

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER:	VARIATION OF THE CONDITIONS OF LICENCE
LICENSEE:	Desert Inns International Pty Ltd
NOMINEE:	Alan Jeffrey Revell
NAME OF PREMISES:	Renner Springs Desert Hotel/Motel Stuart Highway Via Tennant Creek NT 0860
LICENCE NUMBER:	81202669/FLL
LEGISLATION:	Section 33 of the <i>Liquor Act</i>
COMMISSION MEMBERS:	Goldflam, Douglas, McFarland

Decision

1. The Commission determines to vary the conditions of the Renner Springs Desert Hotel/Motel licence as proposed by the licensee to align with the takeaway conditions of the Elliott Hotel and Elliott Store licenses, namely:

ELLIOTT and MARLINJA RESIDENTS:

- Twelve (12) 375 ml bottles or cans of light beer per person per day; or
- Eight (8) bottles or cans of mid strength beer per person per day; or
- Six (6) 375ml bottles or cans of full strength beer per person per day; or
- Six (6) 375ml bottles or cans of RTD's (with alcohol content no greater than 5% per person per day).

2. The Commission otherwise declines to exempt or exclude the Renner Springs Desert Hotel/Motel from the conditions fixed by way of the Commission's Decision Notice dated 12 June 2018.

Reasons

Background

3. On 8 May 2018, 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 19 licensees in the Barkly region (“the Barkly licensees”), one of which being the Renner Springs Desert Hotel/Motel (“the Renner Springs licensee”), and invited the Barkly licensees to submit a response to the proposed variations within 28 days.
4. On 12 June 2018, following the expiry of the 28 day period, and having received responses to the Notice of Proposed Conditions from some of the Barkly licensees (but not the Renner Springs licensee), the Commission issued a Decision Notice (“the Decision Notice”) varying the conditions of the Barkly licensees’ licences, including the Renner Springs licence.
5. The takeaway licence conditions imposed by way of the Decision Notice were substantially less restrictive than those that had been proposed in the Notice of Proposed Conditions.
6. On 19 June 2018, the Commission received a submission dated 1 June 2018 from the Renner Springs licensee. The Commission accepts that the delay was the result of a communications error, and treats the submission as having been prepared before the Decision Notice of 12 June 2018 was published, and as having been received within the 28 day statutory period commencing on 8 May 2018, when the Commission issued the Notice of Proposed Conditions.

The Renner Springs licensee’s submissions

7. The Renner Springs licensee submits that it should be exempt from the conditions in the Notice of Proposed Conditions as “we are an outlying remote community servicing tourists, outlying work camps and communities with little or no connection to Tennant Creek. We propose alternatively that our license be amended to embrace Tennant Creek under our current restrictions under the Elliott Alcohol Supply Plan.”
8. The Renner Springs licensee submits that tourists and bush workers (including cattlemen, grader drivers, road workers and fencers) who patronise it would be seriously inconvenienced by the then proposed conditions. The licensee submits that during the three months following the emergency restrictions imposed on 28 February 2018 by the Northern Territory Director-General of Licensing for two weeks, and continued by the Northern Territory Attorney-General and Minister for Justice for three months, he suffered a substantial loss of liquor trade.

9. The Renner Springs licensee notes that Renner Springs is approximately halfway between Tennant Creek and Dunmarra (which is not subject to the same restricted conditions as the Barkly licensees), and submits that following the restrictions imposed in February 2018, many travellers and contractors have patronised other licensees not subject to the restrictions, instead of Renner Springs.
10. The Renner Springs licensee proposes that his licence conditions be aligned with those that have applied “for the past ten years” to licensees in Elliott, in accordance with the “Elliott Alcohol Supply Plan”, namely a daily takeaway limit of six cans of full-strength beer or equivalent for residents of the local communities of Elliott and Marlinja. In addition, the Renner Springs licensee proposes that this restriction be extended to apply to Tennant Creek residents.

Consideration

11. Renner Springs is situated on the Stuart Highway about 170 km north of Tennant Creek and 90 km south of Elliott. It is approximately the same distance north of Tennant Creek as Wycliffe Well is south of Tennant Creek. The Commission considers that it would be inequitable to impose more restrictive conditions on Wycliffe Well and other neighbouring licensees than on Renner Springs. Similarly, it would be inequitable to impose more restrictive conditions on the Elliott Hotel and the Elliott Store (both of which are Barkly licensees further north of Tennant Creek than Renner Springs) than on Renner Springs.
12. As the Commission has previously stated, it considers that conditions should be calibrated to “remove any incentive to drinkers to drive to another location in the Barkly region where the conditions are less restrictive”. (Decision Notice 12 June 2018 at paragraph 33; Notice of Proposed Conditions at paragraph 56). If the Renner Springs licensee were exempted from the restrictions on trading as set out in the Decision Notice, the Commission considers that it is highly likely that many residents of the Barkly would avail themselves of the opportunity to drive to Renner Springs to purchase takeaway liquor from there.
13. In particular, if takeaway Sunday trading were permitted as the Renner Springs licensee proposes, not only would that give the licensee an unfair competitive advantage over all other Barkly licensees, but a probable consequence would be a substantial and dangerous increase in drink driving between Tennant Creek and Renner Springs on Sundays. Having regard to these matters, the Renner Springs licensee’s submission that Renner Springs has “little or no connection with Tennant Creek” loses much of its force.
14. The Commission considers that the “Bush Orders” conditions as now fixed by the Decision Notice permit the sale of substantial quantities of liquor to cattlemen, grader drivers, road workers, fencers and so on, which in large part address the concerns raised by the Renner Springs licensee regarding these patrons. (The Commission notes that the Renner Springs licensee raised these concerns at a time when substantially more stringent conditions had been proposed and were under consideration).

15. Similarly, the Commission considers that the revised trading hours together with the “Bona Fide Traveller” conditions as now fixed by the Decision Notice permit the sale of takeaway liquor to tourists staying at the premises for consumption at their campsites, which in large part addresses the concerns raised by the Renner Springs licensee regarding travellers and tourists.
16. Given the proximity of Renner Springs to Elliott, the Commission considers that it is appropriate to extend the community-based restrictions that apply to the Elliott Store and the Elliott Hotel to the Renner Springs Desert Hotel/Motel.
17. As the Commission understands it, the Renner Springs licensee’s proposal to also extend this restriction to Tennant Creek residents is made in conjunction with and is conditional on him being granted a general exemption from the Barkly takeaway trading conditions. Given that the Commission has rejected the Renner Springs licensee’s application for a general exemption, the Commission considers that in the circumstances it would be unfair on the licensee to impose the “Tennant Creek residents” restriction he conditionally proposes.
18. The Commission has indicated in the Decision Notice that it proposes to further review Barkly licence conditions in six months. That review will include the Renner Springs licence conditions.
19. In making this decision, the Commission has had regard to the applicable statutory provisions as summarised at paragraphs 19 to 23 of the Notice of Proposed Conditions.

Notice of Rights

20. 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.
21. 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.



Russell Goldflam
Acting Deputy Chairperson
Northern Territory Liquor Commission
11 July 2018

On behalf of Commission Members Goldflam, Douglas, McFarland