

**NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE**

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

REFERENCE: LC2018/041

LICENCE NUMBER: 81401681

LICENSEE: Adelaide River Show Society Inc.

PREMISES: Adelaide River Show Society - Street Pavilion
Old Stuart Highway
ADELAIDE RIVER NT 0846

APPLICANT: Adelaide River Show Society Inc.

NOMINEES: Ian Edward Rixon
Sharon Beswick

LEGISLATION: Section 32A, Part V of the *Liquor Act*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 18 May 2018

DATE OF DECISION: 28 May 2018

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to vary the conditions of the liquor licence for the premises known as the Adelaide River Show Society – Street Pavilion by:
 - a. Extending the trading hours on 2 June 2018 to 10:00 hours to 02:00 hours the following day (“the Race day hours”).
 - b. Suspending conditions 11 and 12 of the licence during the Race day hours.
 - c. During the Race day hours:
 - i. All liquor must be sold in open containers.
 - ii. No more than four (4) drinks may be sold to any one person at any one time.
 - iii. Spirits must not be sold in containers with more than 5% alcohol by volume.

- iv. Wine (including sparkling wine) must not be sold in containers with more than 150 ml.
- v. Between 1000 and 1300 hours on 2 June 2018 the only liquor which may be sold is to be light or mid-strength beer.
- vi. No patrons shall be admitted to the premises after 20:00 on 2 June 2018.
- vii. Last drinks must be called by 00:40 on 3 June 2018.
- viii. Any person involved in Crowd Control, as defined under the Private Security Act, at the premises, must be licensed as required by that Act.
- ix. Crowd Controllers are to be employed as per industry standards as follows: two licensed crowd controllers for the first 100 hundred patrons and one additional crowd controller for each 100 hundred patrons thereafter.
- x. The sale of liquor must be by persons who hold or are supervised by the holder of a Responsible Service of Alcohol certificate, or equivalent qualification approved by the Director-General.
- xi. The licensee must ensure that water, soft drinks, low alcohol beverages and snacks are available during Trading Hours. Commercially bottled water may be sold, otherwise water must be supplied free of charge on request.
- xii. The licensee must not do or permit or suffer any act, matter or thing whatsoever upon the premises or any part thereof, or permit noise at a level, which must or may be to the annoyance, nuisance, grievance or disturbance of the occupiers or owners for the time being of the adjoining properties or the residential neighbourhood.

Reasons

Background

2. The Adelaide River Show Society Inc. (“the licensee”) currently holds a Club Liquor Licence (“the licence”) authorising the sale of liquor for consumption on or at the licensed premises by members and guests, at various times, relevantly including between 16:00 on a Saturday until 02:00 the following day. The dual nominees are Ian Edward Rixon and Sharon Beswick.
3. Under cover of a letter dated 6 April 2018 Ian Sloan (“the applicant”) completed and submitted an “Application for a temporary variation of existing licence conditions” form available from the Northern Territory Government website at <https://nt.gov.au/industry/hospitality/apply-to-change-liquor-licence-conditions> on behalf of the licensee, which had duly authorised him to do so.
4. The applicant, who appeared by telephone at the hearing conducted at Alice Springs by the Commission into this matter, informed the Commission that he had taken this action in accordance with the “Temporary Variations” Special Condition of the existing licence. This condition establishes (or purports to establish) a procedure whereby temporary conditions can be added to the licence by written request to the Director-General of Licensing (“the Director-

General”), who may provide written notice to the licensee of approval of the request.

