

Director-General of Licensing

REASONS FOR DECISION

Matter:	Application for the grant of a liquor licence
Proposed Premises:	Six Tanks Brewing Co. 4/69 Mitchell Street Darwin NT 0800
Applicant:	Six Tanks Brewing Company Pty Ltd
Proposed Nominee:	Ms Terez Petho
Objectors:	Brimsnuck Pty Ltd and Mr Michael Burns
Legislation:	Parts III and IV of the <i>Liquor Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	08 June 2016

BACKGROUND

1. By application received on 8 September 2015, Ms Gina Donatelli, a Director of Six Tanks Brew Co. Pty Ltd ("the Applicant"), applied to the Director-General of Licensing ("the Director-General") pursuant to section 26 of the *Liquor Act* ("the Act") for a tavern liquor licence with authority for the sale of take away liquor for premises to be known as Six Tanks Brewing Co., located at 4/69 Mitchell Street, Darwin. Ms Donatelli is listed as the sole director of Applicant company.

CURRENT SITUATION

2. Ms Donatelli has provided a detailed application which includes information in respect of the relevant criteria referred to in section 26(2) of the Act. The Applicant submits that the information provided demonstrates that the grant of the licence will be in the public interest. Ms Donatelli has also provided an affidavit pursuant to section 26A of the Act, in the approved format, identifying that as sole Director and shareholder of Six Tanks Brew Co. Pty Ltd, she is the only person who may be able to influence the management of the business or expect a benefit from the conduct of business under the liquor licence.
3. The proposed premises is located in the Mitchell Street entertainment precinct in the Darwin CBD where the immediate neighbourhood consists of high rise residential buildings, retail shops, restaurants, hotels and nightclub licensed premises. The application is for a tavern and take away liquor licence for the operation of a micro-brewery bar incorporating a restaurant and alfresco dining area.
4. The liquor trading hours applied for are from 10:00 am to 02:00 am the following day, 7 days per week. Breakfast will also be made available to patrons from 07:00 am 10:00 am with lunch and dinner being available between 10:00 am and 10:00 pm 7 days a week. No trading would be permitted on Good Friday and Christmas Day.

5. The Applicant states that the business aims to target the 25 to 55 age group with moderate to high disposable incomes who appreciate consuming new and different craft beer brands in a relaxed and enjoyable environment. The indoor restaurant/dining area will incorporate two full service bars with a bar located at the rear of the venue and utilised only for pre-booked functions. A wide range of domestic and boutique craft beers, wines and spirits will be available for consumption on premise with a select product range being offered for take away sales.
6. The Applicant proposes to cater for private functions and seating will be provided for at least 80% of the maximum patron capacity. The premises intends to provide entertainment in the form of live performers, pre-recorded music including a DJ and televised programming. An alfresco area will be located at the front of the premises where service will be mainly by wait staff and seating will again be provided for at least 80% of the maximum patron capacity.
7. The micro-brewery will incorporate a six tank Smart Brew System which will be located inside the front of the premises and clearly visible from the street. It is proposed that a range of boutique craft beers will be produced on the premises and will be offered to patrons utilising the premises or as a take away option.
8. The Applicant states that the take away component of the business will be in the form of a boutique bottle shop and takeaway sales will include the on-site produced products being sold as well as premium speciality beers, wines and spirits, catering to the most discerning customer and priced accordingly. Proposed trading hours for the sale of take away alcohol are from 11:00 am until 10:00 pm seven days per week.

ADVERTISING:

9. The application was advertised in the Northern Territory News on Wednesday 14 October 2015 and Friday 16 October 2015 with the objection period expiring on 16 November 2015.

