

Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR PERMANENT VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/102
LICENCE NUMBER:	80515740
LICENSEE:	Pee Wees Pty Ltd
PREMISES:	Pee Wees @ The Point Lot 5775 Alec Fong Lim Drive DARWIN NT 0800
APPLICANT:	Pee Wees Pty Ltd
NOMINEE:	Mr Simon Matthews
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) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	7 September 2018
DATE OF DECISION:	7 September 2018

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 vary the conditions of the liquor licence for the premises known as “Pee Wees @ The Point” by :
 - a. Reference to the “Authority” contained within the licence as “Authority - Restaurant” be deleted and replaced with “Authority - On Licence”
 - b. That the terms set out beneath the heading “Notice To Be Displayed” under dash point 4 be deleted in their entirety and replaced by the following:

- “ - Liquor may be served without a meal provided that the persons shall at all times have the appearance of and trade predominantly as a restaurant and function centre.”
- c. That the terms set out beneath the heading “Special Conditions” and relating to the terms of “Restaurant and Function Centre” be deleted in their entirety and replaced by the following:
- i. “The premises shall at all times have the appearance of and trade predominantly as a restaurant and function centre and must be conducted at all times in a manner that clearly distinguishes it from a hotel, tavern or nightclub”.
- d. That the condition relating to “Liquor Without A Meal” be deleted in its entirety.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 7 September 2018.

Reasons

Background

3. Pee Wees Pty Ltd (“the applicant”) currently holds a “Restaurant” Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being “Pee Wees @ The Point” (“the premises”). The licensee is the applicant and the nominee under the liquor licence is Mr Simon Matthews.
4. On 23 March 2018 the applicant made application pursuant to section 32A of the Act for a permanent variation to its current licence conditions to:
- “... enable the licensed venue to serve alcoholic beverages to patrons without the requirement for provision of a meal. It should be noted that the Licensee will continue maintain (sic) the appearance of and trade predominantly as a restaurant and function centre only requiring removal of the conditions which prevent it from selling alcohol without a meal or snacks being offered (as defined under the Licence) and/or to patrons wishing and (sic) enjoy the ambience and majesty of the location”.
5. The applicant seeks variation to the following conditions:
- “1. **(Authority)** Albeit that the relevant "Authorities" are not defined under statute, the Licensee requests that the Authority be changed from a "Restaurant Authority" to an "On-Licence Authority" in keeping with the precedent licence outlined above and to be consistent with the operations not requiring the service of liquor ancillary to a meal.

2. **(Restaurant and Function Centre)** The Licensee requests that the condition only state that:

"The premises shall at all times have the appearance of and trade predominantly as a restaurant and function centre."
3. **(Liquor Without A Meal)** The condition currently included under the heading "Liquor Without A Meal" be deleted entirely".
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 do not indicate any adverse liquor compliance history". It is apparent therefore that the applicant has a proven and demonstrated capacity to operate the premises appropriately and in accordance with its licence conditions.

Disclosure of influential persons or potential beneficiaries

7. Section 32A(1A) of the Act 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 variation is granted. The applicant has filed such an affidavit.
8. Mr Simon Charles Matthews ("Mr Matthews") is the sole director, secretary and shareholder of the applicant and also the nominee. Mr Matthews has disclosed that there is no other person who may be able to influence any decision made by the applicant in relation to the sale of liquor or the sale and consumption of liquor and further that there is no other person who by any lease, agreement or arrangement may expect any benefit from the applicant in relation to the sale of liquor or the sale and consumption of liquor.
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 of Licensing NT ("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 that investigation by the Director-General.

Advertising and Objections

10. Details of the application were advertised in the Northern Territory News on Wednesday 4 and Saturday 7 April 2018 as well as having signage displayed at the premises for a period of 30 days. The Commission is advised that no objections were received in accordance with section 47F of the Act.
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 Director-General also forwarded a copy of the application to the Northern Territory Police, Fire and Emergency Services ("NTFRS") and to the Development Consent Authority ("DCA") for comment.
13. With respect to this application:
 - a. The DOH made no adverse comment.
 - b. The City of Darwin advised that it "had not identified any ground for an objection to be lodged".
 - c. The DCA did not respond.
14. In relation to the Commissioner of Police, a response was provided on 26 March 2018 as follows:

"Please note that NT Police are unable to support this application. It is our belief that restaurants should have the condition applied that liquor only be sold with the provision of a meal, this helps to minimise the consumption of liquor and maintain that liquor is sold and consumed in a responsible manner.

