



Director-General of Licensing

REASONS FOR DECISION

Matter:	APPLICATION FOR VARIATION OF LICENCE CONDITIONS
Premises:	ONE MILE BREWERY Unit 8/111, Coonawarra Road, Winnellie, NT 0820
Applicant:	ONE MILE BREWERY (NT) PTY LTD
Dual Nominees:	Mr Stuart Brown and Mr Bahadir Bayram
Objectors:	Northern Territory Police
Legislation:	Section 32A and Part IV of the <i>Liquor Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	17 October 2017

BACKGROUND

1. Pursuant to section 46A of the *Liquor Act* (the Act), One Mile Brewery (NT) Pty Ltd (the Applicant) applied to the Director-General of Licensing (the Director-General) to substitute the premises from which they brewed and sold take away liquor, being 3 Mansfield Street, Palmerston, to Unit 8/111 Coonawarra Road, Winnellie, NT 0820. On 10 August 2017, a delegate of the Director-General approved the application for substitution of premises and, as a result, that application need not be further considered.
2. Concurrent with the application for substitution of premises, the licensee also applied, pursuant to section 32A of the Act, for variation to the conditions of its current Liquor Merchant Licence to authorise the sale of liquor for consumption on the licensed premises. Currently the licence only authorises the sale of liquor for consumption away from the premises. The Applicant is a small micro-brewery established in 2012 that produces beers and ciders for the Darwin market. The licensee is also registered as a Wholesaler of Liquor.
3. The variation of licence conditions seeks authorisation to supply or sell the brewery's own products for consumption at the licensed premises from 10:00 am to 10:00 pm Monday to Sunday and not ancillary to a meal. The licensee does not intend to prepare meals at the premises which include no food preparation or service facilities. The licensee submitted that it proposed to allow third party food trucks and mobile food vendors to sell their food products at the premises. The application effectively seeks a variation of the liquor licence authority from Liquor Merchant Authority to On Licence Authority whilst maintaining the authority to sell beer and cider brewed on the premises as take away for consumption away from the premises.
4. The application originally sought approval to trade in the sale of take away liquor on Sundays. However, that component of the application was abandoned due to the restrictions contained in sections 32A(7A) and 32A(7B) of the Act in respect of Sunday trading in the sale of take away liquor.

5. The applications were advertised collectively in the NT News on Wednesday 17 May and Saturday 20 May 2017. As per the usual practice, notification of the applications was also provided to relevant stakeholders being City of Darwin, Northern Territory Police (NT Police), the Department of Health and the Northern Territory Fire and Rescue Service. No objections or adverse submissions were received in relation to application for substitution of premises.
6. One objection was received from NT Police in relation to the application for variation of the licence conditions. NT Police objected on the basis the sale of liquor without a meal or food service would permit the premises to trade as a hotel rather than for purpose of allowing patrons to taste the brewery's own products. The specific grounds of objection were as follows:

"Section 6(2)(a) & (b) – Sale of alcohol should be ancillary to a meal, unless there is a solid cap on how alcohol for tasting purposes is going to be distributed. The use of food trucks for Friday and Saturday nights is insufficient to mitigate concerns around the potential for this location to trade as a pub only. These factors are to help in minimising the harm or ill-health caused to people by the consumption of alcohol and ensuring that alcohol is sold and consumed on a licensed premises in a responsible manner."
7. The licensee was provided with a copy of the objection and provided a response advising that light snack food would be available during the proposed trading hours and that the managers/nominees would be engaging mobile food vendors to provide their services on occasion as required. The licensed premises is securely fenced and a security camera system is in place that covers all entrances to the premises. The licensee submitted that the variation to licence conditions would not result in any adverse impact on surrounding businesses. The licensee also noted that two bus services operate in the vicinity of the brewery.
8. The objection by NT Police was assessed as being valid in accordance with the requirements of section 47F of the Act. As an objection was received opposing the application, the matter was referred to a public hearing in accordance with the Guideline issued by the Director-General – "Public Hearings to be Held in Certain Circumstances".

