

Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/031
PREMISES:	Noonamah Tavern Stuart Highway NOONAMAH NT 0837
APPLICANT:	Dalkeith Ag Co Pty Ltd
EVENT:	Noonamah Tavern Rodeo Series
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson) Dr Charles Douglas (Health Member) Mrs Amy Corcoran (Community Member)
DATE OF DECISION:	14 May 2018

Decision

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act* ("the Act") the Commission has determined to grant the special licence to sell liquor to Dalkeith Ag Co Pty Ltd for the sale of liquor between the hours of:
 - a. 1800 hours on Saturday 26 May 2018 to 0100 hours on Sunday 27 May 2018;
 - b. 1800 hours on Saturday 30 June 2018 to 0100 hours on Sunday 1 July 2018;
 - c. 1800 hours on Saturday 11 August 2018 to 0100 hours on Sunday 12 August 2018;
 - d. 1800 hours on Saturday 22 September 2018 to 0100 hours on Sunday 23 September 2018.
2. The granting of approval is subject to the following conditions, namely:

- a. The liquor shall be sold at the event known as the “Noonamah Tavern Rodeo” occurring at the Premises known as the Noonamah Tavern located on the Stuart Highway, Noonamah in the Northern Territory.
- b. The sale of liquor must be supervised by one or more persons nominated by the Licensee (Nominee), who each hold a Responsible Service of Alcohol certificate, or equivalent qualification approved by the Director-General.
- c. A nominee MUST BE present during all trading hours and must ensure compliance with the conditions.
- d. The Nominee is identified as Mr Anthony James Innes.
- e. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- f. 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.
- g. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.
- h. Crowd controllers are to be employed as per industry standards as follows:
 - i. Two (2) licensed crowd controllers for the first one hundred (100) patrons and one (1) additional crowd controller for each one hundred (100) patrons thereafter.
- i. The Licensee shall ensure that at least 75% of crowd controllers employed are wearing clothing that is readily identifiable, e.g. “hi-vis” vests with “Crowd Controller”, “Security” or “Safe Staff” or similar upon them.
- j. Crowd controllers are to advise Police, if on site, of any persons consuming liquor in the Regulated Area. A Regulated Area is any public place not included within any licensed premises and in particular includes the carparks, driveways, roadway, entry line up points and any open area in front of the Noonamah Tavern and rodeo grounds within a 2 kilometre radius.
- k. The Licensee shall ensure crowd controllers are to actively monitor patron sobriety in the entry line up.
- l. The Licensee shall ensure crowd controllers are located at all entry/exit points to ensure liquor is not brought onto or removed from the licensed area.
- m. On the dates specified in this licence there shall be no more than four (4) cans or bottles sold to any one person at any one time from 1800

hours to 2200 hours and then no more than two (2) cans or bottles sold to any one person at any one time from 2200 hours to 0100 hours.

- n. All liquor must be sold in open containers.
- o. The Licensee must ensure that water, soft drink, 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.
- p. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.
- q. All patrons over the age of 18 years are to be issued with colour coded wrist bands for the purchase of liquor and liquor is ONLY to be sold to those patrons wearing a wrist band.
- r. The Licensee 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.
- s. An RSA Marshall is required at the Bar for monitoring patron's sobriety and is to advise crowd controllers of any refusal of service to a patron.
- t. The Licensee 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.
- u. The Licensee must comply with the Instructions of a Licensing Inspector, an authorised Member of the Northern Territory Fire and Rescue Service or a delegate of the Chief Health Officer upon production of an identify card or other authorisation.
- v. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.
- w. The Licensee must make a record of all liquor obtained for sale under this licence that identifies the source of the liquor and the type and quantity of each type of liquor so obtained.
- x. The Licensee must record all liquor sold, including the type and quantity of that liquor and must record the manner of disposal of any unsold liquor.
- y. This 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 identify card or other authorisation.

