

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *DOCK ONE BAR PTY LTD APPLICATION FOR A NEW LIQUOR LICENCE WITH A SMALL BAR AUTHORITY [2023] NTLiqComm 16*

REFERENCE: LC2023/011

APPLICANT: Dock One Bar Pty Ltd (ACN 665 289 449)

PREMISES: 1/39 Stokes Hill Road
DARWIN NT 0800

LEGISLATION: Section 48 of the *Liquor Act 2019* and Part 4, Divisions 1 and 17 of the *Liquor Regulations 2019*.

HEARD BEFORE: Russell Goldflam (Chairperson)
Greg Shanahan (Deputy Chairperson)
Bernard Dwyer (Health Member)
Denys Stedman (Community Member)

DATE OF HEARING: 30 June 2023

DATE OF DECISION: 7 July 2023

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Dock One Bar Pty Ltd (**the Applicant**).
2. The Applicant will be issued with a Small Bar authority authorising the sale of liquor on premises to the general public at a venue to be named Dock One Bar located at 1/39 Stokes Hill Road, Darwin NT 0800.
3. The conditions of licence and trading hours will be the authority conditions prescribed for a small bar set out in Part 4, Divisions 1 and 17 of the *Liquor Regulations 2019* (**the Regulations**).
4. The licensed premises is Dock One Bar to be constructed at 1/39 Stokes Hill Road, Darwin NT 0800 in accordance with Attachment F of Exhibit One (**the licensed premises**).

5. The licence will be issued immediately following the publication of this decision notice.
6. Liquor must not be sold under the licence until the Director of Liquor Licensing (**the Director**) gives the written approval to do so, following the provision of documentary evidence to the satisfaction of the Director that the Applicant has constructed the buildings and traffic safety measures substantially as set out in the Application and obtained the necessary fire safety and building approvals, including a certificate of occupancy, in respect of the premises.

REASONS

The Application

7. On 31 March 2023, an application was lodged in the approved form with the Director by Mr Darren Lynch, the sole director of Dock One Bar Pty Ltd, for a liquor licence with a small bar authority to be located at 1/39 Stokes Hill Road, Darwin NT 0800. No variations to the standard small bar authority conditions in Part 4, Division 17 of the Regulations were sought.

Consultation

8. As required by section 57 of the Act, notice of the application was published in the *NT News* on Saturday 15 April 2023.
9. The application was also advertised on the NT Government website in the section publishing “Advertised liquor licence applications” on 14 April 2023 and remained on the website for a period of 14 days until the objection period concluded on 28 April 2023.
10. The Applicant displayed a notice of the application at the proposed site of the premises in accordance with section 57 of the Act.
11. In accordance with section 56 of the Act, notification was given to the Chief Executive Officer of the Department of Health (**DOH**), the Commissioner of Police and the General Manager of the Darwin Waterfront Corporation.
12. Although not a statutory requirement, the Director also notified the NT Fire and Rescue Service (**NTFRS**) as part of Licensing NT’s investigations.
13. The Director informed the Commission that:
 - DOH did not provide a response.
 - NT Police advised that it had no objections to the application.
 - The General Manager of the Darwin Waterfront Corporation provided a letter of support for the application at Attachment E of Exhibit One.
 - NTFRS indicated that it had no objection to the application subject to:

- “Building works to go through the buildings approval process as per the Building Act (NT).
- On completion of the building works (occupancy permit issued) NTFRS will inspect to ensure compliance with NT Fire and Emergency Services Act & Regulations (If required, licensed areas will also be assessed for maximum patron numbers at this time).”

14. There were no objections to the Application.

The licensee’s record of compliance

15. The sole director of the Applicant, Mr Darren Lynch, is well known in the liquor and entertainment industry having owned and operated a range of significant licensed venues in the Northern Territory with an unblemished record of compliance. Mr Lynch is the nominee for the licence.

16. The associates and members of the Applicant are:

- a. Chace Karpenko, director of IK71 Pty Ltd (ACN 162 705 446)
- b. James Eadie, director of EPJ Holdings (Aust) Pty Ltd (ACN 653 385 212)
- c. Randal Ashford, director of Ashford Group Investments Pty Ltd (ACN 604 788 650)

17. None of the associates or members have any history of non-compliance with the Act that the Commission is aware of.

The referral

18. On 16 May 2023, pursuant to section 59 of the Act, the Director referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 30 June 2023.

19. The Director provided the following documents to the Commission with the referral (**the brief**):

- a. Affidavit and Declaration of Associates pursuant to section 54 of the Act;
- b. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
- c. A letter from the General Manager of the Darwin Waterfront Corporation advising that the Corporation is finalising a lease/sublease to the Applicant for part of Lot 10156 to Dock One Pty Ltd under a 10 year (5 + 5) arrangement; and

- d. Comprehensive documents covering building plans, road safety management assessments and financial capacity.

The hearing

20. Pursuant to section 23 of the Act the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate.
21. On 30 June 2023, the application proceeded as a public hearing. Mr David De Silva of De Silva Hebron appeared on behalf of the Applicant. The acting Director, Ms Michelle Ganzer appeared in person. The Commission thanks them for their attendance and assistance.
22. The brief was tendered and admitted into evidence without objection.
23. Oral evidence was heard by the Commission from Mr Darren Lynch, the nominee of the Applicant.