PUBLIC HEARING

9. The public hearing in respect of the application was convened on 26 September 2017. The directors of One Mile Brewery (NT) Pty Ltd, Mr Stuart Brown and Mr Bahadir Bayram attended the hearing as representatives of the Applicant. Superintendent Jodi Nobbs attended the hearing on behalf of the objector, NT Police.

Submissions on behalf of the Applicant:

10. Mr Brown advised that he and fellow director Mr Bayram are engaged in full time employment outside the brewery business and that the bulk of brewing activity is carried out over weekends. Despite the fact the application seeks authorisation to trade seven days a week from 10.00 am to 10.00 pm, the intention is that sales of alcohol for consumption on premises will occur mainly from 4.30 pm to 10.00 pm on Fridays and Saturdays and from lunch time until 10.00 pm on Sundays, those being the times that the directors are at the premises engaged in brewing activity. He stated that trading at other times is not viable as the directors would be engaged in their other employment outside those hours. If necessary casual bar staff will be employed to assist if the nominees are not available.
11. It was also submitted that the physical attributes of the licensed premises were not conducive to the operation of a hotel and that patrons would not be inclined to stay at the premises drinking for extended periods. Those factors include that the brewery is located in an industrial shed with no air-conditioning or insulation. The products brewed on site, beers and ciders, are craft products that are considerably more expensive than standard products of that type. The cost

for a carton of One Mile Brewery beer is approximately \$90.00 which would provide a disincentive for prospective clients apart from those who have a particular interest in craft beers.

12. NT Fire Services have inspected the premises and provided authorisation for a maximum of only 28 patrons. Mr Stuart submitted that whilst that was the maximum number permitted on the premises at any one time it was expected the actual number of patrons at any time the premises was open to the public would be in the order of 5 to 6 during a period when the premises was open for on-premises consumption of alcohol.
13. Mr Stuart also noted that the company was also trying to increase the sale of its product through visits to the brewery by organised tour groups for product tastings and "cellar door" sales. The potential for that to occur was currently hampered by the licence conditions which allow for liquor tastings at any time during trading hours but only after providing the Director-General with seven days' notice prior to the event. Mr Stuart noted that the ad hoc nature of such events and short notice from tour operators made it difficult to comply with that condition.
14. It was also submitted that the brewery was a fledgling business conducted by the directors on a part time basis. At this stage, income is not sufficient to allow for free tastings of products to be offered on a regular basis and the proposal was to vary the licence conditions to allow for tastings to be provided at a cost to the client to recoup some of the overhead costs of providing the tastings.
15. In respect of the trading hours sought for on-premises consumption of liquor, Mr Brown stated that whilst the hours sought in the application are from 10.00 am to 10.00 pm seven days per week it was proposed that, initially at least, the hours of trade would be considerably less than those applied for. He reiterated that he and Mr Bayram had full time employment outside the brewery and would not be able to manage a bar for 12 hours per day seven days per week.
16. As opposed to the notice placed in the newspaper, the written application for variation of licence conditions actually seeks trading from 5.00 pm to 10.00 pm Thursday and Friday evenings, Saturday from 10.00 am to 12.00 pm and Sunday from 10.00 am to 10.00 pm. Mr Brown confirmed that those hours were intended to align with times when he and/or Mr Bayram would be at the premises engaged in brewing activity and, should the application be approved, it may be necessary to employ casual staff to manage the bar when neither of the directors was available.
17. Mr Brown also noted that requests were regularly received from tour groups and the like seeking to visit the premises for tours of the brewery and tasting sessions. The current licence condition relating to "Liquor tasting" allows for such activity at any time during trading hours but requires that the licensee provide seven days' notice of such activities to the Director-General prior to the event being held. He noted that requests for tours of the premises and tastings were usually on short notice that did not allow for the advance notice to the Director-General. He submitted that the trading hours sought under the application would allow for such events to be conducted as and when requests from tour operators or the general public were received. Whether such requests would be able to be accommodated would be dependent on the availability of the nominees.
18. Mr Brown and Mr Bayram emphasised in their submissions that the aim of offering their product for sale for on-premises consumption was to increase awareness of the locally brewed beers and cider and to thereby increase take away sales and the profitability of the business overall.

