



Director-General of Licensing

Decision Notice

Matter:	Application for Variation of Conditions of Liquor Licence
Premises:	Lazy Lizard Caravan Park 299 Millar Road, Pine Creek NT
Applicant:	KATT (NT) Pty Ltd
Nominee:	Mr Anthony (Bruce) Jenkins
Objectors:	Ms Gaye Lawrence
Legislation:	Liquor Act (NT) s 32A
Decision of:	Director-General of Licensing
Date of Decision:	19 October 2015

Background

1. The Lazy Lizard Caravan Park ("the Lazy Lizard") operates licensed premises located at 229 Millar Road, Pine Creek and is operated by KATT (NT) Pty Ltd ("KATT") as the licensee. The Lazy Lizard has been in operation since 2000 with KATT acquiring the licence in 2009. Central to the issue of the licence in 2000 was the submission the premises were intended to operate as a family-type bistro with a focus on restaurant services rather than that of a bar.
2. In accordance with the submission the licence was granted containing the following condition:

Trading Conditions

The premises at all times shall trade predominantly as a family-type bistro, with no poker machines and no TAB, gambling, gaming, wagering or raffling facilities or events whatsoever.

Further, in terms of fit out, facilities, signage and ambience, the premises at all times must maintain the appearance of trading predominately as a family oriented bistro, and will have a range of meals available at all time that the premises shall be open for the sale or supply of any alcoholic beverage.

Exempted from the restriction on raffles are raffles conducted by charitable, sporting or other non-profit organisations. This exemption does not cover raffles conducted by any commercial organisation for reward, even if as manager or agent for and on behalf of any charitable, sporting or non-profit organisation. Raffles benefiting such organisations are permitted only if run directly by members of the non-profit organisations for whose benefit they are being conducted.

3. The premises have been the subject of applications to vary the specified condition in 2002, 2003 and 2010 all of which returned consistent decisions by the former Northern Territory Licensing Commission ("the former Licensing Commission") refusing each application. The refusals were on the basis the core concept of the Lazy Lizard as presented to the former Licensing Commission at issue of licence should remain, that being a "...*family-type bistro, with no poker machines and no TAB, gambling, gaming, wagering or raffling facilities or events whatsoever*".

Current Situation

4. Mr Bruce Jenkins, Nominee of the Lazy Lizard, has applied pursuant to section 32A of the *Liquor Act* ("the Act") for a permanent variation to the Lazy Lizard's liquor licence conditions to amend the condition referring to "Trading Conditions". Mr Jenkins also sought a waiver of the requirement to advertise the application for variation of licence conditions.
5. The Nominee sought to have Keno at the premises and to be able to operate fund-raising raffles and competitions otherwise proscribed by the condition. In order to enable this the Nominee sought to have the aforementioned condition varied to read as follows:

Trading Conditions

In terms of fit out, facilities, signage and ambience the premises at all times must maintain the appearance of trading predominantly as a family oriented bistro, and will have a range of meals available at all times that the premises shall be open for the sale or supply of any alcoholic beverage.

Advertising of the application

6. It was sought by the Nominee that the application did not need to be advertised as there was no other material alterations sought or changes to the licence.
7. The delegate of the Director-General of Licensing ("Director-General") refused the request not to advertise the application and advertisements were placed in the prescribed manner at the entry to the premises for the duration of the advertising and objection periods. Further, two advertisements were placed in the Katherine Times on 29 July and 5 August 2015.

Objection

8. One objection was received; it was within the objection period and in the manner prescribed by the Act. The objector was Ms Gaye Lawrence ("the objector") a resident of Pine Creek, who objected on the grounds approval of the application would adversely affect the social conditions in the community.
9. The objector described the demographics and social conditions in Pine Creek whilst acknowledging the premises had already commenced operating Keno.
10. The substantive objection was "...*to have gambling at their premises cannot be supported by our small population, the relation of machines to eligible gamblers is already oversupplied by the Pine Creek Hotel*".
11. It is clear the objection centred on the possible installation of gaming machines at some future date, as it was acknowledged the premises already operated Keno. The operation of Keno will be examined later in this decision.

