

Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/046
LICENCE NUMBER:	80819436
LICENSEE:	Brown's Mart Arts Ltd
PREMISES:	Brown's Mart Theatre 21 Smith Street DARWIN NT 0800
APPLICANT:	Brown's Mart Arts Ltd
NOMINEE/S:	Mr Sean Michael Pardy Ms Kelly Louise Blumberg
OBJECTOR/S:	Nil
LEGISLATION:	Section 32A, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Kenton Winsley (Health Member) Mr Lindsay Carmichael (Community Member)
DATE OF HEARING:	7 June 2018
DATE OF DECISION:	7 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 Brown's Mart Theatre on a permanent basis by :
 - a. Extending the trading hours of the premises from 0100 to 0200 hours on:
 - i. Each Friday and Saturday evening during the Darwin Fringe Festival each and every year. To avoid doubt; if the Darwin Fringe Festival includes a Friday evening, the licence conditions

shall be varied to allow trade until 0200 hours the following Saturday and further that if the Darwin Fringe Festival includes a Saturday evening, the licence conditions shall be varied to allow trade until 0200 hours the following Sunday.

2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 7 June 2018.

Reasons

Background

3. Brown's Mart Arts Ltd ("the applicant") currently holds a Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being Brown's Mart Theatre. The licensee is the applicant and there are two (2) nominees under the liquor licence, namely Mr Sean Michael Pardy and Ms Kelly Louise Blumberg.
4. On 24 March 2018 the applicant made application for a variation of its licence pursuant to section 32A of the Act. The variation is sought to accommodate the applicant's program of activity during the Darwin Fringe Festival. The current trading hours for the premises are from 12 noon to 0100 hours the following day, Monday to Sunday.
5. The applicant is seeking to vary those trading hours for the purpose of the Darwin Fringe Festival to extend the closing time to 0200 hours on Saturday 7, Sunday 8, Saturday 14 and Sunday 15 July 2018. That is to say, the application for variation is seeking one (1) extra hour of trade for each of those four (4) evenings whilst the festival is conducted.
6. The Commission has been informed that the applicant has held similar events over the preceding years and there have been on compliance issues recorded.
7. During the course of the hearing it was suggested that given the previous compliance by the Applicant and the fact that the Darwin Fringe Festival is on every year, and to avoid the Applicant having to return every year for a similar application, a permanent variation could be made to the licence. This potential will be addressed further in these reasons.

Disclosure of influential persons or potential beneficiaries

8. 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.
9. Mr Matthew Garraway ("Mr Garraway") is the Director and Chairperson of the applicant and has stated he is the appropriate person to make the affidavit pursuant to section 26A(2)(a) of the Act. Mr Garraway has disclosed that other than Sean Pardy and Kelly Blumberg there are no other persons who may be able to influence any decision made by the Director of the applicant in relation to the sale of liquor or the sale and consumption of liquor. Mr Garraway has also stated

that there are no other persons who may expect any benefit from the applicant if the licence is granted.

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 due to the nature of the variation sought, i.e. an increase for one (1) hour of trade for certain days during the course of the Darwin Fringe Festival only, the Director-General had exercised her discretion under section 32A(2) and not required the applicant to publish a notice of the application.
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. The Director-General complied with this requirement 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.
14. With respect to this application:
 - a. The DOH made “no adverse comment”, but requested that smoking signage be provided to the applicant. This was done by Licensing NT.
 - b. The City of Darwin had no objections.
 - c. The NTFRS had no objections.
15. With respect to NT Police; they advised that they supported the application “contingent to:
 - Secure storage of alcohol at all times – any alcohol that is left overnight needs to be secured away
 - Industry standard security for crowd numbers – security to ensure no alcohol is entering/exiting the event
 - RSA for all staff handling alcohol

- Maximum 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event
- Commercial bottled water to be readily available for low-cost purchase
- Licensing to inspect quality and coverage of security cctv, to ensure adequate coverage of high risk areas such as entrance, bar area, liquor storage areas, poorly lit areas and outdoor areas close to the fenceline”.

