

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Application for the grant of a licence and authority
APPLICANT:	SXW Pty Ltd
PROPOSED PREMISES:	Fiesta Flavors 378 Stuart Highway Winnellie NT 0820
OBJECTORS:	Nil
LEGISLATION:	<i>Liquor Act 2019</i> - Part 3 and 4
DECISION OF:	Southern Region Manager - Licensing and Compliance
DATE OF DECISION:	22 January 2025

DECISION

1. As a delegate of the Director of Liquor Licensing (the Director), I approve the application by SXW Pty Ltd for the grant of a liquor licence with a restaurant authority pursuant to section 60, and with reference to, section 47(1)(b) of the *Liquor Act 2019* (the Act).
2. The operation of the restaurant authority is to be at the premises known as Fiesta Flavors, 378 Stuart Highway, Winnellie.
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 11:30 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; and

BACKGROUND

4. Pursuant to section 53 of the Act, Mr Sean Johnston, Director of SXW Pty Ltd has sought the licence for premises that are already operating as a family-friendly buffet restaurant with an emphasis on Filipino cuisine.
5. Mr Johnston through this applicant entity, has operated Salvatores Café in Darwin City for many years under a separate licence with a restaurant bar authority.

CURRENT SITUATION

6. The application is for a licence to allow for the sale of liquor by the licensee as a natural expansion of the business which opened in December 2024 and has since been widely supported by the community.
7. 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.
8. The restaurant operates predominately as a buffet with a range of food and a focus on Filipino cuisine.
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 and the buffet style operation.
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. A request was made by Mr Johnston that the Director exercise their discretion to exempt this application from the public notice requirements of section 57 of the Act, submitting the location and proposed nature of the business, along with his history as a licensee suggests there is no public interest arising from the matter.

12. A discussion was had with Mr Johnston in which he confirmed the proposed business model and limited nature of liquor sales, that being ancillary to a meal, and it was on that basis the application was exempted from the public notice requirements pursuant to section 57(2A) of the Act.
13. The exemption under section 57(2A) of the Act notwithstanding, as required the application was notified to the Commissioner of Police and the Chief Executive Officers of the Department of Health (Health) and the City of Darwin.
14. Although not a statutory requirement, as is practice, notification of the application was sent to the Northern Territory Fire and Rescue Service (NTFRS).
15. Police and Health advised they had no objections to the application, and no responses were received from the City of Darwin nor the NTFRS.
16. No objections or adverse comments were received from any person in relation this application.
17. It is noted the NTFRS will determine the maximum patron numbers for the premises and the licensee will be required to display and maintain the signage provided to them by the NTFRS for these numbers.

APPLICATION

18. An incomplete application for the licence was lodged by Mr Johnston on 15 January 2025 with his desire being to commence trade on Australia Day, 26 January 2025.
19. Noting the short time frame provided for this matter discussions were had between the department and Mr Johnston to expedite the process and potentially allow for it to be determined before 26 January 2025.
20. The final materials were provided on 20 January 2025.
21. The applicant has provided a suite of materials in support of the application, reflective of the simple nature of the business model and including all materials prescribed by the Act.
22. The authority sought by the applicant is in pursuance of section 47(1)(b) of the Act.
23. 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 of the delegation includes a restaurant authority.
24. 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.

25. The Director further delegated these powers to me by instrument.
26. Mr Johnston confirmed the sale of liquor is only to be ancillary to a meal with liquor not being a significant attractor, but merely complementary to the overall dining experience.

DISCLOSURE OF PERSONS

27. 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.
28. 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

29. 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.
30. A Business Plan was provided reflective of the simple nature of the business and the ancillary nature of the sale of liquor.
31. Although the premises has only recently opened, it has been well-received and supported by the community and there appear no issues of concern.
32. The premises are within an existing motel complex and has previously been operated by the operators of that motel as an in-house restaurant. Approval has been provided by the owner of the premises for this licence to be sought.
33. The simple nature of the proposed business model and the history of Mr Johnston as a licensee has allowed this matter to be progressed in a short time frame.

FINANCIAL STABILITY

34. SXW Pty Ltd and Mr Johnston as it's Director, has operated Salvatores Café in Darwin for many years and is well-regarded, with no adverse compliance history nor concerns from the department as to its operation.
35. I am satisfied with the materials provided of the financial stability and business reputation of the applicant, particularly considering its previous history of trade at the other related premises.

FIT AND PROPER PERSON

36. 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.
37. The applicant provided materials in support of this and Mr Johnston has been proposed as the nominee for the licence. Mr Johnston is also the nominee on the licence held for their other premises, that being 80515810/FLL.
38. Having considered the materials provided I am satisfied the applicant and Mr Johnston as proposed nominee are fit and proper and sufficiently experienced to hold a licence.

PUBLIC INTEREST AND COMMUNITY IMPACT

39. 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.
40. The first branch of the requirement has already been addressed.
41. 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.

42. 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.
43. 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.
44. 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.
45. Those matters remain as previously published in numerous decisions by the Liquor Commission and I am guided by these decisions.

CONSIDERATION CRITERIA

46. 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.

47. 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. The sale of liquor is not a significant attractor in this business model.

- 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 within a motel complex and industrial area and the nature of the business is 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, this position is supported by the evidence of Mr Johnston's conduct in his other premises.

- 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.

48. 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 is within an existing motel complex that previously operated as an in-house restaurant, 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 the licensee 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 the granting of this licence will increase the ratio of licensed premises however not in a significantly manner, or one that is of concern.

- 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.

49. 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

50. 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.
51. 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.
52. 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.
53. Accordingly, the affected persons in relation to this decision are SXW Pty Ltd, Police and Health.



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

22 January 2025