

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

REFERENCE: LC2019/012

LICENCE NUMBER: 80303731

LICENSEE: Nguiu Club Aboriginal Corporation

PREMISES: Nguiu Club
Bathurst Island
Via DARWIN NT 0822

NOMINEES: Mr Scott Marley
Mr Mark Rhodes

OBJECTOR/S: Nil

LEGISLATION: Section 32A, section 119(2), Part IV and V of the *Liquor Act*.

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

DATE OF HEARING: 5 March 2019

DATE OF DECISION: 5 March 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 liquor licence of Nguiu Club Aboriginal Corporation ("the Licensee") for the premises known as the Nguiu Club by permitting it to trade on Sunday, 17 March 2019 or on such other date that the 2019 Tiwi Island Grand Final may be rescheduled, from 16:30 hours until 19:30 hours. All other conditions of the existing licence will continue to apply including the restriction of a six (6) can limit of mid strength beer per person.

2. In accordance with section 32A(9) of the Act the variation of the condition of licence is to take effect as at Tuesday, 5 March 2019.

Reasons

Background

3. On 17 January 2019 pursuant to section 32A of the Act, the Licensee lodged an application to the Director-General of Licensing for the grant of a variation to their existing liquor licence.
4. The variation was sought for the Tiwi Island Grand Final.
5. The Licensee applied for the licensed premises to trade on Sunday, 17 March 2019 from 16:30 hours to 19:30 hours.
6. The licence only allows for trade on a Tuesday, Wednesday, Friday and Saturday between 16:30 hours to 19:30 hours, with quantity and product restrictions in place for sales.
7. The Licensee advised that trading hours will remain the same, 16:30 hours to 19:30 hours, with restriction on liquor sales of a six (6) can limit.
8. The Licensee provided a sworn affidavit in accordance with section 26A of the Act stating that there are no persons, other than the Dual Nominees, who are able to influence any decision made in relation to the conduct of business or benefit from the sale of liquor or the sale and consumption of liquor under the licence.
9. On 4 February 2019, the applicant submitted a Public Interest Statement and Community Impact Assessment.

Advertising and Objections

10. As the application was for a limited period of time and given the nature of the matter, the A/Deputy Director-General (Operations) exercised her discretion under section 32A(2) of the Act and did not required the applicant to publish a notice of the application.
11. 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.

12. With respect to this application:

- a. The DOH made no adverse comment.
- b. The NT Police supported the application.
- c. The Northern Territory Fire and Rescue Service made no adverse comment.
- d. The Tiwi Regional Council did not provide a comment.

Public Hearing

13. 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.

14. The public hearing commenced at 10.00 am on 5 March 2019. Mr Mark Rhodes, Nominee appeared on behalf of the applicant via tele-conference. Mr Mark Wood as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanks all persons for their assistance.

Assessment of the Application

15. As noted earlier, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, 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.

16. 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.”

17. 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.”

18. 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”.

19. 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	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;

<p>and accessibility of an additional liquor outlet.</p>	<ul style="list-style-type: none"> • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <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. <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</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p>

includes information about the density of licensed premises within the community area.	This could also include traffic and pedestrian impact and any plans 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?

20. 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). The guidelines 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”.

21. With respect to this application it is relevant to note that it is not an application for a new licence. It is a temporary variation to enable the community social club to trade on one additional day for a period of 3 hours. The Tiwi Island grand final is an important day for the community and a similar extension of trade was permitted last year without adverse consequences.
22. In relation to the public interest and community impact test, the applicant provided written submissions. In the course of his evidence, Mr Rhodes was able to expand on that material and satisfy us that the public interest and community impact test and guidelines, as far as they are relevant to this application, have been satisfied and in all the circumstance it is appropriate to vary the conditions of licence to allow for trade on the day of the Grand Final.
23. All other conditions of the licence will remain in place during the additional trading day.

Notice of Rights:

24. 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.
25. 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.
26. 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
Presiding Member
Chairperson

15 March 2019