

NORTHERN TERRITORY LIQUOR COMMISSION
REASONS FOR DECISION

MATTER: APPLICATION FOR A NEW LIQUOR LICENCE

REFERENCE: LC2022/033

APPLICANT: Inci Foods Pty Ltd

PREMISES: Lime Café NT
B3 and B4, 7B Kitchener Drive
Darwin NT 0820

LEGISLATION: Section 52 of the *Liquor Act 2019*

HEARD BEFORE: Richard Coates (Chairperson)
Bernard Dwyer (Health Member)
Christine Hart (Community Member)

DATE OF HEARING: 16 June 2022

DATE OF DECISION: 16 June 2022

DECISION

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (**the Act**), the Northern Territory Liquor Commission has determined to issue a licence to Inci Food Pty Ltd (**the Applicant**).
2. The licence will be issued with a restaurant bar authority and subject to those authority conditions set out in Part 4 Division 1 and 16 of the *Liquor Regulations 2019* (**the Regulations**), together with a catering authority on the terms and conditions prescribed by Part 4, Division 5 of the Regulations. The following additional conditions relate to the catering authority only:
 - (a) Patrons purchasing a light or full meal from the licensee during their existing hours of trade, may purchase liquor for consumption within the Waterfront Beach Club area with their meals;
 - (b) The sale of liquor per person for consumption in the Waterfront Beach Club area is limited to:
 - (i) one (1) 750ml bottle of wine; or

- (ii) six (6) containers of beer, cider or pre-mix spirits with a combined maximum volume of 2250ml, being the equivalent of 6 x 375ml can or stubbies; or
 - (iii) two (2) pre-mixed cocktails (a cocktail being limited to 75ml of alcohol 40% alc/vol each);
 - (iv) cocktails may be served in a vessel together (eg. two (2) patrons ordering two meals may order four (4) cocktails in total which may be placed into one container for shared consumption).
- (c) Liquor may only be sold to a person in conjunction with the purchase of a light or full meal. A light or full meal being as defined in regulation 3 of the *Liquor Regulations 2019*.
- (d) An entrée or side order does not constitute a light or full meal.
- (e) The price point for the sale of liquor under this authority shall not be lower than the price at which the licensee sells that liquor for on-premises consumption.
- (f) All patrons must possess of “*Waterfront alcohol with meal permit*” issued under permission by the Darwin Waterfront Corporation.
- (g) The date and times must be specified on the permit and are limited to two (2) hours per person per day. Multiple purchases are not permitted.
- (h) The sale of liquor under this authority is not subject to the provisions of section 130 of the Act relating to the operation of an identification system.
- (i) The sale of liquor is prohibited beyond 23:59 hours.
3. The licence will be issued immediately following the publication of this decision notice however, the licensee shall not be permitted to sell or supply liquor from the premises until such time as it has provided written proof to the satisfaction of the Director of Licensing (**the Director**) that it has obtained a certificate of occupancy and all the necessary safety approvals in respect of the premises.

REASONS

BACKGROUND

THE APPLICATION

4. On 11 April 2022, an application was lodged by Ms Clear Henderson, Consultant DNS Specialist Services on behalf of Inci Foods Pty Ltd (**the Applicant**) seeking a liquor licence with restaurant bar and catering authorities, for the premises known as Lime Café NT B3 & B4 7B Kitchener Drive, Darwin NT 0820.
5. The application was accompanied by an affidavit and declaration of associates from Ms Aliye Ozpolat, Director of Inci Food Pty Ltd.

6. DNS Consultants prepared and submitted a public interest statement and a community impact assessment and summary on behalf of the applicant.
7. The substance of the application is for a restaurant bar authority and catering authority where locals and tourists may experience a variety of foods. There will be a wide range of drinks available including light, mid-strength and heavy beers, Australian wines, spirits and cocktails as well as non-alcoholic drinks. The catering authority will allow the sale of small quantities of liquor with a meal to be purchased from the venue which can be taken from the premises and only consumed at the Waterfront Beach Club area.
8. The proposed licensee is Inci Foods Pty Ltd, ACN 617 467 026, registered with ASIC on 17 February 2017. Ms Aliye Ozpolat is the sole director and shareholder of the company.
9. The following documents have been provided by the Applicant to the satisfaction of Licensing NT for Ms Aliye Ozpolat:
 - Photographic identification;
 - Resume;
 - References;
 - A national police name check and finger print check and in addition; and
 - RSA certificate.
10. It is proposed that Ms Aliye Ozpolat will be the sole nominee.
11. The applicant has provided a letter from Suyana Shrestha Tax Store, who have confirmed the client's financial stability accompanied with a detailed profit and loss statement for year ending 2020, and Westpac Bank statement for Inci Foods Pty Ltd, dated January to March 2022.
12. The following additional supporting documentation was also provided:
 - a. Lease for the premises.
 - b. Deed of Assignment of Lease of Tenancies B3 & B4.
 - c. Registration of a Food Business.
 - d. Menu.
 - e. Business Name Registration.
 - f. Draft public notice.

PUBLICATION AND CONSULTATION

13. The application was advertised on 14 May 2022. The Director of Liquor Licensing is satisfied that the applicant has complied with the requirements to advertise the application.
14. No objections were received in relation to this application.
15. Pursuant to section 56(4) of the Act on 5 May 2022, the following stakeholders were notified of the application:
 - a. Northern Territory Police;
 - b. Department of Health; and
 - c. Darwin Waterfront.
16. Northern Territory Fire and Rescue Service (NTFRS) were also notified of the application as part of Licensing NT's investigations into the application.
17. On 23 May 2022, the Northern Territory Police provided a response by email, stating they support this application.
18. On 26 May 2022, the Northern Territory Fire and Rescue Service responded, informing that the Tenancy for B3 & B4 appear to have been joined and no occupancy permit issued.
19. NTFRS is currently working with the occupant to rectify some fire safety defects identified and will support the application once all fire safety and occupancy permit issues are resolved.
20. When the occupant is compliant, the maximum patron numbers will be issued.
21. No response was received from the Department of Health.
22. Mr Sam Burke, on 6 June 2022, provided written confirmation the Darwin Waterfront Corporation had no objection to the application and gave their permission, as the owner of the area, for the catering authority as required.

