

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF A LICENCE

LICENCE NUMBER: 80818127

REFERENCE: LC2019/112

PREMISES: **The NT Rock Bar**
Shop 2, 78 Todd Street
ALICE SPRINGS NT 0870

APPLICANT: **The NT Rock Bar Pty Ltd**

LEGISLATION: Section 32A(1) of the *Liquor Act 1978*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Ms Elizabeth Stephenson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 18 October 2019

DATE OF DECISION: 4 November 2019

DECISION

1. The NT Rock Bar Pty Ltd ("the Applicant") has applied to vary conditions of its liquor licence at the NT Rock Bar ("the premises") by extending the hours of operation of the licence on Saturday and Sunday mornings by one hour to 03:00 hours, with a "lockout" of patrons from 02:00 hours on those mornings.
2. For the reasons set out below and in accordance with section 32A of the *Liquor Act 1978* (NT) ("the Act") the Northern Territory Liquor Commission ("the Commission") has determined to refuse the application.

REASONS

BACKGROUND

3. The applicant operates a liquor licence at the premises with an "On licence" Authority. The licence authorises trading up to 02:00 hours seven days a week.

4. The applicant is one of four licensed venues that supply liquor, food and entertainment to patrons at the southern end of Todd Street in the Central Business District of Alice Springs. All four venues are currently licensed to trade until 02:00 hours. The applicant's clientele are a mixture of locals and tourists, with substantial patronage from backpacker clients of "The Rock Tour", a popular camping tour enterprise also operated by the applicant.
5. The applicant seeks to extend its trading hours until 03:00 hours on Friday and Saturday nights, or more accurately, Saturday and Sunday mornings. The applicant proposes that if its hours are extended in this manner, a "lockout" condition should be imposed, the effect of which would be to refuse to admit (or re-admit) patrons after 02:00 hours.

PROCEDURAL MATTERS

6. The applicant lodged a completed application with Licensing NT on 29 May 2019. Following consultation, together with an assessment by Licensing NT of the application, on 23 August 2019 a Delegate of the Director-General of Licensing ("the Director-General") referred the application to the Commission for hearing pursuant to sections 32A(6AA) and 50(b) of the Act.
7. The application was advertised in the Centralian Advocate on 5 and 9 July 2019. The last day of the objection period was 9 August 2019. In addition, the Director-General informed the Department of Health ("DOH"), Northern Territory Police, NT Fire and Rescue Service ("NTFRS") and the Alice Springs Town Council ("ASTC") of the application.
8. The Commission notes that the following responses were received:
 - a. The People's Alcohol Action Coalition ("PAAC") filed an objection.
 - b. DOH made "no adverse comment".
 - c. NT Police objected to the application.
 - d. NTFRS did not respond.
 - e. ASTC did not respond.
9. The Director-General forwarded the two objections to the applicant, who responded to them.
10. The Director-General informed the Commission that there are some pending allegations of non-compliance by the applicant with the conditions of its liquor licence, but did not inform the Commission of any proven breaches. In these circumstances, the Commission considers that it should treat the applicant as a licensee with no record of non-compliance with the Act or the conditions of its licence.
11. The Director-General provided the Commission with a brief of evidence ("the brief") including:
 - Application for a variation of conditions of liquor licence dated 27 May 2019
 - Applicant's liquor licence number 80818127
 - Affidavit for the purposes of section 26A of the Act deposed by Robert John Cowan, the licence nominee and the applicant's principal executive officer, dated 29 May 2019

