

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: **APPLICATION FOR PERMANENT VARIATION OF THE
CONDITIONS OF LICENCE
APPLICATION TO MAKE A MATERIAL ALTERATION**

REFERENCE NUMBER: LC2019/073

LICENCE NUMBER: 81401681

LICENSEE: **Adelaide River Show Society Incorporated**

PREMISES: **Adelaide River Show Society – Street Pavilion**
Old Stuart Highway
ADELAIDE RIVER NT 0846

APPLICANT: **Adelaide River Show Society Incorporated**

NOMINEE/S: Mr Ian Rixon

OBJECTOR/S: Nil

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

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Ms Elizabeth Stephenson (Health Member)
Mrs Amy Corcoran (Community Member)

DATE OF HEARING: 16 October 2019

DATE OF DECISION: 16 October 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978* the Commission has determined to vary the conditions of the liquor licence for the premises known as the Adelaide River Show Society – Street Pavilion to provide as follows:

- That the trading hours be varied as follows:
 - i. On Australia Day, being 26 January, each and every year be between 10:00 hours and 23:00 hours;
 - ii. On ANZAC Day, being 25 April, each and every year be between 07:00 hours and 23:00 hours;

- iii. On the date that the Adelaide River Race Day is held each and every year be between 10:00 hours and 02:00 hours the next day being Sunday;
 - iv. On the weekend that the Adelaide River Show is held each and every year:
 - 1. On the Friday be between 10:00 hours and 23:00 hours;
 - 2. On the Saturday be between 10:00 hours and 02:00 hours the next day being Sunday;
 - 3. On the Sunday be between 10:00 hours and 02:00 hours the next day being Monday.
 - That during the trading hours of each of the above dates and periods conditions 11, 12, 13 and 15 shall be suspended.
 - That during the trading hours of each of the above dates and periods:
 - i. All liquor must be sold in open containers;
 - ii. No more than four (4) cans or bottles, or two (2) 750 mL bottles of wine (including sparkling wine), must be sold to any one person at any one time;
 - iii. Spirits must not be sold in containers with more than 5% alcohol by volume.
 - iv. Crowd controllers are to be employed as per industry standards, namely two (2) licensed crowd controllers for the first one hundred (100) patrons and one (1) additional crowd controller for each one hundred (100) patrons thereafter.
 - v. Any person involved in Crowd Control, as defined under the *Private Security Act 1995*, at the Premises must be licensed as required by that Act.
2. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act 1978* the Commission has determined to approve the material alteration to the licensee's licensed premises allowing the licensed premises to be the area marked in red and attached to this Decision Notice solely during the trading hours of the weekend of the Adelaide River Show.
3. This decision is to take effect as at the date of the provision of this Decision Notice to the applicant.

Reasons

Background

4. Adelaide River Show Society Incorporated (“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.
 - for removal and consumption away from the licensed premises **only** to financial members of the Club.
5. The licensee is the applicant and the nominee under the liquor licence is Mr Ian Rixon. On 7 February 2019 the applicant lodged an incomplete application to the Director-General of Licensing (“the Director-General”) for the grant of a variation to their liquor licence. The remaining supporting documents were then received on 25 February 2019.
6. The application is to permanently vary the current trading hours of the liquor licence to allow the following days and events to be included in the licence:
 - Adelaide River Races 10:00 am – 02:00 am the following day, on the day that the fixture is allocated by Thoroughbred Racing Northern Territory (“TRNT”);
 - ANZAC Day 07:00 am – 23:00 pm;
 - Australia Day 10:00 am – 02:00 am; and
 - Adelaide River Show 10:00 am – 02:00 am the following day, on Friday, Saturday and Sunday after the Adelaide River Races.
7. In addition it is sought that the general public be able to enter the above events without the requirement of being a member or signing in as a visitor or member. In previous years the applicant has submitted separate applications for a variation for all of the above events. It was noted on behalf of the Director-General that including these variations for these specific dates as part of the liquor licence would therefore reduce the amount of individual applications submitted to the Director-General each year and provide confidence to the applicant that the proposed events could be undertaken and planned for well in advance.
8. The applicant’s current liquor licence enables the applicant to trade seven (7) days per week except Good Friday and Christmas Day. There is however no provision for trading prior to 15:00 hours on any day.
9. The Director-General referred the application with respect to all dates to the Commission on 29 May 2019. Following that referral the application was initially listed for hearing on 17 June 2019. However on 13 June 2019 the applicant wrote to the Commission advising they were not able to attend and seeking an adjournment of the matter.
10. That request was acceded to. The matter was then referred once again to the Commission on 14 August 2019, at which time it was listed for a hearing on 11

September 2019. On 10 September 2019 the applicant wrote to the Commission again seeking an adjournment of the hearing. That application was granted and the matter was re-listed for hearing on 16 October 2019.

