

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

---

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

**LICENCE NUMBER:** 803151930

**REFERENCE:** LC2019/017

**LICENSEE:** Throb Nightclub Pty Ltd

**PREMISES:** **Throb**  
Suite 1/64 Smith Street  
DARWIN NT 0800

**APPLICANT:** Throb Nightclub Pty Ltd

**NOMINEE/S:** Timothy John Palmer

**OBJECTOR/S:** Nil

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

**HEARD BEFORE:** Mr Richard Coates (Chairperson)  
Ms Jodi Truman (Deputy Chairperson)  
Mr Kenton Winsley (Health Member)

**DATE OF HEARING:** 26 March 2019

**DATE OF DECISION:** 26 March 2019

---

**Decision**

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to vary the condition of the liquor licence for the premises known as Throb by varying special condition 1. to now provide:

*the premises shall cease trading not later than 04.00 hours, except on 1 January when the premises shall cease trading no later than 06:00 hours and such trading can commence on 22:00 hours on the preceding day being the 31 December, notwithstanding the said day falls outside of the permitted trading hours.*

2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 26 March 2019.

## **Background**

3. On 23 November 2018, an application was lodged pursuant to section 32A of the Act by Thomas Richardson of De Silva Hebron Barristers and Solicitors on behalf of Throb Nightclub Pty Ltd (the Licensee) for the premises known as Throb located at Suite 1/64 Smith Street, Darwin. The Licensee is seeking to vary a condition of their trading hours.
4. The applicant is the holder of liquor licence number 80315930.
5. The liquor licence allows for liquor trading on Thursday, Friday, Saturday and a Sunday only. The applicant is seeking a change to the licence conditions to permit liquor trading on a day when New Year's Eve falls outside of their approved trading days. In simple terms, this would occur 3 times in a 7 year cycle, when New Year's Eve falls on a Monday, Tuesday or a Wednesday.
6. The current condition in the liquor licence states:

*The premises shall cease trading no later than 04:00 hours, except on January 1 when the premises shall cease trading no later than 06:00 hours.*

The proposed condition is:

*The premises shall cease trading no later than 04:00 hours, except on January 1 when the premises shall cease trading no later than 06:00 hours and such trading can commence on 22:00 hours on the preceding day being the 31 December if said day falls outside of the permitted trading hours.*

## **Advertising and Consultation**

7. The application was advertised in the NT News on Wednesday 16 January 2019 and Saturday 19 January 2019. Copies of the notices in the newspaper and photographs of the green sign erected at the venue are attached. A signed declaration that the public notice "Green Sign" had been erected at a prominent external area of the proposed premises and had been displayed for a 30 day period coinciding with the advertisements has been supplied.
8. As a result of publication of the application, no objections were received from the public.
9. Notification and comments were sought from:
  - CEO of Department of Health
  - Commissioner Northern Territory Police
  - City of Darwin

10. The Department of Health advised via email dated 17 January 2019 2018 that it has no adverse comment.
11. The Northern Territory Police replied via email dated 5 February 2019 advising it had no objections.
12. The City of Darwin did not respond.
13. A check of the records held at Licensing NT indicate that there is no previous adverse history on the applicant or associated persons.

## Public Hearing

14. 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.
15. 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 26 February 2019. The hearing was fixed for 11.30am on 26 March 2019 and notice was given to the applicant.
16. 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.
17. Mr Tim Palmer appeared on behalf of the applicant and Ms Tania Chin appeared as the representative of the Director-General. The Commission thanks them for their assistance.

## Assessment of the Application

18. 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.
19. 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.”

20. 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.”

21. 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”.

22. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
<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> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> </ul>

	<ul style="list-style-type: none"> <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>
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>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>
Volume	<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>
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"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service</li> </ul>

	<p>or products that are no available in the area?</p> <ul style="list-style-type: none"> <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>
--	---

23. 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”.

24. 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 clarify an ambiguity within the applicant’s current license conditions. As was made clear during the course of this hearing, if this application had not been made, the applicant would have had to apply for a temporary variation of its licence condition every time that New Year’s Eve fell outside its normal days of trade. This would have involved both the Commission and the applicant in the expenditure of unnecessary resources. The applicant is to be commended for bringing this matter on as a permanent variation.

25. In all the circumstances and having regard to the matters raised in both the applicant’s community impact and public interest test submissions, the Commission is satisfied that it is appropriate to vary the conditions of the licence as outlined at the start of this Decision Notice.

**Notice of Rights:**

26. 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.

27. 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.

28. 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.



---

**RICHARD COATES**  
Chairperson  
Northern Territory Liquor Commission

16 April 2019