

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER: APPLICATION FOR A LICENCE

REFERENCE NUMBER: 2019/014

PREMISES: PIZZA HUT COOLALINGA
T36, T37, T38 Coolalinga Central
425 Stuart Highway
COOLALINGA NT 0839

APPLICANT: Vibgyor Technologies Pty Ltd

NOMINEE: Ms Ritika Singhal

OBJECTOR/S: Nil

LEGISLATION: Section 26, Part IV and V of the *Liquor Act 1978*.

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Amy Cocoran (Community Member)
Mr Phillip Carson (Health Member)

DATE OF HEARING: 19 March 2019

DATE OF DECISION: 27 May 2019

Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* (“the Act”) the Commission has determined to issue a licence authorising the sale of liquor for consumption on or at the licensed premises to “Vibgyor Technologies Pty Ltd”.
2. In accordance with section 31 of the Act, the licence shall be subject to the specific conditions (in addition to those general conditions of all such licences) that:
 - a. The liquor shall be sold pursuant to an authority as restaurant authorising the sale of liquor for consumption on or at the premises ancillary to a meal.
 - b. The licence shall be subject to and inclusive of such additional conditions as may at any time be:

- i. Requested in writing by the Licensee;
 - ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and
 - iii. Notified in writing by the Director-General to the Licensee.
3. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

4. On 23 January 2018 an application was lodged by Ms Ritika Singhal, on behalf of Vibgyor Technologies Pty Ltd (“the Applicant”) seeking a licence for premises known as Pizza Hut Coolalinga, T36, T37, T38 Coolalinga Central, 425 Stuart Highway, Coolalinga, Northern Territory 0839.
5. At the time of lodgement, the application was deemed incomplete. An email was sent to the applicant on the same day of lodgement, addressing the incomplete application.
6. On 8 February 2018 an email including a letter addressed to the applicant and the incomplete application was returned.
7. Over the following 12 months there were numerous emails, letters and telephone calls from licensing officers to officials of the applicant company attempting to get the information and documentation necessary to advance the application.
8. The ongoing failure on the part of the applicant to respond in a timely manner to routine requests for documentation was undoubtedly frustrating for licensing officers. In referring what was still an incomplete application to the commission on 13 February 2019, the Acting Deputy Director General noted:

A review of the entire application shows that:

- *The proposed nominee has failed to provide a copy of their Responsible Service of Alcohol Certificate. Concerns are therefore held as to whether this person is actually a fit and proper person to supervise the sale and consumption of liquor or to be able to properly instruct staff under their control.*
- *The applicant has failed to provide proper financial information or reports to show that it is a financially viable applicant to be granted a liquor licence. The application form clearly states “A recent statement of assets and liabilities is the minimum requirement, preferably with an appropriate letter from the applicant’s bank and/or accountant...” This does not assist the Director-General to make any comment on the financial viability of the applicant to the Liquor Commission.*

- *The applicant has failed to supply a copy of a “Registration of Food Business” even though they have been requested to do so. It is reasonable to assume that it is displayed in the premises at the moment where to supply a copy would be relatively simple.*
 - *The applicant has failed to supply a “Statement of Display” in regards to the Advertising where Licensing Officers or the Director-General have no assurances that the green advertising sign was displayed for the required time.*
 - *The Director-General cannot determine if the applicant intends to use suitable balustrade or another physical barrier, similar to the neighbouring liquor licence “The Meat House at Coolalinga” to satisfy proper delineation of the licensed premises. The applicant has been requested to provide this, including emails from 17 August 2018 – 9 October 2018.*
 - *A review of the entire application and correspondence by Licensing Officers indicate a reluctance of the applicant to progress their own application and shows a complete ambivalent attitude towards the application where serious doubts are expressed by Licensing Officers as to whether the applicant is a fit and proper entity to hold a liquor licence or to be able to comply with all legislation and requirements of a liquor licence if one is issued.*
9. The premises has been operating pursuant to a franchise agreement as a Pizza Hut Restaurant at the Coolalinga Central complex since January 2018. The applicant seeks to be able to sell liquor on the premises only, including wine, mid and heavy strength beer as well as a range of pre mixed spirit drinks and to have trading hours from:
- a. 1100 hours until 2200 hours 7 days a week except Christmas Day

Disclosure of influential persons

10. The Commission notes that section 26A (1) of the Act requires applicants to make 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 applicant has filed such an affidavit.
11. The applicant is a company registered with the Australian Securities and Investments Commission (ASIC). The company has a total of two shares which are wholly owned by the Director and proposed nominee Ritika Singhal.
12. Ms Singhal has provided probity documents in support of the application including a statement from her accountant dated 16 January 2018 that based on information from her personal tax returns he can opine that she “has financial stability”. However as at the time of referral and indeed when the matter first came before the Commission there was no documentary evidence establishing the financial wellbeing of the applicant company.