Response to the objection

12. Mr Jenkins refuted suggestions any potential for additional gaming machines would result in an increase in gaming. He stated "*...if these people are already gambling then the difference it will make is where they gamble, not how much*" and "*...if we do install poker machines or not, there would be no difference in the amount of gambling by this section of the community*".
13. It was further submitted by Mr Jenkins that both he and Mr Mason of the Pine Creek Hotel, currently the only hotel in Pine Creek with gaming machines, "*...uphold all rules and regulations to the letter, and I feel this will continue even with a change in our license conditions*".
14. Mr Jenkins confirmed it is not his intention to install gaming machines at this time "*...not only on the grounds of the costs of licensing and installation being ridiculous, but also because we feel it is not warranted with our present business plan. Nor do we wish to have a TAB*".
15. Despite this submission it was acknowledged he would not wish to be disadvantaged against the Pine Creek Hotel and wanted "*...the option to develop our business in the future is we felt it was warranted*".
16. He stated "*...we have Keno and we would like to be able to do raffles etc*". It was also acknowledged the removal of the condition "*...puts added value to our business, (enabling) any future buyer to apply for improvements such as poker machines*".

Comments from Additional Stakeholders

17. As prescribed the application was sent to Mr Stuart Duncan, CEO of Victoria Daly Shire and also to the Drug and Alcohol Policy Unit of NT Police on 8 April 2015 notifying them of the application and inviting them to provide submissions to the Director-General.

Northern Territory Police

18. NT Police stated they "*...support the application...based on the understanding that if the (licensee) intends to install TAB or gaming machines in the future they will require a separate license*".

This response may be described as qualified support and therefore is not an objection to the application.

Victoria Daly Shire

19. No written response was received from the Shire however Mr Duncan advised orally he had no issues with the application.

Assessment of matter

20. As written earlier the response from NT Police may be considered qualified support. The issues raised by police were the potential for gaming machines to be installed at the premises which may have an adverse effect on the community.
21. The applicant advised they had no intention at this time to install gaming machines whilst conceding the amendment of the condition would give rise to the possibility of such an event.

22. Despite the possibility, any gaming machine installation would necessarily be the subject of a separate application under the *Gaming Machine Act*. Any such application would arguably be considered on much stricter and more rigorous criteria than this present application given the requirements of that licensing regime.
23. The one valid objection, that from Ms Lawrence also focused on the potential proliferation of gaming machines in a small regional community. Ms Lawrence expressed her concerns over the negative impact such an expansion in gambling may have on the community which was already struggling with a number of issues.
24. Ms Lawrence acknowledged the fact the Lazy Lizard was already operating Keno at the premises however made no specific comment objecting to this facility.
25. It would appear central to the concerns of all interested and potentially opposed parties that gaming machines were the foremost concern should they be considered to be installed at Lazy Lizard.
26. On the basis of the submissions in considering this application one may be satisfied those issues raised by the objector (and police) have been negated by the assurance, albeit qualified, the applicant will not be seeking any further "gambling" than is currently being conducted on the premises (Keno) with the exception of possible raffles.
27. It necessarily follows any raffles would be required to operate in accordance with the relevant statutory provisions of the *Gaming Control Act* and *Gaming Control (Community Gaming) Regulations*. The regulations provide legal guidelines as to how lotteries, raffles, lotto, tipping competitions, bingo, Calcuttas and sweepstakes can be conducted in the Northern Territory.

Consideration Criteria

28. The Act prescribes that the Director-General must consider any objection made to the application and the reply from the applicant to any objection.
29. A key further consideration is having regards to the objects of the Act.
30. The Act prescribes the primary object is the sale and supply of liquor in a manner that minimises harm and in a way that takes into account the interests of the public. This is intended to safeguard the amenity and social harmony of the community affected by such a determination.
31. The application itself does not modify any condition which relates to the actual sale of liquor; neither does it increase the availability, volumes and types of liquor available for sale from the premises. It does however arguably expand the clientele base and has the potential to attract clients who would otherwise attend the Pine Creek Hotel which already has gaming facilities, both gaming machines and Keno.
32. The objection and response as written earlier, may satisfy any concerns for an immediate and negative impact on the community through the introduction of more gaming machines. It is not the applicant's intention to seek such a licence although it would certainly remove the current conditional impediment.
33. Any further exploration of gaming machines at the premises would require another application which would be subject to rigorous examination. Given the present submission and assertions by the licensee in his responses to this application any subsequent gaming application in the near future may give rise to considerations of significant scepticism of the word of the applicant.

