

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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<b>MATTERS:</b>	<b>APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE</b>
<b>REFERENCE:</b>	<b>LC2018/086</b>
<b>LICENCE NUMBER:</b>	<b>80315480</b>
<b>LICENSEE:</b>	<b>AVC Operations Pty Ltd</b>
<b>PREMISES:</b>	<b>Shenannigans</b> 689 Mitchell Street DARWIN NT 0800
<b>APPLICANT:</b>	AVC Operations Pty Ltd
<b>NOMINEE:</b>	Rachel Attley
<b>OBJECTOR/S:</b>	Nil
<b>LEGISLATION:</b>	Sections 32A of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Mr Richard Coates (Chairperson) Mr Kenton Winsley (Health Member) Ms Christine Hart (Community Member)
<b>DATE OF HEARING:</b>	12 July 2018
<b>DATE OF DECISION:</b>	12 July 2018

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### **Decision**

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act* (the Act) the Commission has determined to refuse to vary the conditions of the licence.

### **Reasons**

#### **Background**

2. On 20 June 2018, pursuant to section 32A of the Act, AVC Operations Pty Ltd lodged an application to the Director-General of Licensing (Director-General) for

the grant of a variation to their existing liquor licence for the Shenannigans Irish Pub to enable it to trade during the telecast of the 2018 Soccer World Cup matches in Russia.

3. The applicant was seeking an extension of trading hours on 16 days over a period spanning from 19 June 2018 until 16 July 2018. In respect of most of those days, the extension sought was until 6:30am.
4. It is relevant to note that at the time the application for a variation had been lodged by the applicant, the first date on which an extension had been sought had already passed. By the time the application was referred to the Commission on 5 July 2018 only 6 games remained to be played.
5. On 6 July 2018, the Deputy Chairperson wrote to the applicant, *interalia*:

“I advise that unfortunately the earliest date that the Commission could hear your application is Thursday, 12 July 2018. From perusal of your application I see that this will mean that you will only enable you to play one of the matches that you seek, being the final scheduled to start at 12:30am on Monday 16 July 2018. It is in these circumstances that the Commission therefore asks whether you still wish to pursue your application seeking the variations?”
6. Later that day a representative of the applicant advised the Commission that it wished to proceed with the application.
7. The Commission therefore arranged to have the matter added to an already significant list of hearings set down for 12 July 2018. A number of Tribunals and civil authorities have set aside a fixed day each month which is the only day upon which business is conducted and applications determined. This Commission recognises that such a fixed timetable could cause inconvenience to applicants who had urgent applications so we have been prepared to tailor our meeting schedule around the expectations of applicants that they will have a decision on a proposed event prior to the scheduled date having passed. This has resulted in this Commission convening on several occasions in a month in order that it might deal with matters prior to the applications becoming irrelevant.
8. In this matter the applicant was required to lodge its application 28 days prior to the first date on which a variation was sought. As previously indicated that date, 19 June 2018, had already passed when this application was filed on 20 June 2018. If the Director-General had not waived the 28 days’ notice requirement, then there would have been no possibility of the applicant obtaining an extension for any of the games. This applicant would seem to have had little regard for the requirement to provide reasonable notice so that both the Director-General and Commission can comply with their responsibilities under the Act. If the attitude of this licensee in this matter is indicative of the industry as a whole then the Commission may need to reconsider its current policy of listing matters to meet the needs of applicants.
9. The Commission notes that the applicant has sworn an affidavit in accordance with section 26A of the Act stating that there are no other persons of influence in relation to the conduct of the business.

## **Consultation**

10. The Delegate of the Director-General did not require the applicant to publish a notice of the application given its limited nature.
11. The City of Darwin, Department of Health, Northern Territory Police and Northern Territory Fire and Rescue Service were invited to provide comment on the application and no adverse comments were received.

## **Public Hearing**

12. The applicant was represented at the public hearing by Ms Rachel Attley, Nominee. Mr Philip Timney as representative of the Director-General was also present to provide information and assistance to the Commission. The Commission thanks all persons for their assistance.

## **Assessment of the Application**

13. Although there were no objections to this application, the Commission is required to apply the public interest and community impact test. 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.
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:

<b>Criteria</b>	<b>Matters to be considered</b>
<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"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> </ul>

	<ul style="list-style-type: none"> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <hr/> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <hr/> <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>

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"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

18. Section 6A(4) of the Act provides further guidance to decision makers when considering the community benefits associated with an application. It provides:

“For subsection (3)(6)(iii), additional services such as accommodation and dining facilities may be identified as benefits to the local and broader communities, but the mere addition of the proposed liquor outlet is not taken to be a benefit for that provision.

19. Although section 6A(4) of the Act refers to the addition of a liquor outlet, the Commission believes that it should apply the same principle to a proposal by an existing liquor outlet to increase its trading hours.

20. The applicant submitted a document entitled “Shenannignas (sic) Community Impact Analysis” dated June 14 2018. Under the heading “Rationale for the Application” the document states:

“Located in the heart of Darwin town, “Shags” is a favourite haunt for locals and visitors alike. Standing proud for over 21 years, Shags is the place to sit back on the terrace with a pint and watch the world go by, catch the game with mates or enjoy some Irish Pub classics (just as good as mum makes)! .....operating an extended liquor licence during the World Cup 2018 is anticipated to enhance the entertainment options available in the city, staying in line with the competitiveness of the local area”.

21. The aforementioned statement, which might be regarded as self-indulgent “waffle” did not assist the applicant’s case. The applicant did purport to address the section 6 public interest criteria, by the main, relying on its usual adherence to the responsible service of alcohol guidelines.
22. In relation to the possibility of excessive noise it said “Noise emanations from Shenannigans will not exceed normal trading conditions”. Given the applicant was seeking to extend trading hours to 6:00am on a morning when neighbouring residents would be getting up for work, we would have expected more from the applicant in this regard.
23. It became clear during the course of the hearing that the extensions of trading hours that had been sought exceeded what would have been required to enable patrons to view the games. The applicant had either been careless in the preparation of this application or it was an ambit claim.
24. The applicant’s Community Impact Analysis failed to specifically address any of the Minister’s community impact guidelines as set out in paragraph 17 above.
25. By the time the Commission came to consider this application, decisions had already been made to permit several other licensed venues to trade for extended hours to enable patrons to view the World Cup matches. We are not convinced that there is a need for another venue to show the games.
26. The onus is on the applicant to satisfy us that the approval of the application meets the public interest and community impact test set out in section 6(1) of the Act. On this late and poorly presented application we are not so satisfied.
27. Accordingly, pursuant to section 34A(7)(b) of the Act we have determined to refuse to vary the conditions of the licence.

## **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.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES  
Presiding Member  
Chairperson  
20 July 2018