

Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR TEMPORARY VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/112
LICENCE NUMBER:	81404655
LICENSEE:	Gove Peninsula Surf Life Saving Club Inc
PREMISES:	Gove Peninsula Surf Life Saving Club Inc Lot 1192 Approved Survey Plan No.A708 NHULUNBUY NT 0880
APPLICANT:	Gove Peninsula Surf Life Saving Club Inc
NOMINEE:	Mr Brett Geoffrey Parfitt
OBJECTOR/S:	Nil
LEGISLATION:	Section 32A, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Kenton Winsley (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	7 September 2018
DATE OF DECISION:	7 September 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 vary the conditions of the liquor licence for the premises known as Gove Peninsula Surf Life Saving Club Inc by extending the trading hours of the premises from 1600 hours to 2300 hours on Thursday 4 October 2018.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 7 September 2018.

Reasons

Background

3. Gove Peninsula Surf Life Saving Club Inc (“the applicant”) currently holds a “Club (Incorporated)” Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being “Gove Peninsula Surf Life Saving Club” (“the premises”) by a member of the club or by a visitor in the presence of such a member. The licensee is the applicant and the nominee under the liquor licence is Mr Brett Geoffrey Parfitt.
4. On 18 June 2018 the applicant made application pursuant to section 32A of the Act for a temporary variation to its current licence conditions for a number of dates stating (relevantly) as follows:

“Currently we have no License on these days but have applied for a permanent variation. Requesting temporary variation for these events while permanent application is being processed.”
5. The application then set out three (3) dates sought for the purpose of variation of the licence. On this occasion, the Commission has only been referred the date of Thursday 4 October 2018 for consideration. This date relates to the “NT BMX Championship Official Dinner” proposed to be held on that date. It was this part of the application that was referred to the Commission on 13 August 2018.
6. As noted by the applicant, the current licence held does not include trade on Thursdays. The trading hours for the current licence are as follows:

“Sunday 10:00 and Sunday 20:00

Friday 16:00 and Friday 23:00

Saturday 13:00 and Saturday 20:00”.
7. The Commission has been advised by the Acting Deputy Director-General of Licensing NT (“the Acting Deputy Director-General”) that “(t)he Licensee has held events over the preceding years, whereby there are no compliance issues recorded”. The Commission was further advised that “(t)he licence appears to have first been granted on 10/08/1991” and that “(t)here are no records evident that disciplinary action has been taken against the licensee”.
8. It is therefore the evidence before the Commission that the applicant has a proven and demonstrated capacity to operate the premises appropriately and in accordance with its licence conditions.

Disclosure of influential persons or potential beneficiaries

9. Section 32A(1A) of the Act requires applicants to make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence variation is granted. The applicant has filed such an affidavit.
10. Mr Brett Parfitt (“Mr Parfitt”) is the principal executive officer of the applicant and (as earlier noted) also the nominee. Mr Parfitt filed the affidavit on behalf of the applicant. After some further evidence from Mr Parfitt, it was disclosed that there is no other person who may be able to influence any decision made by the applicant in relation to the sale of liquor or the sale and consumption of liquor and further that there is no other person who by any lease, agreement or arrangement may expect any benefit from the applicant in relation to the sale of liquor or the sale and consumption of liquor”.
11. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General of Licensing NT (“the Director-General”) in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of that investigation by the Director-General.

Advertising and Objections

12. Section 32A(2) of the Act provides that where an application for variation of conditions of licence are made; “(i)f the Director-General considers it to be in the public interest, the Director-General may require the applicant to publish notice of the application in the way, and within the period, specified by the Director-General”.
13. In this application, the Acting Deputy Director-General advised the Commission that she did not require the applicant to advertise the application:

“... given that the application is for a single event being the NT BMX Championship dinner”.
14. It is noted that section 32A(5) of the Act requires that the Director-General must inform:
 - a. the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
 - b. the Commissioner of Police; and
 - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.
15. At the commencement of the hearing there was no evidence before the Commission that the Director-General had in fact notified the CEO of the relevant council. After some further evidence on behalf of the Director-General it was

revealed that notification had been provided and in fact the variation for the event was supported by the council.