OBJECTION:

10. One objection was received during the prescribed period, lodged on behalf of Brimsnuck Pty Ltd ("Brimsnuck") and Mr Michael Burns. Brimsnuck is the proprietor of an interest in the Crocosaurus Cove premises situated at 58 Mitchell Street, Darwin, which is located on the opposite side of the street from the proposed site for the Six Tanks Brewing Co tavern. Mr Burns is an office holder of Brimsnuck. As such Brimsnuck, and Mr Burns, are entitled to lodge an objection to the application, being a company that conducts business within the neighbourhood of the proposed premises. The objection was lodged within the statutory time limit.
11. The objection submits that the establishment of a "Micro-Brewery" tavern bar incorporating a brewery, restaurant, alfresco dining area and including provision for takeaway liquor sales in close proximity to the Brimsnuck property, combined with the proposed trading hours for on premise consumption of alcohol, would adversely affect public safety and the amenity of the neighbourhood. The objection states that approval of the application will have an adverse impact on businesses, staff, customers, nearby residents and the public who are, or may be located at the Brimsnuck premises as well as other nearby premises on Mitchell Street and the surrounding area.

12. Brimsnuck further objects to the application on the ground the application under consideration is not consistent with the "Takeaway Licence Guideline" issued by the former Licensing Commission in relation to new applications for takeaway liquor licences.
13. The objection submits further that the sale of take away liquor products in glass containers seven days a week up to 10:00 pm may be problematic and seriously add to the dangers of uncontrolled consumption of alcohol on Mitchell Street including the associated risk of anti-social behaviour. The objection states that the Applicant has not demonstrated that the grant of the licence will be in the public interest and has not addressed the negative impacts such as noise, odours, negative health and environmental impacts from the brewing process and waste removal. Brimsnuck further submits that the Applicant has not applied for a Development Permit for such land use in the CBD and that this should have been addressed prior to the application for a liquor licence being lodged.
14. In respect of the component of the application seeking a take away liquor licence, it was also submitted on behalf of the objector that the application does not meet with the Takeaway Licence Guideline criteria as the addition of a further take away liquor outlet in the Darwin CBD will add to the density and proliferation of licensed takeaway outlets in the central business area.
15. Brimsnuck submits also that the addition of a further tavern on Mitchell Street will distort the current balance between such bars in comparison to restaurants, retail shops, office accommodation, motels and residential apartments and has the potential to result in adverse impacts on the health and amenity of the neighbourhood.
16. Brimsnuck's objection also raises the fact that the Applicant has previously objected to an application for a permanent variation to the licence conditions of the Tap on Mitchell, premises in which Brimsnuck holds an interest. The objection states that the Applicant's previous objection raised issues relating to the increase in pub atmosphere in Mitchell Street, increased drinking and the potential for that application to have a negative impact on Mitchell Street and surrounding businesses leading to the need to increase security in the area and associated costs to businesses.

RESPONSE TO THE OBJECTION:

17. By letter dated 10 December 2015, De Silva Hebron Barristers & Solicitors, on behalf of the Applicant, responded to the objection. The response stated that issues raised by the objector concerning the *Environmental Assessment Act*, the *Planning Act*, the Planning Scheme and the Take Away Guidelines are not valid grounds under section s47F(2)(a) and (b) of the Act on which to base an objection.
18. In response to the ground of objection relating to the proliferation of licensed premises within the area impacting on the amenity of the neighbourhood, the Applicant states that the proposed business is unique to the Darwin Central Business District (CBD) as it will supply select premium liquor and meals aimed at the more discerning patron, which will positively impact upon the amenity of the area. In addition, the increased presence of licensed security personnel within the premises will provide for a safer environment, including when dealing with intoxicated patrons who may have left other licensed premises.

19. In relation to the issue of previous objections raised by the Applicant in 2014 opposing permanent variations to the conditions of the liquor licence associated with The Tap on Mitchell, the response states that the objection was in fact based on the inability of security personnel employed by licensees to properly manage patrons leaving various licensed premises and the resulting damages to nearby businesses.
20. The response to the objection also states that the Smart Brew System planned for installation at the premises poses no threat to the health and safety of customers, staff, the general public and local residents as it presents very little environmental impact as the System is comparable to the use of post-mix soft drink dispensers as used by almost all licensed premises, restaurants and cafes.
21. The response also notes that the Applicant has applied for a Development Permit for the operation of a micro-brewery bar at the premises. The response concludes by submitting that the objection is based on commercial considerations of a potential competitor rather than any real concern for the amenity, health, public safety and/or social conditions of the community and therefore should carry reduced weight in terms of the stated grounds of objection.

