

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

**LICENCE NUMBER:** 80304385

**LICENSEE:** Karma Darwin Pty Ltd

**PREMISES:** **The Deck Bar**  
22 Mitchell Street  
DARWIN NT 0800

**APPLICANT:** Karma Darwin Pty Ltd

**NOMINEE/S:** Mr Jason Hanna

**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

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**Decision**

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to refuse the application to temporarily vary the conditions of the liquor licence for the premises known as The Deck Bar.

**Reasons**

**Background**

2. Karma Darwin Pty Ltd (“the applicant”) currently holds a Tavern Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being The Deck Bar. The licensee is the applicant and the nominee under the liquor licence is Mr Jason Hanna.

3. On 3 April 2019 the applicant made application pursuant to section 32A of the Act for a variation to their licence conditions with respect to ANZAC Day. The application form makes clear that applications **should** be lodged “at least 28 days before the event” to which they relate. The applicant did not comply with that requirement. This is despite the fact that the applicant has long held a licence in the Northern Territory and the nominee is a very experienced publican who has lodged many applications over the years and would be aware of the time periods outlined in the application document itself.
4. These timelines for lodgement are not new requirements. It is well beyond time for all applicants to be aware and understand these time periods. They are not there merely for “window dressing” or to “pad out” the form. They are there for a reason. Applications for variation require hearings by the Commission. They require a panel to be formed. They require notice to be provided to various stakeholders. All of this is required to occur before the matter is even listed for a hearing and must all occur in circumstances where the Commission does not have its own premises or dedicated full time Commissioners for the conduct of hearings. It is therefore no easy task and yet it is done as quickly as possible in an attempt to assist applicants in having their applications heard promptly. This is not assisted when applicants either ignore or refuse to comply with requirements in relation to such time periods.
5. The Commission therefore puts all applicants on notice, including this applicant, that unless these time periods are complied with, applicants may find themselves without a hearing date available in time for the event sought. It is not the responsibility of the Commission to find a hearing date in time. It is the responsibility of applicants to lodge their applications in time and preferably well ahead of time. In the context of this application, given inquiries were made by the applicant initially in January 2019, there is simply no reasonable excuse for the applicant’s failure to comply.
6. Be that as it may, because the nature of the event being sought is related to ANZAC Day, the Commission again went out of its way to accommodate this application. It was referred to the Commission on 8 April 2019 and listed for a hearing at the next available date being 24 April 2019, i.e. the day prior to the event sought.
7. The applicant’s current liquor licence prohibits the supply and service of alcohol before 10.00am. The applicant however seeks to trade on ANZAC for 2019 only between 7.00am to 9.59am. The application states that the details of the variation needed is:

“Early trading hour for ANZAC Day working with Darwin RSL Sub Branch and the Hotel Darwin to host the Gunfire Breakfast and ensure continuity of service due to the lack of an operating RSL”.

8. The Commission notes that this is a reference to the Darwin RSL premises which burnt down in 2018 and are still being in the process of being re-built or rehoused. The Commission notes that this is in fact very similar to the basis upon which The Hotel Darwin sought a variation of its own licence for the purposes of ANZAC Day in 2019 (and 2020 if the premises are still required). That application was determined by this Commission on 3 April 2019. The Commission will return to this aspect later in these reasons.
9. 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.
10. The Commission notes that the applicant has been operating these premises since 2010 and it is therefore clear that the applicant has a proven and demonstrated capacity to be able to operate this venue and to comply with the conditions of its licence very successfully.

#### **Disclosure of influential persons or potential beneficiaries**

11. 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 via its Director (nominee and manager of the premises); Mr Jason Hanna.
12. 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**

13. 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.
14. 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.

15. That occurred with respect to this application and:
  - a. The DOH made no adverse comment.
  - b. The NT Police stated it did not have any objections.
  - c. The City of Darwin did not respond.
16. The Northern Territory Fire and Rescue Service (“NTFRS”) were also informed of the application and made no objection.

## **Public Hearing**

17. 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.
18. 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 8 April 2019. The hearing was fixed for 2.00pm on 24 April 2019 and notice was given to the applicant.
19. 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.
20. Mr Jason Hanna appeared on behalf of the applicant. Mr Jeff Verinder as representative for the Director-General of Licensing was also present to provide information and assistance to the Commission during the course of the hearing.

## **Assessment of the Application**

21. 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.

22. 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.”

23. 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.”

24. 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”.

25. 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"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> </ul>

	<ul style="list-style-type: none"> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <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</p>	<ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an</li> </ul>

<p>additional liquor outlet will benefit the local and broader community.</p>	<p>additional outlet for the sale of liquor – this may include accommodation or dining?</p> <ul style="list-style-type: none"> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>
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26. 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”.

27. 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 in the service of alcohol from 10.00am.

28. The Commission also notes that this is an application that is stated to be centred on being able to provide a venue that allows the Darwin RSL to provide for its members as a result of its own premises being destroyed. The applicant provided submissions addressing the public interest and community impact test and also the community impact assessment guidelines. These submissions were also very focused on providing what the applicant referred to as a “continuity of service due to the lack of an operating RSL” and on ensuring that members of the public remained in the city following the ANZAC Day service.

29. One of the significant difficulties with respect to this application was the fact that although it is correct that there is no longer an operating RSL in the city to accommodate persons who would normally attend for ANZAC Day, this had already been addressed by the variation provided to the Hotel Darwin on 3 April 2019 for the purposes of ANZAC Day. Further, there was no evidence provided to the Commission that suggested that the numbers of those persons who ordinarily attended the RSL on ANZAC Day for the traditional gunfire breakfast or the reunion breakfast are such that they needed to be accommodated in two (2) venues.

30. During the course of the hearing the Commission identified the lack of evidence that there needed to be another venue open and selling alcohol from 7.00am on ANZAC Day. The Commission notes that in fact Mr Hanna responded that he considered it was “questionable if any venue should be selling alcohol at 7.00am on ANZAC Day”.
31. With this comment from Mr Hanna in mind, together with the lack of evidence of any need for a further venue to be available to supply liquor before 10.00am on ANZAC Day in order to accommodate those who would have previously attended the Darwin RSL premises, the Commission is not satisfied that it is appropriate to vary the conditions of the licence as sought.
32. Therefore, for the reasons outlined and having regard to the objects of the Act the Commission has decided to refuse to vary the conditions of the licence as sought by the applicant and as outlined at the start of this Decision Notice.

### **Notice of Rights:**

33. 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.
34. 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.
35. 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

26 April 2019