

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR A LICENCE
LICENCE NUMBER:	LC2018/114
PREMISES:	Alfonsino's 19 and 20/69 Mitchell Street DARWIN NT 0800
APPLICANT:	EFUS Food & Catering Services Pty Ltd
NOMINEE:	Mr Benjamin Jeffrey Matthews
OBJECTOR/S:	Mr Robert Thomson Ms Jan Isherwood-Hicks Ms Jill Kew
LEGISLATION:	Section 26, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Dr Charles Douglas (Health Member) Mr Lindsay Carmichael (Community Member)
DATE OF HEARING:	2 October 2018
DATE OF DECISION:	2 October 2018

Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act* ("the Act") the Commission has determined to issue a licence authorising the sale of liquor for consumption on or at the licensed premises to "EFUS Food & Catering Services 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 known as Alfonsino's.

- b. The trading hours shall be between:
 - i. Sunday and public holidays 1000 hours and 2159 hours;
 - ii. Monday 12 noon and 2359 hours;
 - iii. Tuesday 12 noon and 2359 hours;
 - iv. Wednesday 12 noon and 2359 hours;
 - v. Thursday 12 noon and 2359 hours;
 - vi. Friday 12 noon and 2359 hours;
 - vii. Saturday 12 noon and 2359 hours.
 - c. 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.
 - d. Those conditions set out at the conclusion of these reasons in addition to the general conditions included in a Restaurant authority.
3. This licence will be issued and commence as and from 12 noon on Thursday 11 October 2018.

Notation to Decision

The Commission requests that the Director-General upon receipt of these reasons give urgent consideration to the request made on behalf of EFUS Food & Catering Services Pty Ltd for exemption under s.104(3)(g) of the *Liquor Act* to enable commencement of the licence in accordance with these reasons.

Reasons

Background

4. On 19 January 2018 an application was lodged by Mr Benjamin Jeffrey Matthews, (“Mr Matthews”) as Director on behalf of EFUS Food & Catering Services Pty Ltd (“the Applicant”) seeking a licence for premises located at 19 and 20, 69 Mitchell Street, Darwin City and known as Alfonsino’s (“the premises”).

5. The premises are a well-known café and restaurant featuring authentic Italian cuisine in a European style eatery. The premises currently operate as a café during the day and a pizzeria in the evenings. It holds a 90 seat outdoor undercover area with authorisation to seat 12 persons inside. Its current hours are from 0700 hours to 2200 hours Monday to Saturday and from 1000 hours to 2200 hours on Sunday and at present it operates as a BYO with respect to liquor.
6. The application is for a licence to be permitted to undertake liquor sales between 12 noon and 12 midnight Monday to Saturday and then from 10am to 10pm on Sundays and public holidays. It is sought to have “background music” playing commensurate with a European style eatery. The venue is and will remain entirely “non-smoking”.
7. Unfortunately when the application was initially received by the Director-General of Licensing NT (“the Director-General”) it was deemed incomplete and request for further information was made. On 30 April 2018 all required materials to proceed with the application were finally received by the Director-General.
8. On 16 August 2018 pursuant to sections 28(1) and 50(a) of the Act the Director General referred this application to the Commission to be determined by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application.
9. The applicant has not previously held a liquor licence in the Northern Territory. There is therefore no compliance history held by the Director-General with respect to the applicant.

Disclosure of influential persons or potential beneficiaries

10. The Commission notes that section 26A(1) of the Act now 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 noting that only the two (2) directors of the company are able to influence the applicant.
11. The applicant is registered with the Australian Securities and Investments Commission (“ASIC”). Mr Matthews is joint Director with his father, Mr Jeffrey Bruce Matthews. A review of the corporate structure shows that the applicant has a single share and that share is held entirely by Mr Jeffrey Bruce Matthews.
12. 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.

