

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

LICENCE NUMBER: 80115620

LICENSEE: Saville Hotel Group Pty Ltd

PREMISES: Mantra on the Esplanade
88 The Esplanade
DARWIN NT 0800

APPLICANT: Saville Hotel Group Pty Ltd

NOMINEE/S: Mr David Pearson (Temporary Nominee)

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 Mantra on the Esplanade by:
 - a. Permitting the premises to trade within the area referred to in the licence as “Finz Restaurant” on ANZAC Day, being 25 April 2019, from 9:00am until 11:29am.
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. Saville Hotel Group Pty Ltd (“the applicant”) currently holds a Public Hotel Liquor Licence authorising the sale of liquor for consumption on, at or away from the licensed premises being Mantra on the Esplanade. The licensee is the applicant and the temporary nominee under the liquor licence is Mr David Pearson.
4. On 21 March 2019 the applicant made application pursuant to section 32A of the Act for a temporary variation to their licence conditions with respect to ANZAC Day 2019. The application was then referred by the Director-General of Licensing (“the Director-General”) to the Commission on 10 April 2019.
5. The applicant’s current liquor licence has a number of conditions relating to specific areas within the Hotel. The area to which this application for variation relates is the area referred to in the licence as “Finz Restaurant”. The current conditions of the licence for that area provide for the applicant to trade from 11:30am seven (7) days per week and ancillary to a meal.
6. The applicant wishes to be able to supply alcohol for the purposes of a private function for military personnel that are part of the “1st Combat Service Support Battalion”. The proposal is that personnel from the unit will participate in a breakfast at the premises between 7:30am and 8:30am. Thereafter the personnel will participate in the ANZAC Day march and then return to the premises at approximately 9:30am to participate in a function together to commemorate ANZAC Day.
7. The function will be a private function only open to military personnel and their guests and not open to the public. The consumption of any liquor purchased at the premises will take place on the premises. The restaurant area will have stanchions erected to “rope off” the area and hotel staff will be present to direct the military personnel to the area and to ensure general members of the public do not enter.
8. With respect to this applicant, the Commission was informed by the Director-General that a check of the records held at Licensing NT indicated there was no previous adverse history in relation to compliance issues for “the applicant or associated persons”.

Disclosure of influential persons or potential beneficiaries

9. 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.
10. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-

General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

11. The Commission was advised that 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. This was said to be because the application related to “a single one hour event, not open to the public and to assist the ADF to commemorate what is arguably the most important day in the ADF history”.
12. The Commission notes that due to the fact that the area where the function is proposed to take place is the area described in the licence as “Finz Restaurant”, the event is in fact for two and a half (2 ½) hours as that area is licensed to commence trade in the supply of alcohol from 11.30am, not 10.00am as is the case with other areas of the premises. Be that as it may, the Commission accepts the Director-General has exercised her discretion not to require a public notice.
13. 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.
14. That occurred with respect to this application with the following responses provided:
 - a. The DOH had “no adverse comment”.
 - b. The NT Police did not submit a response.
 - c. The City of Darwin also did not respond.

Public Hearing

15. 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.
16. 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 10 April 2019. The hearing was fixed for 3.00pm on 24 April 2019 (being the earliest next available hearing date) and notice was given to the applicant.

17. 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.
18. Mr David Pearson appeared on behalf of the applicant. Mr Jeff Verinder was also present to provide information and assistance to the Commission during the course of the hearing on behalf of the Director-General of Licensing.

Assessment of the Application

19. 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.
20. 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.”

21. 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.”

22. 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”.

23. 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;

	<ul style="list-style-type: none"> • 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. <hr/> <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</p>

	<p>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?

24. 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”.

25. 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 one year) to be able to sell liquor for a two and a half (2 ½) hour period earlier than it would ordinarily be able to do so.

26. The Commission also notes that whilst the licence with respect to area described as “Finz Restaurant” in the licence is from 11.30am, there are other areas of the premises that commence from 10.00am. Rather than have this private function in those other areas, it is apparent that the applicant is attempting to provide an area that is easy to cordon off for the personnel to commemorate ANZAC Day and that can be properly supervised by the applicant’s own staff.
27. It is also apparent that this is an application that is entirely centred on being able to provide a venue that allows military personnel to commemorate ANZAC Day together via a private function that is not open to the public and that will be supervised by the applicant but also the 1st Combat Service Support Battalion itself.
28. Whilst the Commission advised the applicant that its submissions addressing the public interest and community impact test and also the community impact assessment guidelines were extremely limited and of concern to the Commission as to the level of due diligence given by the applicant to those matters, the Commission is persuaded that they do address, in their extremely limited format, the matters required for the purposes of this **very** limited application. It is important however that the applicant understand that submissions of such a limited nature will not be sufficient for any substantive application in future and that greater care must be taken.
29. In all of the circumstances, in particular:
 - a. the limited nature of the application,
 - b. the processes put in place by the applicant to ensure appropriate service and consumption of alcohol on premises,
 - c. that there is no evidence of any compliance issues, and
 - d. no evidence of any particular adverse impact upon the community;

the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought.

30. 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:

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 vary the conditions of a liquor 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 person is the applicant.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal line extending to the right.

JODI TRUMAN
Presiding Member
Deputy Chairperson

26 April 2019