

Northern Territory

LIQUOR COMMISSION

NOTICE OF VARIATION OF THE CONDITIONS OF LICENCES

MATTER: VARIATION OF THE CONDITIONS OF LICENCES

LICENSEES

LICENCE NUMBERS

Erlunda Desert Oaks Resort Pty Ltd (Desert Oaks Motel)	80100446
Gap View Holdings Pty Ltd (Gapview Resort Hotel)	80102399
Kulgera Trading Company Pty Ltd (Kulgera Hotel)	81202158
LAE Supermarkets Pty Ltd (Eastside IGA)	80902628
LAE Supermarkets Pty Ltd (Flynn Drive IGA)	80902945
LAE Supermarkets Pty Ltd (Northside IGA)	80902690
Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)	80901729
M & J Pascoe and Daughters Pty Ltd, Pepity Pty Ltd, Wrigm Pty Ltd, GRJP Pty Ltd, Stewie Pty Ltd, Maniel Dark Pty Ltd and MT Radloff Pty Ltd (Todd Tavern)	80102200
Silvery Pty Ltd (United Heavitree)	80902567
Stuart Highway Investments Pty Ltd (Pigglys)	80902640
Tancor Nominees Pty Ltd (Milner Road Foodtown)	80902951
Woolworths Group Limited (BWS Alice Springs)	80902856

LEGISLATION: Section 33, *Liquor Act 1978* (NT)

CONSIDERED BY: Mr Richard Coates (Chairperson)
Mr Russell Goldflam (Legal Member)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

INTRODUCTION

1. On 27 February 2019, in accordance with s 33(2) of the *Liquor Act* ("the Act"), the Northern Territory Liquor Commission ("the Commission") issued written notice comprising proposed variations of licence conditions together with reasons for the proposed variations ("the notice of proposed conditions"), to the above-mentioned licensees ("the licensees"), and invited them to submit a response to the proposed variations within 28 days.
2. The Commission proposed that there be two changes to licence conditions: the introduction of a suspicious transactions reporting scheme, including a purchasing threshold above which a purchase would be deemed suspicious; and, for licensees outside Alice Springs, restrictions on the sale of takeaway liquor to local communities similar in effect to conditions currently in force for the Curtin Springs roadhouse ("the Curtin Springs special condition").
3. Section 33(3) of the Act provides:

The Commission may, having considered any response of the licensee, vary the conditions of the licence as proposed in the notice or in another way the Commission considers appropriate.
4. The Commission received responses on behalf of the following licensees:
 - Kulgera Hotel
 - BWS Alice Springs
 - Liquorland Alice Springs
 - Gapview Resort Hotel

The Commission also received a response from the Alice Springs Liquor Accord, which includes seven of the licensees, namely BWS Alice Springs,

Gapview Resort Hotel, Eastside IGA, Flynn Drive IGA, Northside IGA, Pigglys and Milner Road Foodtown.

THE LICENSEES' RESPONSES

5. None of the licensees objected to the proposed Curtin Springs special condition.
6. The submissions from and on behalf of licensees in relation to the proposed suspicious transactions reporting scheme can be summarised as follows:
 - There was general support for the proposal by the Commission that the scheme apply to:
 - A third or subsequent occasion on which liquor is sold to the same individual on the same day; and
 - Any other liquor sale arousing suspicion on the part of the salesperson that the purchaser intends to commit an offence by possessing, consuming or supplying liquor in a manner or place prohibited by law.
 - Licensees seek a reasonable lead-in time before the scheme is introduced, to enable them to make the changes required to successfully establish and implement the scheme.
 - Some licensees request the Commission to conduct further consultations with licensees before making its decision.
 - Licensees submitted that no purchasing threshold should be fixed because the proposed threshold would:
 - impose an unsustainable burden on licensees, due to a high volume of transactions being deemed suspicious;

- arouse customer frustration and antagonism, compromising staff safety
 - unduly infringe customers' privacy
- The Kulgera Hotel licensee submitted that the proposed purchasing threshold condition would be ineffective and impracticable for licensees outside Alice Springs.

DISCUSSION

LEAD-IN PERIOD

7. The Commission accepts that the establishment of a suspicious transactions reporting scheme requires licensees to implement operational changes, including the training of staff, and accordingly, the Commission has decided to allow a three month lead-in period before these conditions take effect.

FURTHER CONSULTATIONS

8. As set out in the notice of proposed conditions, the Commission consulted with licensees by: notifying them of its inquiry in September 2018; receiving and considering their submissions; meeting with them in October 2018; and then, on publication of the notice of proposed conditions, inviting them to provide further submissions. In the course of the 2018 consultations, the Commission specifically requested licensees, who had themselves suggested the suspicious transactions scheme in the first place, to make submissions as to an appropriate purchasing threshold. No such submissions were received at that stage. The Commission considers that licensees have been provided with ample opportunity to contribute their views, and that this inquiry should not be further prolonged by conducting further consultations.

A PURCHASING THRESHOLD IS REQUIRED

9. Despite the licensees' responses, which it has carefully considered, the Commission has determined that a purchasing threshold should be fixed. The Commission considers that a threshold is required to ensure that the suspicious transactions reporting scheme is administered robustly, consistently and fairly.

