

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

LICENCE NUMBER: 80300296

REFERENCE: LC2019/029

LICENSEE: **Marlin Darwin Pty Ltd**

PREMISES: The Hotel Darwin
Cnr of Mitchell & Herbert Street
DARWIN NT 0800

APPLICANT: Marlin Darwin Pty Ltd

NOMINEE/S: Mr Brett Lubicz-Zaorski

OBJECTOR/S: Nil

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

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 3 April 2019

DATE OF DECISION: 3 April 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to temporarily vary the conditions of the liquor licence for the premises known as The Hotel Darwin by :
 - a. Varying condition (3) under “Special Conditions” to read as follows:
 - “(3) The premises shall trade on ANZAC Day from 05:00am for breakfast associated services. Liquor sales are not authorised prior to the usual opening time of trade of 10:00am, however:
 - (a) On ANZAC Day in 2019 the premises shall trade as follows:

- i From 05:00am for Gunfire Breakfast associated services including the provision of rum and milk to RSL members and veterans.
- ii From 07:00am until 08:29am liquor sales are permitted for on premises consumption only.
- iii From 08:30am until 09:59am the premises shall be permitted to continue to trade however liquor sales are not authorised prior to the usual opening time of trade of 10:00am.

(b) On ANZAC Day in 2020 should the premises provide to the Director General or its delegate a written request from “Darwin RSL” and from “Returned & Services League of Australia (South Australian Branch) Darwin Sub-Branch Inc.” to host the ANZAC Day events; the premises shall trade as follows:

- i From 05:00am for Gunfire Breakfast associated services including the provision of rum and milk to RSL members and veterans.
- ii From 07:00am until 08:29am liquor sales are permitted for on premises consumption only.
- iii From 08:30am until 09:59am the premises shall be permitted to continue to trade however liquor sales are not authorised prior to the usual opening time of trade of 10:00am.”

2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at Friday 5 April 2019.

Reasons

Background

- 3. Marlin Darwin Pty Ltd (“the applicant”) currently holds a Tavern Liquor Licence authorising the sale of liquor for consumption on, at or away from the licensed premises being The Hotel Darwin. The licensee is the applicant and the nominee under the liquor licence is Mr Brett Lubicz-Zaorski.
- 4. On 7 March 2019 the applicant made application pursuant to section 32A of the Act for a variation to their licence conditions with respect to ANZAC Day. It is apparent there were some issues with respect to the application; however it was eventually accepted as complete on 18 March 2019 by the Director-General of Licensing (“the Director-General”) and referred to this Commission on 21 March 2019.

5. The applicant's current liquor licence prohibits trading on ANZAC Day before 10.00am. The applicant seeks to trade on ANZAC for 2019 and 2020 only between 5.00am to 10.00am on the basis that they have been approached by the Darwin RSL to provide the services that the RSL would normally provide but are unable to do so in 2019 due to their premises having burnt down in 2018 and still being in the process of being re-built.
6. The application sets out that the Applicant is seeking to serve the traditional rum with milk between 5am – 7am to RSL members and veterans for the "Gunfire Breakfast". Thereafter to serve liquor to RSL members, veterans and the public from 7.00am to 10.00am with the liquor service to be paused between 8.30am and 10.00am to respect the ANZAC Day march. Thereafter the applicant would continue to operate in accordance with its current licence conditions.
7. With respect to this applicant, the Commission was informed by the Director-General that a check of the records held at Licensing NT indicated there was no previous adverse history in relation to compliance issues.
8. As noted by the Commission in a decision in 2018, the applicant has been operating in Darwin since 2015 and it appears on the evidence provided that the applicant has a proven and demonstrated capacity to be able to operate this venue and to comply with the conditions of its licence.

Disclosure of influential persons or potential beneficiaries

9. 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 its nominee (and manager of the premises); Mr Brett Lubicz-Zaorski.
10. 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

11. The Commission was advised that the Director-General had exercised her discretion under section 32A(2) and not required the applicant to publish a notice of the application due to an assessment of the application and deeming there was insufficient public interest. This was said to be based on information that the application related to a single morning of liquor trade and of the licensee wishing to assist the Darwin RSL on what is arguably the most important day of the year for their members.
12. 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.

13. That occurred with respect to this application. With respect to this application:

- a. The DOH made no adverse comment.
- b. The NT Police stated it did not have any objections.
- c. The City of Darwin did not reply.

Public Hearing

14. 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.

15. 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. As stated earlier, this application was referred to the Commission on 21 March 2019. The hearing was fixed for 10.00am on 3 April 2019 and notice was given to the applicant.

16. 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.

17. Mr Brett Lubicz-Zaorski and Mr Trevor Candido appeared on behalf of the applicant. Mr Jeff Verinder as representative for the Director-General of Licensing was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks all persons for their assistance.

Assessment of the Application

18. 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 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.

19. 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.”

20. 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.”

21. 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”.

22. 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.
	<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

	<p>young or disadvantaged people;</p> <ul style="list-style-type: none"> • 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>
<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

	<p>or dining?</p> <ul style="list-style-type: none"> • 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?
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23. 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”.

24. With respect to this application, the Commission considers 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 (for potentially only a 2 year period) to be able to sell liquor for a one and a half hour (1 ½) period where it would not ordinarily be able to do so.

25. It is also an application that is entirely centred on being able to provide a venue that allows the Darwin RSL to provide for its members as a result of its own premises being destroyed. The variation is to enable persons to *commemorate* ANZAC Day and this is further reinforced by the fact that the applicant sought that their ability to sell liquor be “paused” whilst the ANZAC Day march occurred, such is the solemnity that the applicant has recognised around the occasion.

26. The applicant has provided detailed submissions addressing the public interest and community impact test and also the community impact assessment guidelines. It is clear that the applicant has taken this application very seriously. The Commission’s confidence in this regard is further reinforced by the applicant’s clear ability to operate the premises in an appropriate manner and in accordance with the terms of its licence.

27. In all of the circumstances, including the limited nature of the application, the processes put in place by the applicant to ensure appropriate service and consumption of alcohol at all times and that there is no evidence of any compliance issues or particular adverse impact upon the community; this Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought. 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:

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.



JODI TRUMAN
Deputy Chairperson
Northern Territory Liquor Commission

8 April 2019