

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/079
APPLICANT:	Hidden Valley Drag Racing Association Inc.
VENUE:	Hidden Valley Drag Strip Hidden Valley Motor Sports Complex 171 Hidden Valley Road BERRIMAH NT 0828
EVENT:	Nitro Up North
PROPOSED DATES:	Friday 13 July and Saturday 14 July 2018
LEGISLATION:	<i>Liquor Act</i> , Part VI (“Special Licences”)
DECISION OF:	Mr Russell Goldflam (Acting Deputy Chairperson)
DATE OF DECISION:	6 July 2018

Decision

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act* (“the Act”) I have determined to grant a special licence to sell liquor to the Hidden Valley Drag Racing Association Inc. (“the applicant”) for the sale of liquor during the following periods:
 - 16:00 hours to 23:59 hours on Friday, 13 July 2018
 - 16:00 hours to 23:59 hours on Saturday, 14 July 2018
2. The granting of approval is subject to the following standard conditions, namely:
 - a. The sale of liquor must be supervised by one or more persons nominated by the holder of the special licence (“the Nominee/s”), who each must hold a Responsible Service of Alcohol certificate, or equivalent qualification approved by the Director-General. The Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.
 - i. **Nominee: Trenton Clarence Delaney Barfoot**
 - b. Persons under the age of 18 years must not be used in the sale or supply of liquor.

- c. The boundary of the premises must be clearly identified and access to the premises must be restricted in a manner that allows for effective supervision by the Nominee.
- d. Any person involved in Crowd Control, as defined under *the Private Security Act*, at the premises, must be licensed as required by that Act.
- e. Crowd Controllers are to be employed as per industry standards as follows:
Two licensed crowd controllers for the first 100 hundred patrons and one additional crowd controller for each 100 hundred patrons thereafter.
- f. All liquor must be sold in open containers.
- g. No more than four (4) cans or bottles may be sold to any one person at any one time.
- h. The holder of the special licence must ensure that water, soft drinks, low alcohol beverages and snacks are available during Trading Hours. Commercially bottled water may be sold, otherwise water must be supplied free of charge on request.
- i. Liquor must not be sold or supplied to a person who is drunk, or to a person under the age of 18 years.
- j. The holder of the special licence must comply with the “Industry Code of Practice for the Promotion of Liquor”, provide a safe drinking environment, prevent irresponsible or excessive consumption of liquor and ensure all staff are properly instructed to watch for and prevent drink spiking.
- k. The holder of the special licence must comply with all requirements and guidelines published by the Liquor Commission or Director-General, including guidelines related to the conduct of entertainment.
- l. Where the holder of the special licence is operating from enclosed premises, the holder must prominently display on the premises the “Maximum Patron Number” sign (if one has been issued by the Fire and Rescue Service) and must comply with maximum patron numbers as determined by the Northern Territory Fire and Rescue Service from time to time.
- m. The holder of the special licence must not do or permit or suffer any act, matter or thing whatsoever upon the premises or any part thereof, or permit noise at a level, which must or may be to the annoyance, nuisance, grievance or disturbance of the occupiers or owners for the time being of the adjoining properties or the residential neighbourhood.
- n. The holder of the special licence must comply with the requirements of the Liquor Commission or Director-General as specified in this condition, and with the instructions of a Licensing Inspector, a Member of the Police Force, an authorised Member of the Northern Territory Fire and Rescue Service or a delegate of the Chief Health Officer upon production of an identity card or other authorisation.
- o. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.

- p. The holder of the special licence must make a record of all liquor obtained for sale under this special licence that identifies the source of the liquor and the type and quantity of each type of liquor so obtained.
- q. The holder of the special licence must record all liquor sold, including the type and quantity of that liquor, and must record the manner of disposal of any unsold liquor.
- r. This special licence must be located at the premises during Trading Hours and must be produced on demand to a Licensing Inspector, a Member of the Police Force, an authorised Member of the Northern Territory Fire and Rescue Service or a delegate of the Chief Health Officer upon production of an identity card or other authorisation.
- s. The holder of the special licence must clearly display signage to delineate Non-Smoking areas from the Smoking Areas and the holder must comply with smoking requirements contained in the *Tobacco Control Act*. Food and drinks are not permitted to be taken into any designated smoking areas.
- t. The holder of a special licence or employee of a holder shall exclude or remove from the premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang).