11. In relation to the dates and events with respect to which this permanent variation is sought, the Commission was informed that the applicant has provided for similar events (except for Australia Day) for “the last 20 years at least”. With respect to the applicant, the Commission was informed by the Director-General that “a check of the records held at Licensing NT indicates that there are no adverse compliance issues against this licensee”.
12. It further appears on the evidence provided to the Commission that the applicant has worked hard with Licensing NT officers and also NT Police in relation to past events and has a proven and demonstrated capacity to be able to operate this venue and comply with the conditions of its licence effectively.
13. In relation to this application it is important to note that since lodgement the 1978 Act has in fact been repealed and replaced by the *Liquor Act 2019* (“the 2019 Act”). The 2019 Act also introduced its own regulations being the *Liquor Regulations 2019* (“the Regulations”). The Regulations provide for transitional matters under Part 8.
14. Relevant to this application is regulation 131 that provides as follows:

“An application for the variation of a condition of a licence, made under section 32A of the *Liquor Act 1978*, that was not determined under that Act before the commencement is to proceed and be determined under that Act unless the applicant gives the Director written notice that the applicant wishes to proceed and have the application determined under section 113 of the *Liquor Act 2019*.”

15. Also relevant to this application is regulation 132 that provides as follows:
16. In this regard, there has been no written notice that the applicant wishes to proceed under the 2019 Act and therefore this application has proceeded and been determined under the *Liquor Act 1978*.

Disclosure of influential persons or potential beneficiaries

17. The Commission notes that 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 is granted. The applicant has filed such an affidavit via the Vice Chairperson, namely Mrs Jackie Rixon.
18. Mrs Rixon via her affidavit has declared that there are:

“...no other persons other than the committee of the Adelaide River Show Society who will by any lease, agreement or arrangement be able to influence any decision

made by me, or any other party named in this affidavit in relation to the sale of liquor or the sale and consumption of liquor under this licence".

And further that there:

"...is no other persons other than the committee of the Adelaide River Show Society who will by any lease, agreement or arrangement may expect any benefit from me in relation to the sale of liquor or the sale and consumption of liquor under this license".

19. With the greatest of respect to this applicant, this lack of understanding and lack of compliance is unfortunately not unusual and has been the source of concern by the Commission in relation to a number of applications for some time now. This concern has been recorded in previous decisions and also brought to the attention of the Director-General and the Minister.
20. Be that as it may, a number of further questions were asked of Mrs Rixon who was present at the hearing in relation to the committee of the Adelaide River Show Society and the Commission was ultimately satisfied that there were no individuals or organisations that were likely to exert any sinister influence over the applicant's operation of the premises.
21. It is also worth noting that 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

22. Details of the application were advertised in the Northern Territory News on 30 March and 3 April 2019 as well as having signage displayed at the premises for a period of 30 days. No objections were received from the public in the objection period.
23. 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.
24. 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.
25. With respect to this application:
 - The DOH made no adverse comment.
 - The NT Police advised it had no objections.

- The Coomalie Community Government Council advised:

“... if NT Police concur with this, Council would have no reasons to lodge any comment or objection.”
- NTFRS advised they had no objection.

Public Hearing

26. Pursuant to section 50 of the 1978 Act, the Director-General is required to refer these types of applications to the Commission. Pursuant to section 53 of the 1978 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. As stated earlier, this application was referred a number of times to the Commission with a number of hearing dates given and the application finally proceeding on 16 October 2019.
27. Pursuant to section 53 of the 1978 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.
28. Mr Ian Sloan and Mr Ian and Mrs Jackie Rixon appeared on behalf of the applicant. Mr Jeff Verinder as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing.

Assessment of the Application

29. As earlier noted, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, the Act clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, section 6B of the 1978 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.
30. As is clear from section 6(1) of the 1978 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 1978 Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;

- 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;
- the safety, health and welfare of persons who use licensed premises must not be put at risk;
- noise emanations from licensed premises must not be excessive;
- 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;
- 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 2008; and
 - ii. provisions of or under the Planning Act 1999;
- 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;
- the use of credit in the sale of liquor must be controlled;
- practices which encourage irresponsible drinking must be prohibited;
- 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;
- 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;
- 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;

- it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

31. In addition, pursuant to section 6(3), the Commission must:

- 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
- apply the community impact assessment guidelines.”

32. In addition, pursuant to section 6A of the 1978 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. These were published on 6 March 2018 and 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”.

33. Those matters are identified as follows:

Criteria	Matters to be considered
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	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –

accessibility of an additional liquor outlet.	<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.
	<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>
Information about the location and area in which the premises is proposed to be so as to assess any social impact on the	This may include crimes statistics, social profile information and the location of existing licensed premises.

community. This 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"> • 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 not 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?

34. 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 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”.

