

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

REFERENCE: LC2019/022

LICENCE NUMBER: 80315480

LICENSEE: AVC Operations Pty Limited

PREMISES: Shenannigans Irish Pub
69 Mitchell Street
DARWIN NT 0800

NOMINEE: Ms Rachel Attley

OBJECTOR/S: Nil

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

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Pauline Reynolds (Health Member) (via tele-conference)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 14 March 2019

DATE OF DECISION: 14 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 AVC Operations Pty Limited ("the Licensee") for the premises known as Shenannigans Irish Pub by permitting it to trade between 7:00am and 10:00am on Sunday, 17 March 2019 for the purpose of holding a St Patrick's Day breakfast. The extended trading hours will not apply to the Footpath Alfresco Dining Area, otherwise the existing licence continue to apply.

2. In accordance with section 32A(9) of the Act the variation of the condition of licence is to take effect as at Thursday, 14 March 2019.

Reasons

Background

3. On 14 February 2019 pursuant to section 32A of the Act, an application was lodged by Monika Cala, Licensing Manager, Australian Venue Company (Melbourne Office) on behalf of the Licensee for the premises known as Shenannigans Irish Pub located at 69 Mitchell Street. The Licensee sought to vary a condition of trading hours.
4. The Licensee is the holder of liquor licence number 80315480.
5. The application is simple in nature to allow for limited liquor sales between 7:00am and 10:00am on Sunday, 17 March 2019 for St Patrick's Day celebrations. The Licensee applied to hold a private function for invited guests, stakeholders and suppliers between these times where the venue is not open to members of the public. A complimentary pint of Guinness will be supplied with a cash bar available for extra purchases of liquor. In conjunction with this event, breakfast will be served where tea, coffee and juice will also be available. Approximately 80 – 100 persons are expected to attend the event.
6. At the time of lodgement, the application was incomplete because the affidavit required in accordance with section 26A of the Act was not provided until 22 February 2019 and both the Community Impact Assessment required by section 6A of the Act and Public Interest Criteria Statement in accordance with section 6.2 of the Act were not lodged until Friday, 8 March 2019 at 4:10pm.

Advertising and Objections

7. Due to the nature of the application in that the event is a single closed invitation- only event, a delegate of the Director-General of Licensing determined that there was insufficient public interest to warrant the publishing of the application.
8. Notification was sent to:
 - a. the Chief Executive Officer ("CEO") of the Department of Health ("DOH");
 - b. the Commissioner of Police; and
 - c. City of Darwin.

9. There were no objections to the application by Police however, the DOH said it “*was not able to support the general sale of alcohol until normal commencement time of 10:00am hours*”. No response was received from Darwin Council in the limited time available.

Public Hearing

10. 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.
11. Section 53(1)(a)(ii) of the Act requires the Commission to provide at least seven (7) days’ notice of the time and place of the hearing to the parties, however section 127 provides it with the power to abridge or extend time. If the Commission had not been prepared to abridge the time for setting this matter down then it could not have been heard until after the date on which the proposed event was to take place. The Commission therefore arranged for an urgent hearing of the matter on Thursday, 14 March 2019. This was only made possible by Commissioner Reynolds, the only available health member agreeing to attend the hearing by teleconference whilst she was on vacation in Cairns.
12. When the matter was called on at 10:00am, Mr Jeff Verinder appeared on behalf of the Director-General of Licensing however there was no appearance by anyone on behalf of the applicant. Ms Rachel Attley, the Nominee was contacted and advised the Commission’s Secretary that she had no involvement in the application. Eventually Ms Monika Cala from the Licensee’s Melbourne Office was contacted and agreed to appear by telephone.
13. Ms Cala’s explanation that she didn’t believe that anyone was required to appear at the hearing was not appreciated by the Commission. As previously indicated, the Commission is required to hold a public hearing to deal with applications such as this and we expect licensees to be aware of their responsibilities and obligations under the Act. Furthermore, the Commission had gone to considerable effort and expense to list this matter urgently for the convenience of the Licensee. It became apparent during the course of the hearing that the previous owners of Shenannigans had not required a variation of licence conditions because they had not operated a cash bar during the private St Patrick’s Day breakfast function and all liquor provided was at the sole expense of the Licensee.
14. The current Licensee is only providing one complimentary drink of Guinness to those invited guests who will now be required to pay for any further drinks from the cash bar, hence the need for a licence variation. The Licensee may be motivated to encourage moderate drinking on a Sunday morning however if its decision was influenced by the need to defray the cost of the event then it has effectively transferred the costs to the Commission. As was pointed out by the Commission to Ms Cala during this hearing, the costs associated with convening the Commission at short notice to hear this matter are likely to exceed any revenue raised by bar sales.

Assessment of the Application

15. 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.”

16. 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.”

17. 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”.

18. Those matters are identified as follows:

Criteria	Matters to be considered
<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"> • children and young people; • 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. <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;

	<ul style="list-style-type: none"> • 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 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 developed to address these potential issues.</p>
<p>Volume</p>	<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>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>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.</p>	<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?

	<ul style="list-style-type: none"> • 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?
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19. 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”.

20. Although there were no formal objections to the application, the Commission does take into account the fact that the DOH did not support the application and questioned the need for people to be drinking alcohol before 10:00am for any reason.

21. The Commission determined to hear this matter at short notice because the St Patrick’s Day breakfast at Shenannigans has become something of a Darwin institution over a number of years. It is a private function which has previously provided members of the hospitality industry with an opportunity to catch up in convivial surroundings and celebrate the Irish national day.

22. On this occasion we are satisfied that the arrangements that have been made to supply a substantial breakfast to the relativity small number of invited guests who will only be provided with one complimentary drink, will not cause excessive drinking. We are also satisfied that by restricting the extension of hours to the interior of the premises that there should be little or no inconvenience to neighbours. We are satisfied that the public interest and community impact test and guidelines as far as they are relevant to this application, have been satisfied and it is appropriate to vary the conditions of licence to allow for the three (3) additional hours of trade on 17 March 2019, St Patrick’s Day.

23. All other conditions of the licence will remain in place.

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 Licensee.

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

RICHARD COATES
Presiding Member
Chairperson

21 March 2019