

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** *DISCIPLINARY ACTION AGAINST WAGAIT BEACH SUPERMARKET* [2024] NTLiqComm 10

**REFERENCE:** LC2023/041 and LC2024/001

**LICENCE NUMBER:** 80904232

**LICENSEE:** Shining Space Development Pty Ltd

**PREMISES:** Wagait Beach Supermarket  
13 Wagait Tower Road  
WAGAIT BEACH, NT, 0822

**LEGISLATION:** Part 7 Division 4 of the *Liquor Act 2019*

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

**DATE OF HEARING:** 6 and 8 March 2024

**DATE OF DECISION:** 18 March 2024

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### DECISION

1. On 6 and 8 March 2024, the Northern Territory Liquor Commission (**the Commission**) conducted a hearing pursuant to Part 7 Division 3 of the *Liquor Act 2019* (NT) (**the Act**) into complaint LC2023/041 (**the Q3 complaint**) and investigation LC2024/001 (**the Belyuen investigation**) regarding the operation of liquor licence 80904232 (**the licence**) by Shining Space Development Pty Ltd (**the licensee**) at the Wagait Beach Supermarket (**the premises**).
2. The Commission finds:
  - a. The ground for disciplinary action set out at s 160(1)(a) of the Act is made out, and in particular:
    - i. The licensee has contravened the condition of the licence headed “Community Agreement” (**the Community Agreement condition**); and

- ii. The licensee has contravened the condition of the licence headed “CCTV Condition” (**the CCTV condition**).
  - b. The ground for disciplinary action set out at s 160(1)(b) of the Act is made out, and in particular:
    - i. the licensee contravened reg 53(2) of the *Liquor Regulations 2019* (NT) (**the Regulations**) for the period 1 July 2023 to 30 September 2023; and
    - ii. the licensee contravened s 109(2) of the Act by failing to comply with a request made on 27 October 2023 by an inspector for a document relating to the sale of liquor in the course of the licensee’s business.
  - c. The ground for disciplinary action set out at s 160(1)(h) of the Act is made out, that the licensee is not a fit and proper person to hold the licence.
  - d. The ground for disciplinary action set out at s 160(1)(i) of the Act is made out, that the licensee’s nominee is not a fit and proper person and the licensee should reasonably know that.
  - e. The ground for disciplinary action set out at s 160(1)(n) of the Act is made out, that the licensee is no longer eligible to hold the licence.
- 3. Being satisfied that the above grounds for disciplinary action exist, and that the disciplinary action it has decided to take is appropriate in relation to these grounds, the Commission takes the following disciplinary action against the licensee:
  - a. In accordance with s 165(2)(a) of the Act:
    - i. To vary the condition of the licence headed “Trading Hours” by omitting “Monday to Friday” and substituting “Monday, Thursday and Friday”; and
    - ii. To impose the following additional condition on the licence:

The licensee and its employees must not knowingly sell liquor to a customer who has previously purchased liquor from the licensee on that day.
  - b. In accordance with s 165(2)(b) of the Act, to suspend the licence until:
    - i. Either the transfer of the licence to another person is approved under Part 3 Division 8 of the Act; or the Commission is satisfied that the licensee has become a fit and proper person to hold the licence; and

- ii. A new licensee's nominee has been approved in writing by the Director of Liquor Licensing (**the Director**) or the Commission; and
  - iii. The Director has confirmed to the licensee in writing that the Director is satisfied that compliance with the Community Agreement condition has been achieved; and
  - iv. The Director has confirmed to the licensee in writing that the Director is satisfied that compliance with the CCTV Condition has been achieved; and
  - v. The Director has confirmed to the licensee in writing that the Director is satisfied that a point of sale system and record management system has been installed, can operate and will be maintained that enables records and documents requested by an inspector pursuant to the Act and the Regulations to be stored, retrieved and produced in a timely manner.
4. To avoid doubt, the Commission notes that it has decided not to cancel the licence, impose a monetary penalty, or disqualify a person from holding a licence.

## REASONS

### Background

5. The licensee is an ASIC registered company with two directors, Mr Chen Zhang (**Mr Zhang**) and Ms Hongmin Wang (**Ms Wang**), who each owns 50% of the shares. The licensee's registered business name is "Wagait Beach Supermarket". Mr Zhang is the licence nominee.<sup>1</sup>
6. On 25 October 2023 the Commission conducted a hearing into a complaint that the licensee had breached reg 53(2) of the Regulations (**the 25% grocery store cap**). The complaint alleged that 32.2% of the licensee's gross sales (excluding GST) in the second quarter of the 2023 calendar year were from the sale of liquor (**the Q2 complaint**).
7. On 30 October 2023, in accordance with reg 53(3), the licensee submitted a "Grocery Store ancillary declaration" to the Director declaring that in the third quarter of the 2023 calendar year 29.58% of its gross sales (excluding GST) had been from the sale of liquor. Consequently, on 2 November 2023 a Delegate of the Director accepted the Q3 complaint.
8. On 7 November 2023 the Commission issued a decision notice upholding the Q2 complaint and taking disciplinary action by way of a monetary penalty.<sup>2</sup>

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<sup>1</sup> Delegate of Director of Liquor Licensing, *Transfer of Liquor Licence*, 5 July 2022

<sup>2</sup> *Complaint against Wagait Beach Supermarket* [2023] NTLiqComm 35

9. Furthermore, in that decision notice the Commission stated, at [39]:

On 25 October 2023, the day of the hearing, the CEO of the Belyuen Community Government Council sent a letter signed by the President of the Council (**the Belyuen letter**) to Licensing NT. The Belyuen letter contained allegations that the licensee's liquor trading practices were contributing to serious problems in the Belyuen community. Over the objection of the licensee, the Commission admitted the Belyuen letter into evidence. However, the Commission indicated to the parties that as neither the licensee or the Director had been provided with an opportunity to respond to the allegations in the Belyuen letter, it would be unfair for the Commission to have regard to those allegations when considering the current complaint, and the Commission has not done so. Instead, as provided for by s 158(1)(a) of the Act, the Commission Chairperson has requested the Director to conduct an investigation into the licensee, specifically in relation to the matters raised in the Belyuen letter.