16. The Commission notes that the Director-General also forwarded a copy of the application to the Northern Territory Police, Fire and Emergency Services (“NTFRS”) for comment.

17. With respect to this application:

- a. The DOH made “no adverse comment”.
- b. The Commissioner of Police responded stating “that the application is supported contingent to industry standard security arrangements are in place for this function”.
- c. The NTFRS advised it had “no objection”.

18. The Commission requested Licensing NT provide a copy of the response made on behalf of the Commissioner of Police to the applicant. This was done on 6 September 2018, with the applicant responding as follows:

“We strictly adhere to security arrangements for all events at all times.

As this event is catering for only 75 adults we deemed no additional security was needed.

This event is the opening ceremony for the NT BMX Championships.

This is a private function consisting of families. While there will be a reasonable number of children present these have not been included in the figures as they will not be consuming alcohol.

If the Commissioner deems security necessary we will arrange.”

19. With respect to this response; it is important that it be understood by this applicant and all applicants that it is **not** for the Commissioner of Police to determine whether a variation should be granted and, if so, on what terms. The Act provides that the Commissioner of Police is just one of a number of persons/organisations that “must” be informed of any such application. The Commissioner of Police then has the right to consider whether to lodge an objection to the application (or not). However the assessment and ultimate determination of whether the application should be granted and the terms of any conditions to be imposed rests **solely** with the Liquor Commission.

20. The Commission will return to the matters raised on behalf of the Commissioner of Police later in these reasons.

Public Hearing

21. Pursuant to section 50 of the Act, 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.
22. As noted, this application was referred to the Commission on 13 August 2018. 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. Notice was given to the applicant on 13 August 2018 and the application was listed for hearing at 12.00 noon on 7 September 2018.
23. The public hearing commenced shortly after 12.00 noon on 7 September 2018. Mr Parfitt appeared on behalf of the applicant by way of audio link. Ms Anna McGill as representative for the Director-General was present to provide information and assistance to the Commission during the course of the hearing.
24. 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.

Assessment of the Application

25. There were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, 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.
26. 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.”

27. 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.”

28. 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”.

29. 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; • 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? • 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?

	<ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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30. 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). 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”.

31. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. It is therefore noted that some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a variation. It is also significant to recall that this is an application to *temporarily* vary conditions of an existing licence that has been in place since 1991 (i.e. to say for almost three (3) decades) and for which there has been no negative compliance history.

32. In relation to the public interest and community impact test and also the community impact assessment guidelines; the applicant provided written submissions, which the Commission has discerned addresses the following (relevant) matters:

- *(As to the potential harm or health impacts that may be caused to people or any group of people within the local community area):*

“Our club is a place to come and enjoy the view and have a meal in a safe and friendly environment. It is necessary to be either a member of the club, a guest of a member or a bonafide visitor to gain entry. We have a reception that monitors entry whenever open.

We rarely have any local indigenous persons in our club due to the requirement to be a financial member. There are other licensed venues in town that can be accessed without membership.

Our reception staff also ensure that no alcohol leaves the building. Our entry and exit is via the reception with a fenced walkway to the car park.

We do not sell any takeaway alcohol.

Our club serves our local community. We have never had any security issues with guests due to the clientele we attract.

We have no poker machines or pool tables. There has never been any evidence of any antisocial behaviour in our community as a result of our club that has been reported to us. We maintain a close relationship with the local police.

Our volunteers are trained in RSA and this is enforced. The club has 'House Rules' displayed in the clubhouse and there is an expectation that these are followed at all times. Failure to adhere to the rules results in being escorted from the grounds.

We are supplied with a 'Banned Persons Register' from NT Police which is strictly managed.

Our club enforces a 'No Smoking' policy. We have a designated smoking area outside the perimeter of the grounds."