35. With respect to this application, it relevant to note that this is not an application for a new licence. This is an application to vary conditions of an existing licence that already enables the premises to be open for trade, but to enable the applicant to be able to sell liquor for additional periods on specific dates to provide for specific events.
36. It is also relevant that the variations sought are in the main (save for Australia Day) to enable the applicant to trade for the purpose of specific events that it has been involved in for approximately 20 years and about which there have been no formal compliance issues raised.
37. The variations sought are also to enable the premises to trade during hours it would not normally be permitted, but on days where it may be potentially trading, but later in the day. For example, ANZAC Day falls on 25 April 2019. The “day” that it falls on can therefore change each year with the applicant not being permitted to trade any earlier than 15:00 hours depending on the day it falls. The applicant however seeks to trade on ANZAC Day from 07:00 hours to its usual hours of trade. The Commission notes that the applicant has previously sought this variation so as to provide for its:

“Traditional ANZAC Breakfast after the Adelaide River Dawn Service, live music in the afternoon as well as 2 up (with profits returned to the RSL)”.

38. The applicant confirmed that this is the same purpose for which it seeks this permanent variation.
39. Likewise, Adelaide River Race Day falls generally sometime in May or June each year. The applicant is not able to be any more precise than that as it is Thoroughbred Racing Northern Territory (“TRNT”) that sets the date each year. The Commission notes that in 2019 it was in June, whereas it appears from the current calendar issued by TRNT that the day will be in May in 2020.
40. It is acknowledged however that the Adelaide River Race Day falls on a Saturday. In accordance with the current conditions of the licence, the applicant can therefore commence trade from 16:00 hours on a Saturday. The applicant however seeks to trade on Adelaide River Race Day from 10:00 hours to its usual hours of trade. The Commission notes that the applicant has previously sought this variation so as to provide for:

“Racing, fashions on the field, live music and DJ. There are 5/6 food vans selling a variety of styles of food on site until he evening to cater for the crowd. The club’s biggest fundraiser for the year and an iconic Territory event”.

41. The applicant confirmed that this is the same purpose for which it seeks this permanent variation.
42. In terms of the Adelaide River Show Day weekend, the application is centred on being able to provide for persons who attend the camp draft, polocrosse, show and rodeo events being conducted across the weekend. The weekend is popular with locals and tourists alike and attracts visitors from all over Australia and the Northern Territory. It is clear that this event is one that is well known and has been conducted for many years successfully. These premises are a significant part of that event and a significant contributor to the events success.

43. It is this event for which the applicant is also seeking to change the licensed area. This is so as to enable persons to consume alcohol in areas where the event will be centred around which significantly includes the rodeo arena. It is not proposed that the licensed area be extended for any other event, only the Adelaide River Show Day weekend. This is again consistent with earlier applications.
44. The Commission also notes that there will be security present in the area to ensure no alcohol goes outside the increased licensed area and that the applicant has worked closely with NT Police in terms of its arrangements for the Adelaide River Show Day weekend, just as it has for previous years.
45. The applicant has confirmed that it intends to operate the premises in the same manner that it has, and for the same purpose that it has, for the Show Day weekend that has occurred in the last three (3) years and for which it has received temporary variations. The applicant simply wishes to now make this permanent.
46. In relation to Australia Day, the applicant informed the Commission that it had not previously sought a variation for this date, but it was doing so on this occasion as the intent was to make the premises a location where families in the area could come and celebrate Australia Day as a community. The applicant advised it proposed to have pie eating competitions and thong throwing competitions and to make the event one where the community could come together with their family and mix with one another to celebrate the day.
47. Given the applicant highlighted it wished for the day to be about family and community, the Commission inquired as to why it was necessary to have the licence varied until 2.00am the following day. The applicant agreed that it was not necessary and sensibly amended its application seeking that the hours be only to 23:00 hours on Australia Day.
48. In relation to ***all*** the proposed events; the Commission notes that the applicant provided submissions in relation to the community impact assessment and identified that in relation to the event it will have in place a number of procedures to “minimise harm”. These include (but are not limited to):
- “Lock outs are to be implemented;
 - No higher ABV RTD’s will be available;
 - Mid strength and light drink options will be available;
 - There will be no discounted drinks/happy hour during the events;
 - A sober bob register will be available. Persons on the sober bob register may re-enter the premises after the lock out is enforced to collect the patrons they are driving.
 - First Aid certificate holders will be employed in bar areas and by crowd controllers.
 - A Self-Exclusion register will be available for those who do not wish to be served alcohol.

- Staff will be briefed about potential patronage from dry communities and how to manage if necessary.
 - Operators will liaise with the local health clinic to ensure they are aware of times and estimated numbers for events.
49. The Commission has carefully considered all of the material provided on behalf of the applicant and notes the level of seriousness that the applicant has given with respect to this application and the matters that must be addressed under the test and guidelines. The Commission also notes the number of years that the applicant has successfully undertaken all of these events and the continued communication undertaken with the local police and health clinic. The Commission is satisfied the applicant has properly addressed the test and guidelines.
50. In all of the circumstances, including the processes put in place by the applicant to ensure appropriate service and consumption of alcohol at all times, and the evidence that there have been no compliance issues in the past or particular adverse impact upon the community; the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought.
51. 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:

52. 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.
53. 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.
54. 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
24 October 2019