

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2019/011

VENUE: Mindil Beach
THE GARDENS NT 0820

APPLICANT: Hamark Holdings Pty Ltd

EVENT: Tash Sultana - Flow State World Tour

LEGISLATION: Section 58 of the *Liquor Act*

DECISION OF: Ms Amy Corcoran (Commissioner)

DATE OF DECISION: 20 February 2019

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 Hamark Holdings Pty Ltd (**the Applicant**) for the sale of liquor between the hours of:

Saturday, 23 March 2019 from 16:00 to 23:59 hours

2. The granting of approval is subject to the following conditions, namely:
 - a. The liquor shall be sold at the event known as the “Tash Sultana – Flow State World Tour” situated at Mindil Beach, The Gardens in the Northern Territory.
 - b. 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.
 - c. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.

Nominee/s: MS LORRAINE PHELAN

- d. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- e. 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.
- f. Any person involved in Crowd Control, as defined under *the Private Security Act*, at the premises, must be licensed as required by that Act.
- g. 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.
- h. All liquor must be sold in open containers.
- i. No more than four (4) alcoholic drinks must be sold to any one person at any one time.
- j. 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.
- k. Liquor must not be sold or supplied to a person who is drunk, or to a person under the age of 18 years.
- l. 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.
- m. 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.
- n. 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.
- o. 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.

- p. 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.
- q. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.
- r. 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.
- s. 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.
- t. 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.
- u. 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*.
- v. Food and drinks are not permitted to be taken into any designated smoking areas.
- w. 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).

Commission's instructions in accordance with Condition (p):

- No more than four (4) alcoholic drinks to be sold to any one person at any one time from 1600 hours to 2200 hours, then no more than two (2) alcoholic drinks sold to any one person at any one time from 2200 hours to 2330 hours, then no more than one (1) alcoholic drink from 2330 hours to 2359 hours. To the extent that this condition is inconsistent with Condition 2(i) above, this condition prevails.
- No provision of alcoholic drinks that:
 - 1. are designed to be consumed quickly and which are commonly referred to as a 'shot or shooters'; or
 - 2. are a cocktail containing more than a 30ml nip of spirit or liquor.

- The sale of alcoholic ice slushies is prohibited.
- Liquor or any other beverages must not be sold to patrons in glass containers.
- Soft drinks and water may be available from the bar but must also be available from separate outlets for those patrons under 18 years of age.
- Free potable water must be available to patrons.
- All patrons must be issued with colour coded wristbands upon entry clearly identifying patrons who are:
 1. 18+ years of age; and
 2. under 18 years of age.
- No person is to be sold, consume or possess liquor if they are not wearing an 18+ wristband.
- Children under 16 years must be accompanied by a ticket holding adult guardian and a guardian may only accompany a maximum of 6 children under 16 years.
- No pass-outs are permitted for patrons under the age of 18 years.
- Pass outs for patrons 18 years and over are not permitted after 19:00 hours.
- Crowd control arrangements shall comprise of static and roaming crowd controller to diligently monitor and enforce all licensing requirements and regulations pertaining to the sale of alcohol.
- At least 75% of crowd controllers employed must wear clothing that is readily identifiable. For example, high-viz vests with 'Crowd Controller', 'Security' or 'Safe Staff' or similar stated.
- The Security Incident Register must indicate whether an incident involves a minor.

Reasons

Background

3. On 6 December 2018 pursuant to section 58 of the Act, Hamark Holdings Pty Ltd (**the Applicant**) lodged an application with the Director-General for the grant of a special licence to permit the sale of liquor to patrons attending an event known as 'Tash Sultana - Flow State World Tour' on Saturday, 23 March 2019. The

application was then referred to the Liquor Commission and to me pursuant to my delegation to deal with such special licence applications.

4. Tash Sultana is an Australian singer songwriter and multi-instrumentalist described as a “one-person band”.
5. The special licence application incorporates a number of event and risk management documents including an Event Management Plan, Illicit Drug Control Policy, Emergency Response Plan and Event Traffic Management Plan.
6. The Applicant estimates approximately 2,500 persons will attend the ticketed music event held at Mindil Beach. This event is an all ages event with children 13 and under admitted free of charge with a ticket holding guardian and children who are 15 and under being required to have paid tickets and be accompanied by a ticket holding guardian.
7. All patrons will be issued colour coded wristbands to identify whether they are 18+ or under 18 years of age. Any patrons inside the venue without a wristband will be evicted.
8. Specifically, the Applicant is seeking a special licence for the following hours of trade:

Saturday, 23 March 2019 from 16:00 hours to 23:59 hours.

