

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

LICENCE NUMBER: 80101789

REFERENCE: LC2019/068

LICENSEE: Deemat Pty Ltd

PREMISES: The Katherine Hotel
Cnr Giles Street and Katherine Terrace
KATHERINE NT 0850

APPLICANT: Robert and Cassandra Harney

LEGISLATION: Section 32A(1) of the *Liquor Act 1978*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 17 June 2019

DATE OF DECISION: 17 July 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 temporarily vary the conditions of the licence between Thursday 18 July 2019 and Saturday 20 July 2019 (Katherine Show Weekend 2019) as follows:
 - a. Trading hours for the Garden Bar and Kirby's Sports Bar shall be between 10:00 hours and 04:00 hours the following day.
 - b. The licensee shall provide one courtesy bus from midnight and two courtesy buses from 02:00 hours every night to convey patrons to their accommodation or residence.
 - c. The licensee shall take all reasonable steps to have a taxi rank established and operating adjacent to the premises on Giles Street.

- d. The licensee shall cause to be installed and shall maintain a temporary barrier along the entire Katherine Terrace frontage of the premises to prevent persons exiting the premises onto Katherine Terrace from stepping onto the roadway.
- e. After midnight, the sale of “shots” of liquor shall not be permitted.
- f. After 02:00 hours, the sale of liquor shall be limited to one drink per transaction.
- g. After 02:00 hours, there shall be a lock-out, and no patrons shall be permitted to enter the premises.
- h. After 02:00 hours, patrons will only be permitted to exit the premises onto Giles Street.
- i. The licensee shall provide free bottled water to patrons, and shall promote the availability of free bottled water by way of prominent signage on display on the premises.
- j. The licensee shall have food and non-alcoholic drink available for sale at all times during trading hours.
- k. Security staff engaged by the licensee shall wear hi-vis vests.

Reasons

Background

2. Deemat Pty Ltd (the licensee) holds a liquor licence authorising it to sell and supply liquor as a public hotel at the Katherine Hotel (the premises), with trading hours from 10:00 hours until 02:00 hours the following day on weekends.
3. By application dated 8 April 2019, the licensee's dual nominees, Cassandra and Robert Harney (the applicants) applied to extend trading hours over the Katherine Show Weekend 2019 to 04:00 hours.
4. On 24 May 2019, following consultation, together with an assessment by Licensing NT of the application, a Delegate of the Director-General of Licensing referred the application to the Commission for hearing pursuant to s 32A(6AA) of the Act.
5. The Director-General provided the Commission with a brief of evidence (the brief) including:
 - Application for a temporary variation of conditions of liquor licence dated 5 April 2019
 - Section 26A affidavit deposed by Cassandra Harney dated 5 April 2019
 - Public Interest Statement and Community Impact Assessment
 - Correspondence with Northern Territory Fire and Rescue Service (NTFRS)

- Correspondence with Department of Health (DOH)
 - Correspondence with NT Police
 - Correspondence with Katherine Town Council
 - The applicant's existing liquor licence number 80101789 issued on 4 October 2018
 - NT Liquor Commission Decision Notice dated 19 July 2018
 - Licensing NT Compliance Report for Katherine Show Weekend 2017
 - Licensing NT Compliance Report for Katherine Show Weekend 2018
6. The Katherine Show Weekend is a major regional event, attracting a significant influx of people from surrounding communities and pastoral properties, as well as tourists. As well as the Show itself, the Katherine Rodeo is held over this weekend. In 2015, 2016 and 2017, the licensee applied for and was granted a variation to trade until 04:00 hours over the Show Weekend.
 7. In 2018, the licensee made a similar application. However, following the commencement on 28 February 2018 of the *Liquor Legislation Amendment (Licensing) Act 2017* (NT) and the associated establishment of the Northern Territory Liquor Commission, pursuant to s6B of the Act the onus was now placed on the licensee to satisfy the Commission that approval for the extension of trading hours for the 2018 Katherine Show Weekend would meet the public interest and community impact test set out in s6(2) of the Act.
 8. Following a public hearing of the licensee's application on 12 June 2018 at which the Chairperson of the Commission presided, the Commission refused the application. The Commission found that notwithstanding the "desire or expectation by some Katherine residents and others travelling to the show that alcohol may be more widely available for their consumption than it is ordinarily", it was not satisfied that the proposed extended trading would constitute a "recognisable community benefit". Furthermore, after noting that the licensee was then undergoing prosecution for a noise complaint for a previous show weekend, and despite having accepted evidence that the licensee would install a sound ceiling on the premises for the show weekend, the Commission found that it "is not convinced on the information before us that there will be no risk of inconvenience to neighbours if we allow the applicants to trade until 4:00am. The proposed sound ceiling may provide some relief in the future but it is as yet untested."
 9. Accordingly, during the 2018 Show Weekend, the Katherine Hotel ceased trading at 02:00 hours.