Advertising and Objections

13. Details of the application were advertised in the Northern Territory News on Saturday 5 May 2019 and Wednesday 9 May 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 8 June 2018.
14. An objection was received on letter head entitled "Lameroo" and signed "for Roberta Thomson, Jan Isherwood-Hicks and Jill Kew" on 5 June 2018 ("the objection"). The letter does not state that it is from the body corporate of Lameroo Apartments, merely that it is "on behalf of owners of Lameroo Apartments" as previously identified.
15. In order to avoid confusion, we shall set out in full the terms of the objection:

"I write on behalf of owners of Lameroo Apartments who are named below with regard to the above application which is located at the back of Lameroo Apartments. While we recognise the endeavours of Alfonsino's owners to establish a quality business, we have some concerns about the possible adverse effect on our amenity;-

1. *The expansion of the business includes additional outdoor seating for 90 people. Will there be sufficient toilet facilities to accommodate increased patronage of the restaurant/cafe/pizzeria? Currently the adjacent space, which lacks adequate lighting and which leads to the Mantra Esplanade and Lameroo Apartments, attracts itinerants who use the area for a number of purposes including ablutions. There is some concern that insufficient toilets may lead to increased inappropriate use of this space.*
2. *In the Community Impact Assessment section 6, Public interest criteria in respect of licence or licensed premises, (e) noise emanations from licensed premises must not be excessive, Alfonsino's state that Noise will be kept to a minimum. This will be done in the interest of the public as well as our own interest... to ensure our guests can enjoy... their environment. No mention is made of the ensuring the amenity of the neighbouring residential and hotel accommodation is not negatively impacted by noise emanations. There is a concern that amplified music until 11.59pm Mondays to Saturdays and 10.00pm Sundays and public holidays will be added to current amplified music emanating from the Youth Shack located in the same block as Alfonsino's. We request that if there is music it should not exceed 60 decibels at Alfonsino's boundary.*

We trust that our concerns will be raised and addressed to protect our amenity.

16. With respect to the objection, the Commission finds that it falls broadly into two (2) categories:

- a. Sufficient amenity for the expanded business;
- b. Noise concerns.

The Commission will return to these two (2) matters later in these reasons.

17. It is noted that section 27(3) of the Act requires that the Director-General must inform:

- a. the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
- b. the Commissioner of Police; and
- c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.

18. In relation to this application, the Director-General also informed the NT Fire & Rescue service (“NTFRS”) and the Development Consent Authority (“DCA”)

19. The Commission notes that the following responses were received:

- a. The DOH made “no adverse comment”. The Commission notes that the premises are entirely non-smoking.
- b. The NT Police advised that they “are supportive of the application as the consumption of alcohol is to be ancillary to a meal. Nil objections from us”.
- c. The City of Darwin advised they had “not identified” any reason that would be grounds for objection to the application.
- d. The NTFRS (after conducting its own inspections and providing its own occupancy permit for the enclosed area of the premises) advised it had “no objection”.
- e. The DCA also had no objections and confirmed that appropriate planning approval had been granted.

Public Hearing

20. 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.

21. As earlier noted, on 16 April 2018 the Director General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10.00am on 2 October 2018 and notice sent to the applicant on 22 August 2018 advising of the hearing scheduled to take place.
22. Notice of the hearing was also given on 24 August 2018 to the persons named in the objection. Those persons did not appear at the hearing; however it is important to recognise that as with all objectors they were not **required** to appear. The Commission did however ensure that it considered the objection filed (and not withdrawn) when considering the application and making our determination.
23. 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.
24. The public hearing commenced at 10.00am on 2 October 2018. Mr Matthews attended in person on behalf of the applicant. Mr Philip Timney as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks both Mr Matthews and Mr Timney for their assistance.

Assessment of the Application and Objections

25. As earlier noted, an objection was lodged in relation to this application. 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. It is clear that the persons referred to in the objection are owners of units in a nearby set of apartments known as “Lameroo Apartments”. They are therefore persons who may make objection.
26. As earlier noted, the Commission finds the objection falls broadly into two (2) categories:
 - a. Sufficient amenity for the expanded business;
 - b. Noise concerns.
27. The ground upon which objection under section 47F(2) may **only** be made is “on the ground that the grant of the licence may or will adversely affect:
 - a. the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

b. health, education, public safety or social conditions in the community”.

