

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/085
LICENCE NUMBER:	80100141
LICENSEE:	TAD (NT) Pty Ltd
PREMISES:	The Stuart Hotel Cnr Katherine Terrace and Warburton Street KATHERINE NT 0850
APPLICANT:	TAD (NT) Pty Ltd
NOMINEE:	Mr Athol Schmidt
OBJECTOR/S:	Nil
LEGISLATION:	Section 32A, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Mr Richard Coates (Chairperson) Mr Kenton Winsley (Health Member) Ms Christine Hart (Community Member)
DATE OF HEARING:	12 July 2018
DATE OF DECISION:	12 July 2018

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act* (the Act) the Commission has determined to refuse to vary the conditions of the liquor licence for the premises known as The Stuart Hotel.

Reasons

Background

2. TAD (NT) Pty Ltd (the applicant) is the licensee for the premises known as The Stuart Hotel in Katherine and on 26 May 2018 it lodged an application, pursuant

to section 32A of the Act for a variation of its licence to extend trading hours during the Katherine Show Weekend.

3. Currently the applicant is entitled to trade in the area known as the Last Chance Saloon Bar from 10:00am to midnight, seven days a week.
4. The applicant is seeking to extend the trading hours on Friday, 20 July 2018 and Saturday, 21 July 2018 such that it is permitted to trade until 2:00am (the following day).
5. The applicant estimated that 300 patrons may attend on each of the days in respect of which extended trading hours were sought and relied on the fact that it had been granted a similar extension for the 2017 Katherine Show Weekend.
6. The applicant has sworn an affidavit in accordance with section 26A of the Act, stating that there are no other persons of influence in relation to the conduct of the business.
7. The applicant also submitted a Public Interest Statement and Community Impact Assessment which purported to address the matters the Commission, as decision maker, must consider in accordance with section 6 of the Act.

Consultation

8. The Commission was advised that as the variation sought was for an increase in trading hours over the two specified trading days for two hours the Delegate of the Director-General of Licensing (Director-General) exercised her discretion to not require the applicant to advertise the notice of application.
9. In accordance with section 32A(5) of the Act, the Director General informed the Chief Executive Officer of the Department of Health, the Commissioner of Police and the Chief Executive Officer of the Katherine Council of this application. The application was also forwarded to the Northern Territory Fire and Rescue Service.
10. With respect to this application:
 - a. The Department of Health advised that it had no adverse comment however requested that patron and community safety and amenities be considered when determining this application. It also affirmed the importance of the applicant complying with its responsibility with smoking regulation;
 - b. Neither NT Police nor the Northern Territory Fire and Rescue Service had any objection to the application;
 - c. no comment was received from the Katherine Council.

Public Hearing

11. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under section 32A of the Act to be heard and determined by the Commission.
12. 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 by use of telephone when necessary. 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.
13. The applicant elected to appear by telephone at the public hearing on 12 July 2018 and was represented by Tymara Blenkiron. Mr Philip Timney as representative of the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks all persons for their assistance.

Assessment of the Application

14. Although there were no objections to this application, the Commission is required to apply the public interest and community impact test. 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.
15. As is clear from section 6(1) of the Act, when considering or determining an application under the Act in respect of licensed premises, 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.”

16. 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.”

17. 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”.

18. 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

	<p>might be likely to travel to the locality from a dry community;</p> <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. <hr/> <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; • 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. <hr/> <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</p>

	developed to address these potential issues.
Volume	<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?

19. Section 6A(4) of the Act provides further guidance to decision makers when considering the community benefits associated with an application. It provides:

“For subsection (3)(6)(iii), additional services such as accommodation and dining facilities may be identified as benefits to the local and broader communities, but the mere addition of the proposed liquor outlet is not taken to be a benefit for that provision.

20. Although section 6A(4) of the Act refers to the addition of a liquor outlet, the Commission believes that it should apply the same principle to a proposal by an existing liquor outlet to increase its trading hours.
21. During the course of this hearing, the Chairperson reminded those present that the legal framework in respect of licensing decisions had changed since the applicant obtained an extension of trading hours for the previous Katherine Show Weekend. He referred to the findings of the Alcohol Policies and Legislation Review (the Review) conducted by the former Northern Territory Chief Justice, Trevor Riley. In the Foreword to the Review report it was noted that the social cost of alcohol per adult in the Northern Territory was estimated to be more than four times the national cost estimate. The Chair of the expert review panel stated:

“There can be no doubt the people of the Northern Territory of Australia have a problem with alcohol. While it can be readily accepted that many people in the Northern Territory do not drink alcohol at all and most of those who do drink alcohol do so responsibly the fact remains that we have a strong, entrenched and harmful drinking culture. We have a problem that must be addressed”.¹
22. In support of its application, the applicant sought to address the public interest criteria. It claimed that it would have sufficient security staff to provide a safe environment for patrons, free water would be available and “sober bobs” would be given free soft drinks. Bar snacks, pizza and deep fried food would be available for purchase by patrons throughout the night. There was some confusion over the entertainment that was being proposed. Although there was mention of the national performer Adam Harvey and the promotion of the Dolly’s Dream charity it was clarified during the hearing that those events were to be the subject of a separate application and would not be taking place during the show weekend. The only entertainment that would be provided was the normal local DJ playing amplified music.
23. The applicant submitted a “Community Impact Statement” dated 25 May 2018 in support of its application which was unfortunately misconceived in many respects. For example, in addressing the Community Impact Guideline of “the potential harm or health impact toAboriginal people normally resident within the locality and those that might be likely to travel to the locality from a dry community” the applicant stated: “As the Stuart Hotel is located in the CBD of Katherine we are not in a residential area and the only individuals who “reside” in the area of our venue are itinerant people”. That answer clearly missed the point of the guideline. Panel Members are aware from their own varied experience that many aboriginal do travel from dry communities to Katherine and whilst not all of those people will be drinkers an increase in the availability of alcohol represents a potential health risk to those who are drinkers and a potential risk of harm to themselves and their family members through alcohol fuelled violence.
24. Another of the criteria requires the applicant to address the “social impact on the community”. Possibly supported by crime statistics. The applicant stated “we are unable to comment on crime statistics as we are not made aware of these

¹ Alcohol Policies and Legislation Review. Final Report 2017 Page 1

generally however we can add that The Stuart Hotel Have (sic) been for multiple years “Critical Incident Free”. During the course of the hearing it was confirmed that this was a reference to the fact that there had been no homicides on or near the premises in recent years. Panel Members are aware of deaths having occurred both inside and outside these premises in the past as a result of drunken violence. It must be acknowledged however that these unfortunate events occurred prior to the current licensee operating the premises and that they also have a favourable compliance history with Licensing NT.

25. Although the Commission accepts that there may well be a desire or expectation by some of those people travelling to Katherine for the show weekend that alcohol might be more widely available for their consumption than it is ordinarily, as previously indicated, this does not amount to a recognisable community benefit as far as our deliberations are concerned. There is no special entertainment or other community benefit identified as justifying the increase in trading hours. What is being proposed is merely “business as usual” for an additional two hours on two nights which will be busier than normal in any event.
26. The onus is on the applicant to satisfy us that the approval of the application meets the public interest and community impact test set out in section 6(2) of the Act and on the material before us we are not so satisfied.
27. Accordingly, pursuant to section 32A(7)(b) we have determined to refuse to vary the conditions of the licence.

Notice of Rights:

28. 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 vary the conditions of a liquor licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision.
29. 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.
30. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.



RICHARD COATES
Presiding Member
Chairperson
16 July 2018