

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR TEMPORARY VARIATION OF THE CONDITIONS OF LICENCE</b>
<b>REFERENCE:</b>	2019/001
<b>LICENCE NUMBER:</b>	<b>80315190</b>
<b>LICENSEE:</b>	<b>Dalkeith Ag Co Pty Ltd</b>
<b>PREMISES:</b>	<b>Noonamah Tavern</b> Stuart Highway NOONAMAH NT 0837
<b>APPLICANT:</b>	Dalkeith Ag Co Pty Ltd
<b>NOMINEE:</b>	Mr Anthony ("Tony") Innes
<b>OBJECTOR/S:</b>	Nil
<b>LEGISLATION:</b>	Section 32A, Part IV and V of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Ms Jodi Truman (Deputy Chairperson) Mr Kenton Winsley (Health Member) Ms Christine Hart (Community Member)
<b>DATE OF HEARING:</b>	16 January 2019
<b>DATE OF DECISION:</b>	16 January 2019

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### **Decision**

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act ("the Act") the Commission has determined to temporarily vary the conditions of the liquor licence for the premises known as Noonamah Tavern by permitting trade from 1100 hours to 1800 hours on Saturday 26 January 2019 in the area marked within the red boundary as indicated on the map annexed to this Decision Notice and marked "A".
2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at 16 January 2019.

## Reasons

### Background

3. Dalkeith Ag Co Pty Ltd (“the applicant”) currently holds a “Tavern” Liquor Licence authorising the sale of liquor for consumption on or at the licensed premises. The licensee is the applicant and the nominee is Mr Anthony (“Tony”) James Innes (“Mr Innes”).
4. On 24 October 2018 the applicant lodged an application with Licensing NT pursuant to section 32A of the Act for a temporary variation to its current licence conditions for a single event known as the “Australia Day Ute Run”. The event is to occur on Australia Day being Saturday 26 January 2019. The variation is to provide for the current licensed area to be extended to include an area that has been marked with a red boundary on the map annexed to this Decision Notice. The variation seeks that the trading hours for the extended area be from 1100 hours to 1800 hours on Saturday 26 January 2019.
5. The application stated that the extension of the licensed area was sought “so people can view utes parked within the rodeo grounds and enjoy a casual drink”. It was further proposed that in that area there would be additional security to be provided “as per industry standard” and it was estimated there would be approximately 400 persons in attendance at the event.
6. The event supports the 18<sup>th</sup> annual “Australia Day Ute Run” which involves a convoy of utes, variety bash vehicles and classic cars. All such cars register for the “run” and travel from the Hidden Valley Raceway to Noonamah Tavern through the main streets of Casuarina and Palmerston on Saturday 26 January 2019. The Australia Day Ute Run is supported by Variety – the Children’s Charity NT, with funds raised on the day being donated to Variety. The top 25 to 30 vehicles will be parked within the area to which the extended licence application relates. This is the second time that the applicant has had these premises involved in the run as the destination for the event.
7. 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. The promotion will conclude at 1900 hours or earlier if deemed a risk by RSA staff, the Duty Manager or Security Staff.
8. There will be some tables and chairs set up with shade umbrellas also in the extended area for patrons. Entertainment will consist of music which will be played in the Beer Garden. The extended area will close by 18:00 hours and thereafter trade will continue within the Applicant’s usually licensed areas in accordance with the terms of its current licence.

## **Disclosure of influential persons or potential beneficiaries**

9. Section 32A(1A) of the Act 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 variation is granted. The applicant has filed an affidavit. When the applicant is a body corporate the section requires that the person who makes the affidavit must either be:
  - a. The principal executive officer of the body corporate; or
  - b. If that officer does not have knowledge of the relevant facts - another person who has knowledge of the relevant facts and is authorised by the body corporate to make the affidavit.
10. Mr Innes provided an affidavit stating he was the principal executive officer and authorised by the applicant to make the affidavit in accordance with section 26A.
11. In the affidavit Mr Innes swore that:

*“... there are no other person/s other than Anthony James Innes (Director) who will by any lease, agreement or arrangement be able to influence any decision made by the Director in relation to the sale of liquor or the sale and consumption of liquor.”*

Further:

*“... that there are no other person other than the Director who by any lease, agreement or arrangement may expect any benefit from Dalkeith Ag Co Pty Ltd in relation to the sale of liquor or the sale and consumption of liquor.”*

12. 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 of Licensing NT (“the Director-General”) in relation to the application.
13. The application was referred to the Commission on 8 January 2019. The Commission has been advised by Licensing NT that there were no compliance issues recorded against this event when it was held in 2018. The Acting Deputy Director-General of Licensing NT (“the Acting Deputy Director-General”) did advise however that:

“(a) check of records held at Licensing NT indicate minor compliance issues were identified during a Rodeo event held by the licensee 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 Licensee 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”.