Submissions on behalf of NT Police:

19. Superintendent Nobbs stated that NT Police supported diversity in the liquor industry and the objection is not directed towards the operation of the micro-brewery itself or the sale of liquor for consumption away from the premises. He emphasised that the Police objection relates to the uncertainty surrounding the application to authorise the sale of liquor for on-premises consumption and the prospect of the brewery operating in a similar manner to a hotel without the full suite of services usually associated with a business of that nature.

20. The major component of the objection relates to the proposal that food will not be available from the licensee for patrons who attend the premises to sample or purchase the locally produced products. He submitted that Police could not support the proposal to offer tastings to the general public, in the manner and for the hours sought by the licensee, unless there were clear directions as to what constituted a tasting as opposed to simply buying and consuming alcohol on the licensed premises.
21. Superintendent Nobbs noted that the concession to engage mobile food vendors to provide services at the premises is an indication that what is proposed is more than simple tastings of the product and more in line with buying and consuming alcohol in the same manner as would occur at a hotel or tavern. He also raised concerns that patrons, who may be intoxicated to some extent, would need to leave the licensed premises to purchase food from the mobile vendors creating issues so far as patron safety is concerned.

ASSESSMENT OF THE APPLICATION AND OBJECTION

22. In the application for variation of licence conditions, the Applicant notes that proposal for on-premises consumption of its product is for the purpose of providing *"a cellar door experience whereby members of the general public can taste the beer and cider produced by One Mile (Brewery) at the premises."* What the Applicant has actually applied for goes considerably further than appears necessary to achieve that purpose.
23. The objection from Police relates to the hours sought for on-premises consumption being from 10.00 am to 10.00 pm seven days per week. As noted in the objection, those hours are more in line with those applicable to a hotel or tavern licence and not the normal hours associated with cellar door sales. The viewing of the premises, conducted immediately following the public hearing, indicated that the premises are clearly not suitable for the operation of a tavern or hotel and it was also clear from the submissions made by the directors during the public hearing that this is not the business model envisaged.
24. On the basis the application under consideration actually seeks on-premises trading for 12 hours per day seven days per week, the concerns of Police in respect of the proposed arrangements to provide normal hotel services to patrons, and specifically food services, is valid. The proposal by the Applicant that food vans would attend the premises as required is clearly an inadequate response to the concerns raised in the Police objection.
25. Additional concerns were also raised during the conduct of the hearing in respect of the need for security officers, as occurs for many licensed hotels and taverns, and the delineation of smoking areas which, in this case, would need to be outside the licensed footprint of the brewery itself. The suggestion during the hearing that the premises may offer music and entertainment at certain times raises further concerns in respect of the actual purpose of the variation of conditions being sought.
26. The directors candidly conceded that they do not in fact intend to trade in the sale of brewery products for on-premises consumption for the entirety of the hours sought by the application. The brewery business is a relatively new venture and the directors conduct the majority of the business outside normal office hours, when they are otherwise employed.
27. As submitted by Mr Brown during the public hearing, the new premises occupied by One Mile Brewery comprise an industrial shed in an industrial area of Winnellie. The premises are not air-conditioned or insulated and have been rated by NT Fire Services as being suitable for a maximum of 28 patrons. The grant of the variation of licence condition sought would effectively provide the licensee with the ability to trade in both on-premises consumption and take away liquor for a period of 12 hours per day seven days per week, except for take away sales which are not permitted on Sundays. Frankly, the premises are not physically suitable for the conduct of that type of liquor licensed business, more so as the Applicant has no plans for the provision of food to clients apart from an ad hoc and loose arrangement with a local food van operator.

