

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR TEMPORARY VARIATION OF THE CONDITIONS OF LICENCE</b>
<b>REFERENCE:</b>	LC2018/140
<b>LICENCE NUMBER:</b>	<b>81413321</b>
<b>LICENSEE:</b>	<b>Humpty Doo &amp; Rural Area Golf Club Inc.</b>
<b>PREMISES:</b>	<b>Humpty Doo &amp; Rural Area Golf Club</b> Section 2464 Pioneer Road HUMPTY DOO NT 0836
<b>APPLICANT:</b>	Humpty Doo & Rural Area Golf Club Inc.
<b>NOMINEE:</b>	Mr Gary Loy
<b>OBJECTOR/S:</b>	Nil
<b>LEGISLATION:</b>	Section 32A, Part IV and V of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Ms Jodi Truman (Deputy Chairperson) Mr Kenton Winsley (Health Member) Ms Christine Hart (Community Member)
<b>DATE OF HEARING:</b>	1 November 2018
<b>DATE OF DECISION:</b>	1 November 2018

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### 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 temporarily vary the conditions of the liquor licence for the premises known as Humpty Doo & Rural Area Golf Club as follows:
  - a. By extending the trading hours of the premises from 0800 hours to 1000 hours on Sunday 4 November 2018 for the event known as the "Annual Mango Madness Ambrose Golf Day Tournament".
  - b. That the number of bonafide members and guests permitted to participate in the tournament shall be limited a maximum of 80 persons.

- c. That during the extended hours:
  - i. liquor may only be available to bonafide members and their guests participating in the tournament.
  - ii. food is to be available to all participants.
  - iii. There shall be a limit of six cans, stubbies or other containers or alcohol per sale.
2. The early trading hours for alcohol are not to be advertised.
3. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 1 November 2018.

## **Reasons**

### **Background**

4. Humpty Doo & Rural Area Golf Club Inc. (“the applicant”) currently holds a “Club (Incorporated) Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises by a member of the club or by a visitor in the presence of such a member and for the removal an consumption away from the licensed premises **only** to financial members of the Club. The licensee is the applicant and the nominee under the liquor licence is Mr Gary Loy.
5. On 5 October 2018 the applicant made application pursuant to section 32A of the Act for a temporary variation to its current licence conditions for a single event known as “Annual Mango Madness Ambrose Golf Day Tournament” on a single date, namely Sunday 4 November 2018, for extension of their current trading hours under their licence of an additional two (2) hours.
6. The application was referred to the Commission on 22 October 2018. The Commission has been advised by the Deputy Director-General of Licensing NT (“the Deputy Director-General”) that “there is no previous adverse history in relation to the applicant or associated persons for this annual event”.
7. The Commission therefore considers that on the evidence before it; the applicant has a proven and demonstrated capacity to operate the premises appropriately and in accordance with its licence conditions and particularly so with respect to this event.

### **Disclosure of influential persons or potential beneficiaries**

8. 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 an affidavit, however as identified during the course of the hearing when the applicant is a body corporate the section requires that the person who makes the affidavit must either be:

- a. The principal executive officer of the body corporate; or
  - b. If that officers does not have knowledge of the relevant facts - another person who has knowledge of the relevant facts and is authorised by the body corporate to make the affidavit.
9. Mr Gary Loy (“Mr Loy”) is the nominee for the licence. He has stated within the affidavit that he is also the “manager of those licensed premises”. He is not the principal executive officer. Mr Loy acknowledged he had not complied with section 26A(2) of the Act. However he brought with him correspondence from the President, namely Mr Tim Buntain, which confirmed that Mr Loy was authorised on behalf of the applicant to swear the affidavit in support of the application. In the affidavit Mr Loy swore that there is no other person (other than himself) 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 (other than himself) 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. Mr Loy confirmed that the only other persons were the members of the board of the applicant; otherwise the content of his affidavit was true and correct.
10. On this occasion and due to the additional correspondence from the President of the applicant, the Commission has determined to accept the information provided by Mr Loy in this regard. As stated during the hearing, it is important that all applicants comply with the terms of the Act. Therefore due consideration must be given to ensuring that any and all affidavits provided in compliance with section 26A and 32A are done so in accordance with the Act.
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, although not having been set out in the referral to the Commission, the Commission sought and obtained written confirmation that the Deputy Director-General had exercised her discretion and did not require the applicant to advertise the application given “it is for a single event that has been held annually without incident”.

