

Director of Liquor Licensing

Decision Notice

MATTER: APPLICATION FOR GRANT OF LIQUOR LICENCE

PREMISES: Basil Thai Cuisine and Hot Pot
285 Bagot Road
Coconut Grove, NT

APPLICANT: Bai Tong Pty Ltd

LEGISLATION: Sections 47 and 52 of the *Liquor Act 2019*.

DECISION OF: Director of Liquor Licensing

DATE: 11 January 2021

DECISION

1. For the reasons set out below and in accordance with the *Liquor Act 2019*, (**the Act**), the Director of Liquor Licensing (**the Director**) has determined to approve the grant of a liquor licence.
2. A liquor licence with a restaurant authority and BYO authority is approved for premises known as Basil Thai Cuisine and Hot Pot located at 285 Bagot Road, Coconut Grove. The trading hours are approved for 17:00 hours to 24:00 hours seven days a week, with the exception of Christmas Day and Good Friday.

BACKGROUND

Application

3. On 14 September 2020, an incomplete application was lodged for a liquor licence where the applicant then engaged the services of legal counsel. On the 10 November 2020 a full and complete application was lodged by Vincent Close of Bowden McCormack Lawyers on behalf of the proposed licensee, Bair Tong Pty Ltd (**the Applicant**) for a liquor licence with restaurant authority at 285 Bagot Road, Coconut Grove.
4. The Applicant's proposal was clarified as being a Liquor Licence with a Restaurant Authority at premises located at 285 Bagot Road, Coconut Grove, Darwin. The proposed trading times are 17:00 hours to 24:00 hours seven days per week, with the exception of Christmas Day and Good Friday. This is in line with Division 15 of the Liquor Regulations.
5. An affidavit, containing various annexures was been supplied by Wirawan Fitzgibbon, a director of the Applicant
6. An affidavit containing various Annexures has been supplied by Claye Poletti, a director of the applicant
7. The proposed licensee is Bai Tong Pty Ltd. This company is registered with ASIC where Ms Fitzgibbon and Mr Poletti are listed as Directors with Ms Fitzgibbon listed as the Secretary.
8. The company has 1 class A1 share owned by Ms Fitzgibbon and 1 class A2 share owned by Mr Poletti. There are 100 ordinary shares where Ms Fitzgibbon owns 70 shares and Mr Poletti 30 shares.

9. A copy of the ASIC Record of Registration for Business Name has been supplied indicating that the business name, "Basil Thai Cuisine and Hot Pot" is registered and held by the Applicant.
10. Mr Poletti, being a Director of the Applicant, supplied a range of probity documents. . A review of these documents show no reason why he would not be a fit and proper person as a director of the Applicant.
11. The proposed nominee is Ms Wirawan Fitzgibbon. The required probity documents and other qualifications were supplied and a review of these documents do not indicate any reason not to consider Ms Fitzgibbon as a fit and proper person to be a nominee or as a Director of the Applicant.
12. The Applicant has provided the following further documents in support of the application;
 - Community Impact Assessment Summary
 - Financial reports
 - Certificate of Registration of Food Business.
 - Copy of Lease of premises.
 - Copy of proposed liquor licensed area.
 - Letter of consent from landlord to have a liquor licence at the premises.
 - List of Associates
 - Smoking Management Plan
13. The application was published in the NT News newspaper on Saturday November 14 2020. The NT News incorrectly made a typesetting mistake and advertised the application as a Major Event Authority. This mistake was rectified and the application then published on the 18 November, 21 November and 25 November 2020. The Applicant also displayed the required "green sign" advertising sign at the premises for the required 28 day period.
14. As a result of publication of the application, no objections were received from any member of the public.
15. The following stakeholders were notified of the application in accordance with Section 56 (4) of the Act.
 - The Chief Executive of the Department of Health;
 - Northern Territory Police;
 - City of Darwin.
16. Northern Territory Fire and Rescue Service (**NTF&RS**) were also notified of the application as part of the Director's investigations into the application due to this being a new liquor licence application and venue.
17. The Department of Health replied via email dated 10 November 2020 stating that it had no adverse comment and that the Applicant was required to comply with COVID-19 Site Safety Plans.
18. The Northern Territory Police replied via email dated 11 November 2020 stating it had no objections on the proviso that a CEPTD audit is conducted by a Bizsecure organisation. A copy of the NT Police email was supplied to the Applicant's legal counsel on the 11 November 2020. No reply has been received to date however the Applicant may have expected to address this issue with the Liquor Commission whereas Delegations have since been issued to the Director to determine this matter. A CEPTD is not necessarily a requirement under the Liquor Act or public interest criteria in determining this matter.