14. 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 the evidence given by Mr Innes in this regard.

### **Advertising and Objections**

15. Section 32A(2) of the Act provides that where an application for variation of conditions of licence are made; “(i)f the Director-General considers it to be in the public interest, the Director-General may require the applicant to publish notice of the application in the way, and within the period, specified by the Director-General”.
16. In this application, the Delegate of the Director-General exercised discretion and did not require the applicant to advertise the application given the application “is for a limited period of time and given the nature of the matter”.
17. 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.
18. The Commission notes that the Director-General also forwarded a copy of the application to the Northern Territory Police, Fire and Emergency Services (“NTFRS”) for comment.
19. With respect to this application; the DOH had “no adverse comment” and the NT Police and NTFRS had “no objection”. The Litchfield Council “had not provided a comment” by the time of the hearing.

### **Public Hearing**

20. Pursuant to section 50 of the Act, 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.
21. Mr Innes appeared on behalf of the applicant and Mr Phil Timney was present to provide information and assistance to the Commission during the course of the hearing as representative for the Director-General. We thank both gentlemen for their assistance.
22. 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.

## **Assessment of the Application**

23. As noted earlier, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, 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.

24. 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.”

25. 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.”

26. 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”.

27. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
<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"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <hr/> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p>

	<ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <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>

Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
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.	<ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

28. 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). The guidelines 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”.

29. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. It is therefore noted that 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. It is also important to recall that this is an application:

- a. to *temporarily* vary conditions of an existing licence;
- b. for a single event being the Australia Day Ute Run;
- c. for a period of seven (7) hours; and
- d. during a time period within which the Applicant would ordinarily be trading in other areas of the premises.

30. In relation to the public interest and community impact test and also the community impact assessment guidelines; on 8 November 2018 the applicant was requested by Licensing NT to provide a Community Impact Assessment. The applicant was contacted again on 12 December 2018 and requested to provide such an assessment. On 13 December 2018 Mr Innes advised Licensing NT that the applicant sought to rely upon the assessment which had been lodged with a separate application relating to variations sought for rodeo events in 2019. Mr Innes stated that he expected the Australia Day Ute Run would in fact have “less of an impact” than the rodeo events given the ute run ends at 1800hours. As a result it was this Community Impact Assessment that was provided to this Commission as part of the referral.
31. During the course of the hearing the Applicant, through Mr Innes, was advised by the Commission that each and every application must have its own submissions addressing the community impact assessment guidelines. The Commission considers that it is essential that there be evidence that applicants have *actually turned their mind* to the specific event that they are seeking to cater for via their application. It is *not* sufficient to have submissions, which have been provided for another event (or application), to be relied upon.
32. Such a practice by this applicant or any applicant for that matter indicates a lack of due consideration to the relevant application and/or the requirements under the *Liquor Act*. This is a matter that can impact in a **very** negative way when the Commission comes to determine whether an application should be granted or refused. As a result of the manner in which this matter has been referred to the Commission, the Commission has agreed to nevertheless consider this material on this occasion. However the applicant (or any other applicant for that matter) may not receive the same favourable exercise of discretion in future. The applicant was informed during the course of this hearing that this will not be permitted again for any future applications and he **MUST** address the criteria for each and every application that is made.
33. The Commission has therefore considered the submissions in light of their relevance to *this* application. The Commission notes that this event is intended to be conducted in a similar manner to the manner in which it was conducted last year and with apparent success. It is estimated that a maximum of approximately 400 persons will attend the event at any one time and that there will be security in place in accordance with industry standards together with staff trained in the responsible service of alcohol.
34. The entertainment proposed by way of amplified music from the Beer Garden will also be kept at a level that will still enable patrons to speak easily with one another. It is noted that the closest residences to the venue are in excess of 300 metres away and there is no evidence of any complaints relating to this event. The Commission also notes the submission made by the applicant that the nearby service station and tourist park are “supportive” of such an event.
35. Having considered all the evidence, the Commission is satisfied that the public interest and community impact test and guidelines, as far as they are relevant with respect to this variation application, have been satisfied. In all of the circumstances, the Commission is, on balance, satisfied that it is appropriate to

*temporarily* vary the conditions of the licence. The Commission notes that given the regularity of this event, the applicant may wish to give consideration as to whether it is appropriate to make application to permanently vary the conditions of this licence thus avoiding having to file an application for a temporary variation each and every year. This is a matter for the applicant alone to determine.

36. 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:**

37. 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.
38. 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.
39. 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.



JODI TRUMAN  
Presiding Member  
Deputy Chairperson

17 January 2019