

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	APPLICATION FOR TEMPORARY VARIATION OF THE CONDITIONS OF LICENCE
REFERENCE:	LC2018/160
LICENCE NUMBER:	80317827
LICENSEE:	Stamen Investments Pty Ltd
PREMISES:	Rum Jungle Tavern 5 Nurndina Street BATCHELOR NT 0845
APPLICANT:	Stamen Investments Pty Ltd
NOMINEE:	Ms Roisin Howard-Smith
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 Rum Jungle Tavern by:
 - a. Permitting trade from 2330 hours on Monday 31 December 2018 to 0100 hours on Tuesday 1 January 2019; and
 - b. Permitting amplified music until 0100 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. Stamen Investments Pty Ltd (“the applicant”) currently holds a “Tavern” Liquor Licence authorising the sale of liquor for consumption on and away from the premises. The licensee is the applicant and there are four (4) nominees, namely Mrs Janet McElwee, Mr Michael McElwee, Ms Roisin Howard-Smith and Mr Christian McElwee.
4. On 7 December 2018 the applicant made application pursuant to section 32A of the Act for a temporary variation to its current licence conditions for two (2) events being a “Christmas Eve” and “New Year’s Eve” celebration on two dates, being:
 - a. Monday 24 December into the early hours of Tuesday 25 December 2018; and
 - b. Monday 31 December 2018 into the early hours of Tuesday 1 January 2019.
5. The application sought to be permitted to trade under their licence between certain hours, however it was made clear at the outset of the hearing that the applicant no longer sought a variation for trade relating to Christmas Eve and in fact only sought the variation for New Year’s Eve being an extension from the currently permitted trading hours of 2330 hours on Monday 31 December 2018 to 0100 hours on Tuesday 1 January 2019.
6. The application was referred to the Commission on 17 December 2018. The Commission has been advised by the Acting Deputy Director-General of Licensing NT (“the Acting Deputy Director-General”) that “there are no adverse compliance issues recorded against this licensee”.

Disclosure of influential persons or potential beneficiaries

7. 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.
8. Mr Michael McElwee (“Mr McElwee”) provided an affidavit to the Commission stating that he was the person nominated by the applicant to be the “manager” of the licensed premises and “as the nominee” was “authorised” by the applicant to make the affidavit in accordance with section 26A. During the course of the hearing Mr McElwee advised the Commission that in fact it was his wife, namely

Mrs Janet McElwee (“Mrs McElwee”) who was the principal executive officer for the applicant. It was pointed out to Mr McElwee that in such circumstances Mrs McElwee should have been the person to provide the affidavit under in accordance with section 26A. Mr McElwee was nevertheless asked if Mrs McElwee was aware that he had provided the affidavit and agreed with its contents? Mr McElwee confirmed that she was and it was in those circumstances that the affidavit was accepted.

9. In the affidavit Mr McElwee swore that:

“... there are no other person/s other than, Dual Nominees Janet McElwee; Christian McElwee or Roisin Howard-Smith who will by any lease, agreement or arrangement be able to influence any decision made by me, or any other party named in this affidavit in relation to the sale of liquor or the sale and consumption of liquor under this licence.”

Further:

“... that there are no other person/s other than Dual Nominees who will by any lease, agreement or arrangement may expect any benefit from me in relation to the sale of liquor or the sale and consumption of liquor under this licence.”

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 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

11. 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”.

12. In this application, the Delegate of the Director-General exercised discretion and did not require the applicant to advertise the application given the application “was for a limited period of time and given the nature of the matter”.

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. 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.
15. With respect to this application; the DOH had “no adverse comment” and the NT Police and NTFRS had “no objection”. The Coomalie Community Government Council (“CCGC”) advised that it had “no adverse comment”.

Public Hearing

16. 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.
17. Mr McElwee 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.
18. 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

19. 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.
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
The potential harm or health impact that may be caused to people, or any group of people within the local	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –

<p>community area, due to the availability and accessibility of an additional liquor outlet.</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 current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>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.</p>	<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). 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”.

25. 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” celebration;
- c. for a period of one and a half (1 ½) additional hours; and
- d. with respect to a licence for which there has been no negative compliance history. In fact the Commission was advised that the applicant was well regarded in the industry.

26. 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 intended to be conducted in a similar manner to the manner in which the applicant usually conducts its trade on a Friday night. It is estimated that approximately 100 persons will attend the event. Mr McElwee stated during the hearing it may in fact be less. 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.

27. 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 conducts its usual Friday night trade and the manner in which it has conducted 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.

28. The applicant is reminded that all other conditions of the licence will remain in place during the period of the extended hours, including but not limited to those conditions relating in particular to the restriction on take away hours, entertainment, crowd control and minors. In relation to minors it is important that minors only remain on the premises to 2200 hours only if they are in the company of their parent, guardian or spouse (who has attained the age of eighteen (18) years).

29. 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:

30. 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.

31. 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. 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.



JODI TRUMAN
Presiding Member
Deputy Chairperson

20 December 2018