5. The application was to change the licensee’s hours to commence at 10:00 hours on a single day, the day of the annual Adelaide River Races, Saturday 2 June 2018, and to permit the sale of liquor to the general public on that day. The applicant anticipates that up to 2,000 people will attend the event.
6. A further Special Condition of the existing licence provides that the restriction on sales of liquor to members and guests shall not apply to a club fundraising event, subject to notification of the event to the Director-General, who may notify the licensee that she has withheld her consent to the holding of the event. The applicant informed the Commission that the Adelaide River Race Day event is the licensee’s principal annual fundraising event. The Director-General has not notified the licensee that she has withheld her consent to hold the event.
7. The Director-General treated the application as an application made under s 32A of the *Liquor Act* (“the Act”), which establishes a substantially more complex procedure culminating in the conduct of a public hearing by the Northern Territory Liquor Commission.
8. Accordingly, the applicant was required pursuant to s 32(1A) to prepare and submit an affidavit as mentioned in s 26A of the Act. He did so.
9. Pursuant to s 6A of the Act, a s 32A applicant is required to satisfy the Commission that the approval of the application meets the public interest and community impact test set out in s 6(2), and to that end the applicant prepared and submitted a detailed 12 page statement addressing the relevant elements of the test.
10. The Director-General did not require the applicant to publish notice of the application, as she is empowered to do pursuant to s 32A(2).
11. As required by s 32A of the Act, the Director-General notified the Department of Health, NT Police and the relevant regional council (the Coomalie Community Government Council) of the application. In addition, the Director-General notified the Northern Territory Fire and Rescue Service. These agencies were also each notified of their entitlement to object to the application by way of the procedure set out at s 47F of the Act. No s 47F objections were lodged with the Director-General, and none of these agencies appeared or notified the Commission that they wished to appear at the ensuing Commission hearing.
12. The Department of Health advised they had no adverse comment.
13. The NT Police stated that they “support the application contingent to”:
 - a. Secure storage of alcohol at all times
 - b. Standard for crowd numbers security to ensure no alcohol is entering/exiting the event

- c. RSA for all staff handling alcohol
- d. Maximum 4 drinks per transaction
- e. Staggered decline in drinks per transaction towards the conclusion of the event
- f. Alcohol volume to be one standard drink or less per serve
- g. Low to mid-strength beer no full strength
- h. No glass
- i. No BYO
- j. Commercial bottled water to be readily available or low-cost purchase

14. The Coomalie Community Government Council did not respond.

15. The NT Fire and Rescue Service stated they it had no objection.

16. On 5 May 2017 the licensee had made a similar application for a temporary variation, which had been approved by Mr Mark Wood, a Delegate of the Director-General.

17. On 28 February 2018, the *Liquor Commission Act* and associated amendments to the *Liquor Act* came into force, including the provisions which require applications under s 32A to be determined by the Liquor Commission.

Public Hearing

18. Pursuant to s 50 of the Act, the Director-General must refer applications under s 32A to the Commission. Therefore, this application has been heard and determined by this Commission.

19. In addition to the applicant, Mr Mark Wood, a Delegate of the Director-General, appeared and was heard by the Commission. The Commission is grateful for the assistance provided by both the applicant and the Director-General's Delegate.

Assessment of the Application

20. In considering the application, the Commission has had regard to the objects of the Act (s 3), the application of the public interest and community impact test (s 6), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018 pursuant to s 6A, and the onus on the applicant to satisfy the Commission that the approval of the application meets the public interest and community impact test (s 6B).

21. The Commission particularly notes s 3(1), which provides that:

The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:

- (a) so as to minimise the harm associated with the consumption of liquor; and

- (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.
22. Although there were no objectors to the application, the Commission considered the issues raised by NT Police. Had the NT Police taken the opportunity to lodge an objection and appear at the hearing, the Commission would have been in a better position to assess the weight to be given to the proposals put forward by NT Police. In addition, as the NT Police did not join the proceedings as an objector, this matter has proceeded as an uncontested application, and the Commission should accordingly assign only limited weight to the issues raised by NT Police.
23. The applicant informed the Commission that he agrees with all the proposals of the NT Police referred to at paragraph 13.a)13.b)13.c), (13.d)13.h)13.i)13.j) above. The licence conditions imposed at paragraph 11.c) above are therefore framed accordingly, although the Commission does not consider it necessary to impose an express condition in relation to each and every one of these matters.
24. In response to the proposal at paragraph 13.e) above for a staggered decline in drinks towards the conclusion of the event, the applicant, who the Commission is satisfied is an experienced and competent licensee, submitted that this would be ineffective and potentially problematic, as patrons might respond poorly to a requirement that they switch to a different product towards the end of the event. Instead, the applicant proposed a last drinks policy. In addition, the licensee proposed to apply a lock-out policy from 20:00. The Commission accepts the applicant's submissions in this regard, and the conditions imposed are framed accordingly.
25. In response to the NT Police proposals at paragraphs 13.f) and 13.g) above that alcohol be served in portions of no more than one standard drink and that the sale of full-strength beer be prohibited, the applicant opposes this restriction. No such restrictions were imposed in 2017. The applicant submitted that following the Adelaide River Race meetings in 2016 and 2017 (at which full strength beer had been served), NT Police had taken the initiative to compliment him on the manner in which he had run the event. The Director-General's Delegate informed the Commission that there have been no compliance issues with the licensee.
26. These NT Police proposals appear to be a general response provided by NT Police with respect to applications for special liquor licences for similar events. The Commission has hypothesised recently that this may be a general policy stance taken by police. The NT Police have not explained the rationale for this approach in their response, or provided any evidence to substantiate these restrictions they propose.
27. It is notorious that many Australian racegoers consume wine, including sparkling wine, at race meetings. The NT Police have not expressly opposed the sale of wine at this event. Wine has a higher Alcohol By Volume ("ABV")

than full-strength beer. It would be anomalous to permit the sale and consumption of wine, but not full-strength beer.

28. The NT Police proposal that volume be limited to no more than one standard drink per service, if accepted, would effectively restrict the applicant to the supply of light or mid-strength beer, or 100 ml serves of wine. This is because full strength beer and RTD pre-mixed spirits are usually packaged in containers of 375 ml, with 1.4 standard drinks (or higher, depending on the strength of the RTD product) per serve. It would be impracticable to require full-strength beer to be served only in measures of 280 ml.
29. However, the Commission does not consider that the objects of the Act are well served by permitting the supply of liquor in unlimited quantities. In the Commission's view, an appropriate limit for an event such as this is one and a half standard drinks (15 grams of pure alcohol) per serve. That is approximately the same amount of alcohol as in a can or stubby of full-strength beer, a glass of wine as served in a restaurant (150 ml), or a 375ml can of medium strength mixed spirits. In the course of the hearing, the applicant agreed that these restrictions would be appropriate. The conditions imposed are framed accordingly.
30. The Commission also notes that it has issued special liquor licences for other similar events at various Northern Territory venues, and considers that in the interest of consistency, similar conditions should be imposed on this licensee as have been imposed in those matters, despite the fact that those conditions have been fixed by a procedure that does not entail the conduct of a public hearing of the Commission, and in the course of which the applicant does not bear the onus of proof set out at s 6B of the Act.
31. The only significant distinction between the licensee and the others referred to above appears to be that the licensee is the holder of a Club licence. The Commission considers that it is anomalous and unfair that, having already been granted a Club licence, the licensee has been subjected to a more onerous procedure to gain approval to run its race day than other race day operators who do not otherwise hold a liquor licence.
32. The Commission is concerned that the procedure by which this matter has proceeded has been unnecessarily complex and costly. The Commission recommends that the Director-General give further consideration to:
 - a. Whether it is necessary or appropriate to invoke s 32A for a temporary variation of licence conditions where the licence contains a pre-existing "Temporary Variations" Special Condition.
 - b. Whether a licensee in circumstances similar to this licensee should be permitted or encouraged to lodge an application for a special liquor licence, instead of a variation to the existing licence.
 - c. Whether a licensee in circumstances similar to this licensee should be permitted or encouraged to lodge a s 32A application for a "perennial" variation, the effect of which, if granted, would be to allow "race day" trading once a year for years to come.

Notice of Rights

33. 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 special licence subject to condition pursuant to s 32A of the Act is specified in the Schedule and is a reviewable decision.
34. 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.
35. 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



Russell Goldflam
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
28 May 2018