

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

LICENCE NUMBER: 80515570

REFERENCE: LC2019/024

LICENSEE: **Karen Sheldon Group Pty Ltd**

PREMISES: Speaker's Corner
State Square
Parliament House
DARWIN NT 0800

APPLICANT: Karen Sheldon Group Pty Ltd

NOMINEES: Sarah Hickey
Amanda Swift

OBJECTOR/S: Nil

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

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 10 April 2019

DATE OF DECISION: 10 April 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978* (the Act) the Commission has determined to vary the conditions of the liquor licence for the premises known as Speaker's Corner by including an additional condition of the licence as follows:

Karen Sheldon Group

Catering Services

Liquor may be sold between the hours of 11:30 and 23:59, any day of the week excluding Christmas Day and Good Friday at any place where Karen Sheldon Group Pty Ltd is catering for a function or event for less than 500 persons and there is no pre-existing liquor licence in place at the location held by any other party/organisation/business, subject to the written consent of the land owner and compliance with all Northern Territory Fire Service requirements in relation to maximum patron numbers and fire safety precautions, provided always that seven (7) days notice, in writing of the time and place of the function (event) is provided to the Director-General of Licensing . The Director-General may approve or refuse an application at his or her discretion.

2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 10 April 2019.

Reasons

Background

3. On 29 June 2018, an application was lodged by Sarah Hickey and Amanda Swift on behalf of Karen Sheldon Group Pty Ltd (the Applicant), seeking a Permanent Variation to Liquor Licence for Speakers Corner. Included with the application form is a copy of the current licence with draft amended changes made by the applicant. Two emails between the applicant and the Licensing Officer dated 16 July 2018 and 17 July 2018 further clarify the application.
4. The application seeks the ability to host events and provide food and liquor catering services without continuously applying for a special liquor licence, pursuant to section 58(1)(a) of the Act.
5. The Applicant has applied for an excessive number of special liquor licences over the years that have been approved. Since the permanent application was filed the applicant has continued to seek special licences for a range of events such as book launches, Government functions, corporate functions, sporting events and hosting an event for Prince Charles. It is noted that most of these events are closed to the public and are for invited guests only and generally take place on business or private premises.
6. The following documents have been provided;
 - Public Interest Criteria in accordance with Section 6.2 of the Act;
 - Community Impact Assessment in accordance with Section 6A of the Act;
 - Affidavits in accordance with Section 26A of the Act.

Publishing of Application and Consultation

7. The application was advertised in the NT News on Wednesday 17 October 2018 and Saturday 20 October 2018. A green advertising sign was displayed at the premises for a period of 30 days. The applicant has also supplied a Statement of Display indicating that the green sign was displayed for the required 30 day period along with 2 photographs depicting the green sign in-situ.
8. No objections were received from the public as a result of the publication of the application.
9. The following were notified of the application in accordance with Section 32A(5) of the Act on the 19 October 2018.
 - The Chief Executive Officer of the Department of Health;
 - The Commissioner of Police
 - Chief Executive Officer of the City of Darwin.
10. Whilst not legislatively required, the following entities were also notified on the 19 October 2018;
 - Northern Territory Fire and Rescue Service;
 - The Chairman of the Development Consent Authority
11. The Department of Health replied via email dated 19 October 2018 stating it has no adverse comment, however requested that the venue clearly display signage relating to smoking. The applicant is an existing licensee and must comply with all legislation, including the *Tobacco Control Act 2002*.
12. The Northern Territory Police replied via email dated 20 November 2018 stating that it has no objection to the application.
13. The City of Darwin replied via email dated 24 October 2018 stating that there is no reason that Council would formally object to the application.
14. The Northern Territory Fire and Rescue Service replied via email dated 22 October 2018 stating it cannot support the application for the following reasons;
 - “We are required as per NTFRS Regulations to inspect and provide comment on Fire Safety issues for individual premises that apply for Liquor licenses.”
 - We are also required to measure the premises to ensure the maximum patron numbers is going to be sufficient for the designated exits and required space.”
15. The Department of Infrastructure, Planning and Logistics replied via letter dated 22 October 2018 stating that it has no planning issues concerning the liquor licence application.

The Hearing:

16. The matter was heard at a public hearing in Darwin on 10 April 2019. Ms Sarah Hickey and Ms Amanda Swift appeared on behalf of the applicant and Ms Tania Chin appeared as representative of the Director-General. The Commission thanks them for their assistance.
17. 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.
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:

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 community area, due to the availability and accessibility of an additional liquor outlet.	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include – <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that

	<p>might be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <hr/> <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. <hr/> <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</p>

	developed to address these potential issues.
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"> • 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?

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 acknowledges that the applicant has been encouraged to proceed down this path by Licensing Officers who were motivated to reduce the number of non-contentious applications being generated by the Applicant which had to be processed by the Director-General and the Commission, and also limited the capacity of the business to accept late catering requests.
25. On past occasions the Commission has had to convene as a matter of urgency and abridge the 7 day notice provisions of section 53(1)(a)(ii) of the Act in order to hear an application by this licensee to cater for a government function which it had taken on at short notice. The Commission has been advised that there are at least two other liquor licences which have the ability to cater for "offsite" functions, provided the Director-General is given advance notice of the event. Examples are the Darwin Convention Centre and Lasseters Hotel Casino.
26. The Applicant has a proud history within the Territory. Karen Sheldon operated a very successful restaurant named the Dolly Pot in Tennant Creek in the 1980's. Although it was located within a squash court complex, many regarded it as the best restaurant in Central Australia at the time. From those beginnings she has gone on to establish the Territory's pre-eminent catering company which has also made a significant contribution to training up young indigenous people for jobs in the hospitality industry. The applicant has no adverse compliance history with Licensing NT and the Commission is confident that in providing greater flexibility to the licensee, there will be no increased risks of inappropriate liquor supply.
27. During the course of the hearing, the Applicant was able to assure the Commission that it was aware of its responsibilities in relation to fire safety issues, so that we were confident that the concerns raised by the NT Fire Service could be properly accommodated within the licence conditions. The Applicant also suggested a limit of 500 patrons be imposed in respect of the off -site catering condition so that it would still need to submit a Special Licence application for larger functions.
29. In all of the circumstances this Commission is satisfied that it is appropriate to vary the conditions of the licence as sought. Therefore for the reasons outlined and having regard to the objections of the Act, the Commission has decided to vary the conditions of the licence as outlined in 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.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES

Chairperson
Northern Territory Liquor Commission

24 April 2019