10. On 6 December 2023 a Delegate of the Director referred the Q3 complaint to the Commission.

11. On 8 December 2023, having been informed by the office of the Director that the licensee's trading in the fourth quarter of the 2023 calendar year was on track to be compliant with the 25% grocery store cap, the Commission determined to postpone the hearing of the Q3 complaint until it had received the Belyuen investigation report, so that both matters could be heard together, as is permitted by s 166(3) of the Act.

12. On 15 January 2024 the Director provided the Commission with a report of the Belyuen investigation. The Director recommended (**the Director's recommendations**) that the Commission direct that the licensee:

- a. In consultation with the relevant stakeholders, prepare and enter into a community agreement and provide the agreement to the Commission;
- b. Improve its RSA practices to ensure the entire sale of liquor is completed at the POS (liquor is only removed from the premises by the purchaser);
- c. Install and maintain an appropriate CCTV system within the licensed premises that is in compliance with the Code of Practice for CCTV system in licensed premises;
- d. Install and maintain an appropriate point of sale system and/or record management (receipt) system whereby all information is able to be downloaded and supplied in a timely manner.

13. The Commission determined to fix the hearing of these two related matters together on 6 March 2024, the first date convenient to the Commission. Two members of the Commission panel convened for the hearing had also been members of the Commission panel that heard the Q2 complaint.

14. On 23 January 2024 the Commission notified the licensee of the hearing date and supplied it with the material it had received from the Director in relation to both the Q3 complaint and the Belyuen investigation. On the same date the Chairperson of the Commission wrote to the licensee strongly encouraging it to use the six weeks remaining until the hearing to take all reasonable steps to implement the Director's recommendations.

### **The Q3 complaint**

15. In support of the Q2 complaint the Director provided the Commission with a brief that included:

- Liquor licence 80904232
- Letter from Licensing NT dated 25 September 2023 to licensee requesting the Q3 declaration
- Bookkeeper's letter certifying Q3 trading figures dated 19 October 2023
- Reminder email to licensee dated 26 October 2023
- Grocery Store Ancillary Declaration for Q3 submitted 30 October 2023
- Notification to licensee of complaint dated 2 November 2023
- Licensee's sales data for period 1 October to 15 November 2023
- Licensee's response to complaint submitted 27 November 2023

### **The Belyuen investigation**

16. In relation to the Belyuen investigation the Director provided the Commission with a brief that included:

- Investigation report dated 12 January 2024
- Letter from Belyuen Council dated 23 October 2023 with allegations against licensee
- Notes of 7 November 2023 meeting between Senior Compliance Officer Paull, Belyuen Council President Edmunds and Belyuen Council CEO Ferguson
- Liquor licences for Sandpalms Tropical Motel, Darwin River Tavern and Mandorah Beach Hotel, each of which includes a special condition regarding the supply of liquor to Belyuen residents.
- Extract of Merit Partners' independent audit commissioned by the Director of selected licensed premises with a Grocery Store Authority, including the Wagait Beach Supermarket, dated April 2023
- Analysis of licensee's CCTV footage, till receipt sales and Banned Drinkers Register transactions for 1 October 2023 to 26 October 2023.
- Analysis of licensee's "grocery only" receipt sales for 17 October 2023 to 26 October 2023
- Licensee's response submitted on 18 December 2023 to Belyuen allegations

## The hearing

17. The matter commenced as a public hearing in Darwin on 6 March 2024, and resumed and was completed on 8 March 2024. Mr Zhang appeared on behalf of the licensee. Mr Verity appeared on behalf of the Director.
18. The Commission engaged Ms Hanshi Chen, a Mandarin/English interpreter, who performed her duties under oath to a high professional standard. The Commission acknowledges Ms Chen's essential contribution to the hearing.
19. As the licensee was unrepresented, the hearing was conducted with a minimum of formality. The two witnesses who gave evidence at the hearing, Mr Zhang and Senior Compliance Officer Jeff Paull, did so under oath.
20. Without objection, the Commission received into evidence:
  - Exhibit One: Q3 complaint brief (121 pages)
  - Exhibit Two: Belyuen investigation brief (164 pages)
  - Exhibit Three: Q4 2023 Grocery Store Ancillary Declaration
  - Exhibit Four: Chairperson's letter to Mr Zhang dated 23 January 2024
  - Exhibit Five: Email from Commission to Mr Zhang sent 23 January 2024
  - Exhibit Six: List of "Belyuen visitors to be treated as residents"
  - Exhibit Seven: Point of Sale system invoice dated 5 March 2024
  - Exhibit Eight: ebay order for camera security system (no date)
  - Exhibit Nine: Order for camera security system 7 March 2024
  - Exhibit Ten: Lease for Wagait Beach Supermarket from Aihua Feng (**Ms Feng**) as trustee for Feng Family Trust to licensee (45 pages)
21. On behalf of the licensee, Mr Zhang admitted the truth and accuracy of the following summary of the facts the subject of the Q3 complaint:

On 29 October 2023, the nominee signed a declaration as per regulation 53(3) of the Regulations. The nominee declared that the percentage of their liquor sales for the period between 1 July 2023 and 30 September 2023 (Q3 declaration) totalled 29.53%. This is in contravention of regulation 53(2) as the licensee exceeded 25% of the gross value of the sales of all products.
22. Accordingly, at the conclusion of the hearing, the Commission announced that it was satisfied that the Q3 complaint was made out. The Commission also indicated that it considered that the evidence in the matter raised a question as to whether the licensee is a fit and proper person to hold the licence, and invited the parties to make submissions on this issue.
23. Mr Verity's submissions on behalf of the Director were that although Mr Zhang has always been co-operative in his dealings with Licensing NT, the Director has an ongoing concern about the licensee's ability to operate the licence and to discharge its responsibilities, of which the licensee has limited knowledge.

24. In his submissions on behalf of the licensee made through the interpreter, Mr Zhang gratefully acknowledged the Director's recommendations, admitted that some of his previous responses had been inadequate because of the language barrier, and expressed confidence that the licensee would in future comply with regulatory requirements.
25. On 11 March 2024 the Commission wrote to the licensee informing it that on 18 March 2024 it would issue a decision notice, the immediate effect of which would be to suspend the licence. The Commission took this step in order to give the licensee an opportunity to prepare for the impending loss of its authorisation to supply liquor.
26. The Commission now sets out the basis for its findings at paragraph 2 above, and the basis for its disciplinary actions at paragraph 3 above. It is convenient to commence with the ground alleged in the Q2 complaint.