34. A further object which may also be of relevance to this matter is to facilitate a diversity of licensed premises and associated services for the benefit of the community.
35. The Lazy Lizard is the holder of a "Tavern" liquor licence. There are no similar premises with the same condition presently imposed on their licence. It is clear from the earlier decisions of the various former Licensing Commissions the genesis of the condition was the assertions and submissions of the various licensees at the time of each application.
36. In 2010 the former Licensing Commission considered and in doing so upheld a 2003 decision which made the following observation on the original application for the licence to an earlier entity:

"The core concept for the Lazy Lizard as presented to the Commission at the hearing of the original application for the liquor licence was instrumental in persuading the Commission to grant the licence and the Commission demands absolute faith in the Licensee's continued adherence to the resultant restrictive licence in that regard".
37. This present licensee was issued the licence in May 2009 and made the subsequent application to vary the licence as written above. In the application for the transfer it was submitted by counsel for the licensee:

"The Lazy Lizard is a family oriented bistro-like environment without gaming machines, TAB or any wagering facilities to sully the environment. ...there is a focus on family operations and good neighbour relations with the wider Pine Creek community".
38. It may easily be reconciled that the hospitality industry is by its very nature ever- evolving and the market requirements in 2000, driven by the customer will necessarily differ to those in 2015. This accords with the object of the Act which seeks to facilitate diversity in the industry.
39. It necessarily follows that whilst submissions diametrically opposed to those made in the recent past such as those in 2009 and 2010 are looked at with a degree of scepticism, it may be accepted given the passage of time that circumstances do change.
40. Mr Jenkins submitted he had reconsidered his position and has sought a low level of wagering at the premises, one which will not result in gaming machines but some diversity for his clients.

Contrary determinations

41. Also for consideration is the fact the licensee is currently operating a Keno facility, as acknowledged by Ms Lawrence contrary to the existing prohibition.
42. The licensee had made initial enquiries with licensing inspectors in Katherine about the possibility of seeking to have the licence condition amended or removed in March 2015. The application was lodged and the required processes began.
43. On 2 April 2015 the licensee contacted the Katherine inspector to ask what impact a letter he had received regarding Keno would have on the process.
44. The letter was from Mr David Christian, General Manager of SKYCITY Darwin by Ms Karen Avery, Senior Director of Licensing dated 1 December 2014. This letter was notification of approval of the premises by addition of it to Schedule 2 "*...which specifies those places in the Territory where the game of NT Keno can be played...*".
45. Accordingly the licensee was advised the approval had been given despite the obvious conflict, and was incorrectly advised he could install Keno. He was however correctly advised as the condition remained on the licence contrary to this delegated approval, it would still require a subsequent determination to remove the contradictory condition.

46. For completeness the approval given to have the premises added to Schedule 2 merely gives permission for it to be at the premises but is overridden by the licence condition prohibiting the activity until such time as it is not prohibited.
47. An option open to resolve this matter is the rescinding of the declaration and a direction that the facility be removed to bring the premises back into compliance, with the condition remaining untouched.
48. It would appear the licensee has acted in good faith in installing the Keno facility and there is no evidence to suggest it was done to intentionally usurp the current restriction. On the contrary it was done on the advice, albeit incorrect of an inspector.
49. The licensee has not previously been the subject of disciplinary action for conduct contrary to the Act or their licence conditions and Keno has been operating for several months with no reported incidents or issues.
50. It may also be noted in the 2010 decision whilst the licensee of the Pine Creek Hotel was an objector to the application his objection was purely based on the additional servery, not the request for gaming:

“14) Mr Downes confirmed that his client, Mr Chris Mason, had no objection to the amendment to the licence conditions to allow for gaming facilities on the premises and that the substance of the objection related to the application for the second point of sale and extension of the licensed premises.”