28. In this regard, the Commission accepts that the objection falls within the provisions of section 47F and has been properly made. In relation to the objection, the applicant responded in writing as follows:

“NOISE

Alfonsino's is a restaurant with the main purpose of providing a unique dining experience to the community of Darwin. Our main clientele will be families, the Italian community, the community of Darwin and tourists. Our customers will be able to enjoy authentic Italian food in a relaxing and authentic ambience between the hours of 7 am to 10pm. Background music will be played however under no circumstances will the music exceed the suggested noise level.

Our style of business is not going to promote noise behaviour and will not be catered to the late night crowd.

TOILET FACILITIES

Toilet facilities will be available for our customers and under no circumstances will our clientele be using the outside surroundings as a toilet.

Furthermore we would like to mention that some of our main customers do reside in the unit complex that has objected to our application. It was mentioned to us the majority of residents did not agree with the objection being lodged. Most residents believe that what we have created is having the opposite effect on the area. Alfonsino's has greatly contributed to the transit centre becoming an attractive destination for the community of Darwin. This will contribute to the transit centre becoming a more vibrant and clean area.”

29. Whilst the Commission notes the comment made on behalf of the applicant that other residents of the Lameroo Apartments do not share the concerns set out in the objection that does not mean that the matters raised in the objection are not relevant or that they are inappropriately raised. The Act entitles the three (3) residents set out within the objection to lodge their objection in the terms set out. Of course however, their objection also needs to be considered in light of the fact that the premises are in a densely occupied part of the city centre and despite the advertisement of this application, only three (3) persons raised objection. This is obviously a matter that goes to the weight that the Commission gives to the concerns raised in the objection.
30. Even if there had been no objections made to the application lodged by the Applicant, the Act now clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, section 6B of the Act makes clear 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.

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; and
 - ii. provisions of or under the Planning Act;
- 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;

	<ul style="list-style-type: none"> • 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.</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</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an

<p>additional liquor outlet will benefit the local and broader community.</p>	<p>additional outlet for the sale of liquor – this may include accommodation or dining?</p> <ul style="list-style-type: none"> • 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?
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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. The Commission notes that there is no suggestion, nor any evidence to suggest, that the applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee.
- 41. The Commission further notes that there is nothing to suggest that the premises are unsuitable. Despite the concerns raised in the objection about availability of amenity, the applicant has in fact been operating from the premises for a number of months to the occupancy that would be provided for under this licence, the only difference being it has been operating as a BYO with respect to liquor. There is no evidence to suggest that the premises have caused any inappropriate issues in that time. In fact it appears from the work done to provide for the additional al-fresco space, that the applicant has in fact beautified the public amenity.
- 42. The Commission also agrees with the comment made by the applicant in response to the objection relating to toilet facilities; that its customers will not be using the outside surroundings as a toilet. There is simply no evidence to substantiate any alleged concern that the applicant operating its business in that location will lead to “increased inappropriate use” of the space.
- 43. The Commission notes there are no issues of concern in relation to the business reputation and financial stability of the applicant and the general reputation and character of the officers of the applicant. In fact there is evidence as to their good character before the Commission.

44. Whilst the Commission notes there is always concern about noise whenever a new premises is established, these premises are not “new” in the sense that they have not already been operating. These premises have been operating for a number of months now and successfully as a BYO. Patrons have therefore been attending in their numbers, music has been playing in the background and people have been consuming their own alcohol. There is no evidence before the Commission that the noise levels from these premises have been such that they have caused unreasonably annoyance to neighbours. In fact the Commission notes that the objection itself does not even make this allegation.
45. It should also be noted that the premises are located in a very densely occupied part of the city. There are numerous bars, backpacker accommodation and other restaurants in the vicinity as well as the premises being located close to a main thoroughfare which makes the location of the premises one that is relatively “noisy”. There is nothing to suggest that the applicant had made this worse or is likely to make this worse if a licence is granted permitting the applicant to sell liquor from its premises between the hours and days it has sought.
46. Therefore whilst the Commission has considered carefully the matters raised in the objection, the Commission does not consider that either form a proper basis for refusing to issue a licence to the applicant.
47. In relation to the public interest test; the applicant provided written submissions as follows:

“(2) For subsection (i), the criteria are the following:

(a) harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;

Alfonsino's is a restaurant, first and foremost. We are not a bar, and will never be a bar. Harm and ill health caused to people from the consumption of alcohol is generally caused by themselves, and responsible, well educated people generally do not have a problem with this. This is Alfonsinos target market. Responsible, well educated, professional people and their families. Alfonsino's is a high class restaurant, silver service, serving very high quality food. We are creating a European style eatery, primary focused on the consumption of food over alcohol. We ask for a license to serve alcohol, simple because it can be paired with the food, to provide an experience for the customers to enjoy, in a relaxed, enjoyable atmosphere. To complement our food.

There will be little or no alcohol on display in the premises, alcohol may be promoted on the Facebook page very subtly and to no greater extent than a picture of a glass of wine next to a plate of food as a table setting.

There will also be zero alcohol promotions i.e. two for one deals, beer and pizza for so and so amount. Zero.

We will only be selling alcohol with food.

Due to the family friendly atmosphere consumption will not be accepted, and anyone deemed to have had too much will be removed. We will not disguise our restaurant with a small offering of food in order to serve alcohol. Our menu is now currently 6 pages long. 22 pizzas, antipasto, desserts etc. By creating the restaurant's atmosphere as it is intended, I do believe that we will be extremely successful in achieving a very low risk venue with regards to the over consumption of alcohol

(b) liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;

Alcohol will only be served to compliment the food. All our employees will (additionally to having the RSA) receive extensive training on responsible service of Alcohol to our guests.

(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;

Safety and public order will be ensured. The number of tables and seats will restrict the number of patrons within our premises.

(d) the safety, health and welfare of persons who use licensed premises must not be put at risk;

Under no circumstances will the safety, health or welfare be put at risk. Our customers are of most importance to us and all regulations regarding safety will be strictly adhered to. As we have been operating our business for several years we completely understand the importance of the Food Act 2004 and its regulations and will continue to conduct our business in a proper manner and in line with these standards.

(e) noise emanations from licensed premises must not be excessive;

Noise will be kept to a minimum. This will be done in the interest of the public as well as our own interest as we want to ensure that our guests can enjoy their meals in a relaxing and very Italian environment.

(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;

With our current business Cucina sotto le Stelle operating at the Nightcliff foreshore which is close in proximity to residential areas we have proven that the local community is very important to us and under no circumstances we would conduct business which would cause any disturbance to the public. We will conduct our new venture with the same values. The venue to which the licence is applicable to is situated at the rear of the transit centre in the middle of the Mitchell Street entertainment-precinct.

(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; and

The provisions will be strictly adhered to.

(ii) provisions of or under the Planning Act;

The provisions will be strictly adhered to.

(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;

All our employees will (additionally to having the RSA) receive extensive training on responsible service of Alcohol to our guests.

(i) the use of credit in the sale of liquor must be controlled;

The proposed licensed premises is a restaurant where alcohol consumption will be with a meal. This is not a takeaway liquor outlet,

(j) practices which encourage irresponsible drinking must be prohibited;

Alcohol will only be served to compliment the food. All our employees will receive extensive training on responsible service of Alcohol to our guests and under no circumstances will irresponsible drinking be encouraged. Furthermore staff will be trained on how to deal with difficult situations and customers. Promotion of alcohol will be minimal if at all, and no 'deals' or 'promotion' will be offered with respect to alcohol consumption,

(k) it may be necessary or desirable to limit any of the following:

(i) the kinds of liquor that may be sold;

Our range will be restricted to white and red wines, beer and spirits all in line with the traditional Italian approach Aperol Spritz, Campari and soda for example. Mainstream spirits will not be available.

