

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

REFERENCE: LC2019/031

LICENCE NUMBER: 81401681

LICENSEE: Adelaide River Show Society Inc.

PREMISES: Adelaide River Show Society – Street Pavilion
Old Stuart Highway
ADELAIDE RIVER NT 0846

APPLICANT: Adelaide River Show Society Inc.

NOMINEE/S: Mr Ian Rixon

OBJECTOR/S: Nil

LEGISLATION: Section 32A, Part IV and V of the *Liquor Act*.

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 24 April 2019

DATE OF DECISION: 24 April 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to temporarily vary the conditions of the liquor licence for the premises known as the Adelaide River Show Society – Street Pavilion to provide as follows:
 - a. That the trading hours be temporarily varied as follows:
 - i. On Friday 7 June 2019 be between 10:00 hours and 15:59 hours;
 - ii. On Saturday 8 June 2019 be between 10:00 hours and 15:59 hours;

- iii. On Sunday 9 June 2019 be between:
 1. 10:00 hours and 14:59 hours; and
 2. 23:00 hours and 02:00 hours on Monday 10 June 2019.
 - b. That during the trading hours of 7, 8 and 9 June 2019 conditions 11, 12, 13 and 15 shall be suspended.
 - c. That during the trading hours of 7, 8 and 9 June 2019:
 - i. All liquor must be sold in open containers;
 - ii. No more than four (4) cans or bottles, or two (2) 750 mL bottles of wine (including sparkling wine), must be sold to any one person at any one time;
 - iii. Spirits must not be sold in containers with more than 5% alcohol by volume.
 - iv. Crowd controllers are to be employed as per industry standards, namely Two (2) licensed crowd controllers for the first one hundred (100) patrons and one (1) additional crowd controller for each one hundred (100) patrons thereafter.
 - v. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.
 - vi. The licensed premises shall be the area marked in red and attached to this Decision Notice.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 24 April 2019.

Reasons

Background

3. Adelaide River Show Society Inc. ("the applicant") currently holds a Club (Incorporated) Liquor Licence authorising the sale of liquor:
 - a. for consumption on or at the licensed premises by a member of the club or by a visitor in the presence of such a member.
 - b. for removal and consumption away from the licensed premises **only** to financial members of the Club.

4. The licensee is the applicant and the nominee under the liquor licence is Mr Ian Sloan. On 6 March 2019 the applicant made application pursuant to section 32A of the Act for a temporary variation to their licence conditions with respect to a number of dates, one of which included "Adelaide River Show Day weekend" occurring in 2019 on 7, 8 and 9 June.
5. The Director-General of Licensing ("the Director-General") referred the application with respect to all dates to the Commission on 21 March 2019. The applicant's current liquor licence enables the applicant to trade seven (7) days per week except Good Friday and Christmas Day. There is however no provision for trading prior to 15:00 hours on any day.
6. The part of the application relating to the Adelaide River Show Day weekend originally came before the Commission on 3 April 2019. However due to concerns raised by the Commission as to the sufficiency of information provided as to what was to occur that weekend, the applicant requested an adjournment. This was granted and the applicant was permitted to provide further evidence for the hearing re-scheduled for 24 April 2019.
7. As earlier noted, in 2019, the Adelaide River Show Day weekend falls on Friday 7, Saturday 8 and Sunday 9 June 2019. In accordance with the current conditions of the licence, the applicant can therefore commence trade between:
 - a. Friday 16:00 and 23:00 hours;
 - b. Saturday 16:00 hours and Sunday 02:00 hours; and
 - c. Sunday 15:00 hours and 23:00 hours.
8. The applicant however seeks to trade during the Adelaide River Show Day weekend as follows:
 - a. Friday 10:00 and 15:59 hours;
 - b. Saturday 10:00 hours and Sunday 02:00 hours; and
 - c. Sunday 10:00 hours and Monday 02:00 hours.
9. In relation to the events proposed over the course of the weekend, the Commission was informed that the applicant has provided for similar events over the course of the Adelaide River Show Day weekend for "the last 20 years at least". With respect to this applicant, the Commission was informed by the Director-General of Licensing ("the Director-General") that "a check of the records held at Licensing NT indicates that there are no adverse compliance issues against this licensee".

10. It further appears on the evidence provided to the Commission that when issues have been identified in relation to events, the applicant has worked hard with Licensing NT officers and also NT Police and that the applicant has a proven and demonstrated capacity to be able to operate this venue and comply with the conditions of its licence effectively in relation to events.

