

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

REFERENCE: LC2019/115

LICENCE NUMBER: 80818127

LICENSEE: The NT Rock Bar Pty Ltd

PREMISES: The NT Rock Bar
Shop 2, 78 Todd Street
ALICE SPRINGS NT 0870

NOMINEE: Mrs Fiona Darling

OBJECTOR/S: Nil

LEGISLATION: Section 32A, section 119(2), Part IV and V of the *Liquor Act 1978*.

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Pauline Reynolds (Health Member) (via tele-conference)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 20 September 2019

DATE OF DECISION: 20 September 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978* ("the Act") the Commission has determined to temporarily vary the conditions of the liquor licence of The NT Rock Bar Pty Ltd ("the Licensee") for the premises known as The NT Rock Bar Pty Ltd by extending its trading hours on Saturday 12 October 2019 from 11.30 am until 3.00 am the following day, provided that there is a lockout at 2:00 am, no jugs, pints, shots or cocktails will be sold after 1.00 am and there will be a limit of no more than two drinks served to a customer after 1.30 am and that at least 5 crowd controllers will be on duty. All musical entertainment to cease at 1.00 am. All other conditions of the existing licence continue to apply.

2. In accordance with section 32A(9) of the Act the variation of the condition of licence is to take effect as at Friday, 20 September 2019.

Reasons

Background

3. On 9 September 2019, pursuant to section 32A of the Act, Robert Cowan, Director, of The NT Rock Bar Pty Ltd, lodged an incomplete application to the Director-General of Licensing, for the grant of a variation to their existing liquor licence for The NT Rock Bar. The remaining supporting documents were received on 11 September 2019.

The Licensee is seeking a variation for an additional one (1) hour of trading on:

- Saturday 12 October 2019

Currently the licence trading hours on a Saturday commences at 11:30am and finishes at 02:00am. The applicant is seeking to extend the trading under their liquor licence on 12 October 2019 from 02:00am to 3.00am (one additional hour.) The applicant has advised that they will employ extra security guards. There will be a lock-out from 2am, no jugs, pints, shots, and cocktails will be sold after 1am and limit the service of drinks to two (2) drinks per person from 1.30am.

4. The temporary variation is sought for The NT Rock Bar's 10 Birthday, which will host interstate DJ's and a local band, with free entry into the event. It is estimated between 230 and 240 patrons may attend.

Consultation

5. As the application is for a limited period of time and given the nature of the matter, the Director-General has not required this application to be of a nature to require the Applicant to publish notice of the application in pursuance of section 32A(2) of the Act.
6. Comments were sought from:
 - i. Department of Health;
 - ii. Northern Territory Police;
 - iii. Alice Springs Town Council.
7. The Department of Health advise that they have "*no adverse comment*" to the application on the understanding the applicant is aware of their responsibility with regard to smoking compliance at the venue.
8. On 12 September 2019, an email response was received from the NT Police, supporting the application.
9. 11. Alice Springs Town Council - no comment received.

10. The Applicant provided the required section 26A affidavit sworn by its direction Robert Cowan together with a community impact assessment and public interest statement.

Public Hearing

11. Pursuant to section 50 of the Act, the Director-General of Licensing (“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.
12. The public hearing commenced at 10.03 am on 20 September 2019. Ms Darling appeared by telephone from Alice Springs and Mr Jeff Verinder appeared on behalf of the Director-General of Licensing. The Commission thanks them for their assistance.

Assessment of the Application

13. As noted earlier, there were no objections to this application. Despite there being no objections made to the application lodged by the Licensee, section 6B of the Act makes clear that it is the Licensee who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
14. 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.”

15. 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.”

16. 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”.

17. Those matters are identified as follows:

| Criteria | Matters to be considered |
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| <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. |

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| | <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> |

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| <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? • Will it use existing premises improve or add to existing premises or is it a new premises? |

18. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Licensee 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”.

19. With respect to this application, it is relevant to note that it is not an application for a new licence. It is an application for a temporary extension of trading for one hour only. Although the Community Impact assessment provided scant justification for the variation, having now heard from Ms Darling we are satisfied that the patrons will be provided with a popular DJ performance at no cost as part of the Licensee’s 10th Birthday Celebrations. Free snack foods will also be served during the evening. Ms Darling also assured the Commission that the musical entertainment will cease at 1.00 am.

20. On the evidence before us the Commission is satisfied that the application is in the public interest and accordingly has temporarily varied the terms of the licence in the terms set out in paragraph 1.

Notice of Rights:

21. 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.
22. 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.
23. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the Licensee.



RICHARD COATES
Presiding Member
Chairperson
23 September 2019