

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2020/011

APPLICANT: NT Investa Group Pty Ltd

PREMISES: Urban Spice Pantry
Tenancy F1
Wharf One
19 Kitchener Drive
DARWIN CITY WATERFRONT NT 0800

LEGISLATION: Part 3 Division 1 of the *Liquor Act 1978*.

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 20 November 2020

DATE OF DECISION: 27 November 2020

Decision

1. For the reasons set out below and in accordance with section 29(1) of the *Liquor Act 1978* (NT) (“the Act”) the Northern Territory Liquor Commission (“the Commission”) has determined to issue a licence to NT Investa Group Pty Ltd (“the applicant”) over the premises known as “Urban Spice Pantry” at Tenancy F1, Wharf One, Darwin Waterfront and identified as the areas labelled “7849 F1 GLAR Area: 173.7m²” and “7849 F1 Alfresco 108.6m²” at page 307 of the brief of evidence exhibited at the hearing of the application (“the premises”).

Conditions

2. The licence is issued with all the conditions prescribed for a restaurant bar authority in Division 16 of the *Liquor Regulations 2019* (“the Regulations”), except Regulation 82(1).
3. The operating hours of the licence are 11:00 hours to 23:30 hours every day except Good Friday and Christmas Day.
4. A condition of the licence is that the playing of live or recorded music is not permitted after 23:00 hours on the premises.

5. The Commission approves the appointment of Mr Jaswinder Singh Walia (“Mr Walia”) and Mr Binod Khadka (“Mr Khadka”) as joint managers of the licensed premises.
6. Pursuant to section 31(3) of the Act, the sale of liquor is not permitted until the approval in writing to do so is obtained from the Commission or its delegate subsequent to the applicant having provided written confirmation that it has obtained all the necessary building, planning and safety approvals. The Commission delegates authority to grant this approval to any one of Member Goldflam, Member Reynolds and Member McFarland.
7. The Commission notes that had this application been determined pursuant to the *Liquor Act 2019* (NT) (“the 2019 Act”), the Commission would have fixed a term of 15 years for the licence, commencing on the date approval is given for the sale of liquor to commence.

Reasons

Preliminary Issue

8. This is an application for a liquor licence commenced prior to the coming into force on 1 October 2019 of the the 2019 Act. Regulation 129 of the *Regulations* provides that in these circumstances, unless the applicant notifies the Director that it wishes to have the application determined under the 2019 Act, the application is to proceed and be determined under the 1978 Act. The applicant made no such notification, and accordingly, the application proceeded and is being determined under the 1978 Act. In accordance with Regulation 29, the applicant notified the Director that it sought to be issued with a bar authority. During the hearing of the application, the applicant conceded that it would be more appropriate to be issued with a restaurant bar authority, and the Commission has proceeded accordingly.

The Application

9. The applicant lodged an application on 27 September 2019 seeking a liquor licence for Urban Spice Pantry, a family friendly Indian restaurant specialising in traditional Indian food located in the Darwin waterfront tourism and hospitality precinct. The applicant proposes to offer internal and alfresco dining, with acoustic music by way of entertainment. The venue is yet to open and will replace a different style of restaurant that previously operated from the same premises. The applicant is a newly incorporated company with three shareholders: Mr Walia, Mr Khadka and Mr Nelson Manuel Nheu (“Mr Nheu”).

Consultation

10. In accordance with section 27 of the Act, notification of the application was made as specified by the Director, by publication of notices in the NT News on 9 and 13 November 2019, and display of a sign at the premises for 30 days.
11. No objections to the application were received.

12. Also in accordance with section 27, notification was given to the Department of Health (“DOH”), NT Police and the City of Darwin Council, as well as NT Fire and Rescue Service (“NTFRS”).
13. The Director informed the Commission that:
 - DOH responded that it had no adverse comment, but reminded the applicant of its duty to comply with smoking regulations.
 - NT Police advised that they had no objections.
 - NTFRS responded supporting the application provided that any associated building works are approved, and that the applicant complies with NT Fire and Emergency regulations.
 - The Darwin City Council did not provide a response.

The licensee’s record of compliance

14. The Director has informed the Commission that neither the applicant nor any associated persons has a previous adverse history of compliance with the Act. Two of the applicant’s principals, Mr Walia and Mr Khadka, are dual nominees for the liquor licence in operation at The Flank Bar and Grill in Coolalinga, following the transfer on 18 February 2019 of this licence to Outback Foods Pty Ltd, the shares of which are all owned by Mr Walia (70%) and Mr Khadka (30%).