28. Having said that, consideration must also be given to the objects set out in the Act when determining the conditions associated with a liquor licence. One of those objects, as prescribed in section 3(2)(c) of the Act, is to facilitate a diversity of licensed premises and associated services for the benefit of the community. In the consideration of this application it must be acknowledged that the One Mile Brewery business essentially entails the production and sale of locally produced craft beer and cider products, a business type that is somewhat unique in the Northern Territory. In order to grow that business, the Applicant submits that it is seeking changes to its existing licence conditions to allow it to promote and market its products to a wider section of the community, including to tourists. Those aims, and the business model itself, clearly fall within the scope of diversity within the retail liquor industry in the Northern Territory.
29. Against the background of the objectives set out in section 3 of the Act, section 6 of the Act sets out the public interest criteria that the Director-General must take into account in determining the conditions of a liquor licence. Of particular relevance to this application is consideration of limiting promotional activities in which drinks are offered free or at reduced prices as referred to in section 6(2)(n) of the Act.
30. Having considered the application for variation of licence conditions, together with the submissions made at the public hearing in respect of the application, I am not persuaded that the Applicant has presented a case that would justify the approval of trading at the premises in the sale of liquor for on-premises consumption for 12 hours per day seven days per week. Having heard the submissions of the directors in that regard, I am not satisfied that the business model presented and the aims of the variations sought require approval of such extensive trading hours. In addition, the directors made it very clear during the public hearing process that they do not intend to trade for the entirety of the hours sought and, in fact, the full time employment of the directors in other occupations will preclude the business from opening to members of the public seven days per week.
31. I am satisfied that the authorisation of on-premises consumption of liquor does have some merit in the context of allowing the licensee to grow the business through the offering of tastings and limited sales of its locally produced products on premises to existing and potential customers. The option of opening the premises to tour groups, with the option of a tasting session as part of the tour, is also a reasonable request and one that again has the potential to increase the customer base for take away liquor sales of the locally produced product.
32. I am not persuaded however that the variations necessary to achieve those aims need to be as wide as those sought by the Applicant, particularly in terms of the hours of trade required to meet the aim of increasing the customer base through on-premises tasting and sales of liquor. That aim can be addressed through the inclusion of licence conditions that allow the licensee to promote its products to clients without the need to change the licence authority from liquor merchant to tavern or hotel¹.
33. With the objects of the Act in mind, I have determined to reject the application for variation of licence conditions to allow for the trade in the sale of liquor for on-premises consumption from 10.00 am to 10.00 pm seven days per week. In my view the premises are not suitable for that type of trade for the hours sought. The matters raised in the objection lodged on behalf of NT Police in respect of the premises trading as a tavern or hotel, without the safeguards normally associated with a licence of that type, particularly in the area of providing food services to clients who are consuming alcohol over relatively long periods, are particularly relevant and persuasive.
34. I have, however, determined to approve a variation to licence conditions to allow the licensee to offer or sell its locally produced liquor products for on-premises consumption for significantly reduced hours to those applied for. The approved hours for on-premises tasting and sales are more in line with those set out in the Applicant's response to the public interest criteria as set

¹ It should be noted that the *Liquor Act* does not actually prescribe liquor licence authorities and that the authority or type of licence issued is determined by the conditions associated with the licence.

out at folio 11 of the Public Hearing brief. Namely, from 5.00 pm to 10.00 pm on Thursdays and Fridays and from 12.00 noon to 10.00 pm on Saturdays and Sundays. Those hours align with the hours during which the directors are normally present at the premises for brewing activity.

