

A/Deputy Director-General (Operations)

Decision Notice

Matter:	Application for a temporary variation to a liquor licence
Premises:	Discovery
Applicant:	Mr Mario Madaffari, Nominee
Licensee:	Deva Darwin Pty Ltd
Objectors:	NT Police and Department of Health
Legislation:	<i>Liquor Act</i> – section 32A
Decision of:	A/Deputy Director-General (Operations)
Date of Decision:	18 August 2016

Background

1. Pursuant to section 32A of the *Liquor Act* (the Act), Mr Mario Madaffari, Nominee of Discovery, 89 Mitchell Street, Darwin applied to the Director-General of Licensing for a temporary variation to the liquor licence for the premises on 3 August 2016.
2. The application seeks to allow for an "All Age Event" on Friday, 21 October 2016 at the premises. The event is "Ball Park Music" between the hours of 17:00 hours and 23:00 hours "...to showcase National and International touring acts open to all ages".
3. The applicant submits patrons will comprise both underage and of age persons in the one venue.

Current Situation

4. The variation does not seek any additional hours nor does it seek an increase of the licensed area. The premises comprises two (2) separate licensed areas being Discovery and The Lost Arc both of which are subject to a declaration pursuant to Section 106(1)(a) of the Act. The Discovery declaration is for all material trading hours.
5. The declaration proscribes entry by a person under the age of 18 years of age:

"A person who has not attained the age of 18 years shall not enter or remain on or in the following area(s) of your licensed premises... Discovery."

6. In essence this application seeks to suspend the declaration for the specified period of the event.

7. The applicant submits they are :

“...seeking to broaden its appeal to the local market by showcasing some of the best national and international touring acts, open to all ages, in an environment where entertainment, and not alcohol, is not seen as the major attraction of the evening. We believe a benefit of this will be installing in local youth that entertainment is the ‘hero’ of a good night out.

We plan to bring acts whose appeal crosses the age spectrum from youth to adult. As such, given Darwin’s location and population, we need to have as wide a target market as possible to make the act commercially viable. We believe being able to host ‘All Age Events’ will allow us this opportunity to provide unique entertainment to Darwin.”

8. As is required, the application was sent to the Department of Health and NT Police for their comment.
9. Both parties provided objections to the application stating they were unable to support the application.
10. Police in their objection submitted the venue being licensed premises made it “...not a suitable location to hold and under 18 event”. They further submitted there are “...several other locations and activities run by Police (Blue Light Disco) and other youth services” and the endorsement of this application would detract from their activities.
11. Police wish to uphold the message aligning with the Blue Light Discos of alcohol, drug and smoke free events held in non-licensed venues.
12. Likewise the Department of Health stated they were not able to support the application on the grounds the premises is controlled by the aforementioned Section 106(1)(a) declaration. Further, they submitted it was not appropriate to hold mixed age events in a nightclub setting and it may be seen as grooming of children for future patronage upon reaching the age of majority.
13. Health also submitted as the premises was within the late trading premises in Mitchell Street it may place the young patrons at a greater risk of harm after the event when they depart the premises and possibly remain in the vicinity.
14. Health also expressed their concerns of preloading, third party supply and illicit drugs at the premises and the exposure of underage patrons to such matters.

Assessment of the matter

15. The applicant has provided a detailed submission in support of their application. The submission outlines the applicant's history and experience in conducting "Under 18" events in their previous premise Metropolis Freemantle. The events included well known Australian acts and "...local Senior High Schools...would choose our venue to host their year 11 and 12 end of year functions".
16. An obvious issue arising from an "All Age Event" is that liquor is to be sold at the event and seemingly from the same bar as underage patrons would be seeking non-alcoholic drinks.
17. The applicant acknowledges the risk of "secondary supply" to underage patrons and submits:

"Drawing upon our years of experience in the industry, including providing previous 'underage only events' we have come up with the following plan to prevent secondary supply from occurring".
18. The applicant's plan is to mandate the provision of a wristband, red for 18+ and green for underage. Whilst not specifically expressed it may be accepted all patrons would be vetted for evidence of age upon entry.
19. All patrons would be required to maintain the wristband otherwise they will be removed from the premises. Soft drinks and the like will be sold in their original packaging and no in glassware used for the sale and consumption of alcohol. Any minor seen consuming from glassware would be removed "...upon arrival of their guardian".
20. Of relevance to this application are three (3) historic events held at Discovery, albeit under a different licensee, Rediscover Pty Ltd. These events were underage events named "Booty Bar" and were arranged by the now licensee of Opium. These events were restricted to persons under the age of 18 years, and were held between 17:00 hrs and 21:00 hrs on a Sunday.
21. These variations were approved by the Licensing Commission and there were a number of other events held at non-licensed premises of the same nature.
22. Conversely the licensee of Opium recently applied for an underage event at Opium which was refused. That application sought to rely on the previous approvals however was distinguished by the fact the hours sought were 19:00 and 23:00 hours, much later than the other events.

