

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR LIQUOR LICENCE

REFERENCE: LC2020/039

APPLICANT: Infinity Loop Pty Ltd

PREMISES: The Feast of Alice
Shop 17 Diarama Village
Larapinta Drive
Alice Springs NT 0870

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: 18 September 2020, 25 September 2020

DATE OF DECISION: 2 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 Infinity Loop Pty Ltd (“**the applicant**”).
2. The licence will be issued with a restaurant authority authorising the sale of liquor to diners at the applicant’s restaurant “The Feast of Alice”; and a catering authority authorising the sale of liquor to customers of the applicant’s catering business.
3. The conditions of the licence will be those authority conditions set out in Divisions 1, 5 and 15 of the *Liquor Regulations 2019*, subject to a condition that liquor trading hours for the restaurant will be limited to the period between 1100 hours and 2300 hours on each trading day.

4. The licensed premises are situated at Shop 17 Diarama Village, Larapinta Drive, Alice Springs as shown in the area labelled “RESTAURANT” on the plan at page 166 of the brief of evidence tendered at the hearing of the application (“**the licensed premises**”).
5. In accordance with section 60(5) of the Act, and noting that the premises are not yet constructed, liquor must not be sold under the licence until such time as the applicant has been given written approval to do so by the Commission subsequent to the applicant having provided written confirmation that it has obtained all the necessary building, planning and safety approvals.
6. The Commission delegates to any one of Members Goldflam, Reynolds and McFarland the authority to grant the approval referred to in paragraph 5 above.
7. In accordance with section 85 of the Act, the term of the licence will be for 20 years from the date on which the Commission gives written approval for liquor to be sold under the licence.

Reasons

The Application

8. On 5 March 2020 the applicant, which has not previously held a liquor licence, lodged an application with the Director of Liquor Licensing (“**the Director**”) seeking a liquor licence for a fine dining Chinese restaurant, including takeaway food, that the applicant intends to establish in a small commercial and retail precinct, Diarama Village, in Larapinta, a western suburb of Alice Springs. The applicant also applied for authority to supply liquor in the course of operating a functions catering service it proposes to establish.
9. On 10 June 2020 the applicant supplied the Director with further material in support of its application.

Consultation

10. As required by section 57 of the Act, notices of the application were published in The Centralian Advocate on 23 and 26 June 2020.
11. In accordance with section 56 of the Act, notification was given to the Department of Health, NT Police and the Alice Springs Town Council. The Director also consulted with the Northern Territory Fire and Rescue Service.
12. No objections were received to the application, and no issues of concern were raised by any of the stakeholders with which the Director consulted.

The referral

13. On 11 August 2020, pursuant to section 59 of the Act, the Director referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 18 September 2020.
14. The Director provided the following documents to the Commission with the referral (**the brief**):
 - a. Affidavit and Declaration of Associates pursuant to section 54 of the Act;
 - b. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
 - c. Infinity Loop Pty Ltd ASIC Company Extract;
 - d. CVs, qualifications, character references and police checks for:
 - i. Mr Shang-Ming Ting;
 - ii. Mr Wen Qing Zhao;
 - iii. Mr Wei Wang;
 - iv. Mr Tao Sheng;
 - v. Ms Hsiang-Yun Chin;
 - e. Financial records of the applicant's principals;
 - f. Commercial lease of the premises to the applicant;
 - g. Landlord's letter of support for the application; and
 - h. Various registrations and plans.

The hearing

15. 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.
16. The application proceeded as a public hearing on 18 and 25 September 2020. Ms Chin and Mr Tin appeared on behalf of the applicant and Mr Verinder appeared for the Director. The Commission thanks them all for their attendance and assistance.
17. The brief was tendered and admitted into evidence without objection. In addition and also without objection the applicant tendered the following documents:
 - Registration of Business Name: "The Feast ASP"
 - Business Plan
 - Applicant's bank statement 24 September 2020

ASSESSMENT OF THE APPLICATION

18. In accordance with section 59 of the Act, the Commission has considered:

- a. the applicant's affidavit required by section 54;
- b. 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;
- c. the financial stability and business reputation of the body corporate
- d. the general reputation and character of the secretary and executive officers of the body corporate;
- e. whether the applicant, including any 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.

19. 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

20. 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.

21. The applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.

The applicant's associates

22. 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.

23. The Commission considers that it is appropriate to consider whether each of the following persons, each of whom is an associate of the applicant for the purpose of section 55, is a fit and proper person to be an associate of the applicant:

- a. Mr Shang-Ming Ting (Director, 13% shareholder and proposed licence nominee);
- b. Mr Wen Qing Zhao (Director and 25% shareholder);
- c. Mr Wei Wang (Director, Secretary and 25% shareholder);
- d. Mr Tao Sheng (Director and 25% shareholder);
- e. Ms Hsiang-Yun Chin (Director, 12% shareholder and proposed licence nominee).

24. Having had regard to the material tendered by the applicant attesting to the character, experience and qualifications of the above-named persons, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.

25. 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 suitability of the applicant's premises

26. The premises are located in a single story suburban shopping U-shaped "village" with about ten stores adjacent to Larapinta Drive, an arterial road that connects the western suburbs of Alice Springs to the CBD. There is a large parking area, and the premises are located approximately 60 metres from the nearest private residence.

27. 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

28. 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

29. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officers and secretary, Mr Shang-Ming Ting, Mr Wen Qing Zhao, Mr Wei Wang, Mr Tao Sheng and Ms Hsiang-Yun Chin to be satisfactory.

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

30. 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

31. The applicant has nominated Mr Shang-Ming Ting Ms Hsiang-Yun Chin as the joint licence nominees. They both hold current RSA certification. The Commission assesses each of them to be a fit and proper person to hold the licence.

Public notice and consultation

32. 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

33. To determine whether the issue of the license 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.

34. Having considered each of these objectives, and having particular regard to the cultural, recreational and employment benefits that the establishment of the only fine dining restaurant in the western suburbs of Alice Springs will bring to the local community, 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

35. 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 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.

36. The Commission notes there are no such “other” matters prescribed by regulation.

37. 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.

38. Regulation 123 of the Regulations provides that the 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.

39. The guidelines are 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 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). The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are not 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?

40. 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”.

41. 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.
42. 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”.
43. The Commission considers that if the application is granted, there is a low risk that it will have an adverse impact on the community. In reaching this view, the Commission has had particular regard to the circumstance that liquor will only be supplied by the applicant in the context of carrying out the restaurant and catering business it seeks to establish.
44. 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 objects of the Act

45. 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.
46. 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.
47. 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

48. 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.

49. 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
2 November 2020

On behalf of Commissioners Goldflam, Reynolds and McFarland