**Ground 2(b)(i): contravention of the 25% grocery store cap**

27. As stated above, the facts in support of this ground of complaint were formally admitted by the licensee, and the Commission upholds this ground for disciplinary action.
28. On the basis of the sales data provided to it, the Commission estimates that the net profit derived by trading in excess of the 25% grocery store cap between 1 July 2023 and 31 October 2023 was in the order of \$5,000. In previous similar cases, the Commission has imposed a monetary penalty roughly equivalent to the amount that the licensee has unlawfully enriched itself.
29. Usually, in application of the principle of specific deterrence, the Commission would increase the penalty for a second contravention occurring soon after an earlier contravention that resulted in disciplinary action being taken. In this case, the licensee, having contravened the 25% grocery store cap in Q2 of 2023, contravened again in the following quarter.
30. However, the weight to be given to specific deterrence is somewhat reduced because the Commission did not impose a penalty for the earlier contravention until after the period the subject of the second contravention had expired.
31. That said, the delay in finalising the Q2 complaint was primarily due to the conduct of the licensee. The Commission fixed the Q2 complaint for hearing on 20 September 2023. Without giving prior notice to the Commission, Mr Zhang did not attend. Ms Wang attended instead on his behalf. She had not been briefed about the hearing, did not appear to understand what it was about, and, because of her limited English proficiency, was unable to participate meaningfully in the hearing, which the Commission had no choice but to postpone. The Commission infers that either the principals of the licensee did not appreciate the significance of the Q2 complaint and the ensuing hearing, or they did appreciate the significance and nevertheless

refused or failed to take reasonable steps to ensure that the licensee could properly participate in the hearing.

32. On 25 September 2023 the Director sent a form letter requesting all store licensees, including the Wagait Beach Supermarket licensee, to provide their Q3 declaration by 30 October 2023. In a letter dated 19 October 2023 the licensee's bookkeeper provided the licensee with the data required for the licensee to submit a reg 53 declaration for Q3 of 2023. The licensee could have provided its Q3 declaration to the Director and the Commission before the hearing on 25 October 2023, but did not do so. The licensee knew or should have known that this would have been of assistance to the Commission and of relevance to the Q2 complaint hearing.
33. Despite written warnings not to breach the 25% grocery store cap given by the Director to the licensee in August 2022, January 2023 and May 2023, the licensee took no effective action to reduce liquor sales until the beginning of October 2023, when it reduced its trading days by two days a week, Tuesdays and Wednesdays. This action was successful: in the fourth quarter of 2023 the licensee traded within the 25% cap.
34. In its consideration of whether Mr Zhang is a fit and proper person to be the nominee of the licensee, and whether Shining Space Development Pty Ltd is a fit and proper person to be a licensee, the Commission has had regard to the above matters.
35. In considering the disciplinary action to take for the contravention of the 25% grocery store cap, the Commission has regard to: firstly, the relatively modest amount by which the licensee unlawfully enriched itself in Q3; secondly, the licensee's success in trading within the cap since then; and thirdly, the Commission's decision to suspend the licence for reasons explained later in this decision notice. The Commission considers that as it has suspended the licence for what it anticipates will be a significant period, it would be unduly harsh to impose a further monetary penalty. The Commission notes that the licensee still has to pay over \$13,000 of the monetary penalty imposed by the Commission in November 2023. In all these circumstances, although the alleged ground for disciplinary action arising from the Q3 complaint is made out, the Commission is not satisfied that it is appropriate to take disciplinary action by way of a monetary penalty in relation to this ground.
36. Instead, the Commission is satisfied that it is appropriate to take disciplinary action by varying a condition of the licence as set out at paragraph 3(a)(i) above.

### **Matters arising from the Belyuen investigation**

37. The Belyuen investigation did not substantiate the Belyuen Community Council's specific allegations against the licensee. However, the investigation identified some unsatisfactory aspects of the operation of the licence, and led to the Director's recommendations set out at paragraph 12 above.



38. The Belyuen investigation was undertaken not in response to a complaint made under s 160 of the Act, but to a request by the chairperson to the Director made under s 158(1)(a). In accordance with s 163(1), on completing the requested investigation the Director referred the matter to the Commission for disciplinary action. In these circumstances, s166 requires the Commission to conduct a hearing and either dismiss the matter or take disciplinary action. Section 165(1)(a) provides that the Commission may take disciplinary action only if it is satisfied that “a ground for disciplinary action exists”. The Belyuen investigation report did not expressly identify any of the grounds for disciplinary action set out at s 160. However, having regard to the text, context and purpose of Part 7 Division 4 (“Commission’s power to take disciplinary action”), the Commission considers that in order to properly exercise that power it can and should consider for itself whether an investigation has raised grounds for disciplinary action, even if they are not expressly identified in the investigation report.
39. Having considered the Belyuen investigation report and completed the ensuing hearing, the Commission considers that it directly raises two contraventions of the ground for disciplinary action established by s160(1)(a) and one contravention of the ground for disciplinary action established by s160(1)(b).

### **Ground 2(a)(i):<sup>3</sup> contravention of the Community Agreement condition**

40. The Community Agreement condition in the licence states:

A reasonable written agreement must be in place with the Belyuen Community. If this agreement is breached or there is an indication that it may break down the matter must be referred to the Commission as soon as practicable or in any event within three (3) working days.

No sales of beer in glass containers to known Belyuen residents.

No sales of wine or spirits to known Belyuen residents.

41. This condition was included in the licence when a delegate of the Director approved the transfer of the licence to the licensee on 5 July 2022. In his report to the Director recommending approval of the transfer of the licence to the licensee, Senior Compliance Officer Paull stated:

In accordance with the Act, the NT Police were notified of the application [to transfer the licence]. The Police replied via email dated 27 June 2022 requesting that the Community Agreement contained in the liquor licence special conditions, is included and contemporary.

42. Despite this, neither the licensee, the Director nor the Belyuen Community Government Council has been able to find or produce the written community agreement. The licensee produced a document headed “List of Belyuen

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<sup>3</sup> The numbering refers to the corresponding paragraph number in this decision notice.

visitors to be treated as residents”. Mr Zhang’s evidence, which the Commission accepts, is that when it took over the store in December 2021, the licensee received this printed list (which includes some handwritten additions) from a previous licensee, and it has not been updated since.