23. The Director-General refused that application on the following basis:

Decision

30. The decision is to refuse this application on the basis it poses an unacceptable risk to attendees who may be unsupervised at the conclusion of the event, in an area that has transitioned into an adult entertainment area late at night.
24. The main consideration which proved fatal to that application was the late night component where children would be leaving the premises into an adult entertainment area unsupervised and potentially without means of transport home.
25. The issue of the event being conducted on premises that are otherwise licensed is of little import if the event planned is to be restricted to underage patrons only. Such events are commonplace, not only in Darwin and have been successfully run in areas such as Katherine and the like. The adult nature of the premises and products usually available are easily removed and there has invariably been transport also arranged to ensure the attendees are taken home and not left to their own devices at the end of the event.
26. What is proposed by this application is "All Age" involving the sale of liquor. Research was conducted by this author as to other jurisdictions in which these similar events have been held. It would appear each tackles the issue of mixed patronage differently. Some jurisdictions do allow a mixing and utilise the wristband method of identifying the individuals age. Most however either insist on adult supervision or provide separate secured areas for underage patrons and there is no mixing of the groups.
27. Given the tiered nature of the premises it is conceivable the licensee could effectively sequester the underage patrons on a higher tier however this has not been submitted as their plan.
28. There are a number of premises in Darwin that allow for underage patrons to be on the premises in the company of their parent or guardian, who may consume liquor during their meal or even during the event they are attending. The discrete difference of course being the level of supervision of the child.
29. The example has also been considered of events such as Bass in the Grass in the like which are not restricted, allow for the sale of liquor and do not require parental supervision of attendees. That type of event is quite different from what is planned by this applicant. Those events are much larger and involve a significantly heavier level of security and supervision which will not be possible at Discovery.

Consideration Criteria

30. In considering the application the Act requires me to consider any objection to the application and any reply provided by the applicant.
31. I have considered both objections and the response by the licensee.

Summary

32. The application to provide for an "All Ages Event" at Discovery between the hours of 17:00 and 23:00 hours on Friday, 21 October 2016. The premises would then continue their normal trade until closure at 04:00 hours Saturday, 22 October.
33. The applicant submitted they have successfully run underage events previously which have been confirmed.
34. The approval of underage events on licensed premises is not unusual and there are a number of examples of such events, including at Discovery since 2011. Distinguishing those from this event is the fact they were underage only, without the presence of liquor and finished at around 21:00 hours each time.
35. Of great concern, and as expressed by the Director-General in a recent refusal for a late night underage event is the presence of underage persons, late at night exiting the premises in an area that has transformed into an adult entertainment area.
36. The only previous approvals have been for underage only events and this application seeks to mix ages where underage patrons will be exposed to much older persons, unknown to them or their parents consuming liquor late at night.
37. The application has not been supported by Police or Health on this basis and it is accepted whilst the risk to the child may be mitigated through the provision of wrist bands identifying age, it still proves too high to outweigh the benefit to the individual.
38. It of course benefits the applicant to have a wider audience to market to for such events. The concern of objectors that exposing children to such licensed premises and events is grooming and not in their interests is frankly of little merit. Children are readily exposed to liquor consumption in the home and on various other licensed premises. In the circumstance of underage events all adult materials are hidden from view.
39. Of greatest import is the late night nature of the event and the resulting unsupervised children being sent into an adult entertainment area exposing them to greater risk of harm and the commingling nature of an "All Age Event".

40. Some of the harm may be mitigated through the provision of wristbands identifying a person's age however this does not fully mitigate the potential. Further, children may be exposed to behaviours not desirable for a person of that age, by others they would not otherwise be in the company of.
41. A consideration must of course be the objects of the Act, specifically the protection and enhancement of community amenity, social harmony and wellbeing.
42. On weighing up all materials before me the risk posed during and after the event outweighs the benefit of conducting the event. I am not satisfied the conduct of the event as proposed commingling underage and of age patrons is in the public interest and of benefit to the community.

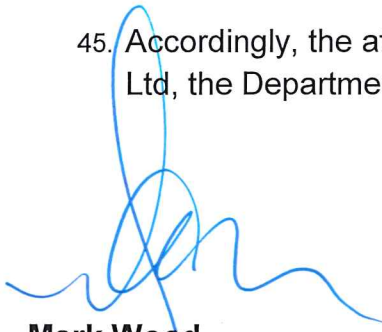
Decision

43. The decision is to refuse this application on the basis it poses an unacceptable risk to underage attendees who may be unsupervised by an adult guardian both during and after the event, in an area that has transitioned into an adult entertainment area late at night. The exposure of children to the consumption of liquor in that form of environment is not appropriate and is likely to encourage children to seek means of obtaining or consuming liquor.

Review of Decision

44. Section 8 of the *Licensing (Director-General) Act* prescribes a delegate decision is a decision, under any Act, of the Director-General that is made by a delegate of the Director-General. The Director-General delegated the determination of applications made under Section 32A of the *Liquor Act* by instrument to the person from time to time holding, acting in or performing the duties of the position in the Department of Business specified in Schedule 2 of that instrument. This decision was made by a person referred to in that schedule. Section 10 of the *Licensing (Director-General) Act* provides that an affected person for a delegate decision may apply to the Director-General for a review of the decision. This application for review must be made within 28 days after written notice of the delegate decision is given to the affected person, or within any additional time that the Director-General allows. Section 9 of the *Licensing (Director-General) Act* prescribes an affected person for a delegate decision to be the applicant for the special licence and a person who made a submission, complaint or objection (however described) during the process that resulted in the decision being made.

45. Accordingly, the affected persons in relation to this decision are, Deva Darwin Pty Ltd, the Department of Health and Northern Territory Police.



Mark Wood
A/Deputy Director-General (Operations)
18 August 2016