19. The City of Darwin replied via email dated 8 December 2020 stating the notification has been forwarded to elected members but no reply has been received from them.
20. The NTF&RS replied via email dated 4 December 2020 stating it supports the application.

MATTERS TO BE TAKEN INTO ACCOUNT IN MAKING DETERMINATION:

21. Section 59 of the 2019 Act provides that the Director must determine the applications on the basis of the following information:
 - a) *the applications as lodged;*
 - b) *any objections lodged in relation to the applications;*
 - c) *any submissions made to or evidence received by the Director in relation to the application*
 - d) *the applicant's affidavit*
 - e) *results of any investigations*
 - f) *suitability of the premises*
 - g) *financial stability of business reputation of the applicant*
 - h) *general reputation and character of the secretary and executive officers of the Applicant*
 - i) *whether the Applicant is fit and proper to hold a licence*
 - j) *if the Director considers it appropriate – whether each associate of the applicant is a fit and proper person to be an associate of the license*

CONSIDERATIONS BY THE DIRECTOR

22. The background and supporting material to the application by the Applicant for the grant of a licence is set out previously in this Decision Notice. I have reviewed this documentation and find that the information contained in the application complies with the requirements of the 2019 Act and does not provide any grounds or reasons to not to approve this application.

Public interest requirements and community impact guidelines

23. In relation to the requirement that the Director consider the potential harm to people attending nearby community facilities such as hospitals, schools and youth facilities I accept that the proposed premises is located in a commercial district and has previously been licensed in the past when a previous restaurant operated from the same premises. Of significance to take into account is the fact that there have been no objections lodged by any of those facilities or members of the public.
24. I also have considered the level of consumption of liquor within the general neighbourhood of the proposed premises and conclude that the existing level of alcohol consumption within the locality is no less than the average level of consumption for the Northern Territory as a whole and that the granting of this licence will not cause any substantial increase of liquor consumption. I also take note, which is of considerable importance, that consumption of liquor can only be undertaken while patrons are consuming a meal.
25. The Applicant submits that the proposed premises is unlikely to cause harm or ill-health to people, or any group of people due to the nature of the business, that the commercial area are mainly unoccupied at night and that there are no at risk venues close by. The Applicant has also consulted with neighbouring businesses who support the application and provided a petition of support. The applicant further submits that the sale and consumption of liquor will be undertaken in accordance with the 2019 Act and with responsible service of alcohol policies in place along with providing non-alcoholic drinks.

26. In considering the application the Director, is obliged to consider the purposes prescribed in Part 1, Section 3 of the Act, namely:

(1) The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.

(2) The secondary purposes of this Act are:

- (a) to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor;
- (b) 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;
- (c) to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and
- (d) to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.

Community Impact:

- 27. I am required by the Act to consider the community impact of this liquor licence application against the primary purpose of this Act to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor. Having considered this application I do not find any evidence to show that the application would have any significant adverse impact.
- 28. I also accept that the premises were previously licensed prior to that licence being surrendered in 2018. I also take account of the fact there have been no objections lodged by the general public.
- 29. Taking into account and considering all of the matters set out above, and in accordance with the 2019 Act I have, in accordance with delegations provided to me by the NT Liquor Commission, determined to approve the grant of a liquor licence in the terms and conditions as outlined in paragraph 2.

NOTICE OF RIGHTS

Section 29 of the *Liquor Commission Act 2018* states that a decision of the Director is reviewable by the Liquor Commission. Section 29(2) outlines that the following persons may apply for review of a decision of the Director:

- (a) the applicant affected by a decision regarding an application;
- (b) any person affected by a decision regarding disciplinary action;
- (c) a licensee affected by a decision regarding the licence or authority held by the licensee;
- (d) any person who made a submission, complaint or objection during the process that resulted in the decision;
- (e) any other person given a right to review under the *Liquor Act 2019*.

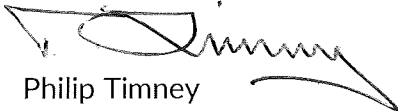
The application for review must be made to the Commission by the later of:

- (a) 28 days after written notice of the decision of the Director is given to the person referred to in subsection (2); or
- (b) any later date allowed by the Commission.

The application must:

- (a) be in the form approved by the Commission; and
- (b) be accompanied by the fee prescribed by regulation; and
- (c) state the grounds on which it is made and the facts relied on to establish the grounds.

The applicant affected in this decision is Bai Tong Pty Ltd.



Philip Timney

Director of Liquor Licensing
11 January 2021.