

## Delegate of the Director of Liquor Licensing

### Decision Notice

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<b>MATTER:</b>	Application for the grant of a licence and authority
<b>APPLICANT:</b>	JTR Trading Pty Ltd
<b>PROPOSED PREMISES:</b>	Medee Eatery Unit 11, 9 Fannie Bay Place FANNIE BAY NT 0820
<b>OBJECTORS:</b>	Nil
<b>LEGISLATION:</b>	<i>Liquor Act 2019</i> - Part 3 and 4
<b>DECISION OF:</b>	Manager Licensing - Liquor, Gambling & Racing
<b>DATE OF DECISION:</b>	3 March 2022

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#### DECISION

1. As a delegate of the Director of Liquor Licensing, I approve the application by JTR Trading Pty Ltd for the grant of a liquor licence with a restaurant authority, for the premises known as Medee Eatery, Unit 11, 9 Fannie Bay Place, Fannie Bay.
2. The grant of the licence is for the premises to sell liquor to diners ancillary to a meal.
3. The licence is granted in pursuance of section 60 of the Act, with reference to section 47(1)(b) of the *Liquor Act 2019* (the Act), being a restaurant authority.
4. The operating conditions in relation to the catering authority are in accordance with regulation 80 of the *Liquor Regulations 2019* (the Regulations).
5. Regulation 79 of the Regulations prescribes the maximum allowable hours of trade under a restaurant authority, however the applicant has sought the following hours which are within the permitted hours and are approved as follows:
  - Tuesday to Friday inclusive
    - 11:00am to 2:30pm
    - 5:30pm to 9:00pm
  - Saturday
    - 5:30pm to 9:00pm
  - No trade on Good Friday or Christmas Day

## BACKGROUND

6. Pursuant to section 52 of the Act, Ms Songporn Sukho the sole director and shareholder of JTR Trading Pty Ltd, lodged an application for a licence with a restaurant authority on 4 January 2022.

## CURRENT SITUATION

7. The application is for a licence to allow for the sale of liquor to patrons of the restaurant ancillary to a meal.
8. Ms Sukho has operated the premises without the sale of liquor since September 2020, and has sought the licence to expand the services offered to her patrons.
9. The sale of liquor is not a primary element, it is complementary to the overall restaurant services provided to patrons whilst dining.
10. 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.
11. The applicant also sought a BYO authority, previously required under the Act for the service of BYO liquor to patrons.
12. On 19 November 2021 that authority was repealed with a registration regime being implemented for premises that do not have a liquor licence.
13. It necessarily follows by granting this application and with reference to section 41A of the Act, no registration is necessary for a licensee and they may serve BYO liquor as a matter of right, but in accordance with the other statutory obligations which apply to the service of liquor.

## NOTIFICATIONS, PUBLIC NOTICES AND OBJECTIONS

14. The application was published in the NT News on 29 January 2022, along with signage at the premises and on the Director's website for the prescribed period.

15. 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 the City of Darwin Council.
16. Although not a statutory requirement, as is practice, notification of the application was sent to the Northern Territory Fire and Rescue Service (NTFRS).
17. Police advised on 31 January 2022 they supported the application.
18. No responses were provided by the Department of Health nor the City of Darwin Council.
19. On 31 January 2022 the NTFRS advised they supported the application notwithstanding there were minor safety issues with the premises they were working on with the applicant.
20. Additional inspections are proposed by NTFRS of the premises and any issues or failures will be advised to Licensing NT.
21. It is noted section 91 of the Act prescribes compliance with the requirements of the *Fire and Emergency Act 1996*, with a breach of that Act being a breach of the Liquor Act.
22. No objections were received in relation to this matter.

## APPLICATION

23. The applicant has provided a comprehensive suite of materials in support of the application including all materials prescribed by the Act.
24. The authority sought by the applicant is a restaurant authority in pursuance of section 47(1)(b) of the Act.
25. 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.
26. The Director further delegated these powers to the Manager Licensing – Liquor, Gambling and Racing by instrument dated 29 November 2021.
27. Regulation 79 of the Regulations prescribes the maximum allowable hours of trade under a restaurant authority, it is however noted this applicant has sought hours well within the maximum allowable period.
28. Those hours have been particularised previously in this notice.

29. No other conditions were volunteered and the applicant accepts the standard operating conditions of a restaurant authority as prescribed in regulation 80 of the Regulations.

## DISCLOSURE OF PERSONS

30. 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.

31. I am satisfied with the materials provided by the applicant in relation to this requirement.

## RESULTS OF INVESTIGATION

32. 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.

33. The nature of the proposed business is simple in nature that of a family style Thai restaurant. It is also noted the applicant has operated the premises without the sale of liquor since September 2020.

34. The applicant advises there is no intention to change the current business model if the licence is granted.

## FINANCIAL STABILITY

35. I am satisfied with the materials provided of the financial stability and business reputation of the applicant as they have operated since September 2020.

## FIT AND PROPER PERSON

36. Section 59(3)(g)(i) of the Act requires the decision maker to consider whether the applicant and as the applicant is a body corporate, their nominated licensee, are fit and proper to hold a licence.

37. The applicant provided materials in support of this and Ms Songporn is to be the licensee's nominee in pursuance of section 53(3) of the Act.

38. Having considered the materials provided I am satisfied the applicant and Ms Songporn are fit and proper persons to hold a licence and act as nominee.

## 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. The applicant has provided a suitable submission in relation to the matters surrounding the public interest and community impact.
45. 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.
46. Those matters remain as previously published in numerous decisions by the Liquor Commission and I am guided by these decisions.

## CONSIDERATION CRITERIA

47. 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.
48. 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 an accompaniment to the primary business of food sales in the restaurant and is not the significant attractor. The restrictions on the authority sought include the sale of liquor can only be with the consumption of food on the premises.
  - 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 limited hours of trade also lend support to a suggestion consumption of liquor will be minimal.

- 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 intimate design and nature of the premises provides comfort in relation to this matter.

- 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 premises is to tourism and hospitality services.

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

In general there are no materials to suggest the applicant will not comply with the relevant laws applicable to this business. It is however noted, as advised by NTFRS, they are working with the applicant on minor compliance matters under their legislation.

- 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.

49. 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:

There are residents within the immediate vicinity of the premises, however the nature of the business suggests there is unlikely to be an adverse impact from this licence.

- 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, especially given the limited hours of sale sought.

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

It is unlikely there will be significant adverse impact on the community by the granting of this licence.

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

I see there to be no issue in relation to this matter.

- 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:

There are several nearby licensed premises, however as this is not intended as a bar or similar style of service, the resultant liquor sales are thought to be minimal in nature and will not provide an overabundance of supply.

- 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 in the area.

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

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

50. 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.

51. Section 60(2)(b) of the Act requires the determiner to make a decision within 14 days of the expiration of the objection period allowed for the application. That day was Saturday, 12 February 2022, accordingly and with reference to section 28(2) of the *Interpretation Act 1978*, the 28 day period within which this matter must be determined is Monday, 14 March 2022.



## REVIEW OF DECISION

52. 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.
53. The Director delegated the determination of applications of this nature 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.
54. 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.
55. Accordingly, the affected persons in relation to this decision are JTR Trading Pty Ltd, Police and the NTFRS.



**Mark Wood**  
**Manager Licensing – Liquor, Gambling & Racing**  
Delegate of the Director of Liquor Licensing

3 March 2022