

# Liquor Commission

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE</b>
<b>REFERENCE:</b>	<b>LC2018/080</b>
<b>LICENCE NUMBER:</b>	80100141
<b>LICENSEE:</b>	<b>SKYCITY Darwin Pty Ltd</b>
<b>PREMISES:</b>	<b>SKYCITY Darwin</b> Lot 5244 Gilruth Avenue DARWIN NT 0800
<b>APPLICANT:</b>	SKYCITY Darwin Pty Ltd
<b>NOMINEE:</b>	Ms Avril Baynes
<b>OBJECTOR/S:</b>	Nil
<b>LEGISLATION:</b>	Section 32A, Part IV and V of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Ms Jodi Truman (Deputy Chairperson) Dr Charles Douglas (Health Member) Ms Christine Hart (Community Member)
<b>DATE OF HEARING:</b>	5 July 2018
<b>DATE OF DECISION:</b>	5 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 Commission has determined to vary the conditions of the liquor licence for the premises known as SKYCITY Darwin by :
  - a. Extending the trading hours of the existing area known as the "SPORTSBAR" as follows:
    - i. from 0400 hours to 0600 hours on Saturday 7 July 2018;
    - ii. from 0400 hours to 0600 hours on Sunday 8 July 2018;
    - iii. from 0400 hours to 0600 hours on Wednesday 11 July 2018;

- iv. from 0400 hours to 0600 hours on Thursday 12 July 2018.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at Thursday 5 July 2018.

## **Reasons**

### **Background**

3. SKYCITY Darwin Pty Ltd (“the applicant”) currently holds a Public Hotel Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being SKYCITY Darwin, known locally as “the Casino”. The licensee is the applicant and the nominee under the liquor licence is Ms Avril Baynes.
4. On 14 June 2018 the applicant made application pursuant to section 32A of the Act for a variation to the licence conditions to cater for patrons watching the “2018 FIFA World Cup” (“The World Cup”) that will be broadcast and available for viewing in the area known as the “SPORTSBAR” at the Casino.
5. The current trading hours for the “SPORTSBAR” are from 1000 hours to 0400 hours seven (7) days a week. The applicant is seeking to vary those trading hours for the purpose of The World Cup to extend the closing time to 0700 hours on certain identified dates only, i.e. to extend the trade of the SPORTSBAR by three (3) hours on each of the identified dates.
6. The Commission has been advised by the Deputy Director-General of Licensing NT (“the Deputy Director-General”) that “(r)ecords held by Licensing NT does not indicate any adverse compliance history”. It appears therefore that the applicant has a proven and demonstrated capacity to be able to operate the venue and to comply with the Act during its “normal” and any varied hours.

### **Disclosure of influential persons or potential beneficiaries**

7. 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.
8. Mr David Christian 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. Mr Christian has disclosed that other than the directors of the applicant, who may be able to influence any decision made by the applicant, there are no other person/s 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. Further that other than the directors of the applicant, who may be able to influence any decision made by the applicant, there are no other person/s who by any lease, agreement or arrangement may expect any benefit from the applicant if the licence is granted.
9. 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**

10. The Commission was advised that due to the nature of the variation sought, i.e. an increase to trading hours over four (4) separate days only, the Deputy Director-General had exercised her discretion under section 32A(2) and not required the applicant to publish a notice of the application.
11. 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.
12. 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.
13. With respect to this application:
  - a. The DOH made no adverse comment.
  - b. The NT Police did not respond.
  - c. The City of Darwin did not respond.
  - d. The NTFRS had “no objection”.

### **Public Hearing**

14. Pursuant to section 50 of the Act, 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. Unfortunately this application was only referred to the Commission on 2 July 2018. It is to be noted that according to the referral by the Deputy Director-General the applicant only lodged their application for variation on 18 June 2018. However, Ms Baynes advised the Commission that in fact it was lodged on 14 June 2018 and there was an email on the referral to the Commission that appeared to support this being the date of lodgement.
16. Whether it was 14 or 18 June 2018, the fact of the matter is that the application was not lodged within the time clearly identified in the Director-General’s own approved form which stipulates that such applications be “lodged **at least** 28 days before the event” (emphasis added). The date of the first variation sought was to

the trading hours commencing on Friday 6 July 2018. Therefore the application was not within time, being lodged some 18 or 22 days before the first event.

17. Despite this, the Director-General accepted the application. Section 32A(5) of the Act provides that upon receipt of such an application the “Director-General must, as soon as reasonably practicable inform” certain identified stakeholders including the DOH, NT Police and the CEO of the relevant council. The Commission assumes that the intent of such a provision is to ensure that the relevant stakeholders are informed of such applications for the proper conduct of their own operations and to advise of any relevant matters. It is apparent from the material received by the Commission that the Director-General informed those relevant stakeholders on 18 June 2018, i.e. the very date that the application was received or very shortly thereafter.
18. The Commission notes that there is not a similar provision of informing the Commission “as soon as reasonably practicable”. Instead, the Commission received the referral on 2 July 2018 some four (4) days prior to the first event relevant to the variation application. As a result of this timeframe, the Commission sought advice as to why the application was being referred to the Commission on 2 July 2018 when it had been with the Director-General since either 14 or 18 June 2018 and related to a series of events the first of which was for the early hours of the Friday morning of that very same week.
19. In relation to that request, the Commission received the following response from the Director-General which we shall set out in full so there is no confusion:

“I understand that you have requested information as to the perceived delay in progressing an application for a variation to trading hours lodged by SKYCITY for the various World Cup soccer events that are being televised. In that regard, I can advise that whilst the application was first received by Licensing NT staff on 18 June 2018, as you are no doubt aware, the *Liquor Act* requires that specified stakeholders must be consulted in relation to applications such as that made in the present case. Any response must of course be included in my referral to the Liquor Commission. In the present case, I can confirm that stakeholder comments were sought immediately following receipt of the application and responses were received on various days after that.