ASSESSMENT OF OBJECTION:

22. The component of the objection relating to meeting the requirements of the Takeaway Licence Guideline is not a valid ground for objection to the grant of a liquor licence, as noted previously by the NT Civil and Administrative Tribunal.¹
23. Similarly, compliance with the *Environmental Protection Act* and the *Planning Act* are not criteria that the Director-General is required to take into account in assessing an application for the grant of a licence under the *Liquor Act*. The development approval process includes dedicated and specialist agencies and bodies tasked with ensuring compliance with planning and public health issues. Contrary to statements made in the objection and as noted below, the Development Consent Authority has in fact consented to the proposal for a change of use for the subject land from “restaurant” to “restaurant and hotel (microbrewery)”. If the licence were to be granted it would be subject to conditions restricting the commencement of trade in the sale of alcohol until such time as the applicant has obtained all necessary statutory approvals, including planning approval.
24. I see no relevance to the application under consideration in the fact that the Applicant previously lodged objections to an application for variation of liquor licence conditions for The Tap on Mitchell, licensed premises which form part of Crocosaurus Cove. The variations to licence conditions sought by the licensee for the Tap on Mitchell were in fact granted, despite objections from the Applicant and others. In a similar vein, the objections lodged by business proprietors located in the Transit Centre in respect of The Tap on Mitchell are of no relevance to the application in this instance. None of those persons lodged

¹ *PLS (NT) Pty Ltd, Sallis & Sallis Nominees Pty as trustees for Douglas Sallis Family Trust v Director-General of Licensing & Simpson & One Stop Pinelands Pty Ltd* [No 2] [2015] NTCAT 17 (11 September 2015)

an objection to the grant of a liquor licence for the Six Tanks Brewing Co premises.

25. The objector also raised the issue of the sale of takeaway alcohol in glass containers, should the takeaway liquor licence be granted, and the potential for this to result in people consuming takeaway alcohol on the streets of the Darwin CBD and resulting in an increase to health risks from broken glass and littering.
26. I do not attach any significant weight to that submission. As noted in the letter of objection, there are six premises located in the CBD that currently trade in the sale of takeaway alcohol. All of those premises sell alcohol in glass containers for takeaway consumption and, as a consequence, present the same risk as that complained about in the objection. In any event the consumption of alcohol in public places in the Darwin CBD within two kilometres of licensed premises is illegal. The entire CBD falls within that classification.

STAKEHOLDER CONSULTATION:

NT Police:

27. The Drug and Alcohol Policy Unit, NT Police was invited to comment on the application and advised that the Policy Unit had reviewed the application and supporting material and had no issues.

Development Consent Authority

28. Ms Sally Graetz, a delegate of the Development Consent Authority ("the DCA"), advised on 12 November 2015 that the site is within Zone CB (Central Business) of the NT Planning Scheme where the land use for a tavern/micro-brewery requires consent. Ms Graetz subsequently forwarded a letter dated 2 February 2016 advising that the DCA had granted consent to the proposal to use and develop the site for the purpose of a change of use from restaurant to restaurant and hotel (Microbrewery), subject to the conditions specified in the Development Permit.

Department of Health:

29. Ms Frances Pagdin, Director of Alcohol and Other Drugs, Department of Health, advised that the Department of has no adverse comments regarding the application for a tavern licence. However, the Department does not support the take away liquor component of the application after considering national and NT specific health related data.
30. In response to the submissions on behalf of the Department of Health, the Applicant stated that it is proposed to sell only high end spirits, wine and beer with the business directed at the discerning alcohol consumer, not all members of the general public. In addition, the pricing of the takeaway liquor sold will be such as to be unattractive to the general public and certainly would not be attractive to the segments of the community who generally are the cause of alcohol related issues in the Mitchell Street precinct, namely youths and itinerants.
31. The Applicant also submits that the comments by Department of Health are necessarily speculative and do not contain sufficient detail specific to this application that would assist the Director-General in the consideration in respect of take away liquor component.

