

## Director of Liquor Licensing

### Decision Notice

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**MATTER:** APPLICATION FOR GRANT OF AN AUTHORITY TO EXISTING LIQUOR LICENCE

**APPLICANTS:** DSH CHA Pty Ltd  
Happy Mekong Pty Ltd  
Medina Property Services Pty Ltd  
Finsio Pty Ltd  
Amigos Pty Ltd  
JK (SA) Investments Pty Ltd & Europa SA Pty Ltd  
Bevco SBB Pty Ltd  
KDNT Pty Ltd  
Craft Beer Australia Pty Ltd  
Sea Dragon NT Pty Ltd

**LEGISLATION:** Section 60 of the *Liquor Act 2019*

**DECISION OF:** Director of Liquor Licensing

**DATE OF DECISION:** 12 May 2021

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### DECISION

1. For the reasons set out below and in accordance with section 60(1)(a) of the *Liquor Act 2019* (the Act), I, in my capacity as the Director of Liquor Licensing (the Director), have determined to approve the applications for the grant of a **catering authority** to the licensees particularised in this notice.
2. Also for the reasons set out below, and in accordance with section 60(1)(a) of the Act, I have determined to impose the following additional conditions on the **catering authority** only:
  - (a) Patrons purchasing a light or full meal from the licensee during their existing hours of trade, may purchase liquor for consumption within the Waterfront Beach Club area with their meals;
  - (b) The sale of liquor per person for consumption in the Waterfront Beach Club area is limited to:
    - (i) one (1) 750ml bottle of wine; or
    - (ii) six (6) containers of beer, cider or pre-mix spirits with a combined maximum volume of 2250ml, being the equivalent of 6 x 375ml cans or stubbies; or
    - (iii) two (2) pre-mixed cocktails (a cocktail being limited to 75ml of alcohol 40% alc/vol each);
    - (iv) cocktails may be served in a vessel together (eg. two (2) patrons ordering two meals may order four (4) cocktails in total which may be placed into one container for shared consumption).

- (c) Liquor may only be sold to a person in conjunction with the purchase of a light or full meal. A light or full meal being as defined in regulation 3 of the *Liquor Regulations 2019*.
- (d) An entrée or side order does not constitute a light or full meal.
- (e) The price point for the sale of liquor under this authority shall not be lower than the price at which the licensee sells that liquor for on-premises consumption.
- (f) All patrons must be in possession of a “*Waterfront alcohol with meal permit*” issued under permission by the Darwin Waterfront Corporation.
- (g) The date and times must be specified on the permit and are limited to two (2) hours per person per day. Multiple purchases are not permitted.
- (h) The sale of liquor under this authority is not subject to the provisions of section 130 of the Act relating to the operation of an identification system.
- (i) The sale of liquor is prohibited beyond 23:59 hours.

## BACKGROUND

3. On 15 April 2021, 10 applications were lodged as a group by Mr Samuel Burke, General Manager, Darwin Waterfront Corporation on behalf of existing licensees situated within the Darwin Waterfront Precinct. Those premises being:

Bannsang Darwin  
 Chow! A Taste of Douth East Asia  
 Curve Restaurant and Bar  
 Fiddler’s Green  
 Hot Tamale  
 Oyster Bar Darwin  
 Snapper Rocks Bar & Kitchen  
 The Coffee Club, Darwin Waterfront  
 The Precinct Tavern  
 Wharf One Food & Wine/Bella

4. The applications were seeking to have a ***catering authority*** added to their existing liquor licences and included affidavits from each licensee as required.
5. Section 47(1)(m) of the Act defines a ***catering authority*** as authorising the licensee to sell, supply or serve liquor to patrons for consumption, in conjunction with food being catered by the licensee, on or in premises with the consent of the owner or occupier of the premises.
6. Mr Burke also provided a collective public interest statement and community impact assessment for all of the applicants.
7. The substance of the applications is to allow licensees to provide a catering service to their patrons to be able to purchase a meal accompanied by a limited amount of alcohol, to be taken into the public areas of the Darwin Waterfront Precinct, known as the Waterfront Beach Club.

8. This will allow patrons to consume their meals and drinks in the open grassed areas, rather than on the respective licensed premises.
9. The fees for each application have been paid.