- z. The Premises must clearly display signage to delineate the Non Smoking area from the Smoking Areas and must comply with smoking requirements contained in the *Tobacco Control Act*.
- aa. Food and drinks are not permitted to be taken into any designated smoking areas.
- bb. The Licensee or an employee of the Licensee shall exclude or remove from licensed premises any person who is wearing colours, insignia or emblems of an outlaw motorcycle gang (“Bikie Gang”).

Reasons

Background

3. Pursuant to section 32A(1) of the *Liquor Act* (“the Act”), Dalkeith Ag Co Pty Ltd applied to the Director-General of Licensing on 27 February 2018 for a variation to a liquor licence pertaining to the Noonamah Tavern in order to permit the sale of liquor to persons attending several events each known as the “Noonamah Tavern Rodeo”.
4. On 19 April 2018, after receiving advice from Licensing NT, the applicant requested that his application be received as an application for a special licence pursuant to section 58(1) of the Act. The applicant is now seeking a special licence to permit the sale of liquor to patrons attending each of the events known as the “Noonamah Tavern Rodeo” occurring at the Premises known as the Noonamah Tavern located on the Stuart Highway, Noonamah in the Northern Territory. The application was then referred to the Commission on 27 April 2018.
5. Shortly after that referral it was determined by the Commission that due to matters raised by NT Police, Fire and Emergency Services (“NT Police”) with respect to the application, there should be a hearing before the Commission to have those matters properly ventilated and enable the applicant to respond. As a result on 4 May 2018 notice was sent to both the applicant and NT Police of the Commission’s decision to have a hearing of the issues on 14 May 2018 to ensure transparency of the matters considered by the Commission.
6. The application lodged set out that the applicant was seeking to sell liquor between the hours of between the hours of:
 - a. 1000 hours on Saturday 26 May 2018 to 0100 hours on Sunday 27 May 2018;
 - b. 1000 hours on Saturday 30 June 2018 to 0100 hours on Sunday 1 July 2018;
 - c. 1000 hours on Saturday 11 August 2018 to 0100 hours on Sunday 12 August 2018;
7. During the course of the hearing however, the applicant confirmed that the license commencement time sought was in fact from 1800 hours and reference to the

earlier time was in accordance with his pre-existing licence. The Commission therefore determined this application on the basis that the hours sought are commencing from 1800 hours.

8. Although the applicant has a licence for its premises known as the Noonamah Tavern, the applicant is seeking approval for off-site catering to permit the sale of liquor to patrons attending the events known as the Noonamah Tavern Rodeo in the adjacent rodeo arena which is outside its present licensed area. It was stated by the applicant that it was estimated that a crowd of “approximately 2,700 to 3,500 persons” were expected to attend each event. It is intended by the applicant that there be beer, wine and spirits available for sale including beer in low, mid and full strength varieties.
9. The applicant is known to Licensing NT having previously sought and obtained multiple variations to its licence in the past in order to conduct this event. The information provided by Licensing NT to the Commission is there is “no adverse compliance history” for this applicant.

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 the Department of Health (“DOH”), NT Fire and Rescue Service (“NTFRS”), and NT Police and seek their comment. Due to the location of this event, consultation also occurred with the Litchfield Council.
11. With respect to this application:
 - a. The Litchfield Council “supported” the application.
 - b. The DOH advised that they had “no adverse comment”.
 - c. The NTFRS advised that they had “no objections”.
12. As earlier noted, the NT Police however did provide a response. In fact NT Police provided several responses. On 4 March 2018 TN Police advise that it would:

“... support this application contingent to the following:

 - Industry standard security for expected crowd numbers
 - Maximum of 4 drinks per transaction with a staggered decline towards the conclusion of the event
 - Low to Mid strength beer
 - No BYO and No alcohol to leave the premises. The extension area needs to be governed by security to ensure no alcohol is leaving and to monitor public safety”.