43. The Commission also accepts Mr Zhang’s evidence that his practice was to check the identity of an Aboriginal customer seeking to purchase wine or spirits against the names on the list, and to decline the sale if the customer’s name was on the list. The Commission was shown CCTV footage of an occasion in October 2023 when Mr Zhang checked on the list the name of an Indigenous customer who purchased a bottle of rum.
44. The Commission received no evidence that the licensee has sold beer in glass containers, wine or spirits to known Belyuen residents, and makes no such finding. However, the Commission does find that the licensee has never complied with the requirement that a reasonable written agreement be in place with the Belyuen Community.
45. Mr Zhang gave evidence, which the Commission accepts, that he and Ms Wang between them assumed exclusive control and management of the business on 21 December 2021. The Commission will return to this finding later in these reasons. Although this was more than six months before the licence was transferred to the licensee, as the de facto operator of the business and the licence, the Commission considers that on commencing to run the store, Mr Zhang and Ms Wang should have taken steps to ensure compliance with all licence conditions, including the Community Agreement condition.
46. The Commission makes no finding as to whether this issue, which, as set out above was highlighted by Senior Compliance Officer Paull in July 2022, was specifically brought to the attention of the licensee at that time by Licensing NT.
47. The issue was certainly brought to the attention of the licensee at the hearing of the Q2 complaint on 25 October 2023, when the Belyuen letter was received by the Commission and given to Mr Zhang, and the Commission referred to the Community Agreement condition. Mr Zhang was assisted at that hearing by an interpreter. Ms Feng, who is the proprietor of the premises, the licensee’s lessor and the principal of the company that had previously held the licence before transferring it to Shining Space Development Pty Ltd, was also in attendance at the hearing of the Q2 complaint, and gave evidence in support of the licensee.
48. On 18 December 2023, the licensee provided a written response to the allegations in the Belyuen letter, in which it stated “to be frankly, the customer from Belyuen community is our main source of turnover... from some extent, the agreement between the community and us is protection from the community people, because they are only available to buy can beer and cider in the shop...”. Giving the licensee the benefit of the doubt, the Commission proceeds on the basis that the licensee honestly believed at that time that it

was acting in compliance with the Community Agreement condition. However, the Commission finds such a belief to be erroneous and, moreover, unreasonable. The condition is in its terms express and clear.

49. The Commission accepts that, as Mr Zhang put it, he has faced a language barrier. The Commission accepts that this may have contributed to his misunderstanding of the Community Condition agreement. The Commission does not however accept this as a reasonable excuse: every liquor licensee has a responsibility to comply with the liquor licensing regulatory framework, and if they face a language barrier, they have a responsibility to take reasonable steps to overcome that obstacle.
50. On 23 January 2024 the Commission chairperson wrote a letter that was emailed to the licensee specifically urging it to take action to comply with the Community Agreement condition before the hearing, which was then six weeks away.
51. The Commission did not receive a “bounce-back” alert, an out-of-office reply or indeed any response from the licensee to this letter. Accordingly, on 27 February 2024, the Commission re-sent its correspondence of 23 January 2024 to the licensee.
52. In his evidence at the hearing, Mr Zhang gave varying accounts of whether and when he had received and read the chairperson’s letter of 23 January 2024. Initially, he said that he didn’t remember receiving the letter. Then he said that he had received it. He then said that he had not received it until 27 February 2024, but did not remember when he had read it. Ultimately, Mr Zhang’s evidence was that although he checks his email daily, and although the email was correctly addressed, he did not receive it on 23 January 2024, and only received and read it on 27 February 2024.
53. Mr Zhang was asked what steps he had taken to engage with the Belyuen community since receiving the chairperson’s letter. His evidence on this issue was non-responsive, evasive and inconsistent. He initially claimed that he had tried to contact the CEO of the Belyuen community. However, he said, the CEO had previously refused to meet Mr Zhang and Ms Wang. He said that he had visited the community “a long time ago” and the CEO was not there, that the CEO is not in his office very often, that Ms Wang had “probably” tried to telephone the CEO after 27 February 2024, that Mr Zhang had not himself tried to telephone the CEO, and that Mr Zhang had not written to the CEO.
54. The Commission finds that before the hearing the licensee took no significant steps to contact the Belyuen community to prepare and enter into a community agreement, even after the licence nominee became aware that Licensing NT and the Commission recommended the licensee do so.
55. In its consideration of whether Mr Zhang is a fit and proper person to be the nominee of the licensee, and whether Shining Space Development Pty Ltd is

a fit and proper person to be a licensee, the Commission has had regard to these matters.

56. The Commission upholds this ground for taking disciplinary action.

**Ground 2(a)(ii): contravention of the CCTV condition**

57. The CCTV condition in the licence states:

The Licensee must install, maintain and operate a camera surveillance system in compliance with any requirements and guidelines prescribed by the Director or any Code of Practice issued by the Commission, including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchase, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The Licensee must retain all data captured by the camera surveillance system for not less than 14 days.

58. On 26 April 2023, in accordance with s 20 of the Act, the Commission established a Code of Practice for CCTV System in Licensed Premises. The Commission published the Code of Practice on its website,<sup>4</sup> and on 18 July 2023 wrote to affected licensees, including Shining Space Development Pty Ltd, notifying them that the Code would come into effect on 1 August 2023.

59. On 27 October 2023, according to the Belyuen Investigation Report,<sup>5</sup> in the course of conducting the Belyuen investigation, Licensing NT requested the licensee to supply CCTV footage (all cameras) for the period 12 October 2023 to 26 October 2023. On 22 November 2023, Mr Zhang only supplied CCTV footage (one camera position) for 16, 19, 20, 21, 23 and 26 October 2023. Due to the inadequate CCTV system software the licensee was unable to produce all footage: 101 transactions were not recorded on CCTV. Mr Zhang advised Licensing NT at the time that the licensee was “currently” sourcing a technician to upgrade the CCTV.

60. The Commission finds that the above account, which the licensee did not challenge, is true and accurate.

61. In his oral evidence, Mr Zhang said that although the licensee’s CCTV system has the capacity to keep data for a month, a technical issue prevented this from occurring on this occasion, and as a result not all CCTV footage was retained for 14 days. He did not elaborate on the nature of this technical issue, or offer further explanation as to why footage from only one of the 16 cameras in the store had been provided, for only six of the fourteen days requested. He offered no explanation as to why it had taken him 26 days to respond to the request for CCTV footage.