9. The sale of liquor to patrons at the event is proposed via 3 bars. Beer, soft drinks, cocktails, ready to drink spirits (**RTDs**), wine and cocktails are proposed to be available for sale throughout the licensed area. Additionally, the Applicant indicates beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength.
10. Complimentary tap water is available to patrons at the event from water stations. There will be no BYO alcohol and patrons will be screened and bags checked upon entry to prevent BYO alcohol, illicit drugs, weapons and already intoxicated persons from entry.
11. Catering will be available during the event with the “capability to service large crowds”.
12. In relation to security and crowd control arrangements, the Applicant indicates there will be sufficient crowd controllers present at the event to adhere to the industry standard for crowd control. Specifically, this is two licensed crowd controllers for the first one hundred patrons and one additional crowd controller for each one hundred patrons thereafter.
13. The Applicant has confirmed that patrons who are minors will not be permitted pass outs, however, patrons who are 18 years plus will be permitted pass outs up until 1900 hours only.
14. The Applicant has advised paramedics will be engaged and present throughout the event.

15. A Traffic Management Plan has been prepared by Core Traffic Control and will implemented for this event.
16. Licensing NT have advised that the Applicant has been issued special licenses to sell liquor at previous major events held in the Darwin region “without adverse outcomes being recorded”.

Consultation

17. 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 Police, Fire and Emergency Services (**NT Police**) and NT Fire, Rescue Service (**NTFRS**), St John’s Ambulance (**SJA**) and seek their comment. With respect to this application:

18. DOH advised that:

“The Department of Health is not able to support this event where underage persons would be permitted to attend. Health maintain the view that it is inappropriate for underage persons to be in attendance at events of this nature. Health has concerns for the wellbeing of underage persons being vulnerable when left along at such events. Health has concerns that underage persons will be left stranded in the city late at night as the last buses leave the Darwin Interchange for Casuarina and Palmerston well before the completion of the event.

The Department of Health has no adverse comment to an adult only event. However, Health asks the Director-General of Licensing to consider patron and community safety & amenity when determining this application.

Health provide the comment on the understanding the applicant is aware of their responsibility with regard to smoking compliance at the venue. Licensing is requested to remind the applicant that food and drinks are not permitted to be taken into any identified smoking area. Appropriate signage is provided for the convenience of the applicant.”

19. The NTFRS advised that it “*NTFRS have no objections. NTFRS have made the event organisers aware of NTFRS requirements for this event and will be conducting a pre-event inspection*”.
20. SJA advised that they are not involved in this event however, requested the applicant e supplied with a copy of the National Regulations in regard to the use of Paramedics. This was undertaken by Licensing NT on 9 January 2019.
21. Initially, the NT Police provided detailed submissions indicating that **they did not support the event** if it remains an all ages event and if it remain in its current form. They also did **not support the event** unless “significant safety and security concerns are addressed by the event organiser which were identified from the Alison Wonderland and Electric Storm events”.

22. NT Police advised that their Events Planning Unit “conducted an assessment of [previous events run by the Applicant] Electric Storm and Alison Wonderland (all ages) event held in November 2018” and provided a number of recommendations based on those assessments for this upcoming event.
23. In response to the NT Police submissions, the Applicant expressed some disappointment with their position given they believed they had a “good working relationship with the NT Police and are extremely open to reasonable suggestions to help better the events that we hold in Darwin.” Further, the Applicant informed the Commission that for both mentioned previous events, being Alison Wonderland and Electric Storm, they worked closely with NT Police particularly regarding the positioning of CCTV, door procedures to work in line with the Narcotic Drug Dogs, amnesty bins, extra lighting and additional fencing.
24. Since the Applicant’s response to the NT Police, direct discussions between the parties took place and subsequently the NT Police reviewed and altered its position to that of **support** for the special liquor licence however requested the Applicant consider four of its recommendations. I will outline those recommendations and discuss the NT Police concerns below along with the other stakeholders’ comments.

Assessment of the Application

25. As noted above, this is an application for a special licence under section 58 of the Act within Part VI of the Act. There are no specific criteria prescribed by 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.
26. 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 I am bound to apply the public interest and community impact test under section 6 of the Act.
27. However, pursuant to section 3(3) of the Act, the Commission when “exercising a power or performing a function under (the Act) 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”.
28. 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.”

29. As a delegate of the Commission, I am also bound to have regard to the objects of the Act when determining this application.
30. In regards to SJA comments, the Applicant has confirmed the paramedics used by at this event are all registered with the Paramedicine Board of Australia.
31. In respect to DOH’s comments regarding smoking areas, I confirm that the Applicant is required to comply with the *Tobacco Control Act* under a special licence.
32. I will address DOH’s concerns regarding an all-ages event further below, however, the response to their concerns from the Applicant was as follows:

“Hamark Holdings now employ staff who are solely dedicated to looking after minors at our events. These staff members stand out wearing red Hamark t-shirts with the writing "Hamark Support Staff" printed on the back. Our Stage Manager between sets announces to the crowd to approach these staff members if necessary, and we also post it on our social media in advance, so minors feel welcome to speak to our staff. Our Support Staff monitor the crowds throughout the event, starting from when they enter until when all patrons have entirely left the premises. Our Support Staff all hold current RSAs and Ochre (working with children) cards. If a minor does happen to be evicted from the premises, it will be the Support Staff's obligation to remain with the minor where necessary until a guardian has been contacted...”