(ii) the manner in which liquor may be sold;

Alcohol will only be sold adjacent to ordering food at our premises.

(iii) the containers, or number or types of containers, in which liquor may be sold;

All glasses will be of a standard size.

(iv) the days on which and the times at which liquor may be sold;

The days and times that liquor is sold will be in line with the opening hours of our premises,

(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;

The number of tables and seats will restrict the number of patrons within our premises.

(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;

Entertainment will only be limited to special events and occasions.

(n) it may be necessary or desirable to prohibit or limit promotional activities, in which drinks are offered free or at reduced prices,

Our main focus will be on the cuisine we produce and alcohol will not be served free or at a reduced price,

48. In relation to the community impact test; the applicant provided written submissions as follows:

“Alfonsino's is a restaurant, first and foremost.

Located in the city centre and entertainment district of Darwin it is surrounded by various restaurants, bars and late night venues. Alfonsino's, however is unique to the Darwin area. We are not a bar, and will never be a bar. We are a café and restaurant that stands out due to its traditional, quality cuisine, its unique service and its traditional high class décor. We are creating a European style eatery, primarily focused on the consumption of food over alcohol. We ask for a license to serve alcohol, simple because

it can be paired with the food, to provide an experience for the customers to enjoy, in a relaxed, enjoyable atmosphere. To complement our food. Our menu features authentic Italian cuisine prepared the traditional way. Our ingredients are of the finest quality and every component of the dish is handmade - the way the food is prepared in Italy, by hand and from scratch. The cafe specialises in Italian style breakfast and traditional porchetta, Italian pastries, bread and desserts as well as Italian style coffee. The pizzeria will feature an outstanding menu of Napoletan style wood-fired pizza, Italian antipasti and desserts. Our beverage list will be modest in size and primarily focused on products from Italy. The beer will served by the bottle only and wine will be available by the glass or bottle. We will also feature some Italian style cocktails and diggestivo. All alcohol will only be served complimentary to the food.

The Darwin city centre has been a great topic of discussion and revitalising the city has become a main focus. Mitchell Street is a place for tourists and office workers during the day. During the night hours, primarily the younger generation frequents the area for the purpose of enjoying a night out with their friends.

Alfonsino' however will attract a completely different clientele to the area. Our target group is focused towards people with an appreciation for authentic high end Italian food and high quality service. The characteristics of our clientele are people who are creative, entertaining and sophisticated diners. Professionals aged between 27-60 years, Darwin residents and interstate business people with a high disposable income and an appreciation for high quality food with exceptional service. Alfonsino's will be a family friendly venue where families will be catered to. Italian cuisine and culture revolves around family and will enhance the atmosphere greatly. The Italian community makes up a large part of the residents in Darwin. Long term Territorians with Italian heritage. People that understand the traditional methods we use to produce our food, and enjoy the nostalgia we evoke with memories of Italy. Our ethos is focused primarily on the local community first and foremost.

However the tourism aspect of Darwin/ NT is extremely important. Alfonsino's we believe will become a 'to-do' venue for local and interstate visitors. Being located in the transit centre makes us the first point of contact for most visitors to Darwin. The first impression some say is one of the most memorable when visiting a destination. The area is currently criticised by not being a particularly attractive part of the city. During the night hours it is characterised by being very dark, people that frequent the area are often intoxicated.

We have been given the building permit to construct a roof structure for an outside seating area. This will be equipped with furniture, lights and decorations, giving it a unique look. CCTV cameras will be installed primarily to ensure the safety of our customers and employees. Alfonsino's will only be trading until 10pm as we have no interest in catering to the late night crowd. However having the lights and safety measures in place will

change this part of the city even after our doors are closed. Plans are in place to re-do the shop front completely. Tiling the whole front and having the history of the Italian community drawn up in a time line will contribute to the beautification of the city centre. Alfonsino's has significantly changed the area within the last year and will continue to do so. Alfonsino's is turning the transit centre into an attractive part of the city. A place for people of all ages and nationalities to gather over a nice plate of food.

