

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER: APPLICATION FOR A LICENCE

REFERENCE NUMBER: LC2018/134

PREMISES: **Victoria Village**
Lot 1867 Victoria Highway
KATHERINE NT 0850

APPLICANT: DARO (NT) Pty Ltd

NOMINEE: Mr Peter Walkington

OBJECTOR/S: No objections

LEGISLATION: Section 26, Part IV and V of the *Liquor Act*.

HEARD BEFORE: Mr Richard Coates (Chairperson)
Dr Charles Douglas (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 13 November 2018

DATE OF DECISION: 13 November 2018

Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act* ("the Act") the Commission has determined to issue a licence authorising the sale of liquor for consumption on or at the licensed premises to DARO (NT) Pty Ltd in respect of the premises, Victoria Village.
2. In accordance with section 31 of the Act, the licence shall be subject to the specific conditions (in addition to those general conditions of all such licences) that:
 - a. The liquor shall be sold pursuant to an authority as On Licence authorising the sale of liquor for consumption on or at the premises known as Victoria Village.

- b. The trading hours shall be between:
 - i. Monday to Friday 0430 hours to 0700 hours and 1630 hours to 2100 hours;
 - ii. Saturday 0430 hours to 0700 hours and 1530 hours to 2100 hours;
 - iii. Sunday 0430 hours to 0700 hours, 1200 hours to 1300 hours and 1630 hours to 2100 hours;
- c. Liquor may only be sold and supplied to persons who are bona fide lodgers or approved visitors;
- d. Liquor may only be consumed within the canteen, bar and alfresco area and is permitted to be taken back to the accommodation area for consumption in room;
- e. Registered workers will only be able to purchase a six pack or a bottle of wine per day for takeaway back to their room.
- f. The licence shall be subject to and inclusive of such additional conditions as may at any time be:
 - i. Requested in writing by the Licensee;
 - ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and
 - iii. Notified in writing by the Director-General to the Licensee.
- g. Those conditions set out at the conclusion of these reasons in addition to the general conditions included in an On Licence authority.

3. This licence will be issued and commence as and from 16 November 2018.

Reasons

Background

- 4. On 16 April 2018, an application was lodged by Mr Peter Walkington, as Director on behalf of DARO (NT) Pty Ltd (“the Applicant”) seeking a licence for premises located at Lot 1867 Victoria Highway, Katherine19 and known as the Victoria Village (“the premises”).
- 5. The premises accommodate up to 110 workers at any one time and operate as a “wet mess” for crews of the various road and civil engineering firms undertaking construction at a number of locations in and around Katherine. It is a sibling operation to the Bladin Accommodation Village on the outskirts of Darwin.

6. The application is for the grant of liquor licence restricted to bona fide lodgers of the village or their approved visitors. It is not an application for a licence intended to be operated for the general public for casual dining and drinks.
7. On 2 October 2018, pursuant to sections 28(1) and 50(a) of the Act, the Director- General referred this application to the Commission to be determined by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application.
8. The applicant currently holds liquor licences in the Northern Territory in respect of the Darwin Airport Lodge and Bladin Accommodation Village and has operated at the Victoria Village under Special Licences since commencement of operation six (6) months ago.

Disclosure of influential persons or potential beneficiaries

9. The Commission notes that section 26A(1) of the Act now 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 is granted. The applicant has filed such an affidavit noting that only the directors of the company are able to influence the applicant.
10. The applicant is registered with the Australian Securities and Investments Commission ("ASIC"). The Directors are listed as Brian Joseph Kelly, Peter James Walkington, Peter William Walker, Brian Joseph Counihan and John Robinson.
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 in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

12. Details of the application were advertised in the Katherine Times on Wednesday 6 June 2018 and Wednesday 13 June 2018 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 20 July 2018.
13. It may be noted that a review of the application following publication of the notices identified some errors, namely, that in relation to the 6 June 2018 advertisement, the date of the notice was incorrectly referred to as 1 June 2018; in relation to the 13 June 2018 advertisement, the date of the notice was incorrectly dated 20 June 2018; and both notices stated that the objection period was to commence from Wednesday 20 June 2018. However the details of the application contained within the body of both notices was accurate and correct and the details of the application published were clear and specific in relation to the details of the application and of the objection period.

