

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *TOP END LODGES PTY LTD APPLICATION FOR LIQUOR LICENCE [2023] NTLiqComm 23*

REFERENCE: LC2023/021

APPLICANT: Top End Lodges Pty Ltd

PREMISES: The Loose Goose Bar
Tenancy 14
Darwin Transit Centre
69 Mitchell Street
DARWIN CITY NT 0800

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

HEARD BEFORE: Russell Goldflam (Chairperson)
Bernard Dwyer (Health Member)
Rachael Shanahan (Community Member)

DATE OF HEARING: 9 August 2023

DATE OF DECISION: 9 August 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 Top End Lodges Pty Ltd (**the applicant**).
2. The licence will be issued with a small bar authority.
3. The licensed premises are at Tenancy 14, Darwin Transit Centre, 69 Mitchell Street, Darwin City NT 0800 designated by the area bounded in red marked on the plan at page 80 of Exhibit One tendered at the hearing of the application (**the licensed premises**).
4. The conditions of the licence will be those authority conditions set out in Part 3 Divisions 1 and 17 of the *Liquor Regulations 2019* (**the Regulations**).

5. The following additional conditions are fixed:
 - a. Pre-recorded or live music may be played, provided it is light, background music.
 - b. The Director of Liquor Licensing (**the Director**) on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such sound attenuation and noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director's view a reasonable requirement in the circumstances then prevailing.
6. The Commission approves the appointment of Mr Rhys Venturin as the nominee of the licensee.
7. Liquor must not be sold under the licence until the Director gives written approval to do so, following the provision of documentary evidence to the satisfaction of the Director that the applicant has obtained the necessary fire safety, building and health approvals, including a certificate of occupancy and a smoking management plan in compliance with the *Tobacco Control Regulations 2002* (NT), in respect of the premises.
8. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

9. The applicant seeks to establish "The Loose Goose Bar", which it describes as "a small, intimate and hidden gem in the Darwin City, offering a relaxing atmosphere in a central location". The proposed premises have previously been the site of a café in the Darwin Transit Centre, the proprietor of which is a company controlled by the same family as the applicant company.

The Application

10. On 20 April 2023, the applicant lodged an application in the approved form with the Director.

Consultation

11. In accordance with section 57 of the Act, on 13 May 2023 notices of the application were published in the NT News, on the Director's website and by way of signs displayed on-site.
12. The Director received no objections to the application.

13. In accordance with section 56 of the Act, the Director notified the Department of Health (**DOH**), NT Police and the City of Darwin. The Director also notified the Northern Territory Fire and Rescue Service (**NTFRS**) of the application.

14. The Director informed the Commission that:

- DOH responded with recommendations that:
 - There be promotion of the availability of non-alcohol and low alcohol beverages
 - National Health and Medical Research Council (**NHMRC**) responsible drinking guidelines be displayed
 - A smoking management plan be submitted
- NT Police advised that they had no objections to the application
- NTFRS supported the application on condition that there was:
 - Compliance with building approvals processes
 - Compliance with the *Fire and Emergency Act 1996* (NT) and Regulations
- The City of Darwin did not comment on the application.

The licensee's record of compliance

15. The applicant has held a liquor licence since January 2022 over premises trading as Finnis River Lodge, with a lodging authority and a special venture authority. The Director has informed the Commission that it has not recorded any instances of non-compliance with the Act or the conditions of its licence.

The referral

16. On 27 June 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 that the matter would be listed for a public hearing on the first available convenient date, 26 July 2023. At the request of the applicant, the hearing was postponed to 9 August 2023.

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

- a. Application for liquor licence
- b. Business plan
- c. Site and architectural renderings

- d. Sample menus
- e. Landholder's letter confirming right to occupy
- f. Projected construction costs
- g. Proposed licensed area plan
- h. Development permit DP22/0334 for small bar, 20 December 2022
- i. Operations plan
- j. Probity materials: Robert Justin Venturin and Rhys Paul Venturin
- k. ASIC company extract: Top End Lodges Pty Ltd and associated companies
- l. Financial projections
- m. Record of registration of business name: The Loose Goose Bar
- n. Food business registration materials
- o. Affidavit and Declaration of Associates pursuant to section 54 of the Act
- p. Public Interest Responses and Community Impact Assessment pursuant to sections 49 to 52 of the Act
- q. Correspondence with stakeholders

The hearing

18. On 9 August 2023, the application proceeded as a public hearing. Mr Giles appeared on behalf of the applicant accompanied by Mr Robert Venturin and Mr Rhys Venturin. Ms Kimber appeared for the Director. The Commission thanks them for their attendance and assistance.
19. The brief was tendered and admitted into evidence without objection.
20. In addition and also without objection the applicant tendered a letter dated 24 July 2023 from the applicant's accountants, certifying the financial stability of the Venturin group of companies, one of which is the applicant.
21. 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. In the circumstances of this application, the Commission determined that it was appropriate to inform itself by informally asking questions of the hearing participants.

