

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: SECOND VARIATION OF THE CONDITIONS OF LICENCES

LICENSEES	LICENCE NUMBER
Erlunda Desert Oaks Resort Pty Ltd (Desert Oaks Motel)	80100446
Gap View Holdings Pty Ltd (Gapview Resort Hotel)	80102399
Kulgera Trading Company Pty Ltd (Kulgera Hotel)	81202158
LAE Supermarkets Pty Ltd (Eastside IGA)	80902628
LAE Supermarkets Pty Ltd (Flynn Drive IGA)	80902945
LAE Supermarkets Pty Ltd (Northside IGA)	80902690
Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)	80901729
M & J Pascoe and Daughters Pty Ltd, Pepity Pty Ltd, Wrigm Pty Ltd, GRJP Pty Ltd, Stewie Pty Ltd, Maniel Dark Pty Ltd and MT Radloff Pty Ltd (Todd Tavern)	80102200
Stuart Highway Investments Pty Ltd (Pigglys)	80902640
Tancor Nominees Pty Ltd (Milner Road Foodtown)	80902951
Woolworths Group Limited (BWS Alice Springs)	80902856

LEGISLATION: Section 33, *Liquor Act 1978* (NT)

CONSIDERED BY: Mr Richard Coates (Chairperson)
Mr Russell Goldflam (Legal Member)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 11 November 2019

DATE OF DECISION: 13 January 2020

INTRODUCTION

1. Following an own initiative inquiry (“the Inquiry”) undertaken under s 33 of the *Liquor Act 1978* (“the Act”), on 27 May 2019 the Northern Territory Liquor Commission (“the Commission”) issued a Notice of Variation of the Conditions of Licences together with reasons for the variations (“the Decision”) to the above-mentioned licensees (“the licensees”).
2. On 2 August 2019, following an application by some of the licensees to review the Decision, the Northern Territory Civil and Administrative Tribunal (“NTCAT”) invited the Commission to reconsider the Decision.
3. On 11 November 2019 the Commission conducted a public hearing in Alice Springs to assist it in reconsidering the Decision.
4. On 29 November 2019, in accordance with s 33(2) of the Act, the Commission gave the licensees written notice of the variations it proposed to make, together with its reasons¹ (“the second notice of proposed conditions”), and invited them to submit a response to the proposed variations within 28 days.

¹ Accessed at https://justice.nt.gov.au/_data/assets/pdf_file/0010/762409/Alice-Springs-s33-proposed-variation-Nov-19.pdf

THE RESPONSES

5. The Commission received responses on behalf of the following licensees:
 - Gapview Resort Hotel
 - BWS Alice Springs
 - Eastside IGA, Flynn Drive IGA and Northside IGA
6. The responses can be summarised as follows:
 - a. Because of its negative connotations, the term “suspicious transaction” be replaced with a more neutral term such as “reportable transaction”.
 - b. The proposed requirement that the licensee must retain all data captured by the camera surveillance system for not less than one month is unreasonably costly and exceeds the requirements set out in the *Liquor Regulations 2019*.
 - c. The proposed requirement that reportable transactions be reported unless a Police Officer, PALI or Liquor Inspector in attendance has a reasonable opportunity to observe the customer either conduct the transaction or exit the premises is too vague and burdensome.
 - d. The proposed threshold ‘triggers’ are too low, and there should be no threshold.
 - e. Consideration should be given to varying the licence conditions of two other Alice Springs licensees, Club Eastside and Club Gillen, which are authorised to sell takeaway liquor to their members.
 - f. The Banned Drinkers Register should be modified to enhance the detection of reportable transactions.

- g. A reference in the second notice of proposed variations to information from a licensee is incorrect and prejudicial.

DISCUSSION

7. The Commission agrees with the matter raised in sub-paragraph 6a above, and appropriate modifications are accordingly made to the variations below.
8. The Commission agrees with the matter raised in sub-paragraph 6b above, and appropriate modifications are accordingly made to the variations below.
9. The Commission does not agree with the view expressed at sub-paragraph 6c above. In Australian law, the test of “reasonableness” is well-established, and frequently used in parliamentary enactments, subordinate legislation, official policies and codes of conduct. The Commission considers that this particular requirement is appropriate to impose because in some cases PALIs are stationed at a location where they do not have a clear or unobstructed view of the point of sale. The Commission considers that provided licensees’ staff are appropriately trained and supervised (as of course they should be), compliance with this condition will not be unduly onerous.
10. The Commission does not accept the submission at sub-paragraph 6d, which goes no further than to repeat views that have been previously expressed by some licensees. The Commission has dealt in detail with this issue in its Notices previously delivered in these proceedings.
11. The Commission considers that the issue raised at sub-paragraph 6e is potentially significant. The Commission notes that the scope of the Inquiry the subject of these proceedings was limited from the outset by the Commission to licensees that supply liquor to the general public. There are several licensed clubs in Alice