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<sup>4</sup> Accessed at [https://cmc.nt.gov.au/\\_data/assets/pdf\\_file/0008/1145591/code-practice-cctv-system.pdf](https://cmc.nt.gov.au/_data/assets/pdf_file/0008/1145591/code-practice-cctv-system.pdf)

<sup>5</sup> Exhibit Two, p. 5

62. On 23 January 2024 the Commission chairperson wrote a letter that was emailed to the licensee specifically urging it to take action in advance of the hearing, which was then six weeks away, to “install and maintain an appropriate CCTV system within the licensed premises that is in compliance with the Code of Practice for CCTV system in licensed premises”. The Commission refers to paragraphs 50 to 52 above, which summarise Mr Zhang’s evidence in relation to this letter.
63. Mr Zhang gave evidence that he was unaware of the existence of the CCTV Code of Practice, despite his evidence that on 27 February 2024 he had read and understood the chairperson’s letter, which expressly referred to the Code of Practice.
64. Mr Zhang was asked about progress that had been made to upgrade the CCTV system. His evidence on this issue was inconsistent and evasive. Initially, he said that the licensee had bought a new system, but not yet installed it. He said that it would be installed “by the end of the week”. He then said that he was not sure if it had been ordered, because that was Ms Wang’s job, not his. He said that he would ensure that the new system keeps data for 14 days.
65. At the request of the Commission for documentation to clarify what progress had been made to upgrade the licensee’s CCTV system, on 6 March 2024 Mr Zhang provided a screenshot of an undated ebay order for a “Swann 4 Camera 4 Channel 1080p Full HD Security System” to be purchased from “official Swann store” with an estimated delivery date of “Tue, 9 May – Mon, 15 May” to a Darwin address (Exhibit Eight). The following day, 7 March 2024, Mr Zhang provided a screenshot of an order dated 7 March 2024 for a different product, a “Swann Enforcer DVR 4K 6-Cam 2TB” from a different supplier, “Berrimah JB”, which the Commission infers is a JB Hi-Fi outlet (Exhibit Nine). The document indicated that Hongmin Wang, the customer, had paid a deposit of \$30.
66. On 8 March 2024, when asked again about the licensee’s plans to install a new CCTV system, Mr Zhang said that the plan was to install two cameras at each of the two tills at the premises.
67. Mr Verity, who the Commission notes was closely involved in the drafting and establishment of the CCTV Code of Practice, made the following submissions, which the Commission accepts:
- The current CCTV system operated by the licensee is non-compliant with the CCTV Code of Practice.
  - The Exhibit Eight product is non-compliant with the CCTV Code of Practice.
  - If the licensee installed the Exhibit Eight and Exhibit Nine products operating in tandem, that consolidated system, which would have a total of

12 channels capable of operating 12 cameras, might have the capacity to be compliant with the Code of Practice.

- Contrary to the Code of Practice, the licensee has not submitted to the Director for approval a Camera Surveillance Plan detailing the technical specifications, location, physical and electronic security arrangements, operational staffing arrangements and ongoing maintenance arrangements of its proposed CCTV system.

68. In its consideration of whether Mr Zhang is a fit and proper person to be the nominee of the licensee, and whether Shining Space Development Pty Ltd is a fit and proper person to be a licensee, the Commission has had regard to the matters considered above.

69. The Commission upholds this ground for taking disciplinary action.

#### **Ground 2(b)(ii): contravention of s 109**

70. Section 109 of the Act provides that a licensee commits an offence of strict liability if the licensee fails to comply with a request of an inspector to produce to the inspector any document relating to the sale, supply or service of liquor in the course of the licensee's business.

71. Having regard to the Commission's findings at paragraphs 59 and 60 above, the Commission upholds this ground of disciplinary action.

#### **Ground 2(d):<sup>6</sup> Licensee's nominee is not a fit and proper person**

72. The Commission has previously considered whether a person was a fit and proper person to hold a liquor licence, stating:<sup>7</sup>

When considering whether to issue a liquor licence, the Commission is required by section 59(3)(i) of the Act to consider "whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence." Section 160(1)(h) of the Act provides that a person may make a complaint against a licensee on the ground that the licensee is not a fit and proper person to hold the licence. The term "fit and proper" is not defined by the Act.

In *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, the High Court considered the meaning of the expression "fit and proper" in relation to licensees under the *Broadcasting Act 1942* (Cth).

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<sup>6</sup> It is convenient to consider ground 2(d) before considering ground 2(c)

<sup>7</sup> *Bojangles Restaurant Saloon - Disciplinary action* LC2020/058 (28 January 2021) at [37] to [41]; see also *The NT Rock Bar – Application for Transfer of Liquor Licence* (LC2022/053) at [51]

Mason CJ stated, at 349:

[A] licensee has a responsibility to exercise the power conferred by the licence with a due regard to proper standards of conduct and a responsibility not to abuse the privilege which it enjoys... A licensee which lacks a proper appreciation of those responsibilities or does not discharge them is not, or may be adjudged not to be, a fit and proper person.

Gaudron and Toohey JJ stated, at 380:

The expression “fit and proper”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities... in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

In *Qadir v Department of Transport* [2015] NTSC 86, Kelly J stated, at [52]:

A decision about whether an applicant is a “fit and proper person” for a particular role or purpose requires a consideration of the qualities necessary to fulfil the role or purpose. It would also generally require some consideration of the person’s moral integrity and rectitude of character as well as the applicant’s knowledge, ability and honesty as it relates to the role in question.<sup>8</sup>

73. In applying to this matter the principles that emerge from these authoritative decisions, the Commission is of the view that it has to consider whether Mr Zhang has a proper appreciation of the responsibilities required to fulfil the role of being the holder of the liquor licence, and whether he has the qualities – the character, knowledge, ability and honesty – needed to discharge the responsibilities of a liquor licensee.

74. The Commission has referred above to some of the evidence to which it has had regard in considering whether Mr Zhang is a fit and proper person to be the nominee of the licensee.

75. The Commission now considers other evidence that goes to this issue.

76. Firstly, on 5 July 2022, Mark Wood, a Delegate of the Director, wrote to the licensee notifying it that the transfer of the licence to it had been approved.<sup>9</sup> Mr Wood continued:

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<sup>8</sup> See also *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) 93 CLR 127, 156

<sup>9</sup> Brief of evidence admitted at hearing of Q2 complaint

I do however wish to raise with you the concerns of the Director in relation to your behaviour to date, specifically sales of liquor while not the licensee.

