

Delegate of the Liquor Commission

Decision Notice

MATTER: **APPLICATION FOR A SPECIAL LICENCE**

REFERENCE: **LC2018/056**

APPLICANT: Northern Cowboys Association Inc.

VENUE: Robbie Robbins Reserve
Stuart Highway Darwin

EVENT: NCA Queen's Birthday Rodeo

LEGISLATION: *Liquor Act*, Part VI ("Special Licences")

DECISION OF: Mr Russell Goldflam (Acting Deputy Chairperson)

DATE OF DECISION: 4 June 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 Northern Cowboys Association Inc. ("the applicant") for the sale of liquor during the following periods:

- 18:00 hours to 23:59 hours on Friday, 8 June 2018
- 15:00 hours on Saturday, 9 June 2018 to 02:00 hours on Sunday, 10 June 2018
- 14:00 hours to 23:59 hours on Sunday, 10 June 2018

1. 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. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.

i. **Nominee: Ian Sloane**

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. Spirits must not be sold in containers with more than 5% alcohol by volume.
- b. Wine (including sparkling wine) must not be sold in containers with more than 150 ml.
- c. After 23:00 hours on each trading day no more than two (2) cans or bottles may be sold to any one person at any one time.

Reasons

Background

- 4. Pursuant to section 58 of the *Liquor Act* (“the Act”), the applicant applied to the Director-General of Licensing on 1 May 2018 for a special licence to permit the sale of beer, cider, wine and spirits (in the form of RTD mixed drinks) to persons attending the Queen’s Birthday Rodeo, a rodeo and roping competition to be presented by the applicant.
- 5. The applicant is seeking to sell liquor from 18:00 to 23:59 hours on 8 June 2018, from 15:00 on 9 June 2018 to 02:00 hours the following morning, and from 14:00 hours to 23:59 hours on 10 June 2018. The applicant anticipates that 500-800 people will attend the event on 9 June 2018, and that 200-300 people will attend the event on the other two days.
- 6. The applicant has not run an event such as this in Darwin for over five years, and the Commission has not been informed of the applicant’s *Liquor Act* compliance

history. However, the Commission is satisfied that the proposed nominee, Ian Sloane, is an experienced and competent licensee.

7. In the Application, the applicant identified “Beer, cider, wine, RTDs” as the types of alcoholic beverages it proposes to sell.

Consultation

8. 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”), Northern Territory Fire and Rescue Services (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.
9. With respect to this application:
 - a. 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 1(s) above.
 - b. The NTFRS expressed no objection to the application.
 - c. The NT Police supported the application subject to:
 - i. Industry standard security for expected crowd numbers
 - ii. Secure storage of alcohol at all times
 - iii. Maximum 4 drinks per transaction
 - iv. Staggered decline in drinks per transaction towards the conclusion of the event
 - v. Alcohol volume be one standard drink or less per serve
 - vi. Low to mid strength alcohol only
10. The applicant responded to the issues raised by DOH and NT Police.

Assessment of the Application

11. 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.

12. 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. Nevertheless, the Commission has been assisted in considering this Application by the applicant's detailed submissions in relation to the public interest and community impact test.
13. 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".
14. 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."
15. The NT Police proposal at paragraph **Error! Reference source not found.** (crowd controllers) above is one of the standard conditions for Special Licences (see paragraph 1(d), (e) above), and the Commission notes that the applicant has undertaken to comply with security industry standards.
16. The NT Police proposal at paragraph 9(c)(ii) above (secure storage of alcohol) is not the subject of an express standard condition, although one such condition requires the licensee to "provide a safe drinking environment" (see paragraph 1(j) above), which may imply that alcohol be securely stored. It is trite to observe that it is in the interest of any licensee to securely store alcohol intended for sale. The NT Police have not provided any information to suggest that the applicant (or for that matter other licensees at similar events) has failed or is at risk of failing to securely store alcohol, and accordingly the Commission does not currently consider it is necessary or appropriate to impose this measure as a standard condition of special licences. Moreover, the applicant has advised that all alcohol

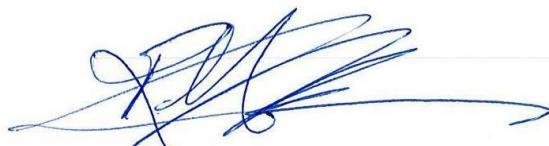
- will be “stored in a 20 foot container with two padlocks”. The Commission declines to impose a special condition in relation to this issue.
17. The NT Police proposal at paragraph 9(c)(iii) above (maximum 4 drinks per transaction) is one of the standard conditions for Special Licences (see paragraph 1(g) above), and the applicant has not sought to be exempted from this condition.
18. The NT Police proposal at paragraph 9(c)(iv) above (staggered decline in drinks towards the conclusion of the event), is supported the applicant, who proposes that sales be limited to 2 drinks per person after 23:00 hours. The Commission accepts the applicant’s submissions in this regard, and the conditions imposed are framed accordingly.
19. The NT Police proposals at paragraph 9(c)(v) and (vi) above (alcohol be served in portions of no more than one standard drink; and that only low to mid strength alcohol be sold), are opposed by the applicant.
20. Regrettably, the NT Police have not specified what they mean by “low to mid strength alcohol”.
21. These NT Police proposals appear to be a general response provided by NT Police with respect to applications for special liquor licences for similar events. The Commission has hypothesised recently that this may be a general policy stance taken by police. The NT Police have not explained the rationale for this approach in their response, or provided any evidence to substantiate these restrictions they propose, and accordingly the Commission considers that their submissions, which it is noted are contested by the applicant, should be given only limited weight.
22. The NT Police proposal that volume be limited to no more than one standard drink per service, if accepted, would effectively restrict the applicant to the supply of light or mid-strength beer, or 100 ml serves of wine. This is because full strength beer and RTD pre-mixed spirits are usually packaged in containers of 375 ml, with 1.4 standard drinks (or higher, depending on the strength of the RTD product) per serve. It would be impracticable to require full-strength beer to be served only in measures of 280 ml.
23. However, 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 applicant has submitted that “we feel that 1.5 standard drinks is a more practical way of operating”. The conditions imposed are framed accordingly.
24. Taking these matters into account, the Commission has determined that the additional conditions set out at paragraph 3 (a), (b), (c), and (d) above should be imposed.

25. The Commission has some reservations about permitting trade to continue until 02:00 on Sunday 10 June 2018. The premises are 7 km from the Central Business District, and there is an appreciable risk that some patrons might drink until 2 am and then, notwithstanding the Territory's drink-driving laws, set out to drive home to Darwin. On the other hand, the Commission notes that camping facilities will be provided by the applicant at the venue, and, having regard to the nature of the event, the Commission is satisfied that many patrons are likely to stay at the camping ground. The Commission accepts that the provision of bar facilities until 2 am to patrons who are camping at the venue will be an amenity for those patrons, and may indeed deter them from driving to (and from) other licensed premises in the locality to drink alcohol. As an entrance fee will be imposed, the Commission accepts the applicant's submission that it is likely that only persons who are actually attending the rodeo are likely to purchase and consume alcohol at this event. The Commission also notes that none of the agencies consulted by Licensing NT expressed concern about the proposed trading hours. In all the circumstances, the Commission has determined to issue the special licence with conditions that permit trading for the periods sought by the applicant.

26. 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:

27. 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.
28. 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.
29. 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