

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF A LICENCE

LICENCE NUMBER: 80819436

REFERENCE: LC2019/080

PREMISES: **Brown's Mart Theatre**
12 Smith Street
DARWIN 0800

APPLICANT: **Browns Mart Arts Pty Ltd**

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

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 17 June 2019

DATE OF DECISION: 17 June 2019

DECISION

1. For the reasons set out below and in accordance with section 32A of the *Liquor Act 1978* (NT) (the Act) the Northern Territory Liquor Commission (the Commission) has determined to approve an application to vary conditions of a liquor licence at the Brown's Mart Theatre (the Premises) held by Browns Mart Arts Pty Ltd (the Applicant) as follows.
2. The licence is varied to authorise the sale, supply and consumption of liquor on the premises on Thursday 11 July 2019 and Friday 12 July 2019 from 01:00 hours to 02:00 hours.

REASONS

BACKGROUND

3. The Applicant operates a liquor licence at the premises with an "On licence" Authority. The licence authorises trading up to 01:00 hours seven days a week.

4. The Applicant hosts the Darwin Fringe Festival (the Festival), which in 2019 runs from 5 to 14 July, featuring theatre shows, performances and events including amplified music, cabaret and pop-up theatre. The Applicant's licence permits it to extend its trading hours from 01:00 hours to 02:00 hours on each Saturday and Sunday morning during the Festival. In 2019, the licensee is therefore permitted to trade until 02:00 on Saturday 13 July and Sunday 14 July.
5. The Applicant now seeks to similarly extend its trading hours until 02:00 hours on two additional days during the Festival, Thursday 11 July 2019 and Friday 12 July 2019.
6. A condition of the Applicant's licence is that crowd controllers are to be employed as per the industry standard after 22:00 hours each day. The industry standard is two crowd controllers for the first 100 patrons, and one additional crowd controller for each additional 100 patrons. The maximum number of patrons permitted on the premises is 300. A further condition of the licence requires that noise levels emanating from the premises not be such as to cause unreasonable disturbance to occupiers of neighbouring premises.
7. The Applicant lodged a completed application with Licensing NT on 26 April 2019. On 28 May 2019, following consultation, together with an assessment by Licensing NT of the application, a Delegate of the Director-General of Licensing (the Director-General) referred the application to the Commission for hearing pursuant to sections 32A(6AA) and 50(b) of the Act.
8. The Director-General, in the exercise of her discretion pursuant to section 32A(2) of the Act, did not require the Applicant to publish notice of the application.
9. No objections to the application were lodged.
10. The Director-General informed the Department of Health, Northern Territory Police, NT Fire and Rescue Service and the City of Darwin of the application.
11. The Commission notes that the following responses were received:
 - a. The Department of Health made "no adverse comment".
 - b. The NT Police, after seeking and being provided with further details of the application, advised that they had no objections.
 - c. NT Fire and Rescue Service advised it had no objection.
 - d. The City of Darwin did not provide a response.
12. The Director-General informed the Commission that that the Applicant has held similar events in previous years and has no adverse compliance history in relation to its licence.
13. The Director-General provided the Commission with a brief of evidence (the Brief) including:
 - Application for a variation of conditions of liquor licence dated 12 April 2019
 - The Applicant's liquor licence number 80819436
 - Affidavit for the purposes of s26A of the Act deposed by Sean Pardy, a nominee of the Applicant and its principal Executive Officer, dated 24 April 2019

- Community Impact and Public Interest Assessment statement in compliance with s6 and s6A of the Act
- Correspondence between Licensing NT and the Department of Health, NT Police, NT Fire and Rescue Services and the City of Darwin.

HEARING

14. On 17 June 2019 the application proceeded as a public hearing. Mr Pardy appeared on behalf of the Applicant, and Ms Chin appeared for the Director-General. The Commission thanks them for their attendance and assistance.
15. The brief was tendered and admitted into evidence without objection. No further evidence was adduced.

ASSESSMENT OF THE APPLICATION

16. Section 6B of the Act provides that the Applicant bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test set out in s6 of the Act. In considering and determining this application, the Commission has had regard to the objects of the Act and applied the public interest and community impact test by reference to the community impact assessment guidelines published by the Minister on 6 March 2018 pursuant to s6A of the Act. The guidelines are detailed and specific, but also state 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.

17. The Commission accepts that the Applicant has no adverse compliance issues under the Act. The Commission accepts the Applicant's evidence that there are no residential buildings within 250 metres of the premises, which are situated adjacent to Civic Park in the Darwin CBD; and that the Applicant has never received any noise complaints in the past. The application is for a temporary variation to extend trading for one hour on two successive days. In the view of the Commission, the Applicant's existing licence conditions are sensible and appropriate to minimise the risk of harm arising from the supply, sale and consumption of liquor until 02:00 hours on these two days.
18. Having regard to these matters, the Commission assesses the impact on the community of the proposed variation as low.
19. The Commission accepts that Browns Mart has been a premier Darwin theatre venue for almost half a century, and as such is an important contributor to the Darwin community arts scene. The Festival is a significant event in the Darwin arts calendar, and the Applicant is the Festival hub. In the view of the Commission, the extension of the Applicant's trading hours supports the purpose of the Act set out at s3(2)(a), to enhance community amenity, social harmony and wellbeing through the responsible supply and consumption of liquor.
20. The Commission is satisfied that the Applicant has met the public interest and community impact test, and that, having regard to the objects of the Act as set out in section 3 of the Act, the conditions of the licence should be varied in the terms of the application.

21. The application to vary the conditions of the Applicant's licence is granted.

NOTICE OF RIGHTS

22. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision.

23. 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.

24. 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.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

19 June 2019

On behalf of Commissioners, Goldflam, Reynolds and McFarland