- Community Impact and Public Interest Test Statement
 - Correspondence between Licensing NT and stakeholders
 - PAAC objection received 9 August 2019
 - Applicant's response to objections
12. On 18 October 2019 the application proceeded as a public hearing. Mr Cowan and Ms Darling, the manager of the premises, appeared on behalf of the applicant. Superintendent Vicary and Ms Nolan appeared on behalf of NT Police. Dr Boffa, the PAAC spokesperson, appeared on behalf of PAAC. Mr Verinder appeared for the Director of Licensing ("the Director"). The Commission thanks them all for their attendance and assistance.
13. The brief was tendered and admitted into evidence without objection. In addition, and by consent, a Statutory Declaration deposited by Superintendent Vicary on 16 October 2019 was tendered and admitted.
14. This matter concerns an application concerning a liquor licence made prior to the commencement on 1 October 2019 of the *Liquor Act 2019* (NT) ("the 2019 Act"). Regulation 131 of the *Liquor Regulations 2019* ("the Regulations") provides that in these circumstances, unless the applicant notifies the Director of Liquor Licensing ("the Director") that it wishes to have the application determined under the 2019 Act, the application is to proceed and be determined under the 1978 Act. The applicant made no such notification, and accordingly, the application proceeded and is being determined under the 1978 Act.
15. At the commencement of the hearing the applicant conceded that both PAAC and Superintendent Vicary were qualified to make an objection pursuant to section 47F(3)(f) and (c) respectively of the Act. In the view of the Commission, that concession was properly made. Mr Cowan and Ms Darling gave evidence and made submissions in support of the application. The two objectors each made oral submissions elaborating their objections, and were given an opportunity to ask questions of the applicant.
16. During the hearing, the applicant modified its application by suggesting that in addition to a lockdown, conditions could also be imposed limiting the type (no shots, no jugs, no cocktails) and quantity of liquor that could be served after midnight, together with a "last drinks" condition preventing the sale of liquor after 02:30 hours.

THE ISSUES

17. In both its written and oral submissions, the applicant sought to justify its proposals on the basis of public safety, which it submitted was "the primary reason" for extending its hours of trading. The applicant referred to "the pressure of having approximately 500 people leaving [Bojangles and the Rock Bar] at the same time [02:00 hours] puts stress onto taxis and police who often have to come help security maintain order... by having a later closing time than other venues this will make closing times a lot easier as everyone in the street cleared out by 3 am so it is just the amount we have in at close."¹
18. The objectors, for their part, contended that later trading hours would lead to more alcohol-related harm.

¹ Robert Cowan, *Application for permanent variation to liquor licence* (27 May 2019), p. 2

19. PAAC submitted that “The longer you serve alcohol and [the] more easily accessible it is, the more alcohol-related harms we will see, be they assaults, falls, or domestic violence.”² PAAC supported this assertion by reference to published Australian research that specifically examined the relationship between extended late-night trading hours and alcohol-related harm.³ No challenge was made by the applicant to the validity, reliability or applicability of this research.
20. Superintendent Vicary gave evidence that there are “currently high levels of alcohol related violence and ASB [anti-social behaviour] occurring in the vicinity of these premises, particularly after midnight and until around closing time at 02:00 hours. Police have seen significant numbers of ‘brawls’ and the presence of highly intoxicated persons loitering at the front of both [Bojangles and the Rock Bar] and this has required ongoing police attention.” Superintendent Vicary supported this assertion by providing data extracted from Northern Territory Police records indicating that in the previous 12 months there had been “136 reported incidents of assaults, disturbances and other anti-social behaviour [at the Rock Bar] that required police attendance”. Of these, 31 substantiated offences were detected, 21 of which occurred between 23:00 and 03:00 hours. There was a markedly similar pattern of incidents next door at Bojangles.⁴ The applicant did not challenge the accuracy of this data.

ASSESSMENT OF THE APPLICATION

21. Section 6B of the Act provides that the Applicant bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test set out in section 6 of the Act. In considering and determining this application, the Commission has had regard to the objects of the Act and applied the public interest and community impact test by reference to the community impact assessment guidelines published by the Minister on 6 March 2018 pursuant to section 6A of the Act.
22. Section 6 of the Act requires the Commission to consider the fifteen objectives listed at section 6(2) of the Act. In determining this application, the Commission considers that objectives (a), (b), (c), (d) and (o) are of particular significance. In the view of the Commission, none of them weighs in favour of the application being granted.
23. In the course of the hearing, two salient questions were put to the applicant. Firstly, the applicant was asked why, if its primary concern is to enhance public safety by removing the existing 02:00 hours “bottleneck”, it doesn’t simply cease trading an hour earlier. The applicant’s response can be paraphrased as, “our business model revolves around our closing time of 2 am. We don’t think there’s a need to close earlier as we don’t operate unsafely.” In the view of the Commission, this response raises doubts as to whether, as the applicant claims, its primary motivation is indeed a concern for public safety.
24. Secondly, the applicant was asked what it considered the Commission should do, if having granted this application, the applicant’s competitors in turn apply to extend their trading by an hour. The applicant did not give a responsive answer to this question. In

