

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR TEMPORARY VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/159
LICENCE NUMBER:	81404499
LICENSEE:	Kalymnian Brotherhood Darwin Inc.
PREMISES:	Kalymnian Brotherhood Darwin McMillans Road KARAMA NT 0812
APPLICANT:	Kalymnian Brotherhood Darwin Inc.
NOMINEE:	Mr Sakelarios ("Charlie") Pikos
OBJECTOR/S:	Nil
LEGISLATION:	Section 32A, Part IV and V of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Dr Charles Douglas (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	19 December 2018
DATE OF DECISION:	19 December 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 temporarily vary the conditions of the liquor licence for the premises known as Kalymnian Brotherhood Darwin by permitting trade from 1900 hours on Monday 31 December 2018 to 0200 hours on Tuesday 1 January 2019.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 19 December 2018.

Reasons

Background

3. Kalyrnian Brotherhood Darwin Inc. (“the applicant”) currently holds a “Club (Incorporated)” Liquor Licence authorising the sale of liquor 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. The licensee is the applicant and the nominee under the liquor licence is Mr Sakelarios (“Charlie”) Pikos.
4. On 17 November 2018 the applicant made application pursuant to section 32A of the Act for a temporary variation to its current licence conditions for a single event being a “New Year’s Eve Party” on a single date, namely Monday 31 December 2018 into the early hours of Tuesday 1 January 2019. The application sought to be permitted to trade under their licence between certain hours.
5. Unfortunately the application was so poorly prepared that it did not make clear what hours it was seeking. At one stage in its documents the applicant alleged it had current hours starting at 10.30am. The applicant in fact is not permitted to trade on Monday. At another stage in its documents it stated drinks would be available for sale from “8pm”. At another stage it sought trade from “6.00pm”. This was completely inadequate.
6. To compound just how inadequate and ill prepared the applicant was with respect to the hours sought, the Commission in fact had to ring a number of persons and make a number of investigations just to have *someone* on behalf of the applicant appear and provide information to the Commission. Unfortunately when an individual was located, they did not even have a copy of the application with them and were “unsure” a number of times as to what was sought and behaved throughout the hearing as if the Commission’s inquiries were in fact a hindrance and annoyance.
7. It is important that the Commission make clear to **this** applicant in particular, but to all applicants that if an application is filed and a hearing is required, the person/s who filed the application must make themselves available to the Commission and be able to assist the Commission with its inquiries. On this occasion the applicant was fortunate indeed that the history of its variations in the past has been without issue and that the patience of the Commission members on this occasion was not exhausted by the conduct of the applicant’s representative.
8. This applicant is warned however that the Commission may not be prepared to go to the lengths it went to in order to accommodate such an application in future and may instead simply dismiss the application should the applicant fail to make the necessary arrangements to attend such hearings.
9. The application was referred to the Commission on 4 December 2018. The Commission has been advised by the Deputy Director-General of Licensing NT (“the Deputy Director-General”) that “there are no adverse compliance issues recorded against this licensee”.

Disclosure of influential persons or potential beneficiaries

10. 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 an affidavit. When the applicant is a body corporate the section requires that the person who makes the affidavit must either be:
 - a. The principal executive officer of the body corporate; or
 - b. If that officer does not have knowledge of the relevant facts - another person who has knowledge of the relevant facts and is authorised by the body corporate to make the affidavit.
11. Ms Emorfia Karambetis (“Ms Karambetis”) is the Vice President for the applicant and is the person who provided the relevant affidavit. Unfortunately Ms Karambetis was unable to be located on the day of the hearing. As noted earlier, after numerous inquiries a contact person for the applicant was able to be located, namely Mr Costa Karaolias (“Mr Karaolias”). When Mr Karaolias was asked if there was someone who could assist with the hearing who was listed as a relevant person in Ms Karambetis’ affidavit he told the Commission; “Basically everyone is busy. They’re working and stuff you know”. Such a response from Mr Karaolias was completely inappropriate.
12. It was eventually discovered that Mr Karaolias was, despite not being referred to in the affidavit of Ms Karambetis, in fact the public officer for the applicant. As such he was an appropriate person to appear for the applicant and in fact the person who should have prepared the affidavit. It was on this basis that Mr Karaolias appeared for the applicant despite not having the application before him or being able to remember some relevant details.
13. Mr Karaolias confirmed the content of Ms Karambetis’ affidavit where she swore that:

“... there are no other person/s other than the President Theophili Kalidonis, Committee Members Emorfia Karambetis, John Giallouris, Charlie Pikos, Chris Elenis, Kosta Nikolakis, Manolis Dris, Nikolaos Manikaros, George Zagrofakis and Poppy Petrakis who will by any lease, agreement or arrangement be able to influence any decision made by the Committee Members and/or Nominee in relation to the sale of liquor or the sale and consumption of liquor.”

Further:

“... that there is no other person/s other than myself as the Vice President, the President as named, the Committee Members as named, the Nominee as named and Members of the Kalyrnian Brotherhood Darwin Incorporated who by any lease, agreement or arrangement may expect any

benefit from Kalymnian Brotherhood Darwin Incorporated in relation to the sale of liquor or the sale and consumption of liquor.

14. 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

15. Section 32A(2) of the Act provides that where an application for variation of conditions of licence are made; “(i)f the Director-General considers it to be in the public interest, the Director-General may require the applicant to publish notice of the application in the way, and within the period, specified by the Director-General”.
16. In this application, the Deputy Director-General exercised her discretion and did not require the applicant to advertise the application “given it was for a limited period of time and given the nature of the application”.
17. 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.
18. The Commission notes that the Director-General also forwarded a copy of the application to the Northern Territory Police, Fire and Emergency Services (“NTFRS”) for comment.
19. With respect to this application; the DOH had “no adverse comment” and the NT Police and NTFRS had “no objection”. The Darwin City Council (“DCC”) advised that it “supports variations for extensions of trading hours (2 hours earlier or later) for New Year’s Eve, St Patrick’s Day and telecasts for special international sporting and cultural events”.

Public Hearing

20. 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.
21. Mr Karaolias appeared on behalf of the applicant by way of audio link. Mr Phil Timney as representative for the Director-General was present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks Mr Timney for his assistance in this hearing.

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 noted earlier, 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.

	<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</p>

	current alcohol consumption rates for the community area.
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?

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 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. It is also important to recall that this is an application:

- a. to *temporarily* vary conditions of an existing licence;
- b. for a single event being a “New Year’s Eve Party”; and
- c. with respect to a licence for which there has been no negative compliance history.

30. As was made clear to Mr Karaolias during the hearing (and as noted above) it is extremely important that greater care is taken by applicants when completing their applications to set out clearly what the variation is in relation to the hours. This was not done in this application and was made all the more complicated by the fact that Mr Karaolias could not properly assist. Eventually it was ascertained that the tickets for the New Year's Eve Party were for the event to start from 7.00pm and it was on this basis that the Commission considered the application.
31. In relation to the public interest and community impact test and also the community impact assessment guidelines; the applicant provided written submissions, which the Commission has considered. The event is to be a ticketed event with a buffet dinner and drinks available for sale. It is estimated that approximately 300 persons will attend the event. The applicant has stated that security will be in place in accordance with industry standards. Entertainment is proposed to be provided by way of amplified music, however the applicant has stated that any impact from noise:
- “... may only be on the tradie's accommodation across the road, 100 metres away, and maybe across McMillan's Road houses but this is protected by trees, 4 lane and island road and large green space with trees.*
- However the committee will ensure that the entrance doors will be closed which seals the hall and virtually no noise escapes.”*
32. The Commission has carefully considered all submissions made by the applicant. It is noted that the manner in which the applicant proposes to trade for this event is similar to the manner in which it has conducted numerous other events at the premises without adverse comment. The Commission is satisfied that the public interest and community impact test and guidelines, as far as they are relevant with respect to this variation application, have been satisfied and in all of the circumstances, the Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence in relation to the hours sought. The applicant is reminded that all other conditions of its licence remain in place including with respect to crowd controllers.
33. 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:

34. 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.
35. 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.

36. 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

20 December 2018