ASSESSMENT OF THE APPLICATION

24. In accordance with section 59 of the Act, the Commission has considered:
 - a. the applicant's affidavit required by section 54;
 - b. the results of any investigation conducted into the application under section 58;
 - c. any objection to the application made under section 61;
 - d. any response provided by the applicant under section 62;
 - e. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
 - f. if the applicant is an individual – the financial stability, general reputation and character of the applicant;
 - g. if the applicant is a body corporate:
 - i. the financial stability and business reputation of the body corporate; and
 - ii. the general reputation and character of the secretary and executive officers of the body corporate;
 - h. if the applicant is a federation of unincorporated bodies:
 - i. the financial stability and business reputation of each constituent body; and
 - ii. the general reputation and character of the secretary and executive officers of each constituent body;

- i. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;
 - j. if the Commission considers it appropriate – whether each associate of the applicant is a fit and proper person to be an associate of a licensee.
25. In accordance with section 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

The applicant

26. The Commission finds that the Applicant complies with section 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
27. The Applicant has provided extensive documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

28. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the Applicant has complied with the disclosure requirements of section 54.
29. The Commission considers that it is appropriate to consider whether each of the following persons, each of whom is an associate of the Applicant for the purpose of section 55, is a fit and proper person to be an associate of the applicant:
- Chace Karpenko, director of IK71 Pty Ltd (ACN 162 705 446)
 - James Eadie, director of EPJ Holdings (Aust) Pty Ltd (ACN 653 385 212)
 - Randal Ashford, director of Ashford Group Investments Pty Ltd (ACN 604 788 650)
30. Having had regard to the ample material tendered by the applicant attesting to the character, experience and qualifications of the above-named persons, the Commission finds that each of them is a fit and proper person to be an associate of the Applicant.
31. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the Applicant.

The Director's investigation

32. The Director informed the Commission that the nominee of the Applicant is known to Licensing NT and that there are no known issues with any of the licensed venues that the nominee is currently the licensee of.

Objections

33. There were no objections to the application. However, NTFRS commented that the building must be constructed in accordance with the building legislation and advised that it would inspect the premises for compliance with the fire safety legislation when the certificate of occupancy for the building is issued. The Commission has made it a condition of licence that trading must not commence before the fire safety and building approvals, including a certificate of occupancy, have been obtained by the Applicant.

The suitability of the applicant's premises

34. The brief included detailed building, food and beverage menus and road safety management assessments.
35. It is proposed that the premises will operate as a small boutique bar and kitchen that will serve alcoholic and non-alcoholic beverages with food available for purchase.
36. The Commission expressed some concern with the safety of patrons exiting the premises given the proximity to traffic and the security of tenure over the alcohol storage facility. Mr Lynch explained that railing will be installed to prevent patrons from exiting the premises directly onto the road and that the storage facility was re-locatable and that there were other potential sites for the storage facility in the nearby vicinity if necessary.
37. The Commission was satisfied that the responses provided were sufficient and assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the Application.

The financial stability, general reputation and character of the body corporate

38. On the information provided, the Commission assesses the associates and members of the Applicant as having a satisfactory business reputation and as being financially stable.

The general reputation and character of the applicant's secretary and executive officers

39. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the Applicant's director, associates and members, namely, Mr Darren Lynch, Mr Chace Karpenko, Mr James Eadie and Mr Randal Ashford, to be satisfactory.

Whether the applicant is a fit and proper person to hold a licence

40. The Commission assesses the Applicant to be a fit and proper person to hold a licence.

Whether the licensee's nominee is a fit and proper person to hold a licence

41. The applicant has nominated Mr Darren Lynch as the licence nominee. The Commission assesses Mr Lynch, who holds current RSA certification and has provided appropriate documentation of his reputation, character and work history, to be a fit and proper person to hold the licence.

Public notice and consultation

42. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

Whether issuing the licence is in the public interest

43. To determine whether the issue of the license is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:

- (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.

44. Having considered each of these objectives, and having particular regard to general amenity the premises will provide to visitors to the area and the experience and track record of the Applicant's nominee, the Commission is satisfied that it is in the public interest to issue the licence.

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

45. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must have considered the matters set out at section 49(3) of the Act:

- (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.

46. The Commission notes there are no such "other" matters prescribed by regulation.

47. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.

48. Having considered all of these matters, the Commission is satisfied, in accordance with section 49 of the Act, that:

- a. the applicant is a fit and proper person; and
- b. issuing the licence or authority is in the public interest; and

- c. the licence or authority will not have a significant adverse impact on the community.

Conditions

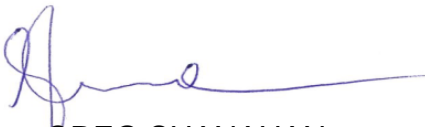
- 49. The Commission has determined to fix the additional condition set out at paragraph 6 above.
- 50. The additional condition is to address patron and staff safety and to ensure that the premises are constructed in accordance with the Application.

The objects of the Act

- 51. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.
- 52. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
- 53. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

- 54. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal. Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
- 55. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director and the licensee.



GREG SHANAHAN

**MEMBER
NORTHERN TERRITORY LIQUOR COMMISSION
10 July 2023**

On behalf of Commissioners Shanahan, Goldflam, Dwyer and Stedman