

Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/074
LICENCE NUMBER:	81416944
LICENSEE:	Livingstone Recreation Reserve Inc.
PREMISES:	Livingstone Recreation Reserve Lot 2229 Livingstone Road BERRY SPRINGS NT 0837
APPLICANT:	Livingstone Recreation Reserve Inc.
NOMINEE:	Ms Joanne King
OBJECTOR/S:	Nil
LEGISLATION:	Section 32A, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Dr Charles Douglas (Health Member) Mr Lindsay Carmichael (Community Member)
DATE OF HEARING:	22 June 2018
DATE OF DECISION:	22 June 2018

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to vary the conditions of the liquor licence for the premises known as Livingstone Recreation Reserve by :
 - a. Extending the trading hours of the premises as follows:
 - i. from 2000 hours to 2230 hours on Sunday 24 June 2018;
 - ii. from 1800 hours to 2230 hours on Wednesday 11 July 2018.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at Friday 22 June 2018.

Reasons

Background

3. Livingstone Recreation Reserve Inc. (“the applicant”) currently holds a “Club (Incorporated) Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being Livingstone Recreation Reserve by a member of the club or by a visitor in the presence of such a member. The licensee is the applicant and the nominee under the liquor licence is Ms Joanne King.
4. The Livingstone Recreation Reserve (“the Reserve”) is situated at Lot 2229 Livingstone Road Livingstone and is just off the Stuart Highway approximately 10km from Noonamah. It is described as “(s)et amongst 80 hectares of Council owned land with 64 hectares being native bushland and the remaining land being utilised by various user groups”.
5. The Commission was informed that the Reserve is an organization has been active since 1986 and is run by a volunteer management committee to service a facility for the local rural community. The principal activities of the Reserve are the provision, maintenance and improvement of recreation and sporting facilities that can be utilised according to the demands of the community.
6. The Bar and Bistro is run together with the Reserve. The Commission was informed that the constitution of the Bar and Bistro required “ALL profits” to be contributed back to the Livingstone Recreation Reserve to be spent in accordance to the Reserve’s principle activities. The "Bar and Bistro" is a permanent bar where home cooked meals are available and describes itself as being a place where “drinks and food are sold at family affordable prices”.
7. On 23 May 2018 the applicant made application pursuant to section 32A of the Act for a variation to the licence conditions to “allow the bar and kitchen facilities to be opened for the State of Origin series”. The current trading hours for the premises are:
 - a. Sunday from 1000 hours to 2000 hours;
 - b. Friday from 1400 hours to Saturday 0200 hours;
 - c. Saturday from 1700 hours to Sunday 0200 hours.
8. The applicant had sought all three (3) State of Origin games in its original application; however the application was not referred to the Commission until 22 June 2018, by which time the first game of the State of Origin series had already been played. The application before the Commission was therefore for the remaining two (2) games.
9. The variation sought is that for those specific games, the hours of trade be varied by:
 - a. Extending by an additional two and a half (2 ½) hours on Sunday 24 June 2018; and

- b. Adding an additional four and a half (4 ½) hours of trade on Wednesday 11 July 2018 which is not a day of trade usually under the current licence.
10. The Commission was advised orally by Licensing NT that there were no compliance issues with respect to the applicant.

Disclosure of influential persons or potential beneficiaries

11. The Commission notes that section 32A(1A) 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.
12. Ms Joanne King is the principal executive officer of the applicant and pursuant to section 26A(2)(a) of the Act is the appropriate person to make the affidavit. Ms King has disclosed as follows:

“... there are no other person/s other than the directors of (Livingstone Recreation Reserve) who will by any lease, agreement or arrangement be able to influence any decision made by the director/s in relation to the sale of liquor or the sale and consumption of liquor”.

And further:

“...there is no other person/s other than the directors of (Livingstone Recreation Reserve) who by any lease, agreement or arrangement may expect any benefit from (Livingstone Recreation Reserve) in relation to the sale of liquor or the sale and consumption of liquor”.

13. 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

14. The Commission was advised by the Acting Director-General of Licensing that she had exercised her discretion under section 32A(2) and not required the applicant to publish a notice of the application “given that the application is for an increase to trading hours for the NRL State of Origin rugby league events”.
15. 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.

16. That occurred with respect to this application. The Commission notes that the application was also forwarded to the Northern Territory Police, Fire and Emergency Services (“NTFRS”) for comment.
17. With respect to this application:
 - a. The DOH made no adverse comment.
 - b. The NT Police had no objection.
 - c. The CEO of Litchfield Council supported the application.
 - d. The NTFRS had no objection.

Public Hearing

18. 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.
19. 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. This application was not referred to the Commission until 22 June 2018. Coincidentally the Commission was hearing another application on that date and due to the limited nature of the application, the fact there were no objections and one of the sought after dates was imminent, the Commission exercised its discretion under section 127 of the Act to abridge time and the hearing was conducted on the same date as the referral.
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 about 9.40 am on 22 June 2018. Although occurring in a public forum there were no appearances due to the abridgement of time by the Commission.

Assessment of the Application

22. 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 now 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.

23. 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.”

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;

	<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 or dining?

	<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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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. 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 and to do so for only two (2) specific dates and for a short period of hours. As a result some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a variation and material alteration.

29. The applicant provided written submissions addressing the public interest and community impact test and also the community impact assessment guidelines. It is clear from the application, and the compliance history of this applicant, that the conditions of licence are taken seriously.

30. With respect to the submissions made addressing the public interest and community impact test and also the community impact assessment guidelines, the Commission considers it important to highlight some of those submissions which were considered particularly relevant to those tests:

“Televising the State of Origin series is promoted as a family event and in past events usually attracts around 30 local patrons. The Reserve is situated on a (sic) 80 hectare parcel of council owned land with no nearby neighbours. There is no loud music associated with the State of Origin series”.

Further:

“All business conducted at the Reserve is considerate of all local community neighbours The Reserve is situated on a 80 hectare parcel of council owned land and has never received any complaints in the past”.

And:

“The Reserve strictly adheres to the provisions and requirements of holding a liquor licence. We take this responsibility very seriously. The Reserve does not hold a take away licence and therefore does not sell liquor that has not been opened”.

31. It is apparent to the Commission that NRL State of Origin series is an event likely to be of interest to a large number of persons in the local community. It is further apparent that the main incentive for this application is to enable members of the applicant to attend at the premises to enjoy the series and that the consumption of liquor is secondary to that purpose.
32. There is no evidence that the applicant has been unable to comply with its conditions in the past and there have been no objections to this application. In all of the circumstances, including the 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.
33. 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:

34. 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.
35. 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.
36. 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