



Director-General of Licensing

Decision Notice

Matter:	Application for a temporary variation to a liquor licence
Premises:	Opium
Applicant:	Mr Andrew Giles of De Silva Hebron on behalf of the licensee
Licensee:	Fuel Ventures Pty Ltd
Objectors:	Department of Health and NT Police
Legislation:	<i>Liquor Act</i> – section 32A
Decision of:	Director-General of Licensing
Date of Decision:	5 July 2016

Background

1. Pursuant to section 32A of the *Liquor Act* (the Act), Mr Andrew Giles counsel for Fuel Ventures Pty Ltd, has applied to the Director-General of Licensing for a temporary variation to the liquor licence for the premises known as "Opium", located at 52 Mitchell Street, Darwin.

Current Situation

2. The variation sought is to allow for the conduct of three (3) underage only events at the licensed premises on consecutive Wednesdays being 6, 13 and 20 July 2016.
 3. The licensee has previously held similar events at Brownsmart and Foskey's Pavilion in 2010 and 2011. As these are not licensed premises they would not have come to the attention of the then Licensing Commission, or the department.
 4. There were a further three (3) similar events held at Discovery nightclub on 26 June 2011, 7 August 2011 and 7 September 2011 under the event name of the "Booty Bar" which necessitated similar approvals to the one sought in this application.
 5. There appears to be no record of incidents at the events that were run at Discovery in 2011.
 6. This application is for the hours of 19:00 to 23:00 each evening whereas the previous approvals at Discovery were between the hours of 16:00 and 21:00.
 7. As is required, the application was sent to the Department of Health and NT Police for their comments. Both have lodged objections to the application and state they are unable to support an approval.
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8. The Department of Health submitted it would be inappropriate to allow youths onto premises otherwise prohibited for entry suggesting it could be seen as "...grooming children as the next generation of drinkers at the very time national health priority is to discourage minors from participating in behaviour associated with alcohol consumption".
9. They further submitted the proposed events are to be held in the centre of the late night trading premises of Mitchell Street and there had been no specifics as to the proposed supervision of the minors attending.
10. Also submitted was the fact the last public bus leaves Darwin for the northern suburbs at 21:39hrs, well before the conclusion of the event. The ancillary effect being if the attendees are not in the presence of their parents or guardians, they may not have safe or easily accessible transport home after the event late at night.
11. The event is to be smoke free therefore no considerations are required as to other health issues normally associated with licensed premises.
12. The objection of NT Police is similar to that of the Department of Health. Police submit they were unaware of specific like events this licensee has held however; in general they had concerns over such events given incidents at previous events.
13. Their submission also included reference to the licensee's social media advertising which "...show images clearly identifying sexually related themes...there appears no consideration by the Licensee to limit their social platform to accommodate children".
14. As with the Department of Health, the absence of public transport at the conclusion of the event, save for taxis is a risk. On these evenings there will be no City Safe patrols and therefore no dedicated patrols making reaction to an incident less immediate as resources would not be specifically tasked.
15. It was further noted by Police that in general premises that did allow minors on licensed premises such as Monsoons required them to be in the presence of their parent, guardian or spouse over the age of 18 years and they must vacate the premises by 22:00hrs.

Assessment of the matter

16. Whilst the licensee is encouraging the attendance of parents there is no mandating of such supervision. This gives rise to the likelihood of unsupervised minors leaving the premises at the conclusion of the event on the main late night trading area of Mitchell Street.
17. The conduct of underage events on licensed premises is not without precedent. Historically there have been similar events held in Darwin and throughout the Northern Territory without incident.
18. In each of these previous events licensees have removed or covered all liquor and materials of an adult nature from the view of minors, engaged crowd controllers at the industry standard and encouraged the presence of parents or guardians. Further, there have been arrangements made for shuttle services or transport home at the conclusion of the event in areas where no public transport is provided.
19. Distinguishing those events from this application is the time proposed for the events. Previously like events have concluded at around 21:00hrs allowing for access to public transport, and in the situation of Katherine where no transport is available a shuttle was provided home.

20. Whilst I am satisfied the adult nature of the premises and safety of attendees on the premises, can be mitigated through the controls proposed by the licensee, it is the safety of the attendees at the conclusion of the event which cannot be adequately ensured.
21. I cannot be satisfied at this time the exiting of minors onto Mitchell Street late at night, is in the best interests of the minors. There will be no public transport available at that time of night in an area that has transitioned into an adult entertainment area.
22. The licensee has compared the timing of the proposed events to be akin to youths attending the cinema complex a short distance further down Mitchell Street. Invariably the last movie screened would conclude at a similar time to that which is proposed for these events and likewise, there is no guarantee attendees would be in the presence of parents or guardians.
23. Whilst this is correct and the cinema complex is within close proximity of other licensed premises, patrons exit to a dedicated taxi rank and are able to wait inside or at the front of the cinema which is not licensed premises. When a person exits Opium they are immediately in an area with a greater density of late night licensed premises. Accordingly they are more likely to be exposed to the consumption of liquor and the possibility of alcohol-fuelled anti-social behaviour.
24. The distinction between previous approvals and this application, being the time the events are held was brought to the attention of the licensee who stated they were not minded to hold the events earlier in the evening.

Consideration Criteria

25. In considering the application the *Liquor Act* (the Act) requires me to consider any objection to the application and any reply provided by the applicant.
26. I have considered both objections and the response by the licensee.

Summary

27. The licensee has made a thorough application and compelling argument for the approval of the variation allowing for the underage event. I am satisfied the conduct of the event on the premises can be done in a manner that ensures the safety of attendees and products of an adult nature can be removed or hidden from view.
28. Whilst no liquor will be promoted or consumed by any person attending the event, I must still consider the objects of the Act specifically the protection and enhancement of community amenity, social harmony and wellbeing despite the absence of liquor.
29. On weighing up all materials before me the risk posed after the event may outweigh the benefit of conducting the event.

Decision

30. The decision is to refuse this application on the basis it poses an unacceptable risk to attendees who may be unsupervised at the conclusion of the event, in an area that has transitioned into an adult entertainment area late at night.

Review of Decision

31. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. An application for a variation of the conditions of a liquor licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision. 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.

32. Accordingly, the affected persons in relation to this decision are, Fuel Ventures Pty Ltd, Mr Neil Wright – Acting Director, Alcohol and Other Drugs, Department of Health and Ms Zoe Langridge – Director, Strategic Policy Division, Office of the Commissioner and CEO, Northern Territory Police.



Cindy Bravos
Director-General of Licensing

5 July 2016