14. The Commission considers that the flaws did not materially affect the purpose of advertising the application and that there is no need for the application to be re-advertised.
15. It is noted that section 27(3) 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.
16. In relation to this application, the Director-General also informed the NT Fire & Rescue service (“NTFRS”) and the Development Consent Authority (“DCA”)
17. The Commission notes that the following responses were received:
 - a. The DOH made “no adverse comment”. However it asked that patron and community safety and amenity be considered when determining the application.
 - b. The NT Police indicated “Nil objections from NTPOL”.
 - c. The Katherine Town Council did not respond.
 - d. The NTFRS initially indicated on 12 June 2018 that there were deficiencies requiring rectification however, on 26 June 2018 further correspondence was received indicating that the deficiencies had been rectified and that there was “no objection to the application”.

Public Hearing

18. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
19. As earlier noted, on 2 October 2018 the Director General referred this application to the Commission. 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. The hearing was fixed for 10.00am on 13 November 2018 and notice sent to the applicant on 16 October 2018 advising of the hearing scheduled to take place.
20. 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.

21. The public hearing commenced at 10.00am on 13 November 2018. Mr Walkington attended in person on behalf of the applicant. Ms Stephanie Monck as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks both Mr Walkington and Ms Monck for their assistance.

Assessment of the Application and Objections

22. The Act now clearly provides that the Director-General 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.

23. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, 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:

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>

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"> • 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? • Will it use existing premises improve or add to existing premises or is it a new premises?

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) 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”.

28. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;

- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;
- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager”.

29. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

- 30. The Commission notes there are no such matters prescribed by the Regulations.
- 31. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.
- 32. The Commission notes that there is no suggestion, nor any evidence to suggest, that the applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee.
- 33. The Commission further notes that there is nothing to suggest that the premises are unsuitable.
- 34. The Commission notes there are no issues of concern in relation to the business reputation and financial stability of the applicant and the general reputation and character of the officers of the applicant. In fact there is evidence as to their good character before the Commission.

35. In relation to both the Community Impact and Public Interest tests the applicant stressed that there were no schools, hospitals or institutions that catered for vulnerable people in the nearby vicinity. Alcohol would only be provided to registered guests of the accommodation facility by staff who were qualified in the responsible service of alcohol. Responsible drinking was foremost in the minds of both management and guests because workers were regularly breath tested by their employers prior to the commencement of their shifts. An intoxicated worker faced dismissal and this would also reflect poorly on the management of the accommodation facility which could lose future business as a result.
36. During the course of the hearing Mr Walkington was asked questions by the Commission as to why workers were not able to purchase their own liquor from takeaway outlets in town for consumption in their rooms. We were concerned that they may have been paying more than was reasonable. However on being advised that the cost of a six pack of beer at the lodge was between \$15 and \$20 and a bottle of wine \$25, we were satisfied that the guests were not being exploited and that the reason for the ban on external take away was to keep a control over the amount of liquor consumed by guests.
37. Having taken into account the evidence provided by Mr Walkington during the course of the hearing and the various submissions made, the Commission is satisfied that the public interest and community impact tests have been properly addressed.
38. Having considered all of the evidence presented, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the licence sought. It is apparent that the applicant has in place appropriate measures to ensure liquor is sold in a responsible manner and there is no evidence to support any suggestion that there is likely to be an impact upon law and order, community safety or public amenity by virtue of this application.
39. The Commission does not consider there is any evidence to suggest any negative impact upon the Katherine community area such as to warrant refusal of the licence. The Commission is confident that in granting this additional liquor licence it will not exacerbate the level of unacceptable alcohol misuse in Katherine. It will however improve the amenity of a much needed new accommodation facility in the region.
40. It is clear to this Commission having heard the evidence that any risk associated with these premises is at the lower end of the scale in terms of risk of alcohol related anti-social behaviour.
41. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the approval of the application for an On Licence authority meets the public interest and community impact tests. As outlined at the start of this Decision Notice, the licence will include the general conditions of an "On Licence".

Notice of Rights:

42. 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 licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
43. 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.
44. 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.



RICHARD COATES
Presiding Member
Chairperson

16 November 2018