13. Ms Singhal as principal executive officer of the applicant is required to make the affidavit under section 26A of the Act wherein she affirmed that there are:

“no other persons other than Ritika Singhal who by any lease, agreement or arrangement will be able to influence or benefit any decision made by the Director in relation to the sale of liquor or consumption of liquor.
14. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.
15. Although the Commission was ultimately satisfied that there were no individuals or organisations that were likely to exert any sinister influence over the Applicants operation of the licensed premises, it became clear during the course of the hearing that there should have been greater disclosure. Ms Singhal’s husband Himanshu Bhatia is actively involved in the operation of the business. The franchisor Pizza Hut is also able to exert some influence over the brands of liquor and other products sold from the premises. Proper compliance with section 26A of the Act requires more than simply signing a pro forma document.
16. It would be unfair to single out this applicant in respect of a failure to identify these innocent associations in the 26A affidavit. The information was provided candidly during the course of the hearing and there is nothing criminal or underhand in these relationships. We also fear that many other applicants may not have been mindful of the extent of the disclosure required by section 26A of the Act having regard to the fact most of the affidavits follow the exact terms of this pro forma. Perhaps Licensing NT needs to change the current form so that it asks the applicant to list those persons and organisations that might influence or profit from the licensed business. The other alternative would be that Regulations are made as envisaged by the section, exempting disclosure of non-contentious domestic and commercial arrangements including employment contracts.

Advertising and Objections

17. The application was advertised in the NT News on 4 July 2018 and 7 July 2018. The applicant provided a photograph of the green advertising sign in-situ. The objection period ended on 6 August 2018.
18. Nil Objections were received.
19. The following stakeholders were invited to provide comment on the application via email on 18 July 2018:
 - the Chief Executive officer of the Department of Health;
 - Northern Territory Police, Fire and Emergency Services;
 - Northern Territory Fire and Rescue Service;
 - Chief Executive Office of the Litchfield Council; and
 - The Chairman of the Development Consent Authority
20. The Department of Health advised that they have no adverse comment, however they requested that the venue clearly display signage relating to smoking.

21. The Northern Territory Police advised that they are supportive of the application in principle “*If liquor is provided ancillary to a meal. In addition the external walkway area (entrance to shopping centre) where tables and chairs are will need a delineation between tables and chairs of Pizza Hut and the public to separate the licensed premises.*”
22. The Northern Territory Police provided an example to that of Pizza Hut’s neighbouring licensee, the Meat House as an example. They further advised “Any consumption of liquor needs to be within the defined licensed premises which still needs to be clearly documented in the application in better details.”
23. The Northern Territory Fire and Rescue Service have no objections to the application except that the maximum patron number were calculated on 23 July 2018, as being 50 patrons.
24. Litchfield Council advised that they support the application subject to conditions of no expected impacts on the amenity of the neighbourhood including no noise or negative social behaviour before midnight and that be confined within the shopping complex.
25. The Department of Infrastructure, Planning and Logistics did not respond to the request to comment on the application.

Public Hearing

26. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
27. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
28. The public hearing commenced on 19 March 2019 re both Ms Singhal the proposed nominee and her husband Himanshu Bhatia appeared on behalf of the applicant. Mr Jeff Verinder as representative of the Director General was also present to provide information and assistance to the commission during the course of the hearing. At the end of that day the applicant requested that the matter be adjourned so that a statement could be obtained which evidenced the company’s financial stability. The Commission agreed to adjourn to a date to be fixed and has now reached a decision on the matter following the recent provision of the further financial evidence.

Assessment of the Application

29. As earlier noted, there were no objections to this application. This is despite the fact that the applicant undertook its obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the Act. The objection process is specifically provided for under the Act at section 47F. That section clearly identifies those persons *who* may make an objection, the specific *kinds* of applications that may be objected to, the *grounds* upon which an objection can be made and *how* the objection is to be made.

30. It is important however to recall at all times that the Act makes clear under section 6B that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test. Even if there are no objections, the Applicant must still satisfy this Commission of those matters.

31. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the *Local Government Act 2008*; and
 - ii. provisions of or under the *Planning Act 1999*;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:

- i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

32. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

33. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

34. Those matters are identified as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • Communities that experience high tourist/visitor numbers. <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres;

	<ul style="list-style-type: none"> • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area?

	<ul style="list-style-type: none"> • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?
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35. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

“... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

36. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;

- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager”.

37. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

38. The Commission notes there are no such matters prescribed by the Regulations.

39. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.

40. During the weeks prior to the hearing the applicant finally attended to the outstanding issues of the Responsible Service of Alcohol Certificate, provided a copy of Registration of Food and Business and “Statement of Display” in regards to advertising notice of the application. It also purchased appropriate barriers and provided a plan showing where they would be placed to “fence off” the licensed pavement area adjacent to the restaurant. These arrangements were satisfactory to both Police and the licensing officers.

41. Having regard to the statements in the Acting Directors General’s referral which are repeated in paragraph (8) above, the Commission commenced this hearing with significant concerns over the ability of the applicant to operate licensed premises and confronted Ms Singhal and Mr Bhatia with those observations.

42. Both representatives of the applicant company impressed us with their intelligence, communication skills and knowledge of the business they were operating. Why then had they consistently failed to attend to the legitimate demands of licensing officers? They explained that the terms of their franchise agreement required them to closely follow the guidelines and procedures of Pizza Hut in the way the business was set up and operated, including the licence. Initially Pizza Hut had a person in head office who was charged with assisting franchisees obtain a liquor licence. The applicant was advised to forward all documentation received from Licensing NT to Pizza Hut and had an expectation that the franchisee would be pursuing the application on their behalf. The community impact statement filed in support of the application was sourced from a private consultant that had been engaged by Pizza Hut.

43. During the lengthy course of this application the person from Pizza Hut who had been assisting the applicant become less responsive to their needs and Ms Singhal was eventually told they “were on their own” as Pizza Hut was no longer able to provide assistance in this regard. Mr Bhatia then took on responsibility for attending to the outstanding matters such that the only remaining area of concern was the financial status of the company.

44. Mr Verinder, for the Director General did not take issue with the applicant's explanation for the delay in pursuing the application and was now generally supportive of the recent efforts that had been made to get the application back on track. There is no logical reason for the applicant to have deliberately delayed finalising this application. In fact the delay has come at a financial cost because they have been operating the business for 12 months without the additional revenue that a licence would have contributed. Having had an opportunity to hear from both Ms Singhal and Mr Bahatia the Commission is prepared to accept their explanation for the delay and is satisfied that the Applicant is a fit and proper person to manage licensed premises.
45. Although the Applicant had provided a number of financial reports and statements from its accountant that Ms Singhal had financial stability it was not until 8 May that the Commission was provided with the financial information we required to discharge our responsibilities under the Act. In a statement dated 8 May 2019, accountants Ferros Wee confirmed that the company had invested over half a million dollars in the business and that:
- “Based on our work on the account and the information provided, this new business is adequately financed and supported by the owner to operate from a sound financial platform.”
46. The Commission is therefore now satisfied that there are no longer issues of concern in relation to the business reputation and financial stability of the applicant and the general reputation and character of the executive officer of the applicant.
47. In relation to the public interest test the applicant had filed a “Public Interest Statement” which had been prepared by a Queensland consultant, Liquor and Gaming Specialists. It states, inter alia “The liquor licence has been sought to maintain consistency with the service provided at the other Pizza Hut dine-in restaurants and provide a better quality dining facility for patrons. The liquor licence will allow the applicant to provide an optimum level of service and will improve the range and diversity of dining facilities on offer in the locality.”
48. Although the Public Interest Statement purported to include a Community Impact Assessment it did not specifically address the Minister's guidelines. The Commission has previously expressed concerns over the utility of Public Interest and Community Impact statements that have been prepared by so called “experts” from interstate. This is another of those relatively meaningless documents which has done little to advance the applicant's case. Fortunately Ms Singhal and Mr Bhatia were able to expand upon the matters contained in the Public Interest Statement and satisfy us that the proposed licence would meet the requirements of both tests.
49. Having considered all of the evidence presented to this Commission and noting there are no objections to the application for a liquor licence, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the licence sought.

of leaving the premises (including after close of trading), are not rowdy or noisy and do not cause any disturbance to the vicinity of the premises.

Entertainment

Entertainment shall be limited to 'easy listening'.

Notice of Rights:

52. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.

53. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.

54. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the Applicant.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
Chairperson

27 May 2019