This is also consistent with the Riley Review and the discussions about the category of licences - pg. 52 item 4. Restaurant and Catering Licence - "In keeping with the concept of a restaurant and catering licence, it must be a condition of this licence category that liquor only be sold with the provision of a meal."
15. Upon receipt of this response, the Senior Licensing Officer in charge of this application on behalf of the Director-General requested that NT Police provide a "formal objection under section 47F". This request was acknowledged by NT Police and confirmation given that a "formal objection" would be prepared and sent through. Despite the Senior Licensing Officer writing on a further two (2) occasions seeking the formal objection, on 29 May 2018 NT Police responded simply with:

"Police still do not support it".
16. No formal objection has therefore been received from the Commissioner of Police in accordance with section 47F of the Act.
17. In relation to the NTFRS; initially a response was provided that it was "not in a position to support this application at the moment". A number of outstanding issues were identified as requiring rectification. Further works were subsequently carried out and on 1 June 2018 NTFRS advised that it "has no objections" to the application.

18. The Commission will return to the matters raised on behalf of the Commissioner of Police later in these reasons.

Public Hearing

19. 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.

20. This application was referred to the Commission on 23 July 2018. 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. Upon confirming with the Local Court the availability of a court room for the public hearing; notice was immediately thereafter given to the applicant on 13 August 2018 and the application was listed for hearing at 10.00am on 7 September 2018.

21. The public hearing commenced shortly after 10.00am on 7 September 2018. Mr Duncan McConnell instructed by Mr Andrew Giles appeared on behalf of the applicant. Ms Anna McGill as representative for the Director-General 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.

22. 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.

Assessment of the Application

23. As earlier noted, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, 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; • 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? • 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?

	<ul style="list-style-type: none"> • 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). 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. It is therefore noted that 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. It is also significant to recall that this is an application to permanently vary conditions of an existing licence that has been in place for approximately the last 16 years and for which there has been no negative compliance history.

31. In relation to the public interest and community impact test and also the community impact assessment guidelines; the applicant provided written submissions as follows:

“Public Interest Responses (section 6(2) of the *Liquor Act* (NT))

(a) harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised:

i. Prohibition of sale or supply of liquor to intoxicated persons (section 102 of the *Liquor Act* (NT)):

The Licensee is acutely aware of the dangers associated with the sale of liquor to intoxicated persons. To prevent this from occurring, the Licensee will implement the following measures:

- All staff who are engaged in the sale or supply of liquor will be required to undergo formal responsible service of alcohol training to ensure that they are capable of recognising signs of intoxication;
- Signage will be displayed at the premises to remind staff and patrons that the sale of liquor to intoxicated persons is an offence and that significant penalties may apply; and
- Intoxicated persons will be refused entry to the premises.

ii. Sale of adulterated liquor (section 103 of the *Liquor Act*):

All liquor to be sold at the premises will be supplied by reputable suppliers to ensure that adulterated liquor is not acquired for sale at the premises. The management plan in place at the premises will ensure that staff are monitored to prevent adulterated liquor from being sold to patrons.

iii. Persons on licensed premises (section 104 of the Liquor Act):

The Licensee will ensure that all staff at the premises are aware of the permitted trading hours of the premises. Staff training and in-house policies will ensure that all patrons have departed the premises prior to the closing time mandated by the liquor licence and the Liquor Act (NT). Where necessary, security guards will be engaged to assist in complying with this requirement.

iv. Prohibition of riotous conduct on or at licensed premises (section 105 of the Liquor Act (NT)):

Riotous, indecent, violent and quarrelsome behaviour will be prohibited at the premises. The style and atmosphere to be created at the premises shall be a deterrent for any raucous behaviour and management will be diligent in ensuring that the environment is in keeping with a restaurant and function centre. The Licensee will enforce this through its internal policies, staff training and the provision of security guards at times of elevated risk.

