, owner of adjoining building, lodged 22 July 2019

- Lloyd Beynon & Viv Axford, 59/10 Doctors Gully Road, Darwin, lodged 22 July 2019
 - Frank Fulham, 35/10 Doctors Gully Road, Darwin, lodged 22 July 2019
 - Joan Hoyle, 108 Mitchell Street,, Darwin, lodged 22 July 2019.
 - Tim Hoyle, 108 Mitchell Street,, Darwin, lodged 22 July 2019
 - Paola Pellegrini 47/108 Mitchell Street, Darwin, lodged 22 July 2019 but with no supporting information. An email dated 25 July 2019 was sent to her requesting clarification of her home address which was supplied the same date. A further email dated 25 July 2019 outlining the supply of “out of time” documents was sent to her but has remained unanswered.
18. Despite being notified of the hearing date none of the objectors attended the hearing or provided any further information in support of their objections.
19. Six of the objections were from residents of a nearby apartment complex at 108 Mitchell Street and appear to be a “cut and paste” of an email sent to them by their Body Corporate Manager Ms Alicia Tollner.
20. In accordance with section 47G of the Act, copies of the objections were forwarded to the applicant who provided a detailed response.

Consultation

21. In accordance with Section 27(3) of the Act, notification of the application was forwarded to;
- Department of Health
 - Northern Territory Police
 - City of Darwin
22. Whilst not legislatively required, notification was also sent to
- NT Fire & Rescue Department
23. The Department of Health replied via email dated 1 July 2019 that it had no adverse comments but included comments regarding smoking signage.
24. The Northern Territory Police replied via email dated 29 June 2019 outlining concerns regarding patron safety when entering and leaving the premises. This was forwarded to the Applicant on the 2 July 2019 and the Applicant provided further details on the 3 July 2019 which were sent to the NT Police on the 4 July 2019. An updated clarification email from NT Police dated 13 August 2019 stated it has no further comments.
25. The City of Darwin was advised of the application via email on 29 June 2019 and subsequently advised that it had no adverse comment to make in relation to this application.
26. The NT Fire & Rescue replied via email dated 29 June 2019 outlining it supports the application but subject to building approval and final inspections upon completion of the building.

27. The Commission notes that in the earlier hearing a response had also been received from the Development consent Authority (DCA) confirming that consent had been granted to:

“The proposal to use and develop the above mentioned land for the purpose of a motel in a 24 storey building including ground floor restaurant.”

28. In support of this current application the Applicant relied on a Development Permit from the DCA dated 20 June 2018 approving the development of the land “for the purpose of 40 x 2 bedroom multiple dwellings, 37 motel rooms and ground level commercial tenancies in an 18 storey building.”

29. The current proposal is for a ‘hotel’ not a motel. Whether the existing DCA development permit is sufficient to enable the Applicant to operate a public bar from the ground floor of the proposed premises or a further DCA application will be required is a matter for that Authority to determine.

Public Hearing

30. Pursuant to section 50 of the Act, 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.

31. As earlier noted, on 27 August 2019 the Director General referred this application to the Commission. 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. On 2 October 2019 notice was sent to the applicant advising the application would be listed for hearing to take place on 22 October 2019 at 10.00am.

32. 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.

33. The Public Hearing commenced at 10:00 am on 22 October 2019. Mr Kalidonis attended together with Michael Blong from DWS Hospitality Specialists, Ms Dianne Lane and Mr Pizanias the proposed nominee. Mr Jeff Verinder appeared on behalf of the Director of Liquor Licensing. The Commission thanks all parties for their assistance.

Assessment of the Application

34. 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.”

35. 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.”

36. 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”.

37. 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. <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; • 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? • 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?

	<ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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38. 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”.

39. 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”.

40. 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”.

41. The Commission notes there are no such matters prescribed by the Regulations.

42. 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.

43. In relation to this application; 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. The Commission has already noted the contents of that affidavit in these reasons.

44. The Commission also notes 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. In fact there appears to be evidence positively in favour of the applicant given the involvement of Mr Kalidonis in another licensed premises (which on all accounts is very successfully operated) and given the reputation of Mr Kalidonis in the construction and mining industry.

