

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2020/047

APPLICANT: Supermarkets Investa Group Pty Ltd

PREMISES: Fresh Point Co.
Shop 5, 127 Flynn Circuit
Bellamack NT 0832

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

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: 30 November 2020

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 Supermarkets Investa Group Pty Ltd (“the applicant”).
2. The licence will be issued with a restaurant authority.
3. The conditions of the licence will be those authority conditions set out in Division 15 of the *Liquor Regulations 2019* (“the Regulations”), save that the hours of trade shall be limited to between 11:00 hours and 23:59 hours each day except Good Friday and Christmas Day.
4. The licensed premises is the Fresh Point Co. café/restaurant situated at Shop 5, 127 Flynn Circuit, Bellamack NT 0832 delineated by the area marked in red at page 49 of the brief of evidence tendered at the hearing of the application (“the licensed premises”).¹

¹ The Commission has received documents variously identifying the address of the premises as “Shop 5, 127 Flynn Circuit, Bellamack”, “Shop 5-9/127 Flynn Circuit, Bellamack”, “Shops 5-9, One27 Flynn Circuit, 123 Flynn Circuit, Bellamack”, “Tenancy Numbers 5-9, One27 Flynn, 123 Flynn Circuit Bellamack”, “127 Flynn Circuit Shops 5-9” and “Unit 5-9/127 Flynn Circuit, Bellamack”. The address used in the body of this Decision Notice is the version used by the applicant in its application.

5. In accordance with section 85 of the Act, the term of the licence will be for 25 years.
6. The licence will be issued immediately following the decision made and given to the parties at the conclusion of the hearing on 20 November 2020.
7. The Commission approves the designation of Mr Jaswinder Singh Walia (“Mr Walia”) as the licensee’s nominee.

Reasons

The application

8. On 1 June 2020 the applicant applied for a licence to serve liquor to customers of Fresh Point Co., Bellamack, a family-friendly café/restaurant offering indoor and outdoor dining located in a suburban shopping centre in Palmerston. The proposed liquor trading hours are 11:00 hours to midnight each day. The application was incomplete and the applicant provided further material in support of the application on 23 July 2020.

Consultation

9. As required by section 57 of the Act, notices of the application were displayed at the premises and published in the NT News on 8 and 12 August 2020. The objection period ended on 10 September 2020.
10. In accordance with section 56 of the Act, notification was given to Department of Health (“DOH”), NT Police and the City of Palmerston Council.
11. No objections were received to the application, and none of the stakeholders consulted raised any substantial concerns.

The licensee’s record of compliance

12. The applicant’s sole director and major shareholder, Mr Walia, is a principal and nominee of two other liquor licensees, Outback Food Pty Ltd, which operates The Flank Bar and Grill at Coolalinga, a licensed bistro; and NT 7 Insta Group Pty Ltd, which operates Fresh Point Co. Parap, a licensed café/restaurant. The Director of Liquor Licensing (“the Director”) informed the Commission that there are no records of non-compliance at either of these premises since these licences were transferred to Mr Walia in February 2019 and July 2020 respectively.
13. Mr Walia is also a principal of NT Investa Group Pty Ltd, which the Commission has recently granted a licence to operate Urban Spice Pantry, a licensed restaurant in the Darwin waterfront precinct which is yet to open its doors.

The referral

14. On 8 October 202, pursuant to section 59 of the Act, the Director referred this application to the Commission. On 21 October 2020 notice was given to the Applicant that the matter would be listed for a public hearing on 20 November 2020. On that date the hearing proceeded and the application was determined.

The delay

15. Pursuant to section 60(2)(b) of the Act, the Commission was required to make a decision within 28 days of the expiry of the objection period on 10 September. However, as the application was not referred to the Commission until the last day of that 28 day period, the Commission was unable to comply with this time limit.
16. As noted in the Commission's Decision Notice for the associated Urban Spice Pantry application ("the Urban Spice Pantry decision"),² the Commission determined to hear the Fresh Point Co. Bellamack application and the Urban Spice Pantry application together. An issue common to both applications was the financial stability of the applicant. Despite previous directions given and requests made by the Commission to Mr Walia's then solicitors, the Commission did not receive sufficient material from the applicants to enable a proper assessment of the applicants' financial stability to be undertaken until the day of the hearing itself.
17. In these circumstances, the Commission, in the exercise of its discretion, has determined to extend to 20 November 2020 the time allowed to decide whether to issue the licence.

The brief

18. The Director provided the Commission with a brief including the following documents:
 - a. Application for liquor licence and restauraunt authority
 - b. Affidavit and Declaration of Associates pursuant to section 54 of the Act
 - c. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act
 - d. Operational plan
 - e. ASIC company extract for Supermarkets Investa Group Pty Ltd
 - f. Registration of Business Name: "Fresh Point Co"
 - g. Documents in support of the character, qualifications and experience of Mr Walia
 - h. Various bank statements of Mr Walia and Supermarkets Investa Group Pty Ltd
 - i. Australian Taxation Office records for Supermarkets Investa Group Pty Ltd
 - j. Lease and associated documents for the premises
 - k. Registration of Food Business for Fresh Point Co. Café
 - l. COVID-19 Safety Plan Statement of Commitment for Fresh Point Co. Bellamack

² Northern Territory Liquor Commission, *Application for Liquor Licence, NT Investa Group Pty Ltd* LC2020/011, 27 November 2020.