(b) liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner

All staff of the Licensee engaged in the sale or supply of liquor will be required to undergo in-house and formal training regarding the responsible service of alcohol. Staff will also be required to monitor the consumption of liquor on the premises and will actively take steps to ensure that patrons are not becoming intoxicated. The availability of drinking water, food, non-alcoholic beverages and low-alcohol content beer will also be promoted to ensure that patrons are consuming alcohol responsibly.

(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

The safety of its patrons is of utmost concern to the Licensee and the Licensee is acutely aware of the heightened risks posed by the concentration of large numbers of people in one area. Where necessary, the Licensee will engage crowd controllers and security guards to work in conjunction with its staff to maintain order at the premises and ensure that patrons of the premises do not cause a public disturbance in the surrounding areas.

(d) the safety, health and welfare of persons who use licensed premises must not be put at risk

All staff at the premises will receive in-house training in fire safety and emergency procedures to ensure that patrons will be able to be evacuated

in an efficient and orderly manner in the event of an emergency. In addition, at least one member of staff on each shift shall be first-aid qualified to allow the venue to respond to any medical emergency which may arise.

(e) noise emanations from licensed premises must not be excessive

The audio visual equipment installed at the premises will be calibrated to ensure that the noise emanating from the premises does not exceed the maximum permissible levels. Noise levels will be monitored consistently to ensure that the noise emanating from the premises is not offensive or disruptive to the occupants of neighbouring properties and in keeping with restaurant and function centre, which provides for relaxed social atmosphere.

(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

As mentioned previously, noise emanating from the premises will be monitored to ensure that it is not causing undue offence, annoyance, disturbance or inconvenience to others in close proximity to the premises.

In addition, the staff at the premises (and any supplementary security and crowd control contractors) will ensure that patrons enter and exit the premises in an orderly manner and act in such a way so as not to offend or disturb persons in the surrounding neighbourhood.

(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;

The Licensee is committed to ensuring that it is strictly compliant with the legislation, regulations and by laws which govern its use of the premises. In particular, it will ensure that it obtains and maintains any regulatory approvals relating to the use of the premises and will comply in all respects with any conditions imposed thereunder.

(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

Employees of venue shall receive both in-house and formal training and are mentored and developed on the job by more senior members of staff. Customer service is the key to the operation of the Licensee's business and

the ability of staff to perform in their respective roles is critical to the delivery of a high standard of customer service.

(i) the use of credit in the sale of liquor must be controlled

Credit in relation to the sale of liquor will not be offered at the premises.

(j) practices which encourage irresponsible drinking must be prohibited

The Licensee and its staff are aware of the importance of ensuring that alcohol is served and consumed responsibly. The managerial staff at the premises receive formal training which has allowed them to identify and curtail practices which may lead to the irresponsible consumption of alcohol.

(k) it may be necessary or desirable to limit any of the following:

(i) the kinds of liquor that may be sold;

The Licensee is experienced in the operation of licensed premises and, therefore, understands that placing an undue emphasis on the sale of certain types of liquor may have an adverse impact on the health and safety of patrons. As a result, the Licensee intends to offer a range of alcoholic beverages which shall also include liquor with low-alcohol content.

(ii) the manner in which liquor may be sold;

Liquor is to be sold by staff who possess all qualifications required by law and who have received appropriate in-house training. The sale of liquor by these staff will ensure that the venue is compliant with the liquor licence and industry best practice.

A significant proportion of the alcohol sold to patrons will be provided by way of table service in order to allow staff to continuously monitor patrons and to proactively identify signs of intoxication.

(iii) the containers, or number or types of containers, in which liquor may be sold;

It is intended that liquor will be sold in a variety of glass containers. Given nature of the Licensee's business and the fact that empty containers will be cleared by wait staff on a regular basis, it is submitted that there is no need to limit the containers, or number or types of containers, in which liquor may be sold by the Licensee.

(iv) the days on which and the times at which liquor may be sold;

The Licensee is not seeking any alteration to the trading hours of the licensed premises

(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

The Licensee will comply with any restriction on maximum capacity imposed by law or as a result of a determination by a regulatory authority or body.