### **Relevant History and Context**

10. On 18 March 2020 the Minister for Health declared a public health emergency under section 48 of the *Public and Environmental Health Act 2011* in relation to COVID-19.
11. Following this declaration the Chief Health Officer, Dr Hugh Heggie (CHO) made a number of directions to prevent the spread of COVID-19 in the Northern Territory.
12. Direction No. 9 of 24 March 2020 (Directions for Closure of Certain Businesses to the Public and to Cease Certain Business and Other Activities), prohibited the sale or service of food or beverages to members of the public for consumption in or on the premises of the business. This did not however, prevent the provision of takeaway sales of food or beverages.
13. Against that background, on 24 April 2020, as Director I exercised my power under section 257(1)(c) of the Act to vary the conditions of certain liquor licences. The variation allowing affected licensees to sell restricted amounts of liquor for takeaway consumption in conjunction with the sale of a takeaway meal, regardless of whether the licensee had a **takeaway authority** attached to their liquor licence.
14. On 22 May 2020 the CHO relaxed the direction, allowing licensed premises to re-open, subject to conditions requiring patrons to be seated and liquor only to be sold with the consumption of a meal. The CHO dispensed with that amended restriction on 4 June 2020.
15. Although the CHO dispensed with the restrictions, licensees are still required to encourage social distancing of patrons. Accordingly, I continued to exercise my power under section 257(1)(c) of the Act, every 7 days until Friday, 2 April 2021.
16. Relevant to these applications, the variation to the conditions of those licensees included the following restrictions:
  - For liquor licensed restaurants, clubs and hotels that normally provide meals and liquor to patrons for on-premises consumption, a variation to the licence conditions to authorise the sale of liquor, in association with the purchase of a takeaway meal, for consumption away from the licensed premises;
  - The quantity of liquor sold must not exceed:
    - one 750ml bottle of wine;
    - one pack of up to six containers of beer, cider or RTD's (maximum 375 ml per container); or
    - two premixed cocktails (maximum 180 ml per container);per meal sold.
  - Meals and liquor may be provided for collection from the licensed premises by the purchaser or via home delivery service to the purchaser's address;
  - The price point for the sale of liquor in conjunction with a takeaway meal shall not be lower than the price at which the licensee sold that liquor for on-premises consumption prior to the CHO's declaration;
  - Sellers and deliverers of liquor must hold Responsible Service of Alcohol accreditation;
  - Liquor may not be sold for consumption off the premises without a meal;
  - The sale of liquor with a meal for collection or home delivery shall NOT be subject to the Banned Drinker Register requirements prescribed by the Act;
  - A take-away meal must be a meal of sufficient substance as to be ordinarily accepted as a meal. An entree or side order alone does not constitute a meal; and
  - No sales or delivery of alcohol beyond midnight.

17. Section 171(1)(f) of the Act prescribes the Darwin Waterfront Precinct as a prohibited public place where no person may consume liquor.
18. Section 200(1) of the Act provides for the owner or occupier of a public place listed in section 171(1) of the Act to give permission for the consumption of liquor on or in all or a part of that place. Subsection (2) provides for the permission to be given generally to the public or to specific persons, bodies or groups, with or without conditions.
19. On 30 April 2021, Mr Alistair Shields, Chief Executive Officer of the Darwin Waterfront Corporation (DWC) issued an updated notice pursuant to section 200(1) and with reference to section 171(1)(f) of the Act, giving permission to the public to consume liquor in the Darwin Waterfront Precinct.
20. What is sought by these licensees is permission to trade in a similar manner, under the same conditions as were available under the emergency conditions through a *catering authority*, additional to their existing liquor licences.

## CURRENT SITUATION

### *Applicants and proposed nominees*

21. The applicant licensees are:

DSH CHA Pty Ltd  
Happy Mekong Pty Ltd  
Medina Property Services Pty Ltd  
Finsio Pty Ltd  
Amigos Pty Ltd  
JK (SA) Investments Pty Ltd & Europa SA Pty Ltd  
Bevco SBB Pty Ltd  
KDNT Pty Ltd  
Craft Beer Australia Pty Ltd  
Sea Dragon NT Pty Ltd

22. There is no application to change existing nominees who have previously been subjected to probity examinations and deemed fit and proper. There is no application to vary any other existing conditions on the liquor licences. The applications are simply for an additional catering authority.

### *Publication of the application*

23. The Act requires applications of this nature to be subject to publication along with notification to stakeholders. Section 57 of the Act requires applicants to post two public notices of the application in a manner approved by me, along with signage at the premises.
24. Section 61(1)(a) of the Act allows persons referred to in subsection (4) to object to an application for an authority. An objection must be received within 28 days of the date of the second public notice. Section 318 of the Act provides the Director with discretion to abridge this time, which was done in this instance, providing for an objection period of 14 days from the date of the second public notice.
25. The applications were published in the NT News on 21 April 2021 and 24 April 2021, with signage placed at each of the premises notifying the public of the applications. The notices also provided the public with details of the web site where a more fulsome description of the application and supporting materials may be obtained.