Harm and ill health caused to people from the consumption of alcohol is generally caused by themselves, and responsible, well educated people generally do not have a problem with this. This is Alfonsinos target market. Responsible, well educated, professional people and their families.

We are not a bar, and will never be a bar. There will be little or no alcohol on display in the premises, alcohol may be promoted on the Facebook page very subtly and to no greater extent than a picture of a glass of wine next to a plate of food as a table setting.

There will also be zero alcohol promotions i.e. two for one deals, beer and pizza for so and so amount. Zero.

We will only be selling alcohol with food.

Due to the family friendly atmosphere over consumption will not be accepted, and anyone deemed to have had too much will be removed.

We will not disguise our restaurant with a small offering of food in order to serve alcohol. Our menu is now currently 6 pages long. 22 pizzas, antipasto, desserts etc.

By creating the restaurants atmosphere as it is intended, I do believe that we will be extremely successful in achieving a very low risk venue with regards to the over consumption of alcohol. We strongly believe that Alfonsino's will have a positive impact on the community."

49. Having taken into account the evidence provided by Mr Matthews during the course of the hearing and the various submissions made, the Commission is satisfied that the public interest and community impact tests have been properly addressed. The Commission agrees with the matters fairly raised and identified by Mr Timney that restaurant licences (such as that being sought by the applicant) are generally low level risk licences. Mr Timney submitted that it may be considered by the Commission that in fact the applicant has made the level of risk of this licence even lower because it seeks that alcohol **only** be provided ancillary to a meal and in fact the applicant was seeking hours that were even less than those referred to in the Riley Review or on licence consumption. Yet again, Mr Timney has conducted himself before the Commission on behalf of the Director-General in the manner that a model litigant should and the Commission is greatly assisted by the matters raised by Mr Timney.
50. Having considered all of the evidence presented, 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. It is apparent that the applicant has in place appropriate measures to ensure liquor is sold in a responsible manner and there is no evidence to support any suggestion that there is likely to be an impact upon law and order, community safety or public amenity by virtue of this application.

51. The Commission is satisfied that with the concept of light background music as proposed and that there will be no increase in noise such as to warrant this application being refused or that the business to be conducted at the premises will cause undue offence, annoyance, disturbance or inconvenience to the neighbourhood.
52. The Commission does not consider there is any evidence to suggest any negative impact upon the local community area such as to warrant refusal of the licence. The Commission accepts that in granting such a licence this will obviously increase the number of licensed premises in the area, but given the proposal of the premises that it provides for a family friendly environment, promoting authentic Italian style food and alcohol to complement such food, the Commission considers this outweighs any increase and will provide an enhanced dining experience at the premises.
53. It is clear to this Commission having heard the evidence that any risk associated with these premises is at the lower end of the scale in terms of risk of alcohol related anti-social behaviour.
54. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the application for a Restaurant authority meets the public interest and community impact tests. As outlined at the start of this Decision Notice, the licence will include the general conditions of a “Restaurant” authority liquor licence and will also include the following conditions:

“Appearance The premises shall at all times have the appearance of and shall trade predominantly as a restaurant.

Liquor To Be Sold With Meal Liquor shall only be sold for consumption ancillary to a meal.

Noise The Licensee shall ensure that there is no excessive noise caused by the operations on the premises which affect the amenity of the neighbourhood.

This includes ensuring the delivery of stock or removal of rubbish is at appropriate hours and that patrons, whilst on the premises or in the course 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.

Notice of Rights:

55. 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.
56. 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.
57. 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 persons who made an objection during the process that resulted in the decision being made, namely Roberta Thomson, Jan Isherwood-Hicks and Jill Kew.



JODI TRUMAN
Presiding Member
Deputy Chairperson

8 October 2018