35. In order to address the legitimate concerns of NT Police in regard to the premises becoming a defacto hotel without the usual safeguards for premises of that nature, I intend to impose conditions restricting the amount of alcohol that may be provided or sold to customers for on-premises consumption during any one visitation. In its submissions in support of the application, the Applicant identified that it proposed to sell its product in 330 ml bottles or 425 and 570 ml glasses, as well as by way of tasting paddles. A licence condition will be imposed restricting such sales to 1140 ml of beer or cider per person per visitation, being the equivalent of three 330 ml bottles, two 570 ml schooners or three or four tasting paddles.
36. It will be a matter for the licensee to develop and implement a system to monitor patron consumption to ensure the licence condition is appropriately enforced. However, given the relatively low number of walk-in patrons anticipated, as submitted by the directors at the public hearing, the implementation and maintenance of a suitable system should not be particularly onerous.
37. A further reason submitted by the Applicants for the hours of trade sought for on-premises consumption of liquor was to cater for groups who wish to tour the brewery and participate in tastings of the locally brewed product. In his submissions at the public hearing Mr Brown noted that whilst the current licence conditions allow for this to occur the requirements to provide seven days' notice to the Director-General prior to such activity presents a barrier to hosting groups who provide short notice to the licensee.
38. The type of activity under consideration presents little, if any risk, in terms of potential adverse impacts on the safety and well-being of the community. As noted, the licensee is currently authorised under its liquor merchant licence to host tours of its brewery premises, including the option of providing visitors with samples of its products for tasting purposes. Following the conduct of tastings patrons are permitted to purchase liquor products for consumption away from the premises during the authorised take away sales hours.
39. I can see no potential for harm to the community by the removal from the licence conditions of the requirement for the licensee to notify the Director-General seven days prior to such events. The relevant licence condition will be replaced with a condition that includes the requirement that such tours and tastings be pre-booked at least 24 hours prior to the event taking place. It is anticipated, given the part-time nature of the business at present, that such a requirement will be necessary to enable one of the directors to be present in any event.
40. In addition, the licensee will be required to maintain records of tours and tastings at its premises, including the date and time of the tours, the number of people attending and the volume of alcohol consumed. Noting that the maximum number of patrons permitted to be on the premises at any time is 28, I do not expect that variation of conditions to have any negative impact on the surrounding business or the community in general. Similarly given the small number of patrons permitted on the licensed premises, the recording requirements should not present any significant burden for the nominees.

DECISION

41. On the basis of the reasons set out above and in accordance with section 32A(7)(a) of the *Liquor Act*, I have determined to vary the licence conditions attached to the liquor licence for the One Mile Brewery to authorise the sale of its locally produced products for on-premises consumption with the authorised hours of trade being from 5.00 pm to 10.00 pm on Thursdays and Fridays and from 12.00 noon to 10.00 pm on Saturdays and Sundays. The liquor licence will also be subject to a condition that the sale or supply of liquor to patrons for on-premises consumption will be limited to the amount of 1140 ml of locally produced beer or cider per person per trading session.

42. I have also determined to vary the current "Liquor Tasting" condition to remove the requirement for the licensee to provide seven days' notice to the Director-General prior to such tasting events. The varied "Liquor Tasting" condition will include the requirements that any such tastings are to be pre-booked at least 24 hours prior to the event taking place and for the licensee to maintain a record of the details of such events as specified in the licence condition.

REVIEW OF DECISION

43. Section 120ZA of the *Liquor Act* provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision to vary or refuse to vary licence conditions pursuant to section 32A of the *Liquor Act* is specified in the Schedule and is a reviewable decision.
44. 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. For decisions in respect of liquor licence applications section 120ZB of the Act defines an "affected person" as including the applicant and a person who made a submission, complaint or objection (however described) during the process that resulted in the decision being made. In this instance the licensee and NT Police fall within that definition of affected person. Any application for review of this decision must be lodged within 28 days of the date of this decision. For the purpose of this decision, and in accordance with section 120ZB(1) of the *Liquor Act*, the affected persons are the One Mile Brewery (NT) Pty Ltd and NT Police.



Cindy Bravos
Director-General of Licensing

Date: 17 October 2017