² PAAC, *Objection: Application for a permanent variation to licence: Rock Bar Alice Springs* (9 August 2019), p. 4, citing Assistant Professor Nadine Ezard, Clinical Director, Drug and Alcohol Unit, St Vincent’s Hospital Sydney

³ For example, the 2018 Horton review of the Newcastle late-night trading restrictions accessed at <https://www.liquorandgaming.nsw.gov.au/documents/ilga/public-consultations/newcastle-licence-review-the-horton-report-2018.pdf>; and Kypri K, McElduff P, Miller P, “Restrictions in pub closing times and lockouts in Newcastle Australia 5 years on” *Drug Alcohol Rev* 2014; 33:323–326

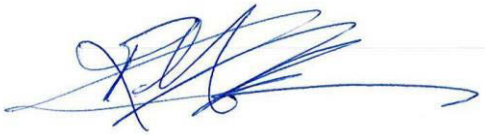
⁴ Pauline Vicary, Statutory Declaration, 16 October 2019

the view of the Commission, the issue raised by this question is a significant one: extending the trading hours of one venue in an entertainment precinct arguably gives that licensee an unfair advantage over its competitors. If that advantage is remedied by extending their hours in a similar fashion, the “bottleneck” problem will remain, and the whole precinct’s late night trading hours will have crept up.

25. The applicant adverted to a recent occasion on which it had been granted a temporary extension of trading by one hour to celebrate its tenth anniversary of trading, and gave uncontested evidence that this event had gone off without incident. However, the Commission does not accept the applicant’s submission that this demonstrates that regular trading until 03:00 hours would be similarly problem-free. It is readily foreseeable – indeed, all but inevitable – that if the application were allowed, the Rock Bar would become well known as the only venue available to patrons of the precinct at which the sale and consumption of liquor is authorised after 02:00 hours. In the view of the Commission, this would likely result in a substantial increase in patronage of the applicant’s premises after midnight on weekends by customers specifically looking for an opportunity to continue to purchase and consume liquor until 03:00 hours. The Commission considers that this would in turn raise the risk that the incidence of alcohol related harm would increase.
26. The Commission accepts the evidence and submissions of PAAC that, generally speaking, extending late-night trading hours leads to an increase in alcohol-related harm, and that specifically, the extension sought by the applicant would likely lead to an increase in alcohol-related harm.
27. The Commission accepts the evidence of Police that The NT Rock Bar is already a “hot spot” for late night alcohol-related harm, and that the extension sought by the applicant would likely lead to an increase in alcohol-related harm.
28. The Commission is not satisfied that the application, if granted, will:
 - a. Minimise harm or ill-health caused to people, or a group of people, by the consumption of liquor (section 6(2)(a));
 - b. Lead to the sale and consumption of liquor on the licensed premises in a responsible manner (section 6(2)(b));
 - c. Not jeopardise public order and safety (section 6(2)(c));
 - d. Not put the safety, health and welfare of persons who use the licensed premises at risk; and
 - e. Not increase anti-social behaviour (section 6(2)(o))
29. In addition, and although no evidence or submissions were received in relation to these issues, the Commission has doubts as to whether, if granted, the application would:
 - a. Not result in excessive noise emanations from the licensed premises (section 6(2)(e)); and
 - b. Not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises (section 6(2)(f)).
30. The Commission is not satisfied that the applicant has met the public interest and community impact test. Accordingly, pursuant to section 6B of the Act, the Commission must refuse the application.

NOTICE OF RIGHTS

31. 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 issue a licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision.
32. 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.
33. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the applicant and the two objectors.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
5 November 2019
On behalf of Commissioners, Goldflam, Cannon and Stephenson