Summary

51. This application is the most recent of several sought to remove or amend a condition from the liquor licence of the premises which prohibits gambling and wagering. This condition was placed on the licence at the granting of the licence in 2000 and has been upheld by three (3) subsequent former Licensing Commission decisions.
52. The present licensee has submitted his wishes have changed through the passage of time and he wishes to have Keno and the possibility of some raffle and the like at the premises. Whilst the initial market at the premises was family, the growth in the minerals industry has resulted in a large number of miners and industry personnel frequenting the premises.
53. It may be accepted on the strength of the objection from Ms Lawrence and qualified approval by NT Police that of most concern is the potential for a growth in gaming machines and the potential flow-on effects from such activity.
54. The applicant has submitted it is not their intention at this time to install gaming machines and they simply wish to operate Keno and some charity raffles. The current condition allows for some raffles and the like to be conducted but they must be done by the organisation that will derive the benefit themselves, the licensee cannot do so as an agent of theirs.
55. It may be accepted the potential for harm given the licensee is already operating Keno, seemingly without incident is low. Also from a diversity consideration such a condition is foreign to every other like licence which places the licensee in an invidious position of uniqueness.
56. Whilst it may be accepted there is little if any opposition to the operation of Keno at the premises the potential remains that removal or amendment of the condition will allow potential for further applications and gaming. In such an event the process is prescribed and involves significant oversight and examination which provides a level of security for those with concerns over this present application. Any further approvals would be considered under the relevant licensing regime.

Decision

57. The licensee is seeking to amend the existing condition relating to "Trading Conditions" by removing the prohibition against gaming and wagering at the premises. There was no other conditional changes sought nor were there any material alterations sought to be approved.
58. Although this condition has been the subject of several previous considerations by the former Licensing Commission I am satisfied the passage of time now warrants a fresh consideration as to the relevant issues involved.
59. As written earlier the substance of the one objection and also the qualified support by NT Police was the potential for proliferation of gaming machines in a small town such as Pine Creek.
60. Regardless of the outcome of this decision, in the event the licensee wishes to install gaming machines he would need to undertake a separate and more rigorous application process before any approvals may be given. Accordingly this provides me with a level of comfort that the approval of this application will not result in the proliferation feared by some.
61. There has been no specific objection to the operation of Keno at the premises and in the event the licensee wishes to hold a raffle or the like he would anyway be governed by the provisions of the *Gaming Control Act* or the *Gaming Control (Community Gaming) Regulations*.
62. I am satisfied the approval of 1 December 2014 to add the premises onto Schedule 2 of the Casino Operator's Agreement which allows for Keno to be installed at premises does not need to be revoked as the licensee acted in good faith and on the instructions of a letter of approval and a licensing inspector.
63. The objects of the Act must be taken into account when considering an application for a variation of licence conditions. In this instance I am satisfied that the amendment of the condition pertaining to "Trading Conditions" amended as particularised in the application and this decision notice will not have a negative impact on the social amenity of the community. The amendment will however in some way assist in satisfying the object relating to diversity allowing this licensee to grow their business by offering other products whilst maintaining the overall requirement to "...maintain the appearance of trading predominantly as a family oriented bistro".
64. In accordance with section 32A of the Act the condition relating to "Trading Conditions" is amended to read as follows:
Trading Conditions In terms of fit out, facilities, signage and ambience the premises at all times must maintain the appearance of trading predominantly as a family oriented bistro, and will have a range of meals available at all times that the premises shall be open for the sale or supply of any alcoholic beverage.

Review of Decision

65. Section 120ZA of the Act provides that a decision of the Director-General of Licensing, as specified in the Schedule to the Act, is a reviewable decision. An application for a variation pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision. 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 the Act, the only affected persons are the applicant, the objector and NT Police.
66. All affected persons are to be provided with a notification of this determination.



Cindy Bravos
Director-General of Licensing

Date 19 Oct 2015