City of Darwin:

32. By letter dated 12 November 2015, Ms Anna Malgorzewicz, General Manager of Community and Cultural Services, City of Darwin, advised that due to the substantial number of alcohol venues that already exist in the CBD and an absence of demonstrated need for additional takeaway facilities, Council does not support the component of the application seeking a licence for the sale of take away alcohol.
33. Ms Malgorzewicz noted that the City of Darwin is committed to developing strategies to address the vulnerability of community members adversely affected by alcohol and evidence shows the greater the density of liquor licenses the more alcohol related harm is seen. In addition, current licenced venues adjacent to the applicant's venue do not sell take-away liquor and the introduction of such sales would significantly alter the character of the precinct.
34. In response to the submission from City of Darwin the Applicant noted that no supporting evidence has been provided to the claim that increased harm would result from the takeaway liquor licence being granted to the Applicant or any other applicant for that matter.
35. Additionally, the Darwin CBD has been declared a designated area for the purposes of the Act permitting the issue of Banning Notices by NT Police. The Applicant also notes that NT Police have not raised any concerns over the application, indicating that the City of Darwin's comments are unsupported by any direct evidence from the authority charged with maintaining public safety, being the NT Police.
36. The Applicant further submitted that the premium nature of the products to be sold, coupled with the requirement for patrons to enter into the licensed premises to purchase liquor, will result in more regulated sales of alcohol with such sales also limited by product range and price.

NT Fire and Rescue Service ("NTFRS"):

37. NTFRS, as per common practice, advised that once the alterations to the premises are completed the certification section will conduct an inspection and report to ensure all work complies with the National Construction Code and the maximum patron numbers for the premises will be recalculated

SUMMARY AND ASSESSMENT OF APPLICATION

38. The applicant has provided a detailed application including sufficient evidence to meet the requirements set out in the Act for the grant of a tavern liquor licence. In addition, the Applicant has provided evidence confirming that that Six Tanks Brewing Company Pty Ltd is financially sound and that Ms Terez Petho is an appropriate person to be appointed as Manager under a liquor licence.
39. Brimsnuck Pty Ltd objected to the grant of a tavern licence on the grounds set out above. Whilst the objection refers to the amenity of the neighbourhood and health and safety issues in the Darwin CBD it must be viewed with some caution given the objector is the proprietor of another licence tavern in close proximity. The safety and wellbeing of patrons of licensed premises and the amenity of the neighbourhood will not, in my opinion, be adversely affected by the grant of a suitable licence to the Applicant to any greater extent than what

now occurs as a result of the various licensed premises operating with the CBD, and in particular, in Mitchell Street.

