

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Application for the grant of a licence and authorities
APPLICANT:	Mr Michael Klarenbeek
PROPOSED PREMISES:	The Blue Moon Restaurant 17 Undoolya Road East Side NT
OBJECTORS:	Nil
LEGISLATION:	<i>Liquor Act 2019</i> - Part 3 and 4
DECISION OF:	Southern Region Manager - Licensing and Compliance
DATE OF DECISION:	7 November 2024

DECISION

1. As a delegate of the Director of Liquor Licensing (the Director), I approve the application by Mr Michael Klarenbeek for the grant of a liquor licence with a restaurant authority. The operation of the restaurant authority is to be at the premises known as The Blue Moon Restaurant, 17 Undoolya Road, East Side.
2. The licence is granted in pursuance of section 60 of the *Liquor Act 2019* (the Act), with reference to sections 47(1)(b) of the Act, being a restaurant authority.
3. The operating conditions in relation to a restaurant authority are in accordance with Part 4, Division 15 of the *Liquor Regulations 2019* (the Regulations) and the following special conditions:

Restaurant authority

- a) The hours of operation are from 17:00 and 23:59 hours, Monday to Sunday each week except Good Friday and Christmas Day;
- b) The hours of operation on Good Friday and Christmas day are from 11:00 to 21:00 in accordance with the Regulations;
- c) The licensee may extend their trade on New Year's Eve until 02:00 the following day if they provide written notification to the Director of Liquor Licensing (the Director) before 3 December of the year preceding the New Year's Day;

BACKGROUND

4. Pursuant to section 52 of the Act, Mr Michael Klarenbeek has sought the licence as a natural person and has operated the premises as a family-friendly restaurant and café for many years. The premises are well known in Alice Springs and there are no concerns arising from its operation at this time.

CURRENT SITUATION

5. The application is for a licence to allow for the sale of liquor by the licensee as a natural expansion of the business which is widely supported in the community.
6. The licensee regularly conducts events at their existing premises.
7. This licence will allow for the expansion of the products offered by the premises which has traded since 2008.
8. The applicant has provided the material prescribed in section 52 of the Act including:
 - an affidavit made under section 54;
 - evidence necessary to satisfy the onus specified in section 51; and
 - the application fee.
9. A food and drink menu was provided by the licensee in support of the application. It is expected by the nature of the operation, the menu will from time to time vary. This reflects the availability of goods and the client's preferences.
10. The varying nature of the food on offer notwithstanding, the Regulations require all persons being served liquor to also be consuming **food from the licensee** and a reasonable range of non-alcoholic drinks and water must also be available to patrons.

NOTIFICATIONS, PUBLIC NOTICES AND OBJECTIONS

11. Pursuant to section 57 of the Act, the application was subject to public notification in the usual manner.
12. In pursuance of section 56(4) of the Act the application was notified to the Commissioner of Police and the Chief Executive Officers of the Department of Health (Health) and Alice Springs Town Council.
13. Although not a statutory requirement, as is practice, notification of the application was sent to the Northern Territory Fire and Rescue Service (NTFRS).

14. Police and Health advised they had no objections to the application, and no responses were received from the Alice Springs Town Council nor NTFRS.

15. No objections were received from any person in relation these applications.

APPLICATION

16. The applicant has provided a comprehensive suite of materials in support of the application including all materials prescribed by the Act.

17. The authority sought by the applicant is in pursuance of section 47(1)(b) of the Act.

18. The determination of applications under section 60(1) of the Act has been conditionally delegated by the Liquor Commission to the Director of Liquor Licensing. The limitation including the authorities which may be granted under delegation being a restaurant authority and catering authority.

19. A limitation placed on the delegation are for applications where an objection has been received. No objections were received and therefore it may be determined under delegation.

20. The Director further delegated these powers to me by instrument.

21. For completeness, the original application was for small bar, restaurant, restaurant bar and special venture authorities which were somewhat misguided. Licensing NT personnel liaised with the applicant who insisted on proceeding as submitted and the matter was referred to the Commission.

22. On 1 November 2024 it was confirmed by Mrs Klarenbeek they wished to amend the application to a restaurant authority only.

23. As the determination of that type of authority has been delegated to the Director the Commission rejected the referral and returned it to the Director for decision on 1 November 2024.

24. For completeness it was confirmed in person by Licensing NT personnel on 7 November 2024 with Mr Klarenbeek at the premises he agreed to the amendment of the application to a restaurant authority only.

25. This matter has subsequently proceeded on that basis.

DISCLOSURE OF PERSONS

26. Section 54 of the Act requires the applicant to make an affidavit disclosing each person who, if the licence is issued, may:
 - (a) be able to influence the applicant; or
 - (b) expect a direct or indirect benefit from the applicant.
27. I am satisfied with the materials provided by the applicant in relation to this requirement and note the applicant already operates the café from the existing premises.

RESULTS OF INVESTIGATION

28. Section 58 of the Act enables the Director to conduct an investigation into an application as considered appropriate. No materials have been discovered or provided to indicate there are any adverse matters in relation to this application.
29. A fulsome Business Plan was provided detailing the nature of the business.

FINANCIAL STABILITY

30. I am satisfied with the materials provided of the financial stability and business reputation of the applicant.
31. As written previously, the applicant has operated these premises for many years, and it is a well-established operator.