45. However, again, that is not the end of the matter. The Act makes clear that the Commission (as the decision maker with respect to this application) **must** apply the public interest and community impact test and that it is the applicant who **must** satisfy the Commission that the approval of the application meets the public interest and community impact test. It is also important to understand that the Act makes clear that the Minister’s community impact assessment guidelines form part of determining whether the application satisfies the public interest and community impact test. The wording of the legislation makes clear that this is not a matter of discretion for the Commission. The Commission **MUST** apply these tests and **MUST** be satisfied that they have been met.

46. In support of this application the applicant submitted a comprehensive Community Impact Assessment (CIA) statement dated March 2019 which had been prepared by DWS Hospitality Specialists. That document described in detail the nature and type of licenced facility that was proposed, analysed the demographics of the local community and provided a projection of liquor sales volumes at \$682,080 per annum once the hotel had been in operation for over a year.

47. The CIA also provided details of other licensed premises in the area sensitive sites of public congregation, an analysis of at risk groups and crime statistics. It outlined the applicant’s harm minimisation policy in relation to the responsible promotion of alcohol and stressed the fact that there would be no takeaway sales or late night trading associated with the outlet.

48. The CIA claimed that the benefits associated with the proposed venture would include a \$30 million development on an otherwise vacant site which would generate around 50 jobs during the building phase. It would contribute to the tourism industry and align with Government and Council initiatives aimed at growing the population boosting the visitor economy and supporting greater business activity.
49. The Public Interest Criteria statement addressed all the relevant considerations and stressed the Applicant's commitment to a comprehensive responsible service of alcohol policy.
50. Although there is a possibility that when built the hotel complex may be managed by a specialist hotel operator, Mr Kalidonis gave evidence about his hopes to manage the hotel bar and restaurant along the same lines as his successful Kalidonis Taverna. The Commission accepts he has a passion and commitment to improving the hospitality options in Darwin.

The Objections

51. In its response to the objections, the Applicant (at attachment X of the Director General's referral brief) accurately listed the key objection points as follows:
 - A. The area is predominantly residential
 - B. There are adequate facilities within walking distance to cater for residents therefore another licensed venue is not required / high infiltration of licensed premises in the immediate area
 - C. Business is bad with the closure of other venues
 - D. Increase in antisocial behaviour associated with alcohol consumption
 - E. Lack of venue parking for patrons
 - F. Lack of off-street parking and drop off zones
 - G. The Building being partially funded by the NT government to cater for 30 social housing apartments in the building.
52. The applicant provided a comprehensive response to each of the heads of objection and stated in conclusion:

We note that the public comment is largely concerned with the logistics of the development, such as planning, parking, traffic, drop off zones and funding. There is minimal reference to any proposed negative impacts of the liquor licence application itself.

While we have included a response to all the objection points, it is our belief that the determination of the liquor licence application is not the appropriate forum for any queries relating to planning consent.

If the relevant planning authorities are satisfied the proposal meets requirements, impact on surrounding residents would be akin to any new development in the region. Given the Council focus on activating vacant sites in the city centre, it would not be amiss to assume residents who elect to reside in the CBD would have some expectation of ongoing urban development in the surrounding area.

53. The Commission agrees with those comments and whilst having considered each of the objections is of the view that the concerns expressed are largely confined to planning issues which have already been determined in favour of the applicant by the appropriate planning authority the DCA.
54. The application that has been presented to this Commission is a significant improvement on what was presented during the previous hearing. The Commission is now satisfied that the applicant has given proper attention to the requirements of the Act and to the guidelines issued by the Minister.
55. Having regard to the modest level of projected liquor sales and to the comprehensive RSA policy that has been adopted by the applicant, together with its demonstrated ability to manage licensed premises we are satisfied that granting the licence would not result in any increase in alcohol related harm within the local community area.
56. The Commission is also satisfied that approving the application will have positive economic benefits both during the construction phase and during the longer term through employment at the hotel as well as within the wider community by enhancing Darwin's tourist industry.
57. Having regard to all the factors we are obliged to consider we are satisfied that the application meets the Community Impact and Public Interest tests. Accordingly we have determined to grant the applicant a liquor licence in the terms and conditions specified in paragraphs 1 to 4 of this Decision Notice.

Notice of Rights:

58. 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.
59. 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.
60. 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 and the objectors.



Richard Coates
Chairperson
Northern Territory Liquor Commission
7 November 2019