(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

Due to the nature of the Licensee's business, the Licensee will limit the entertainment or the kind of entertainment provided at the premises to ensure best industry practices are at all times maintained.

(n) it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices

The Licensee regularly monitors advertising guidelines issued by industry bodies and Licensing NT in order to ensure that any promotional activity associated with liquor is in accordance with the law and industry best practice.

(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

The relaxation of the Liquor Licence conditions will not result in an increase of anti-social behaviour with the style and nature of the licensed premises not akin with raucous behaviour and strict standards of behaviour enforced with the upmarket restaurant bar setting. If successful, the Application will allow clientele to enjoy a drink before being seated for dinner and enable tourists to sample the finest ambience the Territory has to offer with the Restaurant often fully booked”.

Community Impact Assessment (Section 6A of the *Liquor Act* (NT))

1. Potential Harm or Health Impacts 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: are there any at-risk groups or sub-communities within the locality?

The Application is not seeking to establish a new licensed premises rather vary the conditions of the Licence to allow for clientele to consume liquor without the requirement for a meal offering whilst standing within the newly constructed areas. The Applicant submits that approval of the Application will not result in harm or health impacts with liquor only to be consumed

within the existing premises that is in keeping with a restaurant and which brings with it strict standards of behaviour.

Further, the Applicant does not envisage that the permanent variation will necessarily attract a new demographic of clientele rather it will provide existing clientele and tourists the opportunity to attend more regularly for informal high end social interactions and casual dining.

2. Potential Harm or Health Impacts: are there any community buildings, facilities and areas within the locality?

There are community facilities and a dry area nearby, however, the Applicant submits that the following should be considered when assessing this element:

- operation of the licensed premises over the past 20 years evidences that the Application will have no effect on these areas and that the venue is safely operated;
- the Application will allow local residents and tourists to consume liquor within a safe controlled environment; and
- liquor is only to be consumed on premises and management actively encourage responsible consumption of alcohol. Further, given its location, almost all patrons attending the premises will utilise a sober driver to get to and from the premises given its location.

3. Potential Harm or Health Impacts: what policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?

As outlined within the Risk Assessment Management Policy (RAMP) outlined in the body of this Application, the Applicant enforces strict responsible service of alcohol policies and does not tolerate intoxicated patronage. The Applicant, if successful, will continue to strictly adhere to best industry practice to ensure that at-risk groups or sub-communities are not exposed to any potential harm or health impacts. Further, given its location coupled with the on-premises consumption and restaurant conditions, the Applicant is able to nullify the effects to any itinerants and associated at risk groups that may be present within the community.

4. 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.

As outlined above, the Application is in respect of an existing licensed premises being the only licensed premises within the immediate vicinity. Further, the Applicant has an impeccable record with Licensing NT and submits the nature of the business will only have a positive impact on the local community and Darwin as a whole.

5. Volume: projected sales volumes and marketing analysis, liquor type and customer demographic.

The Applicant projects that the permanent variation will result in a ten per cent (10%) increase in turnover with sixty per cent (60%) of that increase attributable to liquor sales. Given the licensed premises will remain a restaurant, the focus will be on offering the fine dining experience whilst providing those unable to get a seat within the fine dining restaurant a chance to enjoy the ambience and a more informal high end food and beverage offering. As outlined in the body of the Application, the Applicant will be looking to promote fine wines and speciality beers targeting high income earners from both the local and tourist market.

6. Any cultural, recreational, employment or tourism benefits for the local community area.

The Applicant has been in contact with the Department of the Chief Minister, the Department of Tourism (Lauren Moss) and the Department of Business (Michael Tennant) given the widespread benefits the redevelopment of Pee Wees at The Point will have on the local community and the Territory as a whole. With respect to each of the categories, the Applicant submits that the following benefits will be received by the local community:

(a) (Cultural) The Applicant will increase the presence of a local artwork within the licensed premises allowing local artists to exhibit their work during ordinary trade and at set art exhibitions to be held within the venue. Given its location and the theme of the business, the Applicant is well placed to deliver these exhibitions and has received strong support from the Northern Territory Government to push such art programs to benefit both the local community and the tourism industry.

