

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

REFERENCE: LC2018/061

LICENCE NUMBER: 801515390

LICENSEE: Tilmouth Well Nominees Pty Ltd

PREMISES: Tilmouth Well Roadhouse
Tanama Highway
Via Alice Springs NT 0872

APPLICANT: Tilmouth Well Nominees Pty Ltd

NOMINEE: Mr Cameron Miller

OBJECTOR/S: Nil

LEGISLATION: Section 32A, Part IV and V of the *Liquor Act*.

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)
Mr Lindsay Carmichael (Community Member)

DATE OF HEARING: 5 June 2018

DATE OF DECISION: 5 June 2018

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act* the Commission has determined to vary the conditions of the liquor licence for the premises known as Tilmouth Well Roadhouse by :
 - a. Extending the trading hours of the premises from 2359 hours on 7 June 2018 to 0200 hours on 8 June 2018.
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 5 June 2018.

Reasons

Background

3. Tilmouth Well Nominees Pty Ltd (“the applicant”) currently holds a Restaurant Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises being Tilmouth Well Roadhouse (“the Roadhouse”) and only as ancillary to a “substantial meal”. The licensee is the applicant and the nominee under the liquor licence is Mr Cameron Miller.
4. On 18 May 2018 the applicant made application pursuant to section 32A of the Act for a variation to the licence conditions to accommodate a request by the KTM Adventure Rally in relation to catering for approximately 300 motorcycle riders who are staying overnight at the roadhouse as part of a 7 day tour ending at Alice Springs. A formal sit down dinner is planned for the participants. The participants are all off-road motor cycle riders who are required to own and ride their own KTM brand motorcycle in order to participate in the rally. There are no links to any Outlaw Motor Cycle gangs.
5. The current trading hours for the Roadhouse are from 1000 hours to 2359 hours seven (7) days a week. The applicant is seeking to vary those trading hours for the purpose of the rally only to extend the closing time to 0200 hours on Friday 8 June 2018 only. That is to say, the application for variation is seeking an extra two (2) hours of trade on one evening only, being the evening of Thursday 7 June 2018.
6. The applicant has not previously sought a similar variation for such an event at these premises, however with respect to their current licence; the Commission has not been advised of any compliance issues.

Disclosure of influential persons or potential beneficiaries

7. The Commission notes that section 32A(1A) of the Act now requires applicants to make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The applicant has filed such an affidavit.
8. Mr Cameron Miller (“Mr Miller”) is the principal executive officer of the applicant and pursuant to section 26A(2)(a) of the Act is the appropriate person to make the affidavit. Mr Miller has disclosed that other than the directors of the applicant, who may be able to influence any decision made by the applicant, there are no other persons who may expect any benefit from the applicant if the licence is granted.
9. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

10. The Commission was advised that due to the nature of the variation sought, i.e. an increase for two (2) hours on one day only, the Director-General had exercised her discretion under section 32A(2) and 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. The Director-General complied with this requirement with respect to this application. The Commission notes that the application was also forwarded to the Northern Territory Police, Fire and Emergency Services (“NTFRS”) for comment.
13. With respect to this application:
 - a. The DOH made no adverse comment, but requested that smoking signage and plans be provided to the applicant. This was done by Licensing NT.
 - b. The NT Police had “no objections”.
 - c. The Central Desert Regional Council advised they had “no major issues”.
 - d. The NTFRS had “no concerns”.

Public Hearing

14. 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. The application was referred to the Commission on 31 May 2018.
15. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. Due to the late lodgement of this application, the Commission exercised its discretion under section 127 of the Act to abridge time and a hearing was fixed for 9.00am on 5 June 2018. Notice was given to the applicant on 1 June 2018.

16. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
17. The public hearing commenced shortly after 9.00am on 5 June 2018. Mr Cameron Miller appeared by way of pre-arranged phone link before the Commission. There was no representative on behalf of the Director-General of Licensing however none was requested by the Commission, nor was their assistance necessary for the hearing on this occasion.

Assessment of the Application

18. As earlier noted, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, the Act now clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, 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.
19. 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.”

20. 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.”

21. 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”.

22. 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; • 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? • 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?

	<ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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23. 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) under the new public interest and community impact test and guidelines. The guidelines do 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”.

24. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application to vary conditions of an existing licence and to do so for a period of only two (2) hours on one (1) day. As a result some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) are not as significant with respect to an application such as this for a variation and material alteration.

25. The applicant provided written submissions addressing the public interest and community impact test and also the community impact assessment guidelines. Those submissions were detailed and helpful and were considered carefully by this Commission. Despite the very short period sought with this application for variation, the Commission is reassured by the detail provided by the applicant within the application. The Commission considers that this shows the applicant takes its conditions of licence seriously and will do so for the additional two (2) hours of trade sought.

26. Based on the information provided to the Commission and particularly the **very** limited nature of the variation sought, this Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought. Therefore, for the reasons outlined and having regard to the objects of the Act the Commission has decided to vary the conditions of the licence as outlined at the start of this Decision Notice.

Notice of Rights:

27. 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.

28. 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.

29. 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.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN
Presiding Member
Deputy Chairperson