

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR A LICENCE</b>
<b>REFERENCE:</b>	2020/021
<b>PREMISES:</b>	<b>Kumbidgee Restaurant</b> <b>595 Gorge Road</b> KATHERINE NT 0850
<b>APPLICANT:</b>	Kumbidgee Pty Ltd
<b>OBJECTOR/S:</b>	Nil
<b>LEGISLATION:</b>	Section 26, Part IV and V of the <i>Liquor Act 1978</i> .
<b>HEARD BEFORE:</b>	Mr Richard Coates (Chairperson) Ms Elizabeth Stephenson (Health Member) Ms Christine Hart (Community Member)
<b>DATE OF MEETING:</b>	21 May 2020
<b>DATE OF DECISION:</b>	21 May 2020

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### Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (“the 2019 Act”) the Commission has determined to issue a licence and restaurant authority to Kumbidgee Pty Ltd (“the Applicant”).
2. The licence is subject to the restaurant authority conditions set out in Division 15 of the Liquor Regulations 2019.
3. In accordance with section 85 of the 2019 Act, the Commission fixes a licence term of 99 years.

### Reasons

#### **Background**

4. On 26 September 2019, an application for a liquor licence was lodged by Ms Carolyn Grace on behalf of the Applicant seeking a liquor licence for the premises known as Kumbidgee Restaurant located at 595 Gorge Road, Katherine.

5. At the time of lodgement, the application was deemed incomplete. On 9 December 2019 all materials were received that allowed acceptance of the application.
6. The Applicant is applying for a liquor licence with a restaurant authority which authorises the sale of liquor to patrons for consumption on or in the licensed premises with the consumption of food.
7. The Applicant intends to specialise in fine-dining and functions, trade 7 days per week, inclusive of public holidays and serve breakfast, lunch and dinner, with proposed liquor trading hours of 11:00 to 11:59 hours.
8. The Applicant proposes to have a selection of beer, cider, wine, basic spirits and a wide range of non-alcoholic drinks available for sale.
9. The application was accompanied by an affidavit of Ms Grace, Director, sworn on 6 December 2019 which stated that there is only one other person, Mr Christopher McManus, who has any influence in relation to the conduct of the business or the proposed licence.
10. The Applicant submitted the following documents in support of the application:
  - Public Interest Statement;
  - Community Impact Assessment;
  - company extract dated 26 September 2019;
  - Vida Credit Report;
  - in respect of the Directors, Ms Grace and Mr McManus: photographic identification, business and personal references and National Police Certificates;
  - in respect of the proposed nominee, Ms Grace, a copy of her resume and evidence of the holding of a Responsible Service of Alcohol certificate;
  - Commercial Lease Agreement- sublease to Desert Farms Pty Ltd;
  - Bank Statements;
  - Assets and liabilities statement;
  - Payslip and bank account details;
  - Business Plan;
  - Smoking Management Plan;
  - Site Plans;
  - Copy of Certificate of Registration of Food Business;
  - Copy of Transfer to Trustee and Search Certificate evidencing the ownership of Volume 834, Folio 792;

- Copy of Development Permit issued by Development Consent Authority on 10 May 2019.

## **Publishing of Application and Consultation**

11. The application was advertised in the Katherine Times on 22 and 29 January 2020, a “green sign” was displayed at the premises for the required 30 day period and a “Statement of Display” was provided.
12. No objections were received from the public.
13. Pursuant to section 27(3) of the *Liquor Act 1978* (the 1978 Act), on 9 December 2019 notification of the application was sent to:
  - a. the Chief Executive Officer of the Department of Health;
  - b. the Commissioner of Police;
  - c. the Chief Executive Officer of the Katherine Town Council.
14. Whilst not legislatively required, notification was also sent to Northern Territory Fire and Rescue Services.
15. On 9 December 2019, the Department of Health provided a response by email confirming it had no adverse comment, however asked that consideration be given to patron and community safety and amenity when determining this application. The Department also requested that the venue clearly display signage to delineate the Non Smoking Areas from the Smoking Areas and that the applicant comply with Section 11 of the *Tobacco Control Act* and Regulation 15B of the Tobacco Control Regulations, specifically Regulation 15B(3) where smoking is not permitted unless sub regulation 15B(3)(a) through (g) are complied with. The Department supplied appropriate signage for the convenience of the applicant, and a sample Smoking Management Plan, Enclosed Area Guidelines and extract of the legislation referred to.
16. On 20 January 2020, NT Police advised by email that there was no objection to the application but queried the security of alcohol on the premises outside of trading hours. Comment was made that the location was vulnerable and that proper consideration needed to be applied to the security of the premises and the principles of Crime Prevention Through Environmental Design (CEPTD). On 21 January 2020, the Applicant provided an email response which was on-forwarded to NT Police and this advice has been accepted by the NT Police.
17. The Katherine Town Council did not respond to the notice from Licensing NT.
18. On 13 February 2020, Northern Territory Fire and Rescue Services advised by email of the support of the application having resolved specific issues with the Applicant.

