

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION TO MAKE A MATERIAL ALTERATION

LICENCE NUMBER: 80315190

REFERENCE: LC2019/081

LICENSEE: Dalkeith Ag Co Pty Ltd

PREMISES: Noonamah Tavern
Stuart Highway
NOONAMAH NT 0837

APPLICANT: Dalkeith Ag Co Pty Ltd

NOMINEE: Mr Anthony (Tony) Innes

LEGISLATION: Section 119(2), Parts I, IV and V of the *Liquor Act 1978*.

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 17 June 2019

DATE OF DECISION: 17 June 2019

Decision

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act 1978* (the Act), the Commission has determined to approve the material alteration to the licensee's licensed premises as sought by the Applicant, with conditions.

Reasons

Background

2. Dalkeith Ag Co Pty Ltd (the licensee) holds a liquor licence authorising it to sell and supply liquor as a tavern at the Noonamah Tavern (the premises). The licence authorises the sale, supply and consumption of liquor on the premises from two bars and a beer garden commencing at 10:00 hours, and in a restaurant commencing at 11:00 hours.

3. By a completed application lodged with Licensing NT on 3 May 2019, the licensee applied to extend the licensed premises to incorporate the hotel's carpark (the carpark) and the adjacent rodeo spectator area for the 2019 Rockabilly Classic Car Show (the car show), from 10:00 hours to 18:00 hours on 10 August 2019. This would allow the public to view cars on display at the car show in the licensee's carpark and adjacent rodeo ground while carrying and consuming an alcoholic drink. An alteration to licensed premises which increases the area used for the sale or consumption of liquor is a "material alteration" pursuant to s4 of the *Liquor Act 1978*; and, pursuant to s119(1) of the Act requires the approval of the Liquor Commission (the Commission).
4. On 28 May 2019, following consultation, together with an assessment by Licensing NT of the application, a Delegate of the Director-General of Licensing referred the application to the Commission for hearing pursuant to sections 119(6A) and 50(d) of the Act.
5. The Director-General provided the Commission with a brief of evidence (the brief) including:
 - Application for material variation dated 11 April 2019
 - Diagram of proposed licence area
 - The Applicant's existing liquor licence number 80315190 effective 28 April 2014
 - Affidavit for the purpose of s26A of the Act deposed by Anthony James Innes, the Applicant's executive officer, on 3 May 2019
 - Community Impact and Public Interest Assessment statement
 - Correspondence between Licensing NT and Department of Health (DOH), NT Police, NT Fire and Rescue Service (NTFRS) and Litchfield Council.

Consultation

6. Pursuant to s119(3) of the Act, if the Director-General considers it to be in the public interest, she may require an Applicant for a material alteration to publish notice of the application. In this instance, the Director-General, in the exercise of her discretion, determined not to require the Applicant to publish notice of the application. The Director-General informed the Commission that in exercising her discretion she had regard to the brevity and nature of this one-off event.
7. As required by s119(5) of the Act, the Director-General notified the Litchfield Council of the application. In addition, the Director-General notified DOH, the NT Police and the NTFRS.
8. The Director-General informed the Commission that:
 - The Council responded that it did not object to the application.
 - DOH responded, making no adverse comment.
 - NT Police did not comment on the application.
 - NTFRS indicated that it had no objection to the application.

9. The Commission notes that the licensee has recently encountered compliance issues with the operation of its liquor licence for a special event, as set out in the following passage from the Commission's decision notice dated 15 May 2019 in relation to another application by the licensee:

With respect to this Applicant, the Commission was informed that:

“A check of records held at Licensing NT indicate minor compliance issues were identified during a Rodeo event held by the Applicant in September 2018. On this occasion, both Licensing NT staff and Police identified a lack of sufficient observations and assessment by crowd controllers when monitoring and limiting the possibility of anti-social behaviour, and ensuring a safe drinking environment at the points of sale. At the time of that Rodeo event, intervention by Senior Compliance Officers and police was required to prompt Crowd Controllers to exercise their duties regarding the checking of patron identification to prevent minors accessing alcohol, as well as their responsibilities to approach and assess patrons levels of intoxication prior to service. The Applicant actively engaged with staff from Licensing NT and the minor compliance issues were resolved through cooperation with Senior Compliance Officers and Police assisting and educating Crowd Controllers throughout the running of the event.”

This matter was raised with Mr Innes at the hearing who frankly recalled the issues raised and confirmed that he had addressed the matters by Licensing with his security provider and took the matter seriously and would continue to do so. The Commission accepts this evidence.

10. On 16 January 2019 the licensee was granted a similar application for the "Australia Day Ute Run". On that occasion, the Commission noted that the licensee proposed to make the following arrangements:

The Applicant has indicated that alcohol will only be able to be purchased in the main bar or Beer Garden within the Licensed Premises and patrons will only be permitted to consume alcohol in the extended area. Such alcohol will be served in either plastic cups or cans. Access to the extended area will only be through the Beer Garden gate and security will be located at this point to monitor patrons and to ensure that all alcohol is in plastic cups or cans. There will be a promotional drinks offer of a “bucket of 4 drinks” for groups which will be monitored by security and RSA staff to ensure responsible drinking.

11. The Commission has not been informed of any non-compliance issues arising from that event.

Hearing

12. On 17 June 2019 the application proceeded as a public hearing. Mr Innes, the licensee's nominee, appeared on behalf of the Applicant, and Ms Chin appeared for Licensing NT. The Commission thanks them both for their attendance and assistance.
13. The brief was tendered and admitted into evidence without objection. It was marked Exhibit One. No further documentary evidence was adduced.

Assessment of the Application

14. In considering the application, the Commission has had regard to the objects of the Act (s3), the application of the public interest and community impact test (s6), the community impact assessment guidelines issued by the Attorney-General and Minister for Justice on 2 March 2018. Pursuant to s6A, and the onus on the Applicant to satisfy the Commission that the approval of the application meets the public interest and community impact test (s6B).
15. The Commission, having considered the application and the Applicant's history of supplying liquor at a similar event, assesses the community impact of the proposed alteration as being low.
16. Accordingly, the Commission determines that approval of the application satisfies the public interest and community impact test, and the Commission grants the application.
17. The Commission considered imposing a restriction that the sale of heavy beer not be permitted before midday, but the licensee opposed this, on the ground that, firstly, it would cause inconvenience to bar staff; and secondly, a similar condition was not imposed by the Commission on another licensee running a recent similar event. Having regard to all the circumstances of the application, the Commission has determined not to impose this condition on this occasion.
18. The Commission determines that the licensee's licence number 80315190 effective 28 April 2014 be amended by adding a condition authorising the sale, supply and consumption of liquor from 10:00 hours to 18:00 hours on 10 August 2019 in the area designated by the area bounded in red on page 8 of Exhibit One tendered at the hearing of the application, with the following special conditions:
 - a. Liquor only be sold in open metal or plastic containers
 - b. No more than four drinks may be sold in a single transaction

Notice of Rights

19. 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 approve a material alteration pursuant to s119(8) of the Act is specified in the Schedule and is a reviewable decision.
20. 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.
21. 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.



Russell Goldflam

MEMBER, NORTHERN TERRITORY LIQUOR COMMISSION
25 July 2019

On behalf of Commissioners Goldflam, Reynolds and McFarland