26. Applications along with their supporting materials, public interest and community impact statements are now uploaded on a Director of Liquor Licensing website which includes decisions, along with applications and details of how an objection may be made. This site also includes the closing date for any objection.
27. The closing date for the lodgement of objections in the within applications was Saturday, 8 May 2021. Convention dictates as that date fell on a weekend, the effective date is to be the following business day, being Monday, 10 May 2021. No objections were received in relation to this matter.
28. The Act also requires me to notify the Commissioner of the Northern Territory Police, the Chief Executive Officer of the Department of Health and the Chief Executive Officer of the local council within which the application lies.
29. As the area is within the control of the Darwin Waterfront Corporation, the City of Darwin had no comment to make in relation to the matter and Police stated they had no objection to the applications.
30. Between 21 and 24 April 2021, enquiries were made by the Department of Health in relation to the applications. Those enquiries included concerns over potential smoking within the area, along with concerns of the sale of liquor. The area in which the Waterfront Beach Club is located is non-smoking and there is suitable signage in place to notify patrons of this rule.
31. A matter raised by Health was the potential for patrons to use the operation of the catering authorities as a means of obtaining takeaway liquor without the oversight of the Banned Drinker Register.
32. As written previously, what is being sought has been operated under the emergency provisions for a considerable time. There have been no issues raised by any party and the restrictions placed on those sales during the emergency mirror those to be placed on licensees under this authority.
33. These restrictions include the limit on the amounts of liquor that may be purchased, and a requirement that liquor must be purchased in conjunction with the purchase of a meal. Further, the price point of the sale of liquor must be equal to the on-premises price, therefore it is improbable a person will seek to circumvent the Banned Drinker Register through this method.

#### ***Licensees' records of compliance***

34. There are no adverse compliance matters in general with any of these licensees, nor any relating to the conduct of their licences during the exercise of the emergency powers, which has given rise to this matter.

#### ***Referral to the Liquor Commission***

35. The Liquor Commission has delegated the determination of applications of this nature, catering authorities, to the Director on the basis of their classification as low risk authorities. In the absence of any objections to the within applications I have determined exercise the delegation granted to the Director and not refer the applications to the Commission.

## ASSESSMENT OF THE MATTER

36. In accordance with section 59 of the Act, I have considered:
- (a) the applicant's affidavits required by section 54;
  - (b) the results of an investigation into the applications conducted by Licensing NT personnel;
  - (c) in the absence of objections, the responses of the stakeholders to which notification was provided;
  - (d) the suitability of the area, having regard to the provisions of section 200 of the Act;
  - (e) the financial stability and general reputation and character of the applicants and their nominees, noting they are existing licensees with unblemished compliance histories.
37. In accordance with section 49 of the Act, I have also considered whether issuing the authority to each licensee is in the public interest, and whether the granting of the authority will have a significant adverse impact on the community.
38. I am satisfied on the basis of the conduct of their current liquor licences, it is unnecessary to consider their appropriateness to be licensed, at question however is whether the additional authority is appropriate.

### *Whether issuing the licence is on the public interest*

39. Section 49(2) of the Act requires me to determine whether issuing the authority is in the public interest and how it will advance the following objectives:
- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
  - (b) ensuring liquor is 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 practices that encourage irresponsible drinking;
  - (j) reducing or limiting increases in anti-social behaviour.
40. Having considered each of these objectives, and having particular regard to the stringent controls placed on the consumption of liquor in the area by the Darwin Waterfront Corporation, including roving security patrols and individual permits, as well as the significant

recreational and tourism benefits for the area, I am satisfied that it is in the public interest to issue the authority to each licensee.

***Whether the issue of the authority will have a significant adverse impact on the community***

41. Section 49(3) of the Act prescribes the matters which must be considered when determining whether the issuing of the authority would have a significant adverse impact on the community.
42. These include:
  - (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 applicants also bear the onus of satisfying the Director of the relevant matters, irrespective of whether any objections were received.
44. In this matter the location of the area within which the liquor may be consumed is a mixed residential, leisure and entertainment area used for commercial activity and host to numerous large social and celebratory events.
45. As submitted by Mr Burke, what is proposed is not an additional licensee, or licensed premises, it is an extension of the operation of the existing licensees who currently operate at the Darwin Waterfront. The application is supported by the DWC as it complements the overall strategy of providing a positive impact to the local community by:
  - o supporting existing business and enhancing the customer experience;
  - o allowing the precinct to integrate the surrounding businesses and community to enjoy the alfresco environment, considered central to the Territory lifestyle;
  - o providing oversight of the conduct of businesses and persons utilising the area, including security patrols to maintain a safe and family friendly environment during the day or night.