PRIVACY ISSUES

10. The Commission is satisfied that the implementation of a suspicious transactions scheme would not unduly or unlawfully infringe the privacy of patrons.

11. Part VIIIIC of the Act ("Point of sale intervention") confers special powers on police and liquor inspectors, the apparent purpose of which is to prevent alcohol-related offences. Section 101ZK of the Act empowers police and liquor inspectors to require persons in possession of liquor on or near licensed premises to provide their name and address, show approved identification, state whether they intend to supply any of the liquor to another person, and answer associated questions. This section further provides:

If the officer or inspector suspects on reasonable grounds that an alcohol-related offence is likely to occur, the officer or inspector may...seize a container in the possession of the customer that the officer or inspector has reason to believe contains liquor.

12. Section 101ZJ defines "alcohol-related offence" to include an offence against the Act. One such offence is created by section 115 of the Act, which provides that "a person must not sell any liquor unless the sale is authorised by a licence."

13. Section 101ZP (which, along with section 101ZK, is in Part VIIIIC of the Act) provides:

Sharing information

Despite section 9 of the *Information Act 2002* and the operation of any other law of the Territory that prohibits or restricts the disclosure of information, a person may disclose information that is requested or collected under this Part for the purposes of enforcing this Part.

14. The Commission considers that the information licensees and their employees will be required to provide to police and inspectors in compliance with the suspicious transactions scheme is all information that police and inspectors are lawfully entitled to acquire, and information the disclosure of which is authorised by section 101ZP.

15. Licensees have informed the Commission that they already report to police transactions they consider to be suspicious. This lessens the force of the licensees' privacy-based objections to the introduction of a purchasing threshold.

THE LEVEL OF THE THRESHOLD

16. In its notice of proposed conditions, the Commission proposed the following purchasing threshold:

Sales to an individual in excess of any of the following: two cartons of full strength beer, six 750ml bottles of wine, two 750 ml bottles of spirits or twenty four cans or bottles of Ready to Drink mixes

17. All of the licensees who responded submitted that the proposed threshold was too low. One licensee submitted that it would result in hundreds of purchases at its premises being deemed suspicious every week. The Commission accepts that this would impose a substantial administrative burden on licensees and also on police, who would be expected to follow up and investigate each reported suspicious

transaction. The Commission also accepts that there may be a real risk to the maintenance of good order on licensed premises, and for the safety of both customers and staff if there were a requirement that licensees report such large numbers of liquor purchases to police as being suspicious.

18. In addition, the Commission accepts that many purchases deemed suspicious if the proposed threshold were fixed would actually be innocuous purchases by customers taking advantage of the opportunity to buy promoted products being offered for sale at a temporarily discounted price.

19. For these reasons, the Commission has decided to fix a substantially higher purchasing threshold than previously proposed.

LICENSEES OUTSIDE ALICE SPRINGS

20. The Commission considers that there is merit in the submissions made by the Kulgera Hotel. The Commission accepts that unlike Alice Springs licensees, there is no routine or regular police presence at licensed premises at wayside inns, and in addition, their patterns of takeaway trading are different. Accordingly, the Commission has decided not to impose a purchasing threshold on these venues, although the other features of the suspicious transactions reporting scheme will be applied to them.

VARIED CONDITIONS: ALICE SPRINGS LICENSEES

21. The varied conditions as set out below will apply from 25 August 2019 to the following licensees:

- Gap View Holdings Pty Ltd (Gapview Resort Hotel)
- LAE Supermarkets Pty Ltd (Eastside IGA)

- LAE Supermarkets Pty Ltd (Flynn Drive IGA)
- LAE Supermarkets Pty Ltd (Northside IGA)
- Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)
- M & J Pascoe and Daughters Pty Ltd, Pepity Pty Ltd, Wrigm Pty Ltd, GRJP Pty Ltd, Stewie Pty Ltd, Maniel Dark Pty Ltd and MTRadloffe Pty Ltd (Todd Tavern)
- Silvery Pty Ltd (United Heavitree)
- Stuart Highway Investments Pty Ltd (Pigglys)
- Tancor Nominees Pty Ltd (Milner Road Foodtown)
- Woolworths Group Limited (BWS Alice Springs)

SUSPICIOUS TRANSACTIONS CONDITION

(1) For the purposes of this condition, “suspicious transactions” are defined as the sale or supply of liquor for consumption away from the premises comprising:

- a. Sales to an individual in excess of any of the following: three cartons of full strength beer, twelve 750ml bottles of wine, four 750 ml bottles of spirits or forty eight cans or bottles of Ready to Drink mixes;
- b. A third or subsequent occasion on which liquor is sold to the same individual on the same day; or
- c. Any other liquor sale arousing suspicion on the part of the salesperson that the purchaser intends to commit an offence by possessing, consuming or supplying liquor in a manner or place prohibited by law.

(2) Suspicious transactions must be reported immediately to a PALI or other police officer on patrol at the premises; or, if there is no officer at the premises, by email as soon as practicable to the Alcohol Policing Unit.