Consultation

10. Pursuant to s32A(2) of the Act, if the Director-General considers it to be in the public interest, she may require an applicant for a material alteration to publish notice of the application. In this instance, the Director-General, in the exercise of her discretion, determined not to require the applicants to publish notice of the application.

11. As required by s32A(5) of the Act, the Director-General notified DOH, NT Police and the Katherine Town Council of the application. The Director-General also consulted with NTFRS. None of these bodies objected to the variation sought, but the NT Police proposed several ancillary conditions, all of which were agreed to by the licensee and are substantially incorporated into the conditions the Commission has decided to impose, namely those set out at paragraph 1(b), (c), (d) and (f) above.

Hearing

12. On 7 June 2019, the Commission notified the applicants that the application would be heard at a public hearing on 17 June 2019. On 17 June 2019 Ms Harney and Mr Harney appeared on behalf of the applicants, and Ms Chin appeared for Licensing NT. The Commission thanks them all for their attendance and considerable assistance.
13. The brief was tendered and admitted into evidence without objection. No further documentary evidence was adduced.
14. The Commission received very substantial assistance from unchallenged evidence adduced in the form of detailed reports by Senior Compliance Officers of inspections undertaken of liquor licence compliance in Katherine over the Show Weekend in both 2017 and 2018.
15. The 2017 report contained the following salient observations:
 - At 00:50 hours on Saturday 22 July, 50 people were lined up waiting to gain entry to the Katherine Hotel. Entry was well controlled, the line was orderly, staff conducted appropriate ID checks, and refused entry to intoxicated patrons.
 - At 02:00 hours a lock-out was in place, the front door (onto Katherine Terrace) was secured, and the side door (onto Giles Street) was attended by staff and security. All exiting patrons were offered a free bottle of water on departure.
 - 580 patrons were on the premises.
 - 11 crowd controllers were on duty, and were observed to engage appropriately with persons affected by alcohol, in compliance with the relevant legislation and code of conduct.
 - Apart from one minor scuffle, no incidents were recorded.
 - Noise levels from 2 DJs playing hip-hop music were “extremely loud”.
 - At 04:00 hours a mini-bus was available to convey people away from the premises.
 - Food was available for sale, and free water was available (not advertised) over the bar.
 - On Sunday 23 July, similar observations were made to the previous night.
 - By 04:00 hours, when the bars closed, there were 80 patrons “steadily departing the premises in a responsible manner”.

16. The 2018 report contained the following salient observations:

- At 01:00 hours on Sunday 23 July, 540 patrons on the premises.
- At 01:40 hours a lock-out was initiated and the front entrance door closed
- At 02:00 hours (closing time) a large number of patrons exited the premises, onto both Giles Street and Katherine Terrace, causing a traffic hazard.
- Police reported a large disturbance which appeared to involve patrons who had exited the premises onto Katherine Terrace.
- The sound ceiling was in place, resulting in a significantly lower volume, although fresh complaints about noise were noted.