Springs authorised to sell liquor for consumption off the premises to their members. Since the commencement of this inquiry in September 2018 the Commission has received no information about the trading practices of licensed clubs in Alice Springs. The Commission requests the Director of Liquor Licensing to provide information to the Commission regarding the patterns and volumes of takeaway trading by licensed clubs in Alice Springs, so that the Commission can make an informed decision as to whether a further inquiry should be instituted with a view to varying the licence conditions of Alice Springs licensed clubs. The Commission requests that this information be provided by 1 May 2020.

12. The Commission agrees with the matter raised at sub-paragraph 6f above. In its Decision delivered on 27 May 2019, the Commission stated:

The Commission notes the proposal by the Central Australia Liquor Accord and others that the identification system established by s 31A of the *Liquor Act* be enhanced so as to instantaneously flag suspicious transactions and alert police. The Commission considers that this proposal has merit. Although there are privacy issues to consider before adopting this proposal, it would seem clear that an expanded use of the Banned Drinkers Register could make it easier to target both problem drinkers and covert secondary suppliers. This would relieve the burden on licensees, and provide significant benefits in turn for law enforcement. The Commission recommends that the Northern Territory Government review this proposal with a view to implementing it.

The Commission remains of that view and reiterates its recommendation.

13. In relation to the issue raised at sub-paragraph 6g above, the disputed information in question was not recorded (there being no legal authority at that time for the Commission to conduct a hearing to receive evidence in a s33 inquiry, a difficulty that has since been rectified by legislative amendment) and accordingly, there are no means to conclusively resolve what precisely was said to the Commission at a meeting in October 2018. The Commission is prepared to accept that the disputed statement, taken at its highest, relates to a hypothetical view by an employee as to how much liquor might be sold if it became widely known that a PALI was not stationed at those premises. The Commission accepts that there is no evidence to establish that this licensee has in fact sold “pallet loads” of liquor to any customer. Accordingly the Commission has not relied on the disputed information in its determination of the issues it has been required to consider in this inquiry.

14. Having considered the above matters, the Commission has determined to vary the licensee’s licences from 1 May 2020 for a trial period of twelve months, as follows.

VARIATIONS

15. CAMERA SURVEILLANCE CONDITION

All affected licensees must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (“the Director”), including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 14 days.

16. REPORTABLE TRANSACTIONS CONDITION

This condition will apply to the following licensees:

- Gap View Holdings Pty Ltd (Gapview Resort Hotel)
- LAE Supermarkets Pty Ltd (Eastside IGA)
- LAE Supermarkets Pty Ltd (Flynn Drive IGA)
- LAE Supermarkets Pty Ltd (Northside IGA)
- Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)
- M & J Pascoe and Daughters Pty Ltd, Pepity Pty Ltd, Wrigm Pty Ltd, GRJP Pty Ltd, Stewie Pty Ltd, Maniel Dark Pty Ltd and MTRadloffe Pty Ltd (Todd Tavern)
- Stuart Highway Investments Pty Ltd (Pigglys)
- Tancor Nominees Pty Ltd (Milner Road Foodtown)
- Woolworths Group Limited (BWS Alice Springs)

(1) For the purposes of this condition, “reportable transactions” are defined as the sale or supply of liquor for consumption away from the premises comprising:

- a. The sale on a single occasion to an individual in excess of any of the following: three cartons of full strength beer, twelve 750ml bottles of wine, four 750 ml bottles of spirits or forty eight cans or bottles of Ready to Drink mixes;
- b. A third or subsequent occasion on which liquor is knowingly sold to the same individual on the same day; or

- c. Any other liquor sale arousing suspicion on the part of the salesperson that the purchaser intends to commit an offence by possessing, consuming or supplying liquor in a manner or place prohibited by law.
- (2) Unless a Police Officer, PALI or Liquor Inspector is in attendance and has a reasonable opportunity to observe the customer either conduct the transaction or exit the premises, reportable transactions must be reported to NT Police as soon as practicable having regard to the circumstances, including the safety of staff and customers.
- (3) Reports to NT Police of reportable transactions must include such details as are prescribed by the Director.
- (4) The licensee must provide an email address to the Director for the purpose of reporting reportable transactions. All reports by the licensee to NT Police of reportable transactions must be made by email from that email address. The licensee must retain the email reports of reportable transactions for at least twelve months.
- (5) The email reports must be made available at any time on request by NT Police and the Director.
- (6) The licensee must display on the premises signage approved by the Director notifying customers of the reportable transactions conditions, including notification that a condition of sale of liquor constituting a reportable transaction is provision by the purchaser to the licensee of identifying information and an explanation for the purchase, details of which will be provided by the licensee to NT Police.