3. Additional Conditions

- a. The only liquor products that may be sold by the holder of the special licence are:
 - wine;
 - pre-mixed spirits; and
 - full-strength, mid-strength and light beer.
- b. Spirits must not be sold in containers with more than 5% alcohol by volume.
- c. Wine must not be sold in containers with more than 150 ml.
- d. Notwithstanding the standard condition at paragraph 2(g) above, after 22:30 hours on each trading day no more than two (2) open containers may be sold to any one person at any one time.
- e. In the event that the Director-General of Licensing NT notifies the holder of the special licence that she has determined to categorise Nitro Up North as a major event, the holder of the special licence shall comply with any directions issued to the holder of the special licence by the Director-General arising from such determination.

Reasons

Background

- 4. Pursuant to section 58 of the *Liquor Act* ("the Act"), the applicant applied to the Director-General on 20 June 2018 for a special licence to permit the sale of beer, wine and spirits (in the form of RTD mixed drinks) to persons attending Nitro Up

North, a drag racing event. The applicant is seeking to sell liquor from 16:00 to 23:59 hours on 13 July 2018 and 14 July 2018.

5. The application is non-compliant with section 58(1)(a) of the Act, which requires that the application be lodged no later than 28 days before the commencement of the event the subject of the application. The applicant has not applied for an abridgement of time. The assessment of applications for a special licence is a time-consuming process involving consultation with and deliberation by several persons. The late lodgement of an application can cause substantial inconvenience, not least to an applicant who purchases wholesale liquor without knowing whether or not its retail sale will be permitted, because his or her licence application is still being assessed.
6. On this occasion, the Commission has determined to abridge time for the lodgement of the application. The applicant should assume that such leniency will not be extended in the event of late applications on future occasions.
7. The applicant has given various estimates of the number of people it anticipates will attend the event. One such estimate is that 2,500 people will attend the event on the first night, and 5,000 on the second night.
8. The applicant has previously been granted special liquor licences for various motor sports events, including in 2016 and 2017, and Licensing NT advises that there have been no compliance issues arising from the conduct of those events.
9. In the Application, the applicant identified “wine in plastic cups, beer and RTD spirits in cans” as the types of alcoholic beverages it proposes to sell.

Consultation

10. As this is an application for a special licence there is no requirement under the Act for advertising of such an application, nor is there provision for formal objections to be made concerning such an application. Despite this, a “usual practice” has developed for the Director-General to consult with relevant stakeholders concerning the application, namely St John Ambulance, Northern Territory Fire and Rescue Services (“NTFRS”), the Department of Health (“DOH”), and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.
11. With respect to this application:
 - a. St John Ambulance expressed no objection to the application.
 - b. The NTFRS expressed no objection to the application.
 - c. The DOH had “no adverse comment” but requested that the applicant be reminded of its obligations in relation to smoking, and in particular the requirement that food or drinks not be taken into designated smoking areas. That requirement is embodied in the Standard Condition set out at paragraph 2(s) above. The applicant has expressly acknowledged his awareness of and commitment to compliance with this condition.

- d. Commendably, NT Police met with the applicant to discuss the conditions of the proposed licence. Police proposed, and the applicant agreed, to incorporate a condition providing for a staggered decline in drinks. That agreement is embodied in the additional condition at paragraph 3(d) above. Police also initially proposed that only low to mid-strength liquor be sold, but ultimately withdrew this proposal, having regard to the applicant's good compliance record, his evident commitment to working with police and running a safe event, and the unavailability of low-strength RTDs at short notice.

Assessment of the Application

12. An application for a special licence is regulated by Part VI of the Act. There are no specific criteria prescribed within the Act for consideration of an application for a special licence. A Part VI special licence is not a "licence" as defined by section 4 of the Act, which confines the meaning of that term to "a licence issued under Part III" of the Act.
13. As a result, it has previously been determined by the Commission that an application for a special licence is **not** a licence with respect to which the Commission is bound to apply the public interest and community impact test as provided for under section 6 of the Act.
14. The Commission has previously noted that pursuant to section 3(3) of the Act it is clear that when "exercising a power or performing a function under the Act the Commission must have regard to the objects of the Act and must exercise the power and perform the function in a way that is consistent with those objects".
15. Section 3 of the Act identifies the "Objects" as follows:
 - "(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:
 - (a) so as to minimise the harm associated with the consumption of liquor; and
 - (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.
 - (2) The further objects of this Act are:
 - (a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;
 - (b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and
 - (c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.