We have updated our T&Cs to reflect that ‘persons under 16 years of age must be accompanied with a ticket holding guardian’.”

33. The matters raised by the NT Police and DOH are considered below:

a. *Fencing and lighting*

NT Police indicated there was inadequate security staff and lighting to restrict unauthorised access of persons and contraband to the licensed venue over the perimeter fencing – particularly the Western side.

The Applicant has indicated that extra “staffing and fencing” will be arranged as well as lighting towers to replace the Maria Liveris Drive street lights which are programmed off due to interference with stage lighting. The Applicant confirmed it was also in their best interests to not “miss out on paying patrons”.

I am satisfied the Applicant has addressed this concern and trust that they will continue to work with NT Police to address any security concerns around the permitter of the event.

b. *Security Incident Register*

NT Police advised that for the previous events mentioned above, the respective Security Incident Registers did not record whether an incident involved a minor or not which made the data difficult to analyse.

The Applicant has agreed and confirmed that it will ensure minors are recorded as minors in the Register and I have included this as a condition of the special licence.

c. *Low to mid-strength drinks to be sold only (except VIP areas)*

The Applicant has confirmed that food, light and mid-strength beer and non-alcoholic beverages (including complimentary water) will be readily available during the event encouraging responsible consumption of alcohol but “to compete in the current market place, full strength products must be available”.

The NT Police submitted that a total of over 60 patrons were asked to leave the Alison Wonderland and Electric Storm events. It is unclear whether all these patrons were asked to leave due to intoxication levels. I also note given the crowds in attendance for both events, this number makes up for a very small percentage of total patrons over the course of both events.

With the added concerns of illicit drug use and “pre-loading practices” the Applicant must rely primarily on sound crowd control management and strong responsible service of alcohol practices to minimise this risk. It would be a concern if restricting alcohol products to mid or light strength may also encourage such “pre-loading” practices or smuggling contraband into the event.

Licensing NT have reported no compliance concerns regarding major events run by the Applicant in the past and in this instance, for the reasons above, I will not be imposing a condition restricting alcohol to mid and light strength only.

d. *Staggered decline in drinks per transaction towards the conclusion of the event*

The Applicant agreed to a staggered decline however, suggested a slightly different method than the NT Police. Given the availability of full strength alcohol at this event, I will impose a similar condition for the staggered decline of alcoholic drinks as that requested by the NT Police being:

- *From 1600 hours to 2200 hours no more than four (4) drinks must be sold to anyone (1) person at any one time;*

- *From 2200 hours to 2330 hours no more than two (2) drinks must be sold to any one (1) person at any one time;*
- *From 2330 hours to 2359 hours no more than one (1) drink must be sold to any one (1) person at any one time.*

e. *Concerns that it is an “all ages event where alcohol is available”*

It is important to consider the appropriateness of this event as an all-ages event. DOH have a policy view that events such as these are inappropriate for minors, highlighting concerns regarding their vulnerability if left alone at such events as well as being stranded after the event due to a lack of public transport.

NT Police raised concerns that they did have to deal with some intoxicated minors at Alison Wonderland event but the Security Incidents Register from that event did not specify if an incident involved adults or minors.

The Applicant has confirmed that a condition of entry will be that all minors under 16 years must be accompanied by an adult guardian. Further, the Applicant submitted the following:

“Hamark Holdings now employ staff who are solely dedicated to looking after minors at our events. These staff members stand out wearing red Hamark t-shirts with the writing “Hamark Support Staff” printed on the back. Our Stage Manager between sets announces to the crowd to approach these staff members if necessary, and we also post it on our social media in advance, so minors feel welcome to speak to our staff. Our Support Staff monitor the crowds throughout the event, starting from when they enter until when all patrons have entirely left the premises. Our Support Staff all hold current RSAs and Ochre (working with children) cards. If a minor does happen to be evicted from the premises, it will be the Support Staff’s obligation to remain with the minor where necessary until a guardian has been contacted.”

Unlike the Applicant’s event, the all-ages event of BASSINTHEGRASS does provide a free bus service after their event to the relevant bus interchanges, however, the patron numbers attending this event is significantly less than the 7,500 that attend BASSINTHEGRASS and therefore requiring greater transport options.

Based on the specific circumstances of this event including the procedures put in place by the Applicant and to reduce the risk of children being left vulnerable at the event or stranded after the event, it is appropriate that that children 15 years and under must also be accompanied by a ticket holding adult guardian. A guardian may accompany a maximum of 6 patrons aged 15 or under.

For added measures to assist the running of an all ages event, the Applicant should also establish and