Your application was lodged 22 June 2022, notwithstanding you took possession of the premises on or about 24 March 2022. It has been submitted by you to Licensing NT personnel that there has been no sale of liquor at the premises in the intervening period. I can inform you that a review was undertaken of the Banned Drinker Register System, confirming several thousand scans which can only relate to takeaway liquor sales since you took possession.

It necessarily follows that you have clearly been selling liquor from the premises, without a liquor licence and when challenged denied doing so. With respect to Mr Chan [sic], I note in the materials eventually provided in support of the application, that he holds a Bachelor of Law degree. This behaviour is troubling and raises serious concerns as to how you will conduct the business of the liquor licence, your compliance with the *Liquor Act 2019* and the conditions of your licence.

The Director has considered the issues and at this time decided not to pursue action against you. I do however strongly counsel you to be frank and complete in your dealings with Licensing NT personnel. You are now placed on notice that future matters are likely to be treated far more vigorously than this matter.

77. Mr Zhang gave oral evidence on 6 March 2024 that he took over running the store not in March 2022, but in 21 December 2021, at around the time Ms Feng acquired the licence from a previous long-standing licensee. Mr Zhang was firm and clear about this. He stated that from that date he had managed and taken care of the business with Ms Wang, and that he had managed the daily operation, including stock management, emails, and relationships with suppliers. He stated that Ms Feng was not a part of the business. This account is consistent with what Mr Zhang told Merit Partners when they interviewed him in the course of their review.<sup>10</sup> The Commission accepts this account.

78. The Commission received unchallenged evidence, which it accepts, that between 21 September 2021 and 30 June 2022, the store sold \$420,510 of liquor.<sup>11</sup>

79. Now that the Commission has been apprised of these facts, the warning given to the licensee by Mr Wood in June 2022, stern and clear as it was, appears, if anything, to have understated the seriousness of both the licensee's cavalier conduct, and its lack of candour.

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<sup>10</sup> Exhibit Two, p. 53

<sup>11</sup> Exhibit Two, p. 58



80. Secondly, on an occasion between 30 June 2022 and 14 April 2023, Mr Zhang told the Merit Review officer that he was planning to upgrade the licensee's point of sale system in order to remedy various shortcomings identified by Merit Partners including the licensee's financial accounting, stock control, data storage, data retrieval, data back-up, journal maintenance and business process documentation systems.<sup>12</sup> In November 2023, Mr Zhang told Licensing NT that he was sourcing a technician to upgrade this system.<sup>13</sup> However, no such system was purchased until 5 March 2024, the day before the current hearing commenced. The licensee has not given evidence as to when this new system will be installed and become operational.

81. Thirdly, on 15 December 2022, the Commission received evidence in the Q2 complaint hearing that Mr Zhang had proposed that the licensee be issued a takeaway authority, as a means of avoiding having to comply with the 25% grocery store cap. The Commission explained to Mr Zhang at that hearing that s 84(3) of the Act imposes a moratorium on the creation or issue of a takeaway authority. However, on 27 November 2023, a month after the Q2 complaint hearing, Mr Zhang repeated this request.<sup>14</sup> In his evidence given on 6 March 2024, he stated that this was because he had forgotten about this law.

82. Having considered all of these matters, the Commission finds that the licensee's nominee has repeatedly and consistently engaged in conduct the effect of which was to hinder, delay or frustrate:

- a. a full and proper investigation and assessment of the operation of the licence; and
- b. the implementation of remedial action to address deficiencies and instances of non-compliance that had been brought to the attention of the licensee.

83. If Mr Zhang engaged in this pattern of behaviour to intentionally avoid operating the licence in a compliant manner, that would support a finding that he lacks the integrity and honesty needed to discharge the responsibilities of a licensee. If on the other hand Mr Zhang's pattern of behaviour is explicable by reference to his lack of understanding of the licence conditions, the Act, the Regulations, the Code of Practice, the correspondence he has been sent by the Director and the Commission, and/or the English language, this would support a finding that he lacks the knowledge, skills and abilities required both to appreciate the responsibilities of a licensee, and to discharge those responsibilities. It is unnecessary to decide whether the effect of this pattern of conduct was intended, unintended or at times one and at other times the other. The Commission is however satisfied and finds that Mr Zhang is not a fit and proper person to be the nominee of the Wagait Beach Supermarket liquor licence.

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<sup>12</sup> Exhibit Two, p. 54

<sup>13</sup> Exhibit Two, p. 5

<sup>14</sup> Exhibit One, p. 121

84. The Commission further finds that the licensee, the sole principals of which are Mr Zhang and Ms Wang, should reasonably know that Mr Zhang is not a fit and proper person to be the licensee's nominee.

85. The Commission upholds this ground for taking disciplinary action.

**Ground 2(c): Licensee is not a fit and proper person**

86. The licensee is a body corporate. The Commission has previously stated:<sup>15</sup>

In the view of the Commission, when a [person] is, as in this instance, a body corporate, to determine whether that corporate person is fit and proper the Commission must consider whether the executive officers of the body corporate are fit and proper to hold the licence, whether the designated nominee is fit and proper to hold the licence, and whether the associates of the body corporate are fit and proper to be associates of the licensee, having regard to the relationships between these individuals and the respective roles they propose to play in the operation of the licence.

87. The licensee has two equal shareholders, who are also its directors, Mr Zhang and Ms Wang. Ms Feng, who previously held the licence and owned the business, remains the owner of the premises, which she leases to the licensee. Accordingly, she is, in the view of the Commission, a person who may expect a benefit from the licensee, and as such she is an associate of the licensee pursuant to s 54 read with s 55(1)(m) of the Act. The Commission notes that Ms Feng attended the hearing on 6 March 2024. Ms Feng was not called to give evidence, but immediately following the adjournment of the hearing that day she approached a member of the Commission to engage in private discussion about the case.