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. 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.
16. With respect to this application:
  - a. The DOH had “no adverse comment with an application of this nature that is consistent with the conditions for a special event for golf clubs early start”. The Commission will return to this response later in these reasons.
  - b. On behalf of the Commissioner of Police it was stated that “NTPOL are not objecting to this application, however cannot support the consumption of alcohol before 100 hours”.
  - c. The Litchfield Shire Council advised that it did “not formally object to a one-off variation to the hours of sale of takeaway liquor for consumption on the golf course, from 10am to 8am on Sunday 4 November 2018 only. However Council notes the recent investigations and reports into the consumption of alcohol in the Northern Territory and notes support for limiting the harmful use of alcohol in the community”.
  - d. The NTFRS advised it had “no objection”.
17. Although there have been comments made within the responses from the various stakeholders, it is clear that there are no objections to this application.

## **Public Hearing**

18. 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.
19. As noted, this application was referred to the Commission on 22 October 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.

20. Notice was given to the applicant on 23 October 2018 and the application was listed for hearing at 10.00am on 1 November 2018. The public hearing commenced at that date and time. Mr Loy appeared on behalf of the applicant. Ms Sally Ozolins as representative for the Director-General was present to provide information and assistance to the Commission during the course of the hearing.
21. 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**

22. As noted earlier, 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.
23. 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.”

24. 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.”

25. 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”.

26. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
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	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include – <ul style="list-style-type: none"> <li>• children and young people;</li> </ul>

<p>and accessibility of an additional liquor outlet.</p>	<ul style="list-style-type: none"> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <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</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p>



includes information about the density of licensed premises within the community area.	This could also include traffic and pedestrian impact and any plans 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"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

27. 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 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”.

28. 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 important to recall that this is an application to:
- a. vary conditions of an existing licence;
  - b. for extension of the trading hours under their licence of an additional two (2) hours; and
  - c. with respect to a licence for which there has been no negative compliance history.
29. It is also important to recognise that the applicant has held this licence for approximately 32 years and has in fact been conducting this particular event as part of its program for in excess of 20 years without issue.
30. In relation to the response by DOH where reference is made to “conditions for a special event”; this is in fact a reference to specific provision that has been made for golf clubs to apply for a temporary liquor licence variation for a special event. The provision however requires that the golf club “ensure that:
- the event does not start before 7am
  - food is available to patrons during the variation period
  - takeaway liquor is purchased from the golf club and consumed on the golf course area in closed containers
  - limit of six cans, stubbies or other containers or alcohol per sale
  - staff are trained in the responsible service of alcohol
  - the applicant details the nature of the event and the charity to be supported (if applicable)
  - early trading hours for alcohol are not advertised.”
31. The applicant confirms that it has no issue with these conditions being included in any variation of the conditions of their licence.
32. In relation to the response on behalf of the Commissioner of Police; the applicant provided a written response as follows:
- “The Mango Madness Ambrose has been a part of our Golf program for 20 years or more & is a tool for promoting Golf in the community. Over the years we have had no adverse incidents as HDRAGC staff are aware of their obligations under their Responsible Service of Alcohol requirements. Also some of the participants are shift workers who see 1000 hours as their afternoons.”

33. Whilst the Commission places little weight in the comment regarding participants who are shift workers, the Commission does consider that the lengthy period that this event has been running is highly relevant, particularly given its success.
34. 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 considered. It is clear that during the additional two (2) hours proposed that the applicant will continue to impose the same conditions and restrictions that it has successfully undertaken under its current licence for a number of years.
35. The Commission has carefully considered all submissions made by the applicant. The Commission is satisfied that this is a low risk event and that the public interest and community impact test and guidelines, as far as they are relevant with respect to this variation application, have been satisfied. In all of the circumstances, the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought.
36. 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 on a temporary basis for this event as outlined at the start of this Decision Notice.

### **Notice of Rights:**

37. 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.
38. 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.
39. 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