17. The varied conditions as set out at paragraphs 18 and 19 below will apply to the following licensees:

- Desert Oaks Motel (Erlunda)
- Kulgera Hotel

18. REPORTABLE TRANSACTIONS CONDITION

(1) For the purposes of this condition, “reportable transactions” are defined as the sale or supply of liquor for consumption away from the premises comprising:

- a. A third or subsequent occasion on which liquor is knowingly sold to the same individual on the same day; or
- b. Any other liquor sale arousing suspicion on the part of the salesperson that the purchaser intends to commit an offence by possessing, consuming or supplying liquor in a manner or place prohibited by law.

(2) Unless a Police Officer, PALI or Liquor Inspector is in attendance and has a reasonable opportunity to observe the customer either conduct the transaction or exit the premises, reportable transactions must be reported to NT Police as soon as practicable having regard to the circumstances, including the safety of staff and customers.

(3) Reports to NT Police of reportable transactions must include such details as are prescribed by the Director.

(4) The licensee must provide an email address to the Director for the purpose of reporting reportable transactions. All reports by the licensee to NT Police of reportable transactions must be made by email from that email address. The

licensee must retain the email reports of reportable transactions for at least twelve months.

(5) The email reports must be made available at any time on request by NT Police and the Director.

(6) The licensee must display on the premises signage approved by the Director notifying customers of the reportable transactions conditions, including notification that a condition of sale of liquor constituting a reportable transaction is provision by the purchaser to the licensee of identifying information and an explanation for the purchase, details of which will be provided by the licensee to NT Police.

19. SPECIAL CONDITION

The licensee is not permitted to sell or supply liquor for consumption away from the premises to:

- a. any person who is unable to satisfy the licensee that they do not reside or normally reside in:
 - i. a general restricted area declared pursuant to s74(1)(a) of the *Liquor Act 1978* (NT);
 - ii. an alcohol protected area declared pursuant to s27 of the *Stronger Futures in the Northern Territory Act 2012* (Cth);
 - iii. any of the Communities or Homelands on the Pitjantjatjara Lands in South Australia; or
 - iv. any of the Communities or Homelands on the Ngaanyatjarra Lands in Western Australia.

- b. any person who the licensee knows intends to supply the liquor to a resident of the areas set out in sub-condition (a) above.

The Licensee may at his or her discretion refuse service to any person whom he or she has reason to believe is attempting to purchase liquor on behalf of the persons described above.

Notes:

- (i) The Commission requests the Director to compile and provide to the licensee a map and/or list of the communities, outstations and town camps referred to in this condition.
- (ii) A list of residential areas subject to restricted area declarations pursuant to s74 of the *Liquor Act 1978* (NT) is published at <https://nt.gov.au/law/alcohol/where-you-cant-drink-in-the-NT/list-of-restricted-areas>
- (iii) As at January 2020, the residential areas declared to be alcohol protected areas also comprise the town camps prescribed by the *Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 1)* (Cth) and the *Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 2)* (Cth).
- (iv) “Pitjantjatjara Lands” means the lands described in the First Schedule to the *Pitjantjatjara Land Rights Act 1981* (SA) but does not include any roads referred to or described in the Second Schedule to that Act or any road reserved within the meaning of Section 33 of the Act.

(v) “Ngaanyatjarra Lands” means the lands contained in the Reserves (Use & Benefit of Aboriginals) Nos. 17614, 21471, 24923, 40783, 29452, 40787 and 40781 in Western Australia declared under Part 3 of the *Land Act 1933* (WA) and the Leases which were granted to the Ngaanyatjarra Land Council (Aboriginal Corporation).

20. Notwithstanding anything contained in the proposed conditions set out above, where a licence contains an existing condition which is more restrictive than the proposed conditions, the existing condition prevails.

NOTICE OF RIGHTS

21. 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 licence conditions pursuant to section 33 of the Act is specified in the Schedule and is a reviewable decision.

22. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the NTCAT. Any application for review of this decision must be lodged within 28 days of the date of this decision.



RICHARD COATES, CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
13 January 2020
On behalf of Commissioners Coates, Goldflam, Reynolds and McFarland