

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

LICENCE NUMBER: 81416621

REFERENCE: LC2019/035

LICENSEE: Humpty Doo & Rural Area Golf Club Incorporated

PREMISES: Humpty Doo & Rural Area Golf Club
Section 2464 Pioneer Drive
Humpty Doo NT 0836

NOMINEE/S: Gary Alan Loy

OBJECTOR/S: Nil

LEGISLATION: Section 32A of the *Liquor Act 1978*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 10 April 2019

DATE OF DECISION: 10 April 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978* (the Act) the Commission has determined to temporarily vary the conditions of the liquor licence for the premises known as the Humpty Doo & Rural Area Golf Club by varying the conditions to provide the trading hours for this year's ANZAC Day, being Thursday 25 April 2019, to be between 06:30 hours until 23:59 hours, save and except that no takeaway liquor for consumption on the golf course area may be sold prior to 09:00 hours.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at Wednesday 10 April 2019.

Reasons

Background

3. On 26 March 2019 pursuant to section 32A(1) of the Act, Humpty Doo & Rural Area Golf Club Incorporated (the Applicant) lodged an application with the Director-General of Licensing (Director-General) for the grant of a variation to its existing liquor licence.
4. The variation is sought for ANZAC Day Celebrations
5. The Applicant is applying to commence trading from 0630 hours instead of 1000 hours on Thursday 25 April 2019 to allow the service of the Traditional Gunfire Breakfast. The event has been held over the previous two ANZAC Days.
6. The Applicant advises alcohol beverages will include the traditional rum and milk, mid strength and heavy beverages, wine and spirits with mix for ANZAC Day Celebrations.
7. The Applicant has sworn affidavit in accordance with section 26A of the Act, stating that there are no other persons of influence in relation to the conduct of business or the proposed licence.
8. The Applicant has also submitted a Public Interest Statement and Community Impact Assessment on the 26 March 2019

Publishing of Application and Consultation

9. A delegate of the Director-General determined that this application was not required to be published. This was due to an assessment of the application and deeming there was insufficient public interest in accordance with Section 32A(2) of the Act. This was based on information that the application related to a single morning of liquor trade for the specific purpose of allowing members to commemorate ANZAC Day celebrations with the service of a Traditional Gunfire Breakfast.
10. Stakeholders were invited to provide comment on the application.
 - i. Department of Health
 - ii. Northern Territory Fire and Rescue Service; and
 - iii. Northern Territory Police
 - iv. Litchfield Council.
11. The Department of Health has no adverse comment to an adult only event however, asks the Director-General of Licensing to consider patron and community safety & amenity when determining this application.

12. The Northern Territory Fire and Rescue Service have no objection to the application.
13. Litchfield Council submit they have no formal objection to the application.
14. NT Police supported the application provided no takeaway alcohol was sold to golfers for consumption on the course prior to 9:00am.
15. A check of the records held at Licensing NT indicate that there is no previous adverse history on the applicant or associated persons, particularly in respect of previous ANZC Day events.

Public Hearing

16. Pursuant to section 50 of the Act, the Director-General of Licensing (“the Director-General”) must refer *inter alia* applications under section 32A of the Act to the Commission. Therefore this application must be heard and determined by this Commission.
17. 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. As stated earlier, this application was referred to the Commission on 29 March 2019. The hearing was fixed for 2.00pm on 10 April 2019 and notice was given to the applicant.
18. 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.
19. Mr Gary Loy appeared for the applicant with Ms Tania Chin as representative for the Director-General of Licensing was also present to provide information and assistance to the Commission during the course of the hearing.

Assessment of the Application

20. As earlier noted, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, the Act 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.

21. 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.”

22. 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.”

23. 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".

24. 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. <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;

	<ul style="list-style-type: none"> • 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 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?

	<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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25. 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”.

26. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application to temporarily vary the conditions of an existing licence to enable the provision of liquor to those ex-service men, women and their guests who are attending the traditional gunfire breakfast at the golf course. The same event has been held without adverse incident on two previous occasions and the fact that there were 200 people in attendance at the dawn service las year is indicative of significant community support for the event.

27. In all of the circumstances, including the limited nature of the application, the processes put in place by the applicant to ensure appropriate service and consumption of alcohol at all times and that there is no evidence of any compliance issues, or particular adverse impact upon the community; this Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought. Therefore, for the reasons outlined and having regard to the objects of the Act the Commission has decided to vary the conditions of the licence as outlined at the start of this Decision Notice.

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.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES

Chairperson
Northern Territory Liquor Commission

23 April 2019