13. There was then further material provided by NT Police in response to the application, however such information included confidential information which NT Police sought to remain confidential. As a result a decision was made by the Deputy Chairperson that to ensure fairness to the applicant and transparency, there would be a hearing in the presence of the applicant where NT Police could speak to their concerns before the Commission and enable the applicant to respond.

Assessment of the Application

14. As previously noted, this is an application for a special licence under section 58 of the Act. That section is within Part VI of the Act. There are no specific criteria prescribed within the Act for consideration of an application for a special licence. Special licences exist under Part VI of the Act and are therefore not part of the definition of “licence” pursuant to section 4 of the Act, namely “a licence issued under Part III” of the Act.
15. As a result, it has previously been determined by this Commission that an application for a special licence is **not** a licence with respect to which it is bound to apply the public interest and community impact test as provided for under section 6 of the Act.
16. The Commission has previously noted however 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”.
17. 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.”

18. The Commission is bound by these objects and they have been considered carefully when determining this application.
19. As earlier noted, it is the understanding of the material before the Commission that this application is similar to applications made previously for this same event in years past. Further, the information provided to the Commission with respect to the applicant is that there is “no adverse compliance history”. The Commission notes that in fact it appears that this event (or better described series of events) has been conducted for the past 7 years and attracts a large crowd. The applicant submits that the event/s provide a benefit to the local community with “sports clubs and charities and schools involved in helping at the Rodeo for sponsorship and fundraising during the event”. It is however clear that the event is much larger than it was originally.
20. At the commencement of the hearing NT Police were asked to advise of the matters that they wished to raise for the Commission to consider when determining the application. Superintendent Antony Deutrom, who was just one of four representatives from NT Police, stated that he wished to make clear that NT Police “do not oppose the application or the event”, but that the concern was that “the event had morphed into something bigger than originally planned” and this therefore raised issues that were not being adequately dealt with by the applicant.
21. In general terms the Commission considered the matters raised by NT Police could be summarised as follows:
 - a. That there be a condition of the licence that there be only Low to Mid strength beer;
 - b. That applications for a special licence should be made for each event, rather than all four events to allow for monitoring and feedback;
 - c. That there be the imposition of the industry standard for security to deal with expected crowd numbers and provision that security remain on premises until 0200 hours rather than 0100 hours;
 - d. There be a condition of the licence that provides for a maximum of 4 drinks per transaction with a staggered decline towards the conclusion of the event as follows:
 - i. 4 drinks from 1730 hours to 2130 hours;
 - ii. 2 drinks from 2130 hours to 2300 hours; and
 - iii. 1 drink from 2300 hours to 0100 hours”.
 - e. No BYO and No alcohol to leave the premises and that the extended area needed to be governed by security to ensure no alcohol was leaving and to monitor public safety”.
22. The Commission notes that there were further matters raised by NT Police concerning traffic management and also camping. These matters were ventilated before the Commission and the Commission notes that Mr Greg Fisher from the

Department of Infrastructure, Planning and Logistics (“DIPL”) was present and also spoke to the issues raised.