The delay

15. Section 60(2) of the 2019 Act requires the Commission to make a decision to issue a licence within 28 days of the expiry of the 14 day period within which objections can be lodged to an application after it has been advertised. In this case, the objection period expired on 14 December 2019, and had this application been determined under the 2019 Act, the Commission would have been required to make that determination by 12 January 2020, subject to the exercise by the Commission of its power under section 318 of the 2019 Act to extend time.
16. Unlike the 2019 Act, the 1978 Act does not prescribe a date by which the Commission is required to determine an application. Nevertheless, the Commission considers that the delay, from 27 September 2019, when the application was lodged, until 20 November 2020, when it was determined, is substantial and should be explained.
17. On 27 September 2019, the applicant, through its then solicitors, lodged an application for a liquor licence. The application was incomplete.
18. On 30 October 2019 the applicant’s then solicitors lodged further material, as requested by the office of the Director, enabling notification of the application to commence, as occurred on or about 9 November 2019.
19. On 1 November 2019, the office of the Director requested further information from the applicant in relation to its financial stability.

20. On 18 December 2019, on 31 January 2020 and on 21 February 2020, in response to further requests by the office of the Director, the applicant's solicitors provided additional material regarding the financial circumstances of the applicant company and its principals.
21. On 4 March 2020 the Director referred the application to the Commission. On receipt of the Director's referral, the Commission arranged to hear the application on 1 April 2020.
22. On 26 March 2020, due to COVID-19 restrictions, the Chairperson, after having consulted with the applicant, deferred the hearing to a date to be fixed.
23. On 13 May 2020, when the Commission was again able to resume the conduct of hearings, Acting Deputy Chairperson Goldflam assumed conduct of the application and convened a panel of the Commission, comprising himself, Member Reynolds and Member Cannon to hear the matter.
24. On 20 May 2020 the Commission listed the application for hearing on 5 June 2020, and notified the parties accordingly.
25. On 29 May 2020, having perused the 398 page brief referred to it by the Director, Members Goldflam, Reynolds and Cannon conferred and determined to inform the applicant that the Commission was concerned that the brief did not appear to include evidence capable of satisfying the Commission of the financial stability of the applicant, its executive officers and associates.
26. On 1 June 2020 the Commission wrote to the applicant's solicitor accordingly, setting out in detail the apparent deficiencies it had identified. The Commission further stated "The applicant will be afforded every reasonable opportunity to address the apparent deficiencies in the application. If the applicant applies to have the hearing vacated and relisted to a later date, the Commission would, subject to submissions to the Director, be inclined to grant that application."
27. On 2 June 2020, the applicant applied for an adjournment of "at least 4 weeks". The Director consented to this application, and the Commission vacated the hearing. The Commission directed the applicant to provide any further material it sought to rely on by 3 July 2020.
28. On 16 June 2020 the Commission listed the application for hearing on 17 July 2020.
29. On 25 June 2020 the applicant applied to vacate the hearing listed for 17 July 2020 and applied for an extension of time to provide further material by 31 July. The Commission granted these applications, and determined to wait until the applicant had provided the further material before again listing the matter for hearing.
30. On 8 October 2020, the Director referred an application for a liquor licence ("the Fresh Point application") to the Commission. The Fresh Point Co application was by a body corporate associated with the applicant. The Commission determined to hear both applications together, as the principals of the two applicant body corporates included the same individuals, and the issue of financial stability appeared common to both applications.

31. On 21 October 2020, despite the continued failure of the applicant to provide any further material in support of the Urban Spice Pantry application, the Commission fixed both applications for hearing on 20 November 2020.
32. On 18 November 2020 the applicant provided the Commission with further financial information from its recently appointed accountant.
33. In the view of the Commission, the office of the Director acted expeditiously and appropriately in processing the application, and the Commission makes no criticism of the office of the Director for the delay between 27 September 2019 and 4 March 2020. Neither the applicant nor the Commission would have been assisted had the Director simply referred the application in its earlier unsatisfactory and incomplete form to the Commission. The Commission considers that the material provided by the applicant during this period was insufficient to enable the Commission to properly assess the financial stability of the body corporate, as the Commission is required to do. The Commission considers that the office of the Director took all reasonably available steps to progress the application.
34. The Commission considers that the delay between 4 March 2020 and 5 June 2020 was unavoidable, and due entirely to the impact of COVID-19 restrictions.
35. The Commission considers that the delay from 5 June 2020 to 20 November 2020 was entirely due to the applicant, who was accorded every opportunity to expedite the hearing of the application.
36. Had this been a matter to which the 2019 Act applied, the Commission would, in the exercise of its discretion for the benefit of the applicant, have extended the time required to determine this application.