(b) (Recreational) The Application if successful will provide a safe environment for those looking to enjoy a relaxing meal or a drink at a five star venue and looks to fill a large void in making Darwin a more liveable city. Darwin ultimately needs to revitalise itself as a liveable city and encourage people to make Darwin their home to ensure that positive population growth is maintained and the local economy developed with it. The redevelopment of Pee Wees at The Point is a major step towards making Darwin that much more liveable.

(c) (Employment) If the Application is successful, the Applicant estimates that it will immediately add an extra three (3) fulltime employees and eight (8) casual employees (spread across front of house and kitchen employees) to its payroll to meet the demand for the new offering.

(d) (Tourism) The permanent variation will provide the tourist market with a greater opportunity to access an iconic venue and will be presented as a must do experience to better promote Darwin and the Territory as a whole. The Department of Tourism has already promised to allocate funding under the new Turbo Charging Tourism grants seeing the venue as

a key offering to encourage the tourism market to stay and enjoy what Darwin has to offer when visiting the many natural beauties in the Territory. Market research indicates that a large number of tourists are by-passing Darwin and heading directly to regional areas which is causing local businesses to lose out on a key revenue stream.

7. What additional services will be provided other than simply an additional outlet for the sale of liquor?

As outlined above, the Application will not result in an additional liquor outlet with the permanent variation in respect of an existing licensed premises. Needless to say, there will be additional services offered in the form of high end casual dining and a world class wine bar for local residents and tourists. It will provide clientele with a chance to enjoy the venue on a more informal basis given the high demand for the fine dining experience providing by the Applicant.

8. Will the proposed licensed premises provide additional choices of service or products that are not available in the area?

As it stands, there is no other high end wine bar within the Parap or Fannie Bay area nor is there any high end casual dining experience available to the residents. The offering is truly unique to Pee Wees at the Point will provide the local and tourist market with a chance to enjoy world class food and beverage in a premier venue (which has recently completed a major redevelopment) looking over an awe-inspiring vista.

9. Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?

A precedent licensed premises exists within Darwin, being Char Restaurant @ Admiralty, which trades under almost identical conditions to a similar demographic without incident. Furthermore, given the licensed premises location and its well developed RAMP, the Application submits that it can extend on its exemplary trading history and illustrate how high end licensed premises could provide a viable solution to a number of the issues raised by the Riley Report with respect to high quantity low quality licensed premises.

10. Will it use existing premises, improve or add to existing premises or is a new premises?

As outlined above, the Applicant will be operating from the existing premises improving on what is a world class facility. It should be noted that the Applicant has only recently undertaken a major redevelopment of the venue in which it has reduced the foot print of the licensed premises and extended the fine dining facilities.”

32. These submissions have been considered carefully by the Commission.

33. In relation to the issues raised on behalf of the Commissioner of Police, the applicant provided the following written submissions:

“NT Police Submission

We understand from communications with ... Licensing NT that NT Police have not lodged a formal objection in accordance with section 47F of the Liquor Act (NT) and the submission is confined to a consideration to be made by the Commission by way of a stakeholder comment.

In dissecting the correspondence between NT Police and Licensing NT, we believe the basis of NT Police's concern can be summarised as follows:

- NT Police believe that all Northern Territory restaurants should have a condition applied that liquor only be sold with the provision of a meal to help minimise consumption of liquor and maintain that liquor is sold and consumed in a responsible manner.
- The Riley Review recommended that it should be a condition for the restaurant licence category that liquor only be sold with the provision of a meal.

When considering the comments in this way it is plain to see that the comments are not made with regard to the nature of the Application and the legislative framework currently in existence within the Northern Territory and do not meet the pre-requisites of a formal objection. It is noteworthy that having been given notice of this, NT Police have not proceeded to take formal objection in relation to this Application.