- m. Details of public notification and stakeholder consultation regarding the application
- n. Liquor licence 80518782 (Fresh Point Co. Parap)
- o. Liquor licence 80519485 (The Flank Bar & Grill)

The hearing

- 19. 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. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No submissions were made to the Commission to this effect.
- 20. On 20 November 2020 the application proceeded as a public hearing, in conjunction with the hearing of the Urban Spice Pantry application. Mr Walia appeared on behalf of the applicant. Mr Wood appeared for the Director. The Commission thanks them both for their attendance and assistance.
- 21. The brief was tendered and admitted into evidence without objection.
- 22. In addition and also without objection the applicant tendered the following documents:
 - a. 17 further documents regarding the applicant's financial circumstances provided to the Commission on 18 November 2020
 - b. Screenshot of "RAMS Action" account dated 16 November 2020
 - c. 2019/2020 Balance Sheet and statement of Profit and Loss for Supermarkets Investa Group Pty Ltd
- 23. In the course of the hearing oral evidence was given on oath by Mr Walia and Mr Parminder Walia, the father of Mr Jaswinder Walia.

Assessment of the application

- 24. In accordance with section 59 of the Act, the Commission has considered:
 - a. The applicant's affidavit required by section 54;
 - b. The results of any investigation conducted into the application under section 58;
 - c. 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;
 - d. As the applicant is a body corporate:
 - i. The financial stability and business reputation of the body corporate; and
 - ii. 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;
 - f. If the Commission considers it appropriate – whether each associate of the applicant is a fit and proper person to be an associate of a licensee.
25. 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

26. The Commission finds that the applicant complies with section 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
27. The applicant has provided extensive documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

28. 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 section 54.
29. The Commission considers that it is appropriate to consider whether Mr Walia the executive officer of the applicant, and accordingly an associate of the applicant for the purpose of section 55, is a fit and proper person to be an associate of the applicant:
30. Having had regard to the ample material tendered by the applicant attesting to the character, experience and qualifications of Mr Walia, the Commission finds that he is a fit and proper person to be an associate of the applicant.
31. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the applicant.

The Director's investigation

32. The Director informed the Commission that it had investigated the relationship between Mr Walia and a former associate who had been convicted of serious dishonesty offences in the Northern Territory. The Director informed the Commission that NT Police had confirmed that Mr Walia had no involvement with the commission of those offences. The Commission also heard evidence from Mr Walia regarding his business relationship with the former associate. The Commission is satisfied that Mr Walia's relationship with the former associate was innocent, that the relationship has been terminated, and that no inference adverse to the applicant or Mr Walia should be drawn arising from that relationship for the purpose of determining the application.

The suitability of the applicant's premises

33. 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

34. The applicant company was registered on 10 November 2015. Its registered address is the domicile of Mr Walia. Mr Walia is the sole director and holds 75% of the company's shares. No other shareholder holds more than 15% of the shares. The Commission considers that the financial stability of the applicant is in large part dependent on the financial stability of Mr Walia.
35. The Commission refers to and adopts its assessment of the financial stability of Mr Walia in the Urban Spice Pantry decision, in which it stated, at [51]:

Mr Walia is the principal entrepreneur of not only [Urban Spice Pantry], 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 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.

36. Having reviewed the 2019/2020 Balance Sheet and Statement of Profit and Loss for the applicant, in addition to other financial and taxation records of the applicant, the Commission is satisfied that the applicant is on a sound financial footing.
37. 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

38. 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 executive officer, Mr Walia, to be satisfactory.

Whether the applicant is a fit and proper person to hold a licence

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

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

40. The applicant has designated Mr Walia as the licence nominee. The Commission assesses Mr Walia, who holds current RSA certification and has provided appropriate documentation of his reputation, character and work history, to be a fit and proper person to hold the licence.

Public notice and consultation

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

Whether issuing the licence is in the public interest

42. 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 section 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;
- (j) Reducing or limiting increases in anti-social behaviour.

43. Having considered each of these objectives, and having particular regard to the location of the premises in the food and beverage precinct of a shopping centre, the nature and scope of the business, and the good record of Mr Walia in establishing and operating licensed restaurants in Darwin, 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

44. 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 have consider the following matters set out at section 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;
 - (j) Any other matter prescribed by regulation.
45. The Commission notes there are no such “other” matters prescribed by regulation.
46. 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.
47. Regulation 123 of the Regulations provides that the following community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50:

Criteria	Matters to be considered
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>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;

	<ul style="list-style-type: none"> • 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 buildings, 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; • 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. 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>

Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<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? • 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?

48. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state 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.

49. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

50. In considering these issues, it is also important to keep in mind that the onus is on the applicant: section 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”.

51. Having considered all of these matters, the Commission is satisfied, in accordance with section 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.

The licence term

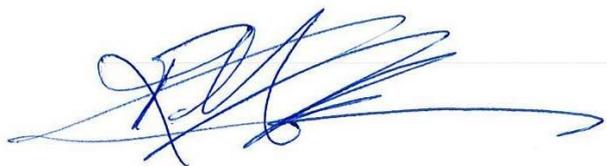
52. Having particular regard to the conditions of the applicant's tenancy over the premises, the Commission accepts the applicant's submission that the duration of the licence should be fixed at 25 years.

The objects of the Act

53. Finally, 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.
54. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
55. For these reasons, the Commission has determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

Notice of Rights

56. 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.
57. In accordance with section 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

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
30 November 2020

On behalf of Commissioners Goldflam, Reynolds and McFarland