“As evidenced by the supporting material, the applicant acknowledged that the application was submitted somewhat late and you will have noted that as at the time of the matter being referred to the Commission, responses from City of Darwin and the NT Police had still not been received. However, given the timing of the application and the dates sought to be varied by the applicant, a determination was made not to wait any further time for submissions to be made.

“It is obviously for the Commission to determine whether or not it has capacity to hear and determine the matter in the timeframe given however, as the Director-General is bound by section 32A(6AA), I must refer such applications to the Commission

20. Whilst it is true that it is “for the Commission to determine whether or not it has capacity to hear and determine the matter in the timeframe given”, this in fact ignores that “the timeframe given” as a result of the timing of the referral by the Director-General means that the Commission cannot even contemplate complying with section 53(1)(a)(ii) of the Act which requires that when the Commission fixes the application for hearing it must “give notice to the relevant parties not less than 7 days before the hearing date”. So whilst the Director-General may refer to the Commission’s responsibility for determining “capacity”; this capacity is not assisted in any way by a referral only a matter of days before the sought after date/s.
21. Further, it is incorrect to suggest that the Act “requires that specified stakeholders must be consulted in relation to applications such as that made in the present case”. What the Act in fact requires under section 32A(5) is that those “specified stakeholders” be informed. It is of course appropriate that any response from those stakeholders then be included in the referral by the Director-General to the Commission. However in terms of any “response” there is in fact no provision for that to occur. This is by virtue of the fact that in this matter, the objection process was excluded as a result of the Director-General exercising her discretion under section 32A(2) and not requiring the applicant to publish a notice of the application. It is only upon publication under that section that the objection process occurs under section 47F of the Act.
22. Therefore it is the view of the Commission that there was no necessity for any delay in referring the matter to the Commission on the basis of awaiting responses from relevant stakeholders.
23. In addition whilst it is clear “that stakeholder comments were sought immediately following receipt of the application”; in terms of the “responses ... received on various days after that”, there were in fact only two (2) responses received. The first from the DOH on 18 June 2018, i.e. the date the DOH received notice of the application. The second from NTFRS on 19 June 2018, i.e. the very next day. It was then 14 days from the provision of such comment that the Director-General referred the application to the Commission.
24. The Commission therefore does not consider the response provided by the Director-General as to how this kind of time restriction has placed upon the Commission as adequate in all the circumstances. It is not enough to say that it is “for the Commission to determine whether or not it has capacity to hear and determine the matter in the timeframe given”. If the stakeholders can be “informed” on the date of receipt of the application and the requirement to publish can be waived, then referral to the Commission can also occur in a more timely fashion to at least afford the Commission an opportunity to deal with these applications in a timely fashion. Such courtesy would be appreciated by the Commission.
25. Indeed as was indicated to the applicant in this matter, some courtesy by applicants of ensuring they comply with relevant time periods set out within the relevant forms/applications would also be appreciated by the Commission. This would then give the Director-General an opportunity to go through its relevant and appropriate investigations in a timely fashion. As was foreshadowed, if this does

not occur there may come a time when applications that are out of the identified time period are refused by the Director-General and/or the Commission and that would be to the disadvantage of any applicant.

26. As earlier noted; 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. Given that this application was not referred to the Commission until 2 July 2018, the Commission exercised its discretion under section 127 of the Act to abridge time and a hearing was fixed for 4.00pm on 5 July 2018 and notice was given to the applicant on 3 July 2018.
27. 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.
28. The public hearing commenced shortly after 4.00 pm on 5 July 2018. Ms Avril Baynes and Mr Oliver Howe appeared on behalf of the applicant. Mr Phil Timney 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**

29. 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.
30. 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.”

31. 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.”

32. 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”.

33. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
The potential harm or health impact that may be caused to people, or any group of people within the local	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –

<p>community area, due to the availability and accessibility of an additional liquor outlet.</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> <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>
	<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>
	<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"> <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>

34. 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”.

35. 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 three (3) hours on four (4) separate occasions. 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.
36. 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 considered carefully by this Commission. The Commission is reassured by the level of detail provided by the applicant and considers this to be an indicator as to the level of seriousness the applicant takes its conditions of licence. The Commission is satisfied that the public interest and community impact test and guidelines, as far as they are relevant with respect to this limited variation, have been satisfied.
37. What the Commission was not satisfied about however was the time period sought to 0700 hours on each of the relevant dates. The Commission discussed with the applicant the relevant starting times of each of the proposed matches and after some brief discussion it was agreed by the applicant that an extension to 0600 hours would be sufficient for the purposes of the application. In such circumstances the Commission amended the application to be to 0600 hours.
38. Based on the information provided to the Commission and particularly the limited nature of the variation sought, the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought to 0600 hours on each of the relevant dates. 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:**

39. 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.
40. 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.

41. 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 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN  
Presiding Member  
Deputy Chairperson