23. As noted during the course of the hearing, whilst issues of safety are matters to be taken into account by the Commission when assessing applications and particularly when considering the Objects of the Act, the Commission did not consider it possible to impose specific conditions within a licence about traffic and camping. The Commission notes that it was apparent during the course of the hearing that there was a “general consensus” that these issues were being appropriately addressed and attended to by the applicant and the Commission therefore does not intend to say anything further with respect to those issues.
24. In relation to the other general matters raised by NT Police Mr Innes stated that he “agreed that the event had probably outgrown itself” and that “traffic had been an issue”. Mr Innes also stated that he could “fully understand the police position on mid-strength alcohol” but raised concern as to why his application may have been seen “differently” to other applications that he had recently reviewed from the Commission website and the responses given by police.
25. In terms of the matters generally identified, Mr Innes responded as follows:
 - a. If he was **required** to only sell mid-strength beer then he **may** be able to make the event “still work” but that he had concerns that this would lead to “preloading and increased drug taking” which were areas he had no control over and which made the event much more difficult to manage from his perspective.
 - b. That he would “go insane” being required to apply for a special licence for each and every event and that feedback could be provided to him from NT Police at any time “after each event”.
 - c. That he understood the requirement for security to the industry standard and would do so and that he “always” had security present in the required numbers for the number of patrons still present at the venue.
 - d. That he had already “self-imposed” a reduction in drinks from four (4) at commencement to one (1) from midnight.
 - e. That there was no provision for BYO and he did not allow alcohol to leave the premises.
26. Having heard the matters raised by NT Police and the responses of Mr Innes, the Commission adjourned for a period to determine the application.
27. With respect to each of those matters; as to concerns raised by NT Police in relation to BYO or alcohol leaving the premises, the Commission notes there is no application for BYO or for alcohol to leave. There is also no evidence of any compliance issues in this regard. The Commission does not therefore consider it necessary for there to be any specific condition in this regard.
28. In relation to the alcohol to be supplied; whilst the Commission understands that there has been a change in what Superintendent Deutrom referred to as “police

mindset” concerning a move to low and mid strength alcohol; that does not in and of itself necessarily provide a basis for there to be an immediate change in all licence conditions. This is particularly the case in circumstances (as those that exist here) where an applicant has previously held such a licence for other events and where there have been no compliance issues arising from those previous events.

29. The Commission notes that as a basis for there to be a change in conditions; concerns were raised by NT Police as to behaviour of patrons during the course of previous events (not just the event in 2017 being the last application). In this regard however the Commission also notes that in 2017 NT Police did not “object” to the application by the applicant and did not in fact raise the earlier episodes from the years of 2015 and 2016, but instead seeks to do so now.
30. It is the Commission’s view that when dealing with issues relating to alcohol, an important factor is the **responsible** service of alcohol. The Commission notes that there is nothing before the Commission to indicate that this applicant has not complied with its obligations as to the responsible service of alcohol. There are no breaches or compliance issues alleged. The Commission also notes that the applicant appears willing to put in place a number of additional strategies to try and address the concerns of police in relation to crowd control and behaviour.
31. As such, the Commission is not satisfied on **this** occasion that there is a need with respect to this particular special licence for a condition to be considered and/or imposed that provides for only the service of low to mid strength beer and the Commission declines to make that a condition of this special licence.
32. In relation to the issue of the reduction in the service of alcohol; the Commission notes the applicant’s own self-imposed restriction to one (1) drink from midnight. As noted at the hearing, should the applicant determine this is appropriate for the event; the Commission encourages the applicant to continue that self-imposed condition.
33. With respect to the material before the Commission however, the Commission is satisfied that it is appropriate to reduce the supply from four (4) to two (2) from the approximate completion of the rodeo event. As such the Commission is satisfied that there should be a reduction to two (2) drinks at 2200 hours.
34. It is as a result of the matters outlined above that the Commission is satisfied, on balance, that the objects of the Act have been sufficiently addressed and for the reasons outlined has decided to grant the special licence as outlined at the start of this Decision Notice.
35. Before finalising this Decision Notice, the Commission repeats the matters it raised with the applicant during the course of the hearing. The applicant should now be clearly aware of the change in “mindset” from the perspective of NT Police for these types of applications. Should the sorts of concerns that were raised by NT Police occur again and be raised again with respect to future applications, it is possible that the Commission (and/or its delegate) takes a different attitude to any such application.
36. It should never be presumed (or assumed) by any applicant that because they have received a special licence and certain conditions on one (or other) occasion,

that it will be the same result on the next occasion. Each application is dealt with according to its individual circumstances and this must be kept in mind.

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 issue a special licence subject to condition pursuant to section 59 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
Deputy Chairperson
Northern Territory Liquor Commission

16 May 2018