

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR TEMPORARY VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/152
LICENCE NUMBER:	80318470/FLL
LICENSEE:	Craft Beer Australia Pty Ltd
PREMISES:	The Precinct Tavern Ground Floor Medina Vibe Hotel Complex Kitchener Drive DARWIN NT 0800
APPLICANT:	Craft Beer Australia Pty Ltd
NOMINEE:	Mr Darren Lynch
OBJECTOR/S:	Nil
LEGISLATION:	Section 32A, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Mr Richard Coates (Chairperson) Dr Charles Douglas (Health Member) Ms Sandra Cannon (Community Member)
DATE OF HEARING:	5 December 2018
DATE OF DECISION:	5 December 2018

Decision

1. For the reasons outlined in this decision, the application for a variation of licence conditions is refused.

Reasons

Background

2. On 26 October 2018, pursuant to section 32A of the *Liquor Act* ("the Act"), The Precinct Tavern lodged an application with the Director-General of Licensing ("Director-General") for the grant of a variation to its existing liquor licence.

3. The application sought extended trading hours of 02:00 hours to 03:00 hours every Friday and Saturday night beginning Saturday 1 December 2018 and inclusive of 1, 7, 8, 14, 15, 21, 22, 28 and 29 December 2018.
4. Currently the licence trading hours on a Friday and Saturday commence at 10:00 hours and finish at 02:00 hours the following day. The applicant is seeking to extend the trading under its liquor licence from 02:00 to 03:00 hours on every Friday and Saturday in December 2018.
5. The temporary variation is sought for December festivities, including group bookings and Christmas functions.
6. The applicant has advised that it will have additional security to meet the extended hours and demand.
7. A similar application was made for the premises in 2017 and approved. The licensee has since added the alfresco deck area which was not included in the 2017 matter, however is included in the present application.

Disclosure of influential persons or potential beneficiaries

8. 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 there are no other person/s who will by any lease, agreement or arrangement be able to influence any decision made by the applicant in relation to the sale of liquor or the sale and consumption of liquor.
9. If the applicant is a body corporate, the affidavit must be made by either:
 - a. The principal executive officer of the body corporate; or
 - b. If that officer 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.
10. Mr Darren Lynch, Principal Executive Officer of Craft Beer Australia Pty Ltd made the affidavit on 2 November 2018.
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; “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”.
13. As the application is for a limited period of time and given the nature of the matter, a determination was made that the application was not such that advertising was required as contemplated in section 32A(2) of the Act.
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. Further the Commission notes that the Director-General also informed the NT Fire & Rescue service (“NTFRS”).
16. With respect to this application:
 - a. The DOH advised it has “no adverse comment” in relation to the application. However, the department stated that it was not able to support extended trading hours for Friday and Saturday nights to 03:00 hours noting that it supports the recommendations of the Alcohol Review to standardise hours of trade and prohibiting sales of beverages of high alcohol content >5%.
 - b. On behalf of the Commissioner of Police it was stated that there were “no objections from NTPOL”;
 - c. The NTFRS advised it had “no objection” in response to the application lodged.
17. There are therefore no objections to this application.
18. Records held by Licensing NT do not indicate any adverse compliance issues in relation to the liquor licence.

Public Hearing

19. A public hearing was held on 5 December 2018 and Mr Darren Lynch, Nominee, appeared on behalf of the applicant and Ms Stephane Monck appeared to represent the Director-General. The Commission thanks them for their attendance and assistance.

Assessment of the Application

20. 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.”

21. 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.”

22. 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”.

23. 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?

24. 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”.

25. During the course of the hearing Mr Lynch was reminded that since being granted an extension of trading hours for the 2017 festive season the *Liquor Act* had been amended such that an applicant clearly bears the onus of establishing that any variation of licence conditions is in the community interest. He was also reminded of the following comments in the decision of the Delegate of the Director-General, Mark Wood, when he was granted an extension of trading hours on 30 November 2017:

- “Ongoing and repetitive variations are more appropriately dealt with by an application for a permanent variation to the liquor licence. Given what is sought is repetitive and no doubt will be sought again in 2018, the licensee is to seek a permanent change to their licence to reflect what they intend as their real hours of trade;
- The temporary variation sought is not for a specific event and there is no altruism attached to the variation; it is a commercial decision which the

licensee is quite entitled to make designed to increase revenue at the premises;

- Accordingly, I will not be issuing further approvals for temporary variations of this nature to the licensee for 2018, they should seek a permanent variation to their liquor licence if they wish to continue this Christmas and New Year's Eve extension of hours in 2018 and into the future;
- A permanent variation would allow for public ventilation of the application and issues around it, and afford parties the right to object which is denied by a temporary variation”.

26. Apart from vague claims that there were a number of Christmas functions booked at the Precinct and extended trading until 03:00 hours would take pressure off the city venues there was no real justification for the extensions sought. The Applicant submitted a community impact analysis which had been prepared in 2016 to support an application for a gaming machine licence together with what appears to be a “cut and paste” of the Commission’s decision in March this year granting the Applicant an extension of its licensed footprint to include the outside deck area.
27. On the material provided by the Applicant the Commission is not satisfied that the Applicant’s extension of trading hours sought meets the community impact and public interest tests. Accordingly, the application is refused.

Notice of Rights:

28. 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.
29. 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.
30. 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

14 December 2018