19. Part 8 of the Liquor Regulations 2019 provide for transitional matters including the handling of an application for a licence made under section 26 of the 1978 Act that was not determined before the commencement of the 2019 Act on 1 October 2019.
20. Regulation 129 provides for an Applicant to give notice to the Director of Liquor Licensing (“the Director”) that the applicant wishes to proceed to have the application determined under section 324 of the 2019 Act. Further Regulation 129(2) mandates the lodgement of a notice of the authority sought to have issued in conjunction with the licence.
21. On 20 April 2020, the Applicant gave written notice to the Director that it wished to have the application determined under the 2019 Act and that a restaurant authority was sought. Although having regard to the fact that the application was not formally accepted by the Director until 9 December 2019, the Commission was probably required to determine it in accordance with the 2019 Act in any event.

## **The Hearing**

22. On 23 April 2020, the Director referred the application for the grant of a licence to the Commission for consideration and determination.
23. On 21 May 2020, the Commission convened by way of telephone conference and determined pursuant to section 21(2)(d) of the 2019 Act that conducting a public hearing was not worthwhile nor in the public interest for the following reasons:
  - a) that the matter was not contentious, there having been no objections;
  - b) that having regard to the Corona virus pandemic there was a need to avoid unnecessary public gatherings.

Accordingly, it was appropriate to conduct the hearing in private and on the basis of the written material submitted with the application.

## **Assessment of the Application**

24. The Commission has had regard to the relevant considerations listed in section 59(3) of the 2019 Act as to the suitability of the applicant to hold a licence. The applicant is a body corporate and the company accountant has provided an opinion that it is a financially viable entity with sufficient assets to conduct the business of a licensed restaurant. The company’s two directors and sole shareholders Ms Grace and Mr McManus have provided personal references which attest to their good character and extensive experience working within the restaurant industry. There has been no suggestion that either of them are not fit and proper persons to be an associate of a licensee. The Commission is satisfied that the applicant is a fit and proper entity to hold a licence and that the premises, which have previously operated as a successful licensed restaurant and function centre, are suitable to be once again licensed.

25. The Commission has had regard to the public interest requirements of section 49 of the 2019 Act and is satisfied that issuing the licence and restaurant authority is in the public interest and will not have a significant adverse impact on the community. The venue is situated in an environment which will showcase the Territory's natural beauty. That, together with the proven ability of Ms Grace and Mr McManus to work at a high level within the hospitality industry has the potential to create an outstanding destination for the benefit of tourists and Katherine residents alike.
26. Section 85 of the 2019 Act now requires the Commission to fix a licence term. The applicant was contacted in relation to this and sought the grant of a licence in perpetuity. However it is our view that the Act requires that a definite term be imposed. Having regard to the significant investment being made by the applicant which has purchased the freehold of these premises the Commission has determined to set the longest term realistically available which will be 99 years.

**Notice of Rights:**

27. Section 31 of the 2019 Act provides for any decision of the Commission for which a decision notice is required under the Act is reviewable by Northern Territory Civil and Administrative Tribunal.
28. Section 60(3) of the 2019 Act requires the Commission to give a decision notice to the Applicant after making a decision under section 60(1).



Richard Coates  
Chairperson  
Northern Territory Liquor Commission  
22 May 2020

On behalf of Commissioners Coates, Stephenson and Hart