The hearing

37. On 20 November 2020 the application proceeded as a public hearing before Members Goldflam, Reynolds and McFarland. Mr Walia and Mr Khadka, the two nominated managers of the proposed licensee, appeared on behalf of the applicant. They informed the Commission that the applicant was no longer represented by solicitors. Mr Wood appeared for the Director. The Commission thanks them for their attendance and assistance.
38. The hearing was conducted in conjunction with the hearing of the Fresh Point application. As neither applicant was legally represented, the hearings were conducted with a minimum of formality.
39. The brief was tendered and admitted into evidence without objection. The brief included the following:
 - Application for liquor licence
 - Section 26A affidavits by Mr Walia and Mr Khadka
 - Community impact assessment and public interest statement

- Operational Plan
- Registration of Business Name
- Documents in support of the character, qualifications and experience of Mr Walia, Mr Khadka and Mr Nheu
- Various bank statements of Mr Walia, Mr Khadka, Mr Nheu, Supermarkets Investa Group Pty Ltd and other associates of the principals of the applicant
- Australian Taxation Office records for Mr Walia, Mr Khadka, Mr Nheu, Outback Foods Pty Ltd, Palates of India Pty Ltd and Supermarkets Investa Group Pty Ltd
- ASIC extracts for NT Investa Group Pty Ltd, Outback Foods Pty Ltd, Palates of India Pty Ltd and Supermarkets Investa Group Pty Ltd
- Records of Northern Territory properties in which Mr Nheu and Mr Khadka have a proprietary interest.
- Lease and associated documents for the premises
- Details of public notification and stakeholder consultation regarding the application

40. In addition and also without objection the applicant tendered the following documents:

- 17 further documents regarding the applicant's financial circumstances provided to the Commission on 18 November 2020
- Screenshot of "RAMS Action" account dated 16 November 2020
- 2019/2020 Balance Sheet and statement of Profit and Loss for Supermarkets Investa Group Pty Ltd

41. In the course of the hearing oral evidence was given on oath by Mr Walia, Mr Khadka and Mr Parminder Walia, the father of Mr Jaswinder Walia.

Assessment of the Application

42. The Commission has considered the application and the materials tendered in support of the application, including the section 26A affidavits of Mr Khadka and Mr Walia and financial records provided by the applicant, together with the results of the investigations conducted by the Director in relation to the application. The Commission has applied the public interest and community impact tests. Having done so, the Commission has determined to grant the application.

The applicant's premises

43. Section 28(2)(a) of the Act requires the Commission to consider the suitability of the premises in respect of which the application is made. Having done so, the Commission

is satisfied that the premises are suitable for their proposed purpose. The premises are situated in the Darwin Waterfront Precinct, a prominent Darwin tourism and hospitality district where some seven other licensed premises are also located. The premises, which comprise an internal area of 173.7m² and an alfresco area of 108.6m², have been leased for a period of five years, with options to extend that term for up to a further five years, by the applicant from TOGA Development No 49 Pty Ltd, commencing one week after the issue of the liquor licence. The restaurant will be furnished to accommodate about 60 patrons seated at dining tables, and a further 30 patrons seated in a bar area. (These estimates do not take account of social distancing measures that may be applicable.)

The applicant

44. The applicant is a proprietary company limited by shares that was registered on 11 September 2019.
45. The Commission finds that the applicant complies with section 25(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
46. The applicant has provided extensive documentation regarding its operations, activities, financial circumstances and plans.

The applicant's business reputation, financial stability and propriety

47. In accordance with section 28(2)(c) of the Act, the Commission is required to assess the applicant's business reputation and financial stability. The applicant was only recently registered, its registered principal place of business is the address of Urban Spice Pantry, and its only current venture is the establishment and operation of Urban Spice Pantry, which has not yet commenced to trade. Accordingly, at this embryonic stage in its corporate life, the applicant has not acquired a business reputation, and has not engaged in financial activity.
48. In accordance with section 28(2)(e) of the Act, the Commission is required to assess whether the applicant is a fit and proper person to hold a licence.
49. In these circumstances, the Commission considers that to comply with section 28(2)(c) and (e), the appropriate course is to lift the corporate veil and assess, firstly, the business reputation and financial stability, and secondly, the fitness and propriety of the shareholders and executive officers of the applicant corporation. The sole director of the company is Mr Khadka, who is also a 25% shareholder. Mr Walia holds 50% of the shares. The remaining shares are held by Mr Nheu.
50. Over the last eight years, Mr Khadka, an Australian citizen, has been employed as the head chef at three Darwin eateries. He is the current joint nominee with Mr Walia of liquor licences at The Flank Bar and Grill and Fresh Point Co. Parap. The Commission assesses him to have a sound business reputation, to be financially stable, and to be a fit and proper person to be a licensee.
51. Mr Walia is the principal entrepreneur of not only the applicant, but also four other recently established Darwin businesses: Outback Foods Pty, which operates The Flank Bar and Grill (a licensed bistro); NT 7 Insta Group Pty Ltd, which operates Fresh