88. If the licensee has any other associates, that has not been disclosed to the Commission.

89. Having considered all of the evidence it has received regarding the licensee's corporate structure, management and operation, including Mr Zhang's testimony summarised at paragraph 77 above, the Commission finds that the only executive officers of the licensee are Mr Zhang and Ms Wang. The Commission's brief engagement with Ms Wang on 20 September 2023 (see paragraph 31 above) left the Commission with the strong impression that Ms Wang is at best no more competent to manage the liquor licence than Mr Zhang. Ms Feng, who gave lengthy evidence to the Commission at the hearing of the Q2 complaint on 25 October 2023, impressed the Commission as an experienced, articulate and assertive businessperson. The Commission has accepted Mr Zhang's evidence that Ms Feng "is not part of the business". However, the Commission is concerned that during the period of over six months when Ms Feng was the licence nominee, she had apparently handed

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<sup>15</sup> *The NT Rock Bar – Application for Transfer of Liquor Licence* (LC2022/053) at [47]

over the conduct of the licence and the running of the business to an unlicensed operator.

90. The Commission upholds this ground for taking disciplinary action.

### **Ground 2(e): Licensee not eligible to hold a licence**

91. Section 49(1) of the Act provides that the Commission may only issue a licence or an authority if satisfied that the applicant is a fit and proper person. Having been found to be a person who is not fit and proper, the licensee is now ineligible to be issued with a licence. In the view of the Commission, if a person is ineligible to be issued with a licence, as a matter of logic that person is ineligible to hold a licence.

92. The Commission upholds this ground for taking disciplinary action.

### **Disciplinary action**

93. Section 165(1)(b) requires that the Commission only take disciplinary action that it is satisfied is appropriate in relation to that ground. The most serious grounds of complaint that the Commission has upheld in this matter are the grounds at paragraphs 2(c), 2(d) and 2(e) above, which in the view of the Commission require it to take disciplinary action to prohibit the licensee from operating the licence, with immediate effect.

94. The most drastic action available to the Commission in these circumstances would be to cancel the licence and/or disqualify the licensee from holding a licence for a specified period. The Commission has decided not to take either of those actions.

95. If the licence were cancelled, by operation of s 84(2) ("No grocery store authority may be created or issued under the Act"), the Commission would be precluded from issuing a new licence to replace it. This would in turn have the effect of substantially reducing the value of the business owned by the licensee (and the value of the premises owned by Ms Feng) and operate as an inappropriately harsh penalty on the licensee. The Wagait Beach Supermarket is the only takeaway liquor outlet and the only grocery store on the Cox Peninsular. Notwithstanding the 25% grocery store cap, and the licence condition that the sale of liquor at the premises be ancillary to the operation of the premises as a supermarket or general store, the Commission accepts that for many years, the sale of liquor by the Wagait Beach Supermarket has been a significant contributor to the financial viability of the business. The Commission is not satisfied that it would be in the interest of the nearby Mandorah community to permanently close their only local supermarket. The Commission is not satisfied that it would be appropriate to cancel the licence.

96. If the Commission were satisfied that Mr Zhang has engaged in a pattern of conduct with the deliberate intent of concealing activities in breach of licence conditions or the Act, the Commission would have been inclined to disqualify Mr Zhang and the licensee from holding a licence for a significant period.

However, as discussed at paragraph 83 above, the Commission's conclusion that the licensee's nominee (and by extension, the licensee) is not a fit and proper person to manage this liquor licence is not based on a finding that Mr Zhang has necessarily engaged in systematic dishonesty or that he is necessarily a person of poor character. The Commission is not satisfied that it would be appropriate to disqualify a person from holding a licence.

97. In lieu of cancelling the licence or disqualifying the licensee, the Commission has determined to suspend the licence until specified conditions have been met.

98. A preliminary question that arises is whether the Commission has the power to suspend a liquor licence in this manner instead of, as it has previously done in other matters, for a specified period.

99. Section 3(4) of the *Liquor Act* requires the Commission to exercise its power in a way consistent with the purposes of the Act. Section 62 of the *Interpretation Act* provides:

In interpreting a provision of an Act, a construction that promotes the purpose or object underlying the Act (whether the purpose or object is expressly stated in the Act or not) is to be preferred to a construction that does not promote the purpose of the Act.

100. Section 6(3) of the *Liquor Commission Act 2019* provides that the Commission "has the power to do all things that are necessary or convenient to be done for, or incidental to, the performance of its functions".

101. The Commission also has regard to the distinction between the terms of the disciplinary action prescribed by s165(2)(b) ("suspend a licence") and 165(2)(f) ("disqualify a person from holding a licence for a specified period"). In the view of the Commission, if the legislature had intended to limit the scope of the Commission's power to suspend a licence to "for a specified period", it could and would have included those words in s 165(2)(b), as it has done with s 165(2)(f).

102. Having had regard to these statutory provisions and the purposes of the Act, the Commission considers that the power to suspend a licence is not limited to suspension for a specified period, but permits suspension until specified conditions have been satisfied.

103. In this case, the Commission is unable to identify any alternative disciplinary action available that would be appropriate and effective to address all of the issues raised by the grounds of complaint that the Commission has upheld.

104. The Commission has fixed five conditions, all of which must be met before the licence suspension expires. Each of the five conditions is calculated to address an issue that the Commission considers must be dealt with before operation of the licence recommences.

105. The first two conditions the Commission has imposed leave the door open for the licensee to either transfer the licence to another licensee, or to retain it. If the licensee wishes to be restored as the operator of the licence, it will have to satisfy the Commission that it has become a fit and proper person, and has engaged an approved nominee other than Mr Zhang. On the evidence that it has received to date, the Commission's view is that it would be difficult for Ms Wang to satisfy the Director or the Commission that she is a fit and proper person to be appointed as the licensee's nominee.
106. The remaining conditions are based on three of the four Director's recommendations in the Belyuen investigation report. The Commission is satisfied that the condition at paragraph 3(b)(iii) is appropriate in relation to the ground for disciplinary action that the licensee contravened the Community Agreement condition. The Commission is satisfied that the condition at paragraph 3(b)(iv) is appropriate in relation to the ground for disciplinary action that the licensee contravened the CCTV condition and s 109 of the Act. The Commission is satisfied that the condition at paragraph 3(b)(v) is appropriate in relation to the ground for disciplinary action that the licensee contravened s 109 of the Act.
107. The Commission is not satisfied that it is appropriate to take the disciplinary action recommended by the Director to direct the licensee to improve its RSA practices. The Commission considers that the evidence provided by the Director in support of that recommendation was relatively tenuous. That is not a criticism of the Director, whose attempts to obtain evidence of the licensee's RSA practices were to a significant extent frustrated by the licensee's serious failure to produce records in response to the Director's request made under s 109 of the Act.
108. The Commission has decided to vary a condition of the licence. The variation of trading hours confirms the voluntary reduction of trading hours the licensee commenced in October 2023 that have enabled it to trade since then in compliance with the 25% grocery store cap. The Commission considers that this reduction of hours should be incorporated into the licence.
109. The Commission has upheld the ground for disciplinary action set out at paragraph 2(a)(ii) above, that the licensee has contravened the Community Agreement condition. The Commission infers that the purpose of inserting this condition into the licence was to minimise the incidence of alcohol-related harm arising from the supply of liquor from the Wagait Beach Supermarket to persons who consume it at the Belyuen community, which is 12 km from the premises. Belyuen is an interim alcohol protected area where liquor is prohibited.<sup>16</sup>
110. Although the Belyuen investigation did not substantiate the allegations in the Belyuen letter, the Commission is satisfied that despite the fact that liquor is prohibited in Belyuen, alcohol is at times possessed and consumed in that