40. The Department of Health and City of Darwin also raised concerns to the grant of a take away component of the licence on similar grounds. However, neither the objector nor the stakeholder comments raise any issue specific to this application that would not be equally applicable to any licensed hotel or tavern located in the CBD and selling take away alcohol.
41. In addition, the micro-brewing concept which the applicant has proposed presents an alternative type of venue to those already existing in the CBD. In this instance I am not persuaded by the formal objection or the stakeholder submissions to refuse the application for a tavern liquor licence for the sale of alcohol for on premise consumption. In reaching that decision the objects of the Act, as prescribed by section three, are taken into account and in particular the object set out in section 3(2)(c) of facilitating a diversity of licensed premises and associated services for the benefit of the community.
42. It is noted that there are numerous licensed premises within the CBD and particularly in Mitchell Street. This is not surprising given that Mitchell Street is Darwin's major entertainment and nightclub hub. The grant of a tavern licence incorporating the production and sale of craft beer will, in my view, add to the choices available to Mitchell Street patrons and enhance the diversity of licensed premises available to members of the community seeking an alternative to the current offerings. The business and concept plans presented by the Applicant also emphasise the focus on the sale of quality food as a major component of the business model proposed for the premises.
43. In relation to the takeaway liquor component of the licence application, reference must be made to the Takeaway Guideline Criteria issued in December 2014 by the former Northern Territory Licensing Commission following the lifting of the moratorium on takeaway liquor licences that had been in place since 2006. Applications for new takeaway liquor licences must fall within the following guidelines:
 - a) A takeaway liquor licence in a new residential development; or
 - b) A takeaway liquor licence to be located in an area that has had recent, substantial population increase; or
 - c) A takeaway liquor licence for a producer of liquor products that enables the licensee to sell as takeaway only the liquor products at the location; or
 - d) A takeaway liquor licence for a location where there is a very clearly established public need.
45. Criterion a) has no application in this instance as the Darwin CBD cannot be classified as a new residential development by any measure. According to the Australian Bureau of Statistics at June 2015, the population of Greater Darwin was 142,300 people, which accounted for over half of the NT's total population. The population of Greater Darwin increased by 1.9% (2,600 people) in 2014-15, which was the second-fastest growth rate of all capital cities, behind Greater Melbourne (2.1%). It is at least arguable that the application falls within criterion b) of the Take Away Liquor Guideline.

46. Criterion c) provides for the grant of a new take away liquor licence where the applicant is a producer of liquor products, which is the case in this instance. However, that criterion clearly provides that in those circumstances a take away liquor may be granted only for the sale of products produced by the licensee. As is clear from this application, the Applicant is seeking a take away licence to sell a range of products beyond the locally produced craft beers.
47. The Applicant also presses the argument that the application falls within criterion d) submitting that there is a clearly established public need for the up-market products that it intends to sell if the take away liquor licence is granted.
48. The Guideline also requires that where an application falls within one of the criteria set out above the Director-General must also take account of the following considerations:
 - e) The density of takeaway liquor venues in the vicinity of the proposed application;
 - f) The proposed business model; and
 - g) The propensity for alcohol-related anti-social behaviour and harm in the vicinity of the proposed application.
49. The assessment of the take away liquor component of this application requires careful consideration of the density of take away liquor outlets in the Darwin CBD. There are currently seven take away liquor outlets in the Darwin CBD, including two associated with major supermarkets. The Coles Liquorland outlet is located approximately 200 metres from the proposed site for the Six Tank Brewery Co.
50. The Applicant emphasises that it will not be involved in the sale of mass produced liquor products, but rather looking for up market, small quantity specialty boutique liquor products aimed at the discerning drinker. The Applicant submits that there is a public need for that type of product that is not presently catered for in the Darwin CBD. That argument is difficult to maintain given that Vintage Cellars, which stocks an extensive range of boutique and high end products, is located 600 metres from the proposed tavern.
51. Included with the application is a list of the types of liquor products the Applicant intends to sell under a take away liquor licence. Of the 16 bottled spirits listed eight are available for sale at Vintage Cellars at similar prices. Of the 14 red and white wines listed by the Applicant, 6 are readily available at Vintage Cellars. The wines proposed to be sold by the Applicant range in price from \$19.99 to \$25.99 per 700 ml bottle. On any measure those prices indicate wines in the medium price bracket and certainly not in the premium up-market range as submitted by the Applicant.
52. I am of the view that the density of take away liquor outlets in the Darwin CBD is such that there is no public need for a further outlet in the area. The close proximity of the proposed tavern to a number of established take away liquor outlets must also be taken into account, including one that is already in the business of providing up-market and boutique liquor products.
53. In assessing this application against the Guideline consideration must also be given to the propensity for alcohol-related anti-social behaviour and harm in the

vicinity of the proposed premises. According to police data there were 212 assaults on Mitchell St between August 2014 and July 2015, down by approximately 10% since 2012. The corresponding figures from 2013 and 2014 were 236 and 226 respectively, showing a steady decline, albeit marginal in terms of raw numbers. The percentage of assaults involving alcohol has also decreased from 77 per cent in 2013 to 71 per cent in 2015.