16. Given the anticipated number of people who will attend, it is a real possibility that Nitro Up North is properly categorised as a “major event”. The Notes to the Special Liquor Licence Application published by the Northern Territory Department of Business (“the Application Notes”) state:

- A major event or function is essentially an event where “Risk” of impact on amenity, public safety and order is considered to be high due to the nature of the function and the potential size of the crowd. Some examples of functions that would be classed as major events are: New Year’s Eve Street Party, Greek Glenti and V8 Supercar’s.

17. The Application Notes provide that a special liquor licence for a major event must be lodged no later than 3 months before the event.

18. The Application Notes also specify requirements in relation to special liquor licences for major events, including:

- The Licensee must, no later than two weeks before the function, provide the Director-General of Licensing with the number and names of security persons to be employed for the function. The special licence may be cancelled if adequate security is not provided during the function.
- The Licensee shall ensure details of safe transport to and from the function are advertised in the Northern Territory News (*or regional papers*) no later than 1 week prior to the function.
- The provision of First Aid services which shall be in a clearly defined area and that must be able to easily communicate with the Licensee, staff and security personnel.
- The licensee shall ensure that a substantial number of persons involved in the sale/supply of liquor on the licensed premises have completed a Responsible Service of Alcohol Course approved by the Director-General of Licensing.
- Other requirements may be imposed by the Director-General of Licensing depending on the event.

19. Neither Licensing NT nor any other party has made submissions to the Commission in relation to whether or not Nitro Up North should be categorised as a major event. The Commission requests that the Director-General consider whether or not Nitro Up North should be categorised as a major event, and accordingly imposes the additional condition referred to at paragraph 3(e) above.

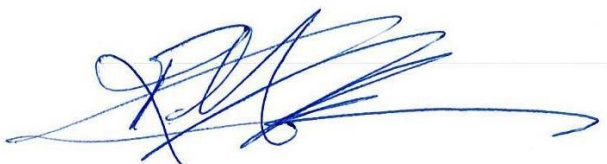
20. The NT Police initially proposed that the applicant be permitted to sell “low to mid-strength alcohol only” (“the proposed condition”). The NT Police did not specify and the Commission does not know exactly what the expression “low to mid-strength alcohol” was intended to convey. If by it was meant an intention to restrict the types of liquor which may be sold to light and mid-strength beer, that would have required a substantial change to the conditions imposed on the applicant for recent similar events, and it would have been substantially more restrictive than conditions

recently imposed by the Commission for other similar events. As noted above, NT Police have withdrawn the proposed condition, but had they not done so, it is unlikely that the proposed condition would have been imposed unless the Commission had been satisfied that either the applicant had consented to the proposed condition, or that imposition of the proposed condition would have been required to give effect to the objects of the Act. To be so satisfied, the Commission would have required evidence in support of the proposed condition. No such evidence was received by the Commission.

21. That said, the Commission does not consider that the objects of the Act are well served by permitting the supply of liquor in unlimited quantities. In the Commission's view, an appropriate limit for an event such as this is one and a half standard drinks (15 grams of pure alcohol) per serve. That is approximately the same amount of alcohol as in a can or stubby of full-strength beer, a glass of wine as served in a restaurant (150 ml), or a 375ml can of medium strength mixed spirits. The conditions imposed are framed accordingly.
22. Taking these matters into account, the Commission has determined that the additional conditions set out at paragraph 3 above should be imposed.
23. I am exercising the power to make this decision of the Commission pursuant to the delegation made to me by the Commission.

Notice of Rights:

24. 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 issue a special licence subject to condition pursuant to section 59 of the Act is specified in the Schedule and is a reviewable decision.
25. 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.
26. 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
Acting Deputy Chairperson
Northern Territory Liquor Commission

6 July 2018