17. In addition to the detailed public interest and community impact statements lodged in conjunction with their application, the applicants gave oral evidence and made submissions at the hearing. They informed the Commission that:

- They anticipated that as in previous years, between 400 and 600 patrons would attend the premises on each night of the Katherine Show Weekend 2019, with the crowd peaking each night at about 0100 hours.
- In 2015, 2016 and 2017 trading at the Katherine Hotel for the Show Weekend was successful and uneventful, with trading continuing until 04:00 hours.
- After the licensee's 2018 application was refused, the nominees predicted that there would be trouble, because "people weren't ready to go home at 2", and consequently a large group of patrons all exited the premises at the same time.
- The imposition of a "one drink per transaction" limit at 01:00 hours, when numbers are expected to peak, would be impractical and lead to congestion and frustration at the bar.
- A 2 hour period from 02:00 hours is required to give patrons the opportunity to filter out in an orderly manner, and for the licensee to provide transport for departing patrons using one 12 seater and one 24 seater bus, with bus runs taking 10 to 20 minutes each.
- As in previous years, patrons will only be permitted entry on payment of a cover charge, and will not be permitted entry if intoxicated or unruly.
- An additional 6 trained bar staff, an additional 5 to 8 licensed security officers, and 3 to 4 Responsible Service of Alcohol marshals will be engaged by the licensee to work at the premises over the weekend.

18. On behalf of the Director-General, Ms Chin conceded that there was merit in the position advanced by the licensee, and submitted that extended trading hours should be allowed, in conjunction with the imposition of appropriate conditions to minimise associated harm.

Assessment of the Application

19. In considering the application, the Commission has had regard to the objects of the Act (s3), the application of the public interest and community impact test (s6), the community impact assessment guidelines issued by the Attorney-General and

Minister for Justice on 2 March 2018 pursuant to s6A, and the onus on the applicants to satisfy the Commission that the approval of the application meets the public interest and community impact test (s6B).

20. After careful deliberation, the Commission is satisfied that an extension of trading during the Katherine Show Weekend 2019 to 04:00 hours, supported by the conditions set out at paragraph 1 above, meets the public interest and community impact test.
21. In reaching this conclusion, the Commission has had regard to all of the objectives of the test, and particular regard to the following:
 - Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised (s6(2)(a))
 - Liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner (s6(2)(b))
 - 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 (s6(2)(c))
 - The safety, health and welfare of persons who use licensed premises must not be put at risk (s6(2)(d))
 - Noise emanations from licensed premises must not be excessive (s6(2)(e))
 - Practices which encourage irresponsible drinking must be prohibited (s6(2)(j))
 - Any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour (s6(2)(o))
22. In addition, the Commission has, as required by s6(3), considered the potential impact in the area that would be affected by the granting of the application, having regard to all the matters set out in that provision, with particular regard to the “cultural, recreational, employment or tourism impacts” (s6(3)(a)(ii)), and noting that the variation of conditions is temporary. The Commission assesses the impact of the variation on the community in the immediate vicinity of the Katherine Hotel as being moderate to high for a period of three days. The associated noise will likely inconvenience and irritate guests at the adjacent motel. On the other hand, it is likely that about 500 locals and visitors per night will have an enjoyable time out drinking as part of the annual Katherine Show celebrations.
23. The Commission accorded significant weight to the evidence of Senior Compliance Officers as summarised at paragraphs 15 and 16 above, and on the basis of that evidence is satisfied that although the Commission’s decision to refuse to extend trading hours for the Katherine Show Weekend in 2018 was made in accordance with the Act, an unfortunate, unintended and unforeseen consequence of that decision was that public order and safety, and the safety, health and welfare of patrons, were, in the event, somewhat jeopardised.
24. The Commission has also accorded significant weight to the views of the stakeholders consulted by the Director-General, and in particular the detailed and

carefully considered response of NT Police, who proposed several of the conditions set out at paragraph one above.

Notice of Rights

25. 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 approve a material alteration pursuant to s119(8) of the Act is specified in the Schedule and is a reviewable decision.
26. 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.
27. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the applicants.



Russell Goldflam

MEMBER, NORTHERN TERRITORY LIQUOR COMMISSION
19 July 2019

On behalf of Commissioners Goldflam, Reynolds and McFarland