- (3) Suspicious transaction details as prescribed by the Director-General of Licensing must be recorded by the licensee or an employee of the licensee in a daily register, including time of transaction, type of suspicious transaction and time of report to police.
- (4) The licensee must provide the day's register to the PALI or other police officer on patrol at the premises when trading ceases for the day; or, if there is no officer at the premises at that time, on the next occasion an officer attends the premises.
- (5) The register must be made available at any time on request by NT Police.
- (6) If so required by the Director-General, the licensee must display on the premises signage approved by the Director-General of Licensing notifying customers of the suspicious transactions conditions.

22. The Commission notes the proposal by the Central Australia Liquor Accord and others that the identification system established by s31A of the *Liquor Act* be enhanced so as to instantaneously flag suspicious transactions and alert police. The Commission considers that this proposal has merit. Although there are privacy issues to consider before adopting this proposal, it would seem clear that an expanded use of the Banned Drinkers Register could make it easier to target both problem drinkers and covert secondary suppliers. This would relieve the burden on licensees, and provide significant benefits in turn for law enforcement. The Commission recommends that the Northern Territory Government review this proposal with a view to implementing it.

VARIED CONDITIONS: AFFECTED LICENSEES OUTSIDE ALICE SPRINGS

23. The varied conditions as set out below will apply to the following licensees:

- Desert Oaks Motel (Erlunda)
- Kulgera Hotel

SUSPICIOUS TRANSACTIONS REPORTING CONDITION

(1) For the purposes of this condition, “suspicious transactions” are defined as the sale or supply of liquor for consumption away from the premises comprising:

- a. A third or subsequent occasion on which liquor is sold to the same individual on the same day; or
- b. Any other liquor sale arousing suspicion on the part of the salesperson that the purchaser intends to commit an offence by possessing, consuming or supplying liquor in a manner or place prohibited by law.

(2) Suspicious transactions must be reported immediately to a PALI or other police officer on patrol at the premises; or, if there is no officer at the premises, by email as soon as practicable to the Alcohol Policing Unit.

(3) Suspicious transaction details as prescribed by the Director-General of Licensing must be recorded by the licensee or an employee of the licensee in a daily register, including time of transaction, type of suspicious transaction and time of report to police.

(4) The licensee must provide the day’s register to the PALI or other police officer on patrol at the premises when trading ceases for the day; or, if there is no

officer at the premises at that time, on the next occasion an officer attends the premises.

(5) The register must be made available at any time on request by NT Police.

(6) If so required by the Director-General, the licensee must display on the premises signage approved by the Director-General of Licensing notifying customers of the suspicious transactions conditions.

SPECIAL CONDITION

The licensee is not permitted to sell or supply liquor for consumption away from the premises to:

- a. any person who is unable to satisfy the licensee that they do not reside or normally reside in:
 - i. a general restricted area declared pursuant to s74(1)(a) of the *Liquor Act 1978* (NT);
 - ii. an alcohol protected area declared pursuant to s27 of the *Stronger Futures in the Northern Territory Act 2012* (Cth);
 - iii. any of the Communities or Homelands on the Pitjantjatjara Lands in South Australia; or
 - iv. any of the Communities or Homelands on the Ngaanyatjarra Lands in Western Australia.
- b. any person who the licensee knows intends to supply the liquor to a resident of the areas set out in sub-condition (a) above.

The Licensee may at his or her discretion refuse service to any person whom he or she has reason to believe is attempting to purchase liquor on behalf of the persons described above.

Notes:

- (i) A list of residential areas subject to restricted area declarations pursuant to s74 of the *Liquor Act 1978* (NT) is published at <https://nt.gov.au/law/alcohol/where-you-cant-drink-in-the-NT/list-of-restricted-areas>
- (ii) As at May 2019, the residential areas declared to be alcohol protected areas also comprise the town camps prescribed by the *Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 1)* (Cth) and the *Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 2)* (Cth).
- (iii) “Pitjantjatjara Lands” means the lands described in the First Schedule to the *Pitjantjatjara Land Rights Act 1981* (SA) but does not include any roads referred to or described in the Second Schedule to that Act or any road reserved within the meaning of Section 33 of the Act.
- (iv) “Ngaanyatjarra Lands” means the lands contained in the Reserves (Use & Benefit of Aboriginals) Nos. 17614, 21471, 24923, 40783, 29452, 40787 and 40781 in Western Australia declared under Part 3 of the *Land Act 1933* (WA) and the Leases which were granted to the Ngaanyatjarra Land Council (Aboriginal Corporation).

24. The Commission varies the Desert Oaks Motel (Erlunda) licence by amending its registered address to PO Box 1017 CAMDEN NSW 25170.

25. Notwithstanding anything contained in the proposed conditions set out above, where a licence contains an existing condition which is more restrictive than the proposed conditions, the existing condition prevails.

NOTICE OF RIGHTS

26. 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 licence conditions pursuant to section 33 of the Act is specified in the Schedule and is a reviewable decision.

27. 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



CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

27 May 2019

On behalf of Commissioners Coates, Goldflam, Reynolds and McFarland