54. Whilst the decline in assaults in the CBD is encouraging credit must be given the significant and targeted efforts of NT Police, City of Darwin and Licensing NT Inspectors through their individual and joint operations aimed at improving the safety of patrons and amenity of Darwin City generally. The risk that another take away liquor outlet in the CBD will impact negatively on the improved safety of the Mitchell Street entertainment district is such that I am not persuaded to approve a take away liquor licence offering a wide range of products. For the reasons set out above I do not accept that the product range proposed by the Applicant is so unique as to satisfy a public need in that regard.
55. Whilst the application for a take away liquor licence falls within the criteria included in Guidelines consideration of outlet density and the curtailment of alcohol related antisocial behaviour are compelling reasons to deny the grant of a take away licence with a product range as identified by the Applicant.
56. I do not agree that the criterion allowing for the grant of a new take away liquor licence for the sale of licensee produced products, in this case craft beer, is intended to allow for the sale of anything other than the locally produced liquor. Put another way, I am not satisfied that the criterion was intended to allow for a producer of boutique products to use that fact as authorising an expansion of the take away liquor licence to include liquor products purchased from other producers or wholesalers.
57. I am however persuaded to grant a take away liquor licence with restrictions authorising only the sale of craft beers produced by the Applicant for consumption away from the premises. Market forces will ultimately determine whether there is a public demand or need for that type of product or whether such sales will be commercially viable. I do not anticipate that a licence of that nature will result in an increase in antisocial behaviour in the Darwin CBD. Nor will a licence restricted in that manner impact to any significant degree on the density of outlets in an area that is currently well catered for in terms of the existing take away liquor outlets offering a full range of liquor products.

DECISION

58. In accordance with section 29(1)(a) of the Act and on the basis of the information provided in respect of the application, and for the reasons set out above, I approve the issue of a Tavern Liquor Licence to Six Tanks Brewing Company Pty Ltd for the Six Tanks Brewing Co tavern to be located at 69 Mitchell Street, Darwin. A licence condition relating to the concept of the premises is to be included in the licence. Namely, a micro-brewery bar incorporating a restaurant/café and alfresco dining area.
59. Also, in accordance with section 29(1)(a) of the Act, and taking consideration of the Take Away Licence Guideline, I have determined to grant a take away liquor licence to the Applicant authorising only the sale of craft beers brewed on the premises for consumption away from the premises. The restriction on the

products able to be sold under the take away liquor licence will be included in the licence conditions.

60. The licence will be issued immediately following the publication of this decision and, in accordance with section 31(1) of the Act, is subject to a condition that the Licensee will not commence trade in the sale of liquor under the licence until such time as the proposed premises are refurbished and a certificate of occupancy under the *Building Act* has been issued to the licensee, authorising it to conduct the business of a tavern and take away liquor outlet at the premises.
61. Commencement of trade in the sale of liquor will also be conditional on the Applicant obtaining the necessary approval from the Development Consent Authority. The Applicant will also be required to obtain the usual approvals from the Northern Territory Fire Rescue Service in respect of patron capacity and fire safety issues prior to commencing operation.
62. The licence will become operative, subject to the normal conditions associated with a Tavern liquor licence authorising the sale of take away alcohol, once the Applicant has presented evidence to the satisfaction of the Director-General that the premises have been satisfactorily refurbished and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee.
63. The normal conditions attached to the licence include the conditions shown in Annexure A to this decision, being the draft liquor licence.

REVIEW OF DECISION

64. 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 liquor licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
65. 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. For the purpose of this decision, and in accordance with section 120ZB(1) of the Act, the affected persons are the Applicant and the persons who lodged valid objections being Brimsnuck Pty Ltd and Mr Michael Burns.



Cindy Bravos
Director-General of Licensing

08 June 2016