Disclosure of influential persons or potential beneficiaries

11. The Commission notes that 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 is granted. The applicant has filed such an affidavit via its nominee, Mr Ian Rixon.
12. 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

13. The Commission was advised that the Director-General had exercised her discretion under section 32A(2) and not required the applicant to publish a notice of the application due to an assessment of the application and deeming there was insufficient public interest.
14. 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.
15. That occurred with respect to this application with the following response received:
 - a. The DOH made no adverse comment.
 - b. The NT Police had no objections.
 - c. The Coomalie Community Government Council advised that “(i)f Adelaide River Police are satisfied with the variation the Council would have no objection and wish the ARSS club well for their 2019 calendar of events”.
16. Notice was also provided to the Northern Territory Fire and Rescue Service who advised that they also had “no objections” to the application.

Public Hearing

17. Pursuant to section 50 of the Act, the Director-General of Licensing (“the Director-General”) must refer *inter alia* applications under section 32A of the Act to the Commission. Therefore this application must be heard and determined by this Commission.
18. 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. As stated earlier, this application was referred to the Commission on 21 March 2019. The hearing was fixed for on 3 April 2019 and notice was given to the applicant. However in order to provide additional information to the Commission the hearing was adjourned at the request of the applicant to 24 April 2019.
19. 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.
20. Mr Ian Sloan and Mr Ian and Mrs Jackie Rixon appeared on behalf of the applicant. Mr Jeff Verinder 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.

Assessment of the Application

21. 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 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.
22. 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.”

23. 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.”

24. 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”.

25. 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.
	<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</p>

	potential harm or health impacts to these 'at-risk' groups or sub-communities
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>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>
Volume	<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>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<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? • Will it use existing premises improve or add to existing premises or is it a new premises?

26. 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”.

27. 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 that already enables the premises to be open for trade, but to enable the applicant for the long weekend known as the Adelaide River Show Day weekend in 2019 only to be able to sell liquor for periods during which it would not ordinarily be able to do so.

28. It is also relevant that the variation sought is to enable the applicant to trade for the purpose of a specific event that it has been involved in for 20 years and about which there have been no formal compliance issues raised. During the course of the hearing it was made known to the Commission that in fact in recent times the only year that this event was not run was in 2018 and this was because the premises were not sufficiently ready and therefore the event did not proceed. The Commission considers this shows a level of due diligence on the part of the applicant as to its preparedness to conduct such events.

29. In terms of the Adelaide River Show Day weekend, the application is centred on being able to provide for persons who attend the camp draft, polocrosse, show and rodeo events being conducted across the weekend. As was submitted on behalf of the applicant, the weekend is popular with the locals but also tourists alike and attracts visitors from all over Australia and the Northern Territory. It is clear that this event is one that is well known and has been conducted for many years successfully. These premises are a significant part of that event and a significant contributor to the events success. Whilst the applicant is seeking to change the licensed area for the event, this is being done so as to enable persons to consume alcohol in areas where the events will be centred around which significantly includes the rodeo arena.

30. The Commission notes that the applicant provided submissions in relation to the community impact assessment and identified that in relation to the event it will have in place a number of procedures to “minimise harm”. These include:

- a. “Lock outs ... to implemented;
- b. No higher ABV RTD's will be available;
- c. Mid strength and light drink options will be available;
- d. The increased licensed area ... will be clearly identified by being segregated using a rope barrier with signage every 5 metres”.

31. The Commission also notes that there will be security present in the area to ensure no alcohol goes outside the increased licensed area and that the applicant has worked closely with NT Police in terms of its arrangements for the Adelaide River Show Day weekend. During the course of the hearing the applicant also confirmed that it agrees to a limit on the number of drinks that can be provided to any one person at any one time.
32. As earlier noted, the applicant sought an adjournment to provide further material to the Commission to address the public interest and community impact test and also the community impact assessment guidelines. The additional material provided gives confidence to the Commission that the applicant has taken this application seriously and given proper consideration to those matters that must be addressed under the test and guidelines. Given the number of years that the applicant has successfully undertaken this event and the submissions that have been made, the Commission is satisfied the applicant has properly addressed the test and guidelines.
33. In all of the circumstances, including the nature of the application, the processes put in place by the applicant to ensure appropriate service and consumption of alcohol at all times, the evidence that there have been no compliance issues in the past or particular adverse impact upon the community and the processes put in place to minimise any harm from the consumption of alcohol; the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought.
34. 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:

35. 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.
36. 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.

37. 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

26 April 2019

Adelaide River Show Society Incorporated

Plan of Licensed Area

Adelaide River Show Day weekend

7 – 9 June 2019