46. As written earlier, the genesis of the applications is the cessation of The Director's exercise of the emergency powers. These licensees essentially were, under those powers, able to trade in the same manner which is now being sought via the catering authorities. Effectively the applicant licensees have been trading in the same manner to what is being sought for in excess of 12 months during the emergency.
47. There have been no issues arising from the conduct of the relevant businesses in this manner over the past 12 months, in fact, it has received significant support from residents of the local area, businesses, Police and the wider community. I therefore see no better demonstration as to whether the issuing of the authority would have a significant adverse impact on the community that by considering the previous 12 months and the positive outcomes that have resulted.
48. I am satisfied the conditions being placed on the catering authorities will ensure liquor is consumed in an appropriate manner, the risk of harm is minimal and there is no increase in the number of licensees in the area.
49. On the strength of the evidence provided by the applicants and also the conduct of the businesses over the last 12 months during the emergency, a continuation of the services provided in the Waterfront Beach Club will be in the public interest and have a positive community impact.
50. In considering these applications I am obliged to consider the purposes prescribed in the Act, primary being, to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale and consumption of liquor.
51. Secondary purposes include, a protection of the community amenity and wellbeing, regulation of the sale of liquor in a way that contributes to the responsible development of the industry and associated businesses, and of particular relevance, facilitating a diversity of associated services for the benefit of the community and stimulating the tourism and hospitality industries.
52. I am satisfied the within applications are in accord with the objects of the Act, particularly in providing a diversity of services and stimulation to the tourism and hospitality industries.

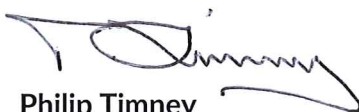
### ***The authority***

53. All of the applicants have a ***restaurant or restaurant bar authority***, with The Precinct Tavern also operating under a ***public bar authority***. Central to each of their operations is the sale of food.
54. A ***catering authority*** authorises the licensee to sell liquor to patrons for consumption, in conjunction with food being catered by the licensee, on or in premises with the consent of the owner or occupier of the premises. The sale of liquor will be in conjunction with food being catered by the licensee and the Darwin Waterfront Corporation as the owner of the premises, has provided the necessary consent.
55. I am cognisant this is a unique situation and one that has not been considered or determined previously.

56. The Macquarie Dictionary defines *cater* as "...to provide food and service, means of amusement, or the like at functions", and further it defines *function* as "...any ceremonious public or social gathering". In this matter, the function is on-going, whilst somewhat unique, there is no fettering of time on a function. The unique nature of this matter and lack of precedent does not in itself prohibit the granting of the applications.
57. The consumption of liquor will not be on licensed premises, it will be off-premises consumption. This form of consumption is traditionally described as takeaway liquor and the Act provides a *takeaway authority* which authorises licensees to sell liquor products to customers for consumption away from the licensed premises.
58. For completeness, it should also be acknowledged section 84(3) of the Act places as statutory prohibition on the granting of a *takeaway authority* until 31 August 2023. The operation and intention of that authority is discreetly different to a *catering authority* and what is sought by these licensees.
59. A takeaway authority, in the absence of any subsequent restrictions, provides for the unfettered purchase of bulk liquor, intended to be consumed at a person's home or other location. It is not sold as an accompaniment to a meal.
60. Accordingly, I am satisfied the nature of the sale of liquor under a *catering authority* is not takeaway liquor and it is not an attempt to circumvent the statutory prohibition on takeaway licences.

## REVIEW OF DECISION

61. In pursuance of section 29(1) of the *Liquor Commission Act 2018*, a decision to grant an authority is reviewable by the Liquor Commission.
62. An application for the review of this decision of the Director may only be made by the applicant affected by a decision regarding the application and any person who made a submission, or objection during the process that resulted in the decision.
63. An application for review must be made to the Commission by no later than 28 days after written notice of the decision of the Director is given to the affected person, and must be in the approved form, accompanied by the fee prescribed by regulation and state the grounds on which it is made and the facts relied on to establish the grounds.
64. Accordingly the affected persons in relation to this decision are DSH CHA Pty Ltd, Happy Mekong Pty Ltd, Medina Property Services Pty Ltd, Finsio Pty Ltd, Amigos Pty Ltd, JK (SA) Investments Pty Ltd & Europa SA Pty Ltd, Bevco SBB Pty Ltd, KDNT Pty Ltd, Craft Beer Australia Pty Ltd, Sea Dragon NT Pty Ltd, the Darwin Waterfront Corporation, Northern Territory Police and the Department of Health.



**Philip Timney**  
Director of Liquor Licensing

12 May 2021