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<sup>16</sup> Exhibit Two, p. 1

area, and that at times harm results. During the course of the Belyuen investigation, Licensing NT identified some occasions on which a customer made more than one purchase of liquor in a single day, in circumstances giving rise to a reasonable suspicion that this customer was in turn supplying liquor to another person. The Commission considers that the licensee's failure to comply with the Community Agreement condition has aggravated the risk that the licensee will, unwittingly or otherwise, facilitate unlawful secondary supply to persons who will take liquor unlawfully into the Belyuen restricted area, where it will be unlawfully consumed.

111. In order to mitigate this risk, the Commission is satisfied that it is appropriate to impose the additional condition on the licence set out at paragraph 2(a)(ii) above. The Commission notes that this condition is substantially similar in its effect to Regulation 56A of the Regulations, which applies to licensees with a grocery store authority in the Alice Springs local government area. At the hearing on 6 March 2024, the Commission invited Mr Zhang to comment on this proposed additional condition. He said, "I can't accept that condition because we are going to receive a lot of complaints from customers." This response seems somewhat inconsistent with Mr Zhang's evidence that there are only one or two instances a day of multiple purchases. In any event, the response does not, in the view of the Commission, materially affect the appropriateness of taking this disciplinary action.

112. As stated at paragraph 25 above, on 11 March 2024 the Commission provided the licensee with advance notice by email of this decision. The Commission's email to the licensee crossed with an email from Mr Zhang to the Commission. Although the hearing was completed in the afternoon of 9 March 2024, the Commission has considered this belated submission, which the Commission has decided to set out in full, both as a matter of procedural fairness to the licensee, and because the submission illustrates the character of the licensee's dealings with the Director and the Commission:

Dear Chairman and esteemed Members of the Commission,

I take the liberty of writing this letter at this time. When I heard the Chairman express concerns about us last Friday, I felt on the brink of anguish and felt there were many things I wanted to express. Thus, I would like to reiterate our thoughts shared by myself and my business partner, Crystal, and to humbly seek the understanding of the Chairman and the esteemed members.

1. Regarding the first letter sent by the Commission on January 23, we indeed neglected to see it (for which I deeply apologize). It wasn't until the second email on February 27 that we became aware, which unfortunately led to our failure to respond promptly and make improvements as suggested in the emails in a timely manner. We acknowledge our fault and seek the Commission's understanding. You may verify with the licensing department that we always respond promptly and cooperate actively upon seeing emails, especially on such important matters. If the Commission perceives this as

unprofessionalism on our part, we apologies again and commit to implementing necessary improvements without fail.

2. Jeff from the licensing committee conducted a thorough investigation into the focus of Belyuen's letter for this hearing and found no evidence to support any accusations against us. He emailed Dave, the CEO of Belyuen community regarding this matter but received no response from the other party. If anyone can fabricate allegations against us baselessly, we will seek legal resource to protect for our rights.

3. We strictly adhere to the agreement with the Belyuen community regarding the representation on our liquor license, selling no alcohol to them other than Can beer/cider. We instruct each of our employees accordingly. Even for visitors, we double-check whether they are on the visitor list, and if they are, we firmly refuse sales. Even if they are not, we persuade them not to purchase here or not to bring alcohol back to the community, causing unnecessary trouble. Additionally, Glynn from the licensing department expressed affirmation towards us we are always cooperate well when they request us and confidence in our ability during the summary remarks.

4. During the week of the meeting, we have done many things as requested by the committee. We have upgraded the cameras, which can now store all content within 30 days (we apologize for not being aware of any unrecorded situations with the machines we previously installed). We have also emailed Dave, the CEO of Belyuen community but have not received a reply. We will continue to reach out to him.

5. We have received reliable information that Dave, the CEO of the Belyuen community is seeking to apply for a liquor license to sell alcohol themselves. If they are intentionally damaging our reputation and depriving us of our license to achieve their goals, we will certainly assert our rights to the fullest extent.

6. Our Wagait Beach Supermarket has been in operation for over 20 years, serving as a primary grocery store catering to the local community of Wagait Beach, and the Belyuen community has their own shops. A significant number of elderly residents in local community relies heavily on our supermarket. We are the sole bottle-mart, post office service point, newspaper vendor, petrol station, and Centerlink service provider in the area. Local residents purchasing alcohol has become an integral part of their lives, and if we were to lose our liquor license, it would not only deprive local residents of the freedom to purchase alcohol, but it would also present challenges for elderly community members who may not have the means to transport such heavy items by themselves, either by car or by boat. Furthermore, our supermarket will also face the risk of bankruptcy. Since implementing two alcohol-free days last October, our revenue has seen a sharp decline, leaving us struggling, especially with ongoing fines. We simply cannot afford the risk of losing our liquor license. If we are compelled to relinquish the entire supermarket, it

would disrupt the normal lives of the entire community, leaving residents without access to their most convenient services.

We sincerely hope that the Commission can give us a chance to better serve the community.

Shining Space Development Pty Ltd

113. The Commission has considered the above submissions. They do not materially affect the Commission's findings, orders or reasons in this matter.

#### **NOTICE OF RIGHTS**

114. Section 31(1) read with s 166(7) 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.

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



RUSSELL GOLDFLAM  
DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION

18 MARCH 2024

On behalf of Commissioners Goldflam, Dwyer and Stedman