Assessment of the application

22. In accordance with section 59 of the Act, the Commission has considered:

- a. the applicant's affidavit required by section 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, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

23. 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

24. Section 53(1) of the Act requires that a body corporate shall not hold a licence unless it is a corporation. The Commission finds that the applicant complies with s 53(1). The applicant company's sole shareholder is Venturin Group Pty Ltd, the shareholders of which are in turn all members of the Venturin family, which has substantial tourism and hospitality business interests and assets in the Northern Territory.

25. The applicant has provided extensive documentation regarding its proposed operations and activities.

26. The Commission assesses the applicant to be a fit and proper person to hold a licence.

The applicant's associates

27. 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.

28. Having read Mr Robert Venturin's declaration of associates, the Commission does not consider that it is appropriate to consider whether any of the associates of the applicant is a fit and proper person to be an associate of the applicant.

The suitability of the applicant's premises

29. The proprietor of the proposed premises is another member of the Venturin group of companies, and the Commission is satisfied that the applicant is permitted to occupy the premises. The Commission is also satisfied that the Development Consent Authority has approved the premises to be developed as a small bar.
30. The premises are situated in Darwin's popular Mitchell Street tourism and hospitality precinct, which the Commission assesses as being well suited as the location of a venue of the type proposed by the applicant.
31. The Commission 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

32. The Commission assesses 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

33. Having been provided with appropriate evidence regarding his reputation, character and work history, the Commission assesses the general reputation and character of the applicant's sole director and secretary, Mr Robert Venturin, to be satisfactory.

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

34. The applicant has nominated Mr Rhys Venturin as the licence nominee. The Commission assesses Mr Rhys Venturin, who holds current RSA certification and has provided appropriate documentation of his reputation, character and work history, including in the hospitality industry, to be a fit and proper person to hold the licence.

Public notice and consultation

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

Whether issuing the licence is in the public interest

36. 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; and
- (j) reducing or limiting increases in anti-social behaviour.

37. Having considered each of these objectives, and having particular regard to the location of the premises, the detailed operational plans prepared by the applicant (including a risk assessment management plan), the relatively small size of the premises, and the good record of the applicant's principals in managing licensed premises, 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

38. 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 (the Commission considers that there are currently no community impact assessment guidelines in force); and
- (j) any other matter prescribed by regulation (the Commission notes there are no such “other” matters prescribed by regulation).

39. 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. It is also important to keep in mind that 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”.

40. The application is for a small, rather secluded venue where patrons will be charged a premium for food and drink in a more sophisticated and restrained setting than has traditionally been associated with the Mitchell Street nightlife scene. The Commission has had regard to each of the above-listed matters set out in s 49(3) of the Act, and is satisfied that the grant of this application will not have an adverse affect, let alone a significant adverse affect, on the community.

41. 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.

42. Accordingly, the Commission has determined to issue a liquor licence to the applicant.

Conditions

43. The Commission has determined to fix the additional conditions set out at the commencement of this decision notice.

44. In doing so, the Commission has had regard to the following circumstances:

- There is backpacker's accommodation immediately adjacent to the premises, including a unit with a balcony overlooking the premises;
- The applicant proposes to install acoustic dampening materials in the ceiling of the premises;
- The accommodation is located within the Darwin Transit Centre, the proprietor of which is, along with the applicant, a member of the Venturin company group;
- The applicant has informed the Commission that it proposes to restrict musical entertainment to light, background music;
- The applicant has informed the Commission that it intends to display appropriate signage regarding NHMRC guidelines for alcohol consumption at the premises; and
- The applicant has assured the Commission that it will offer a range of non-alcoholic and low alcohol beverages.

The objects of the Act

45. 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. The Commission has done so, and considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

Extension of time

46. Section 60(2)(b) of the Act provides that the Commission must make a decision whether to issue the licence and authority within 28 days of the expiry of the 14 day period allowed for an objection to be lodged with the Director after public notification of the application. In this case, the objection period expired on 27 May 2023. However, the Commission was unable to make a decision within 28 days of that date because the Director did not refer the application to the Commission until 27 June 2023. The Commission heard the application on the first available opportunity convenient to the applicant, and pronounced its decision that day, immediately following the hearing.

47. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision to 9 August 2023.

NOTICE OF RIGHTS

48. 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.

49. 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.



Russell Goldflam

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
14 August 2023

On behalf of Commissioners Goldflam, Dwyer and R. Shanahan