As you are no doubt aware, the *Liquor Act* (NT) does not specify any set categories or authorities but permits Applicants to apply for the conditions that best meet the requirements of the business model having regard to public benefit. In this context, our client has an exemplary compliance history and in keeping with its willingness to comply with future laws has foreshadowed potential changes to the Liquor Act (NT) and sought to vary its licence authority to an "On Licence Authority" thereby dispensing with arguments over the proper construction of a "Restaurant Authority" and the inclusion of the condition requiring provision of a meal. That is, our client is complying both with the current laws and the recommend direction of the relevant liquor licence authorities.

Furthermore, we observe that the Application volunteers a proposed condition that the premises shall at all times have the appearance of and trade predominately as a restaurant and function centre. This was suggested by the Applicant to alleviate concerns of the public that it will materially alter the nature of its business. Our client has worked extensively with the Department of Tourism and the Department of Business to develop its business offering such that it remains to be the market leader of a high end dining experience, as outlined in depth within the Application.

On the basis of the above, we submit that the Commission should disregard the comments of NT Police as they are not factually relevant or form the proper basis for an objection under the Act.”

34. In relation to these submissions the Commission notes as follows:

- a. The Commissioner of Police has **not** lodged a formal objection despite an invitation being made to do so on a number of occasions.
- b. The response provided on behalf of the Commissioner of Police appears general in nature and not with any reference to the particular circumstances of this application or of this applicant.
- c. The provision of a meal with liquor is **one** way in which the consumption of liquor can be minimised. It is however also correct that appropriate application of the responsible service of alcohol requirements is another way and it is clear that this applicant has successfully complied with those requirements for a significant period of time.
- d. The Commission also agrees with the submission made on behalf of the applicant that the Act as it currently stands “does not specify any set categories or authorities but permits Applicants to apply for the conditions that best meet the requirements of the business model having regard to public benefit”. The Commission considers this is a matter that is particularly relevant when considering the detailed submissions that have been made by the applicant with respect to the public interest and community impact test and the response provided on behalf of the Commissioner of Police referencing the “Riley Review”.

35. In addition, with respect to the comments made on behalf of the Commissioner of Police to the “Riley Review”, the Commission notes that such comments in fact ignore a significant matter within the Review relevant to the discussion of categories of licence. Within the Review itself and in fact at the commencement of the authors discussion concerning categories of licence, the authors noted as follows:

“As a consequence of the ad-hoc system of licensing that has applied to date, the licences now held show a lack of uniformity in what they permit and the terms and conditions under which they operate. There are no categories (save for some loosely created in the licensing authority for administrative convenience) and no settled standard conditions. The result is that any transition to an ordered and consistent licensing regime will be difficult to implement and will, almost inevitably, lead to concerns for licence holders. The period of transition will need to be carefully and sensitively managed”.

36. The authors then go on to recommend a number of “categories” of licence to be introduced. It is during that discussion that the authors of the review make the comment now relied upon by police in this application. However, also within those recommendations, the authors recommend “on-premises” licences, i.e. the category of licence now sought by the applicant in this application. Importantly,

and what has apparently been ignored by police within their response is that, within that recommended category of licence, the authors note as follows:

“This licence category will authorise the retail sale of alcohol for consumption on the premises. Where appropriate, it will encompass restaurants on the premises. We consider the majority of licences that currently authorise the sale of liquor for consumption on-premises would transition into this category, including not only hotels, wayside Inns and tavern licences, but other licences that apply to vessels and function centres.”

37. The Commission notes that the current licence held by the applicant is one that has the “Authority” as “Restaurant”, but is one that “authorises the sale of liquor for consumption on or at the licensed premises”. The variation proposed with respect to the “Authority” to “On Licence” will still mean that the applicant is subject to an Authority that “authorises the sale of liquor for consumption on or at the licensed premises”. That does not change with this proposed variation. The Commission agrees with the submission made on behalf of the applicant that what the applicant is seeking to do with this application is in fact to comply “both with the current laws and the recommend (sic) direction of the relevant liquor licence authorities”.
38. Given these circumstances; the Commission considers this specific variation to be appropriate.
39. In relation to the proposed variation significantly varying the current conditions concerning “Restaurant and Function Centre”, the Commission notes that this proposed variation also does not result in a significant change in the practical operation of the premises from the manner in which it is successfully conducted now. The applicant is not seeking to remove the terms of that condition which provide that it trade “predominantly as a restaurant and function centre”.
40. In addition, during the course of the hearing the applicant confirmed to the Commission that it would agree to the terms of that condition continuing to include the following within its terms:

“... and must be conducted at all times in a manner that clearly distinguishes it from a hotel, tavern or nightclub”.
41. With this concession having been made, the Commission accepts the submission made on behalf of the applicant that what it is seeking to do is to “apply for the conditions that best meet the requirements of the business model having regard to public benefit”.
42. Given the nature of the operation of the premises and that the applicant is not proposing to change the appearance of the premises as one trading predominantly as a restaurant and function centre, the Commission considers this specific variation to be appropriate.
43. In light of this change, during the course of the hearing it was noted that the licence included provision with respect to the “Notice To Be Displayed”. Included within that provision at dash (“-“) point 4 was reference again to the “appearance of and

trade” of the premises. Given the variation made to the licence, the Commission considers it appropriate that the terms of this condition also be amended to reflect the changes made and that condition will be varied to delete its terms and be replaced by the following:

“ - Liquor may be served without a meal provided that the persons shall at all times have the appearance of and trade predominantly as a restaurant and function centre.”

44. As for the third variation sought; the Commission notes that the terms of the current licence provide as follows:

“Liquor Without A Meal

The licensee may serve liquor other than as ancillary to a meal, provided that such service is limited to persons seated at a table within the restaurant of the premises. Service to such persons shall be provided in a manner consistent with the restaurant.”

45. As is clear from the terms of that condition, at present the applicant is permitted to serve liquor *without* a meal, provided it is “is limited to persons seated at a table within the restaurant” and “in a manner consistent with the restaurant.” It was submitted by the applicant that it was arguable that wherever a table was placed, provided a person was seated, the current conditions enabled the applicant to serve alcohol in any area that fell within the licensed footprint. It is noted that with the nature of the functions conducted at the premises such a condition could cause problems; effectively requiring the applicant having to ensure all persons were seated at all relevant times. This was effectively conceded by the applicant during the course of submissions.
46. As was identified by the Commission during the course of the hearing; the Commission agrees with the submission on behalf of the applicant that the premises are an iconic venue. The premises have been extremely successful and are known generally as one of Darwin’s finer venues. It is in those circumstances however that the Commission does not wish to see changes made to the licence that effectively enable a “creep” in the conditions such that the venue eventually alters itself in such a way that it becomes another bar where patrons are seen standing around drinking in amongst the tables of those persons who have come to dine.
47. This concern was acknowledged on behalf of the applicant and it was submitted that the variations sought were “not directed towards bringing in a raucous bar crowd” and that to do so would “have a significantly negative impact” on what has been a “very successful” venue. It was submitted on behalf of the applicant that what was proposed by way of the variations was a “better fit” for what is a “multi-use venue” and more consistent “with the manner in which the venue has always operated”. It was stated that the variations were not sought to “change the purpose” of this successful venue and that it would be “commercial madness to do so”.

48. With these submissions and reassurances in mind and the detailed submissions made by the applicant (as earlier outlined) addressing the relevant matters with respect to the public interest and community impact test and guidelines, the Commission considers this specific variation to be appropriate. The Commission considers that the applicant has in place sufficient processes and procedures to ensure that such a variation is not against the public interest and nor do such variations have a negative impact upon the community.
49. The Commission again notes that there is no evidence that the applicant has been unable to comply with its conditions in the past. This is a significant matter when considering the longevity of these premises and this licence. In all of the circumstances, particularly including the detailed submissions made by the applicant addressing the public interest and community impact test and guidelines, the processes put in place by the applicant to ensure appropriate service and consumption of alcohol at all times, and the fact that there is no evidence of any compliance issues or particular adverse impact upon the community over a significant period of time; the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought.
50. Therefore, for the reasons outlined and having regard to the objects of the Act the Commission has decided to permanently vary the conditions of the licence as outlined at the commencement of this Decision Notice.

Notice of Rights:

51. 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.
52. 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.
53. 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

10 September 2018