- *(As to information about the location and social impact on the community):*

"The Gove SLSC is located at Town Beach, Nhulunbuy. It is very much a standalone establishment. On three sides of the boundary is nothing but bush and the ocean.

On the other boundary is the car park. The closest building is a large Besser brick storage garage that is 60 metres from the Surf Club building.

The town flats are another 60 metres beyond the garage making the total distance to any residential building 120 metres from the surf club.

The town flats are a Besser block construction with windows that are unable to be opened. They are cooled via chiller water. The front of the town flats faces away from the surf club. The side of the building facing the direction of the surf club has minimal windows. These buildings are extremely sound proof.

We have never received any complaints from any residents of the town flats."

- *(As to any cultural, recreational, employment or tourism benefits for the local community area):*

"The Gove Peninsula Surf Life Saving Club (GPSLSC) was formed in 1974 and since that time has played a pivotal role in our community.

Nhulunbuy in East Arnhem Land is a remote township currently under the control of Rio Tinto. The town was built by Nabalco in 1971. For the past 45 years bauxite has been mined and refined into alumina.

In 2015 Rio Tinto announced the closure of the alumina plant. Over the following 12 months over a thousand families left the area. This had a devastating impact on the township of Nhulunbuy and the local economy.

In response, the NT Government formed a department called 'Developing East Arnhem Land'. The purpose was to encourage private enterprise and tourism to the region to ensure economic growth and long term sustainability.

In 2016 to help stimulate the local economy and to help create a sense of future optimism the Gove Surf Club embarked on a total redevelopment of our clubhouse including a refurbishment of the toilets and new fencing. In all just over 1 million dollars was spent. This large undertaking was completed in May 2018.

Further:

“How will our request impact our township:

The Gove SLSC has held a liquor license since 1991. During that entire time we have never been investigated nor had any compliance issues. We are a family oriented club with our social members predominately surf club families and friends.

Our clubhouse is on the ocean, has a large playground and activities for children.

And further:

“Since the completion of the new clubhouse we have a state of the art asset that can be utilized by our community. The clubhouse has a commercial grade kitchen as well as a very well equipped outside kitchen. We have an area that can be used for training and functions. Already we have had numerous inquiries and bookings for weddings, functions and sports events as well as corporate dinners. The number of bookings absolutely will increase but our current trading hours are restricting this growth.

...

We have held numerous large events in the past and these have all been very successful with no negative impact. We have a number of registered security staff who we utilize when needed for large events.”

33. In addition, in advance of the hearing; concerns were raised with the applicant as to the particulars of submissions made attempting to address the public interest and community impact test. As a result, on 6 September 2018 the applicant provided further submissions addressing these matters and highlighting strategies to attempt to minimise the harm or ill-health caused to people from the consumption of alcohol and the provision of alcohol in a responsible manner. The applicant also addressed the issues concerning public order and safety highlighting its security measures and the management of the premises by all staff.
34. The Commission has carefully considered all submissions made by the applicant addressing the matters required to be addressed under section 6 and 6A of the Act, both written and those made before the Commission during the course of the hearing.

35. In relation to the response from on behalf of the Commissioner of Police; the Commission notes that there has been no objection lodged. There is also evidence before the Commission that the applicant has conducted previous events of a similar nature without issue. The Commission is also not, on this occasion, considering a permanent variation of the conditions of this licence. It is a temporary variation for a single event that appears to be significantly family and sport orientated, being the “opening ceremony for the NT BMX Championships”. As was also highlighted by the applicant during the course of the hearing, this is a “low level risk” event significantly orientated towards family with a focus on sport. This submission was conceded on behalf of the Director-General. The Commission therefore does not consider it necessary to include a specific condition in relation to security levels as suggested on behalf of the Commissioner of Police.
36. The Commission is satisfied that the public interest and community impact test and guidelines, as far as they are relevant with respect to the variation sought, have been satisfied and in all of the circumstances, the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought for the event sought.
37. 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:

38. 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.
39. 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.
40. 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.



JODI TRUMAN
Presiding Member
Deputy Chairperson

10 September 2018