

# 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>	<b>LC2018/141</b>
<b>LICENCE NUMBER:</b>	<b>80518538</b>
<b>LICENSEE:</b>	<b>Amigos Mexican Cantina Pty Ltd</b>
<b>PREMISES:</b>	<b>Hot Tamale</b> Tenancy F2, Wharf One Retail 7 Kitchener Drive DARWIN NT 0800
<b>APPLICANT:</b>	<b>Amigos Mexican Cantina Pty Ltd</b>
<b>NOMINEE:</b>	Mr David Jared Robinson
<b>OBJECTOR/S:</b>	Nil
<b>LEGISLATION:</b>	Section 32A, Part IV and V of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Mr Richard Coates (Chairperson) Mr Kenton Winsley (Health Member) Mr Lindsay Carmichael (Community Member)
<b>DATE OF HEARING:</b>	5 November 2018
<b>DATE OF DECISION:</b>	5 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 Hot Tamale by suspending the operation of the condition that:

*"All patrons in the Alfresco Area are to be seated and served by wait service and the Alfresco Area patron capacity contained in the licence condition is to equal or not exceed the seating capacity of the area";*

for the trading hours on Friday, 30 November 2018.

## **Reasons**

### **Background**

2. Amigos Mexican Cantina Pty Ltd (“the Applicant”) currently holds a “Restaurant” Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being “Hot Tamale” (“the premises”). The licensee is the applicant and the nominee under the liquor licence is Mr David Jared Robinson.
3. On 2 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 being a private function on a single date, namely Friday, 30 November 2018, to allow patrons to stand whilst they consume liquor and food in the Alfresco Area during the hours 6:00pm to 7:30pm.
4. The application was referred to the Commission on 22 October 2018. The Commission has been advised by the Deputy Director-General (Operations) that there are no adverse compliance issues recorded against this licensee.

### **Advertising and Consultation**

5. Section 32A(2) of the Act provides that where an application for variation of conditions of licence is made; “if 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”.
6. In this application, the Delegate of the Director-General did not require the applicant to publish a notice of the application given its limited nature.
7. It is noted that section 32A(5) of the Act requires that the Director-General must inform:
  - the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
  - the Commissioner of Police; and
  - 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.
8. 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.
9. With respect to this application no adverse comments were received.

## Public Hearing

10. 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.
11. Mr David Robinson appeared on behalf of the Applicant and Ms Sally Ozolins, Deputy-Director General (Operations) appeared to represent the Director-General.
12. The Commission is grateful for the assistance provided by Mr Robinson and Ms Ozolins.
13. 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

14. 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.
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:

- p. 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
- q. 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:

<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>

19. 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”.

20. 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:

- *temporarily* vary conditions of an existing licence;
- for a single private event;
- on a single date, namely Friday 30 November 2018;
- with respect to a licence for which there has been no negative compliance history.

21. Mr Robinson stated that the variation was sought because he was hosting a private corporate event at the restaurant and part of the proposed activities were the provision of nibbles and pre-dinner drinks in the Alfresco Area. The number of people attending the event were half the patrons he would ordinarily expect to attend on a Friday night. Furthermore, security staff would be in attendance.

22. From the information provided by Mr Robinson as well as the material contained in the Application the Commission is satisfied that by allowing the variation there is likely to be less liquor consumed and less impact on neighbouring properties than would occur on a normal trading night.

23. In all the circumstances, the Commission is satisfied after applying the public interest and community impact test and guidelines that it is appropriate to vary the conditions of licence as sought.

24. 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:**

25. 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.

26. 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.



27. 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 stylized, sweeping flourish at the end.

RICHARD COATES  
Presiding Member  
Chairperson

12 November 2018