Point Co. Parap (a licensed café/restaurant); Supermarkets Investa Group Pty Ltd, which operates Fresh Point Co. Bellamack (a licensed café/restaurant); and Palates of India Pty Ltd, which operates an unlicensed restaurant of the same name. The Commission assesses Mr Walia to have a sound business reputation, to be financially stable, and to be a fit and proper person to be a licensee. In reaching this conclusion, the Commission gave particular weight to the oral evidence of Mr Walia and his father Mr Parminder Walia, and to the documentary evidence provided to the Commission two days before the hearing, and during the hearing. But for this evidence, it is unlikely that the Commission would have been able to properly assess the financial stability of Mr Walia.

52. Mr Nheu is employed in the transport and industrial sector, and appears to be a potential investor in the applicant's business, rather than a person who intends to be involved in its day to day operation. The Commission assesses Mr Nheu to have a sound business reputation, to be financially stable, and to be a fit and proper person to be a licensee.

The applicant's secretary and executive officers

53. In accordance with section 28(2)(c) of the Act, the Commission is required to assess the general reputation and character of the applicant's secretary and executive officers. As the applicant has not registered the appointment of a secretary, the Director, Mr Binod Khadka, assumes the responsibilities of the Secretary under the *Corporations Law*. The Commission regards Mr Khadka as the sole executive officer of the applicant.
54. Taking into account the Commission's findings above in relation to the business reputation and financial stability of Mr Khadka, together with his eight years of experience as the head chef at three Darwin eateries and the material provided to the Commission attesting to his good character, in the Commission's assessment Mr Khadka is a person of good general reputation and character.

The licensee's associates

55. No associates of the applicant have been referred to in the section 26A affidavits tendered in support of the application, and the Commission does not consider it appropriate to consider the fitness and propriety of any other associate of the applicant.

Public notice and consultation

56. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 32A(4) and (5) of the Act.

Conditions

57. The Commission considers that in all the circumstances, the premises should operate subject to the conditions that apply to restaurant bar authorities under the 2019 Act and Regulations. These conditions were explained to the applicant in the course of the hearing, and the applicant readily agreed that they would be appropriate. The other conditions imposed are as sought by the applicant in its application.

The public interest and community impact test

58. The Commission is required to consider each of the fifteen objectives in section 6(2), which are as follows:

- (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:
 - by-laws made under the *Local Government Act 2008*; and
 - 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:
 - the kinds of liquor that may be sold;
 - the manner in which liquor may be sold;
 - the containers, or number or types of containers, in which liquor may be sold;
 - 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.

The impact on the community

59. In considering the impact of the decision on the local community, the Commission must have regard to five matters set out at section 6(3)(a) of the Act. Those matters are:
- (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.
 - (ii) The cultural, recreational, employment or tourism impacts.
 - (iii) The social impact in, and the impact on the amenity of, the locality of the premises or proposed premises.
 - (iv) The density of existing liquor licences within the community area.
 - (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.
60. Section 6(3)(b) requires that the Commission also apply the community impact assessment guidelines. The Commission has done so.
61. The Commission has considered each of the section 6(2) objectives, and has had regard to each of the section 6(3) matters and the community impact assessment guidelines. Having had particular regard to the location of the premises in a prestigious tourism and hospitality precinct, the nature and scope of the proposed enterprise, and the good record of Mr Walia and Mr Khadka in establishing and operating licensed restaurants in Darwin, the Commission is satisfied in accordance with section 6B of the Act that the approval of the application meets the public interest and community impact test.

The objects of the Act

62. Finally, section 32A(7) of the Act provides that after considering the application, the Commission must have regard to the objects of the Act in deciding whether to approve or refuse the application.

63. Throughout its consideration of this application, the Commission has steadily born the objects in section 3 of the Act in mind. The Commission is satisfied that the grant of the application is in accordance with the primary object of the Act.
64. For these reasons, the Commission has determined that the application should be granted, and that a licence be issued on the terms and conditions set out at the commencement of this Decision Notice.

Notice of Rights

65. 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 32A of the Act is specified in the Schedule and is a reviewable decision.
66. 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.
67. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the applicant and the Director.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
27 November 2020

On behalf of Commissioners Goldflam, Reynolds and McFarland