FIT AND PROPER PERSON

32. Section 59(3)(g)(i) of the Act requires the decision maker to consider whether the applicant is fit and proper to hold a licence.
33. The applicant provided materials in support of this and as Mr Klarenbeek has sought the licence as a natural person, the provisions of section 53(3) of the Act are not enlivened. No nominee is required.
34. Having considered the materials provided I am satisfied the applicant, Mr Klarenbeek is a fit and proper person to hold a licence.

PUBLIC INTEREST AND COMMUNITY IMPACT

35. Section 49 of the Act requires the decision maker to be satisfied the applicant is fit and proper, the licence or authority is in the public interest and will not have a significant adverse impact on the community.
36. The first branch of the requirement has already been addressed.
37. It remains to consider whether the application is in the public interest, to do so consideration must be given to the objectives prescribed in section 49(2) of the Act which include:
- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
 - b. ensuring liquor is to be 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 the practices that encourage irresponsible drinking;
 - j. reducing or limiting increases in anti-social behaviour.
38. In determining whether there would be a "significant adverse impact on the community" section 49(3) of the Act prescribes the decision maker "must consider the following":
- 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;
 - j. any other matter prescribed by regulation.
39. The Act is clear in that the applicant bears the onus of satisfying the decision maker of the relevant matters, irrespective of whether no objections were received as is the case in this matter.
40. In relation to the issue of the community impact and public interest, those matters have previously been published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the *Liquor Act 2019*, and are taken to be community impact assessment guidelines issued under section 50 of the Act.
41. Those matters remain as previously published in numerous decisions by the Liquor Commission and I am guided by these decisions.

CONSIDERATION CRITERIA

42. Consideration must be made of the applicant's affidavit, the results of any investigation, objections and responses, the suitability of the premises along with the appropriateness of the applicant to be a licensee.
43. With regards to the matters raised in section 49(2) of the Act, I note the following:
- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised:

I am satisfied the provision of liquor is complementary to the existing restaurant operations and a natural part of the services to be provided by the licensee.
 - b. ensuring liquor is to be sold, supplied, served and consumed, on or in licensed premises in a responsible manner:

Having considered all the material, it is unlikely any liquor sold, supplied, served and consumed will be done so in an irresponsible 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:

The existing premises are in a quiet residential area however the nature of the events held are unlikely to attract anti-social behaviour.

- d. protecting the safety, health and welfare of people who use licensed premises:

The policies developed by the applicant applicable to the premises are considered to adequately protect the safety, health and welfare of people who are likely to use the licensed premises during its hours of operation.

- e. increasing cultural, recreational, employment or tourism benefits for the local community area:

The primary intention of the licence is to provide a more fulsome restaurant operation to their existing clientele.

- f. promoting compliance with this Act and other relevant laws of the Territory:

There are no materials provided which would suggest the applicant will not comply with the Act and any other relevant laws.

- g. ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business:

I am satisfied the applicant will appropriately manage and supervise service staff.

- h. preventing the giving of credit in sales of liquor to people:

No issues have been raised to suggest there is any concern in relation to this objective.

- i. preventing the practices that encourage irresponsible drinking:

No issues have been raised to suggest there is any concern in relation to this objective.

- j. reducing or limiting increases in anti-social behaviour:

No issues have been raised to suggest there is any concern in relation to this objective.

44. Turning to the matters under section 49(3):

- 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:

There are no materials to suggest there is a significant risk of undue offence, annoyance, disturbance or inconvenience likely to be caused by the granting of these authorities.

- b. the geographic area that would be affected:

As the premises have been operating at this location since 2008 I am satisfied there is unlikely to be any anti-social behaviour arising from the sale of liquor under the restaurant authority.

- c. the risk of harm from the excessive or inappropriate consumption of liquor:

As previously indicated, there are no materials to suggest there will be excessive consumption of liquor.

- d. the people or community who would be affected:

As written previously these premises are already well supported and highly-regarded, it is unlikely this expansion of the business will result in adverse impact on the nearby residents.

- e. the effect on culture, recreation, employment and tourism:

This is a natural growth of the business.

- f. the effect on social amenities and public health:

It is unlikely there will be any significant adverse impact on the social amenities and public health by the granting of this licence to the applicant.

- g. the ratio of existing liquor licences and authorities in the community to the population of the community:

It is my opinion this matter does not significantly increase the ratio of licensed premises.

- h. the effect of the volume of liquor sales on the community:

The minimal nature of the operation is unlikely to significantly increase the volume of liquor sales.

- i. the community impact assessment guidelines issued under section 50:

These have been considered and referred to earlier in this notice.

- 45. Having regards to the foregoing, I am satisfied that the issuing of the licence as sought is in the public interest and will not have an adverse effect on the community.

REVIEW OF DECISION

- 46. Section 27 of the Act provides for the applicant or a person who made a submission the subject of the decision, to seek a review of a decision made by the delegate of the Director.
- 47. The Director delegated the determination of applications made under section 52 of the Act by instrument to the person from time to time holding, acting in or performing the duties of the position listed in the Schedule of that instrument. This decision was made by a person referred to in that schedule.

48. An application for review must be lodged with the Director within 28 days after written notice of the decision is given to the person and must be in the form approved by the Director, stating the grounds for the review and the facts relied on to establish the grounds.

49. Accordingly, the affected persons in relation to this decision are Mr Michael Klarenbeek, Police and Health.



Mark Wood
Southern Region Manager – Licensing and Compliance
Delegate of the Director of Liquor Licensing

7 November 2024