Public Hearing

16. 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. The application was referred to the Commission on 10 May 2018.
17. 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. A venue was then secured for the public hearing on 15 May 2018 and notice was subsequently sent to the applicant of the hearing scheduled to take place on 7 June 2018.
18. 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.
19. The public hearing commenced shortly after 2.00pm on 7 June 2018. Ms Blumberg appeared in person before the Commission. Mr Philip Timney appeared as representative on behalf of the Director-General of Licensing. The Commission thanks both Ms Blumberg and Mr Timney for their courtesy and assistance.

Assessment of the Application

20. As earlier noted, there were no objections to this application. The Commission notes that the NT Police provided a response which addressed a number of additional issues including storage, RSA, number of drinks, water and security. It appears that NT Police clearly misunderstood the nature of the application. This was an application to vary the licence for one (1) additional hour, not an application for a special licence or to change the pre-existing licence condition other than the additional hour of trade. The matters raised by NT Police were therefore, with respect, irrelevant to the nature of the application before this Commission.
21. Be that as it may, the applicant addressed the response by NT Police as follows:

“Secure storage of alcohol at all times – any alcohol that is left overnight needs to be secured away.

- All bar stock is secured in the Browns Mart bar area and storage areas, which are all areas that are locked and protected by an alarm system and CCTV. There is never an instance where stock would be left unsecured overnight at Browns Mart.

Industry standard security for crowd numbers – security to ensure no alcohol is entering/exiting the event

- Browns Mart adheres to all conditions on our Liquor License including the provision of security guards for the facility. We work closely with a local security company to ensure that all of our security needs are met and are in line with our Liquor License.

RSA for all staff handling alcohol.

- All Browns Mart bar staff have attained their Responsible Service of Alcohol Certificates

Maximum 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event

- Browns Mart staff strictly follow this as it is a condition outlined in our Liquor License. All Browns Mart bar staff have their Responsible Service of Alcohol certificates. They have also been briefed on all matters in accordance with the License and there is visible signage in the bar to support this matter.

Commercial bottled water to be readily available for low-cost purchase

- Browns Mart sells bottled water behind the bar. We also provide free water on the bar at all times that the Browns Mart bar is open.

Licensing to inspect quality and coverage of security cctv, to ensure adequate coverage of high risk areas such as entrance, bar area, liquor storage areas, poorly lit areas and outdoor areas close to the fenceline.

- Browns Mart has CCTV cameras situated in the Courtyard and bar areas. An inspection was undertaken by licensing in 2017 with regards to our Full Liquor License application and the CCTV was deemed adequate for the venue.”

22. As earlier noted, the matters raised by NT Police do not address the application for variation, however even if the Commission is wrong in this regard, we consider the responses by the applicant to be appropriate and address the matters raised. We do not intend to say anything further about such matters.

23. Despite there being no formal 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.

24. 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.”

25. 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.”

26. 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”.

27. 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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28. 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”.

29. 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 a period of only one (1) hour on certain days during the course of the Darwin Fringe Festival. 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.

30. The applicant provided written submissions addressing the public interest and community impact test and also the community impact assessment guidelines. Those submissions were detailed and helpful and were considered carefully by this Commission. The Commission is reassured by the detail provided by the applicant within the application and finds that this shows the applicant takes its conditions of licence seriously and will do so for the additional one (1) hour of trade sought on each of the relevant dates.

31. As earlier noted, a suggestion was made to have the variation made permanent given that the Darwin Fringe Festival was held each year and this would avoid the applicant having to return each year for the same type of application. Given that the applicant has previously sought, and obtained, variations to its licence to provide for the festival and given there have been no compliance issues, the Commission considers it to be appropriate to make such a variation permanent and will do so.

32. In all of the circumstances and based on the information provided to the Commission and particularly the **very** limited nature of the variation sought, 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:

33. 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.
34. 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.
35. 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

21 June 2018