THE HEARING

23. On 6 June 2022, pursuant to section 59 of the Act, the Director referred this application to the Commission. On 7 June 2022, the Applicant was notified by the Commission that the matter was listed for public hearing on 16 June 2022.
24. On 16 June 2022, Ms Aliye Ozpolat, together with Mr Hughes, appeared on behalf of the Applicant, and Mr Mark Wood appeared for the Director. The Commission is grateful for the assistance of all those involved with the hearing.
25. The Director's referral brief was tendered into evidence and additional evidence was provided by Ms Ozpolat and the manager, Mr Hughes.

ASSESSMENT OF THE APPLICATION

26. 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.
27. 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 applicant body corporate;
 - (d) The general reputation and character of the secretary and executive officers of the applicant body corporate;
 - (e) Whether the applicant is a fit and proper person to hold a licence; and
 - (f) Whether the nominees designated by the applicant are fit and proper persons to hold a licence.
28. 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

29. 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.
30. The Applicant has provided appropriate documentation regarding its operations, activities, financial circumstances and plans.
31. 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.

THE SUITABILITY OF THE APPLICANT'S PREMISES

32. The premises have been operating as a restaurant / café serving a variety of snacks as well as main meals such as pastas, steak, seafood and desserts for several years. The adjoining tenancy, which may have at some time in the past been combined with these premises, operates under the Coffee Club franchise

and hold a liquor licence with restaurant, bar and catering authorities. While slightly larger it has a similar setup to the Applicant's premises.

33. The Applicant can seat approximately 30 diners inside and almost twice that number at the outdoor undercover dining area. It is also hoping to utilise its catering authority to participate in the "Waterfront Beach Club" scheme, whereby customers can purchase meals together with limited quantities of liquor and consume these anywhere within the designated Waterfront Beach Club area pursuant to a permit issued by the Waterfront Corporation.
34. Apart from some minor technical issues that have been raised by the fire service and which the Applicant has agreed to resolve, no concerns have been advanced by the Director as to the fitness of these premises to operate as a licensed restaurant bar.
35. The Commission is satisfied that, provided the Applicant obtains all the necessary safety approvals, these premises are suitable to be used as a restaurant bar.

THE FINANCIAL STABILITY, GENERAL REPUTATION AND CHARACTER OF THE BODY CORPORATE

36. The Commission notes that the Applicant has established a strong business reputation. In addition, the Applicant's sole Director and the proposed nominee have a good general business reputation, are of good character, and the Applicant is financially stable.
37. The Commission assesses the Applicant to be a fit and proper person to hold a licence.
38. The Commission notes that Ms Ozpolat holds a current RSA certification and based on her history within the hospitality industry is assessed to be a fit and proper person to be the nominee of the licence.

WHETHER ISSUING THE LICENCE IS IN THE PUBLIC INTEREST

39. 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.
40. The Commission has considered each of these objective. Ms Ozpolat's family have operated a number of successful restaurants and take-away Kebab bars in Darwin. She commenced her career in hospitality as a Trainee Chef at the family's very popular Alaturka Turkish Restaurant in Knuckey Street. She has worked across many aspects of the food and beverage industry and convinced the Commission that she had the requisite understanding of her obligations in respect of the responsible service of alcohol. The focus of the business will remain on the provision of quality meals in a tourist precinct with wine, beer, and a limited range of cocktails offered as an option for diners and those who might be accompanying them.
41. When questioned as to why a restaurant authority would not suffice, Ms Ozpolat said that when people gathered at the restaurant for a celebratory event such as a birthday or work function, there were always a few in the group who were "only dropping in for a drink" and would not be intending to consume a meal. A restaurant bar authority would allow her to serve a drink to those patrons.
42. In support of its application, the Applicant commissioned DNS Specialist Service to prepare an extensive Community Impact Assessment and Public Interest report. The consultants provided a demographic profile of the local community's area and addressed the generic risk factors associated with that area which was identified as within a 5km radius of the restaurant.
43. The Commission has taken into account the contents of that report but having regard to the fact that these premises are located within the midst of a tourist precinct surrounded by a number of other hospitality venues, the Commission was not greatly assisted by the generalised risk analysis of such a large part of Darwin.
44. Ms Ozpolat impressed the Commission with her commitment to establishing a successful restaurant at this venue and we are satisfied that she and Mr Hughes have the necessary skills to bring that goal to fruition. There will be eight people employed in the business and the Commission is satisfied that there will also be tourism and recreational benefits associated with the proposed licence.
45. Having considered all the matters required by section 49(2) of the Act, the Commission is satisfied that it is in the public interest to issue the licence and authorities sought.

WHETHER THE ISSUE OF THE LICENCE WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON THE COMMUNITY

46. 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.
47. 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, which are as follows:

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 – children and young people;</p> <ul style="list-style-type: none"> • 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;

	<ul style="list-style-type: none"> • 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.</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). The Commission will consider information available to it about the</p>

	current alcohol consumption rates for the community area.
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. 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.
49. 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.
50. At the conclusion of the hearing, the Applicant was advised that its application would be approved.

NOTICE OF RIGHTS

51. 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 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
52. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Applicant and Director.



Richard Coates

CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
23 June 2022

On behalf of Commissioners Coates, Dwyer and Hart