

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS

CITATION: DOCTORS GULLY INVESTMENTS PTY LTD
APPLICATION FOR LIQUOR LICENCE WITH
RESTAURANT BAR AND CATERING AUTHORITIES
[2024] NTLiqComm 8

REFERENCE: LC2023/043

APPLICANT: Doctors Gully Investments Pty Ltd

PREMISES: Aquascene
32 Doctors Gully Road
LARRAKEYAH NT 0820

LEGISLATION: Part 3 Division 4 of the *Liquor Act 2019*.

HEARD BEFORE: Ms Jodi Truman (Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 16 January and 21 February 2024

DATE OF DECISION: 21 February 2024

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 Doctors Gully Investments Pty Ltd (**the applicant**).
2. The licence will be issued with a restaurant bar authority and catering authority.
3. The licensed premises are situated at Aquascene, 32 Doctors Gully Road, Larrakeyah NT 0820 in the area delineated in red on pages 1 and 2 of exhibit 9 of the evidence exhibited at the hearing of the application (**the licensed premises**).
4. The supply and consumption of liquor on the premises is in accordance with the conditions set out in Part 4, Division 16 of the *Liquor Regulations 2019* (**the Regulations**) and the supply pursuant to the catering authority is in accordance with the conditions set out in Part 4, Division 6 of the Regulations.

5. The Commission approves the appointment of Mr Thanh Tho Thai as the licence nominee (**the nominee**).
6. The sale, supply, service and consumption of liquor is not authorised and the licence will not issue until documentary evidence has been provided to the satisfaction of the Director of Liquor Licensing (**the Director**) that the applicant has obtained the necessary fire safety and building approvals, including a certificate of occupancy, in respect of the premises.

Reasons

The Application

7. On 30 August 2023, Mr Jason Hanna (**Mr Hanna**) having paid the prescribed fees, lodged an application on behalf of the applicant for a liquor licence with restaurant bar and catering authority with the Director.
8. The substance of the application is for a liquor licence with a restaurant bar and catering authority that “will focus on the tourist market”. During the day the premises will be a café/restaurant serving breakfast and lunch. In the evenings “it will pivot” solely into a restaurant offering “a different food menu”. The catering authority will allow the applicant to cater for weddings, social gatherings and corporate events on and off the licensed premises. Evidence of what is proposed was provided to the Commission.
9. The applicant proposes that Mr Thanh Tho Thai be appointed as nominee of the licence¹.

Consultation

10. The Commission was informed by the Director that the application was advertised on 11 November 2023 and that the Director was satisfied that the applicant had complied with the requirements to advertise the application.
11. In accordance with section 56 of the Act, notification was given to Department of Health, NT Police and the City of Darwin, as well as to Northern Territory Fire and Rescue Services (**NTFRS**).
12. There were no objections to the application, however the Department of Health provided a “suggestion” that the proposed hours of the venue be amended “to align with other liquor licensed premises in the Larrakeyah area”. It is noted by the Commission that no one from the Department of Health attended the hearing in relation to this application and that no objection was lodged by the Department. The applicant confirmed that it wished to pursue its application in the form lodged.

¹ Exhibit 2

13. NTFRS proposed that a condition be imposed that the issue of the licence be subject to approval of the premises by building and fire safety authorities. The City of Darwin and the NT Police did not object.

14. In submissions to the Commission at the hearing of the application, the representative of the Director stated that the Director “had no concerns with the application”.

The licensee’s record of compliance

15. The applicant, being “Doctors Gully Investments Pty Ltd” has not previously held a licence in the Northern Territory, however the proposed nominee, Mr Thanh Tho Thai, is one of its two (2) Directors and is known to the Director as the nominee of Nirvana Restaurant.

16. Mr Thanh Tho Thai is also known to the Director as Director of two (2) other companies that operate a number of other licensed premises in Darwin. Mr Thanh Tho Thai has therefore been assessed previously as a “fit and proper” person.

The referral

17. On 19 December 2023, pursuant to section 59 of the Act, the Director referred the application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the applicant on 20 December 2023 that the matter would be listed for a public hearing on 16 January 2024.

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

- a. Application for a new liquor licence
- b. Affidavit and Declaration of Associates pursuant to s 54 of the Act and receipt for the prescribed fee
- c. Public Interest and Community Impact Assessment Summary pursuant to ss 49 to 52 of Act
- d. ASIC company extract for licensee
- e. Probity documents for Thanh Truc Thai and Thanh Tuan Thai
- f. Financial reports
- g. Baja Food and Darwin Bagel Co. food and drink menu
- h. Food Business Registration certificate
- i. Development Consent Authority Permit
- j. Site and architect plans, and Record of Administrative Interests and Information
- k. Correspondence with stakeholders

The hearing

19. On 16 January and 21 February 2024, the application proceeded as a public hearing. Mr Thanh Tho Thai and Mr Jason Hanna appeared on behalf of the applicant. Ms Christine Free appeared for the Director. The Commission thanks them all for their attendance and assistance.
20. Pursuant to s 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. No submissions were made to the Commission to this effect.
21. The brief was tendered and admitted into evidence without objection.
22. On 16 January 2024, the Commission indicated it was not satisfied with the state of the evidence in support of the application, in particular with respect to relevant financial information or likely costs with respect to the venue to enable the Commission to make an assessment of the application. As a result, the applicant sought (and was granted) an adjournment to provide further information.
23. The application was adjourned to 21 February 2024 by which time the applicant provided:
 - a. CCTV information and security information.
 - b. Information concerning costs.
 - c. Copy of Mr Thai's RSA certificate.
 - d. Various bank account statements as a bundle.
24. The Commission accepted this material into evidence as tendered by the applicant, without objection.

ASSESSMENT OF THE APPLICATION

25. In accordance with s 59 of the Act, the Commission has considered:
 - a. the applicant's affidavit required by s 54.
 - b. 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.
 - c. the financial stability and business reputation of the body corporate.
 - d. the general reputation and character of the secretary and executive officers of the body corporate.
 - e. whether the applicant and the nominees designated by an applicant, are

fit and proper persons to hold a licence.

- f. whether each associate of the applicant is a fit and proper person to be an associate of a licensee.

26. In accordance with s 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

27. The Commission finds that the applicant complies with s 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.

28. The applicant is an Australian proprietary company limited by shares. The current office holders are Mr Thanh Tho Thai and Mr Thanh Tuan Thai (joint Directors). There are currently 1,000 ordinary class shares issued with Mr Thanh Tho Thai holding 250 shares and Mr Thanh Tuan Thai holding 500 shares. The remaining 250 shares are held by Ms Thanh Truc Thai.

29. As earlier noted, Mr Thanh Tho Thai is known to the Director as the nominee of Nirvana Restaurant and also via his directorship of two (2) other companies that operate a number of other licensed premises in Darwin. Mr Thanh Tho Thai has therefore been assessed previously as a "fit and proper" person.

30. The applicant filed a number of documents in support of Mr Thanh Tuan Thai and Ms Thanh Tuan Thai.

31. Although there was some delay, the applicant has provided satisfactory documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

32. 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 s 54.

33. The Commission considers that given Mr Thanh Tho Thai previous involvement in numerous other licensed premises that he is a "fit and proper" person.

34. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of Mr Thanh Tuan Thai and Ms Thanh Tuan Thai, the Commission finds them to also be fit and proper.

The suitability of the applicant's premises

35. The proposed premises are located at Aquascene, 32 Doctors Gully Road, Larrakeyah. This is an iconic tourist attraction that has long been part of Darwin and has recently undergone some refurbishments to the premises to encourage

year-round visitation. It is certainly a venue targeted to the tourism market however in more recent times has become a popular café location with a popular bagel menu. The applicant is the owner of the premises.

36. The Commission was informed that if the application for a liquor licence were successful, the applicant intended to complete the following further works:
- a. Refurbishment to the decking area for everyday use and improved viewing of the fish feeding operation.
 - b. Addition of draught beer system.
 - c. Refurbishment of the internal elevated function space for small events and corporate meetings.
 - d. Addition of a commercial kitchen and bakery to allow for increased options for food production.
37. The premises are well known to all members of the Commission who are long term Darwin residents. The premises, although located in the suburb of Larrakeyah, are effectively at the end of the City Esplanade and adjacent to the entertainment section of the city which already has a large number of other licenced premises.
38. The Commission is not aware of these premises ever having previously been considered suitable for a liquor licence of any kind. After having considered the evidence, the Commission considers the premises suitable for the supply and consumption of liquor in the manner proposed in the application.
39. The Commission further notes that, pursuant to section 91 of the Act, the licensee will be required to comply with the requirements of the *Fire and Emergency Act 1996* and the associated regulations, including those that prescribe fire safety standards.

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

40. The Commission notes that the applicant entity has yet to establish a business reputation in its own right. However, the Commission finds that the applicant's principals have a good general business reputation, are of good character and are financially stable.

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

41. As noted earlier, the Commission assesses the general reputation and character of the applicant's two (2) Directors to be satisfactory.

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

42. As noted earlier, 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

43. The applicant has nominated Mr Thanh Tho Thai as the licence nominee. Mr Thanh Tho Thai holds a current RSA certification and (as previously noted) has earlier satisfied the Director to be fit and proper. The Commission assesses Mr Thanh Tho Thai to be a fit and proper person to hold the licence.

Whether issuing the licence is in the public interest

44. To determine whether the issue of the licence 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 s 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.

45. The Commission did indicate concern in relation to the proposal for a restaurant bar authority rather than a restaurant authority. This was particularly the case given that the applicant's own submission was that "... management will actively promote responsible alcohol consumption, restricting it to designated areas like tables and other furniture, and ensuring it is not allowed in fish feeding areas unless supervised"².

² Ibid, p.34

46. In relation to this issue, it was stated on behalf of the applicant that although patrons will be encouraged to enjoy the facilities, including the “tables and other furniture”, the premises will operate in a café style most of the time with patrons coming to the counter to order. There will not be “table service” and as such a restaurant authority was “not suitable” for what was proposed.
47. Having considered each of the above objectives, particularly the recreational and tourism benefits of the proposed premises targeting a market likely to be attracted to such a premises, the Commission is satisfied that it is in the public interest to issue the licence on the conditions set out at the commencement of this Decision Notice.
48. The Commission also inquired as to why it was necessary for this applicant to also hold a catering authority given its own application referred to the fact that it was utilising the catering authority held under “a different company and their catering liquor license, Gardens Catering”³.
49. In relation to this issue, it was stated on behalf of the applicant that although another catering licence had been utilised in the past, the applicant was a completely separate legal entity and there was a desire for it to have its own catering authority to enable it to operate its separate business and services. This makes sense and as such the Commission is satisfied that it is in the public interest to issue the licence with a catering authority.
50. Further, the Commission also considers that:
- (a) the establishment of these premises with their continued focus on promoting the fish feeding that this venue has long been known for with a focus on families carries a relatively low risk of directly increasing the incidence of alcohol-related harm or ill-health to people.
 - (b) the applicant will serve and supply liquor in a responsible manner.
 - (c) the business is unlikely to imperil public order and safety.
 - (d) the safety, health and welfare of customers will be protected.
 - (e) there will be a small increase in employment benefits for the local community area.
 - (f) the applicant will conduct its business in compliance with the law.
 - (g) the applicant will ensure that all staff involved in the sale and service of liquor will receive appropriate training.
 - (h) the applicant will not allow liquor to be supplied on credit; and
 - (i) the applicant will not encourage irresponsible drinking.

³ Exhibit 1, p.41

51. As earlier noted, 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

52. 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 consider the matters set out at s 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.

53. The Commission notes there are no such “other” matters prescribed by regulation.

54. 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.

55. The onus is on the applicant: s 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

56. The granting of this licence **will** result in the addition of a new licence and licensed premises. There will therefore be an increase in the actual number of licenced premises in the “community” area. It will also be in a location that has never previously held a licence, and which is surrounded by residential

accommodation, YMCA men's housing, a primary school and childcare and closely adjacent to Darwin's entertainment precinct. These are factors that weigh against the issuing of a licence.

57. On the other hand, the Commission notes that what is proposed here is a licence very much focussed on complementing an already popular tourist attraction whose main audience is families. It is also intended that there be no real significant change in seeking to cater to that demographic. It is also intended that the premises maintain the appearance of a café/restaurant and tourist experience, rather than a "bar". The premises have also operated as a tourist attraction for a very long time in the same location and there were no objections lodged with respect to the application. These factors weigh in favour of the issuing of a licence.
58. The Commission took time to carefully consider and weigh each of these factors and the Commission is satisfied that the issue of the licence and authority with the conditions the Commission has determined to impose will not have a significant adverse impact on the community.
59. Having considered all of these matters, the Commission is satisfied, in accordance with s 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.

The objects of the Act

60. 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.
61. The primary purpose of the Act is set out at paragraph 53 above. Among the secondary purposes of the Act in s 3(2) are to regulate the sale, supply, service, promotion and consumption of liquor in a way that:
- contributes to the responsible development of the liquor industry and associated businesses in the Territory; and
 - stimulates the tourism and hospitality industries.
62. For these reasons, the Commission has determined that the application should be granted, and that a license and authority be issued on the conditions set out at the commencement of this Decision Notice.
63. Before completing these Reasons, the Commissions wishes to note that during the course of the hearing the applicant was specifically asked about the

promotion of the availability of non-alcohol and low alcohol beverages, availability and access to free drinking water and the display of NHMRC responsible drinking guidelines. In relation to the display of NHMRC responsible drinking guidelines; it was stated on behalf of the applicant that the applicant would include messages about responsible drinking and these guidelines. The Commission notes this indication and encourages the applicant to take reasonable steps in this regard.

NOTICE OF RIGHTS

64. 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 (**NTCAT**). 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.

65. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the applicant.



JODI TRUMAN

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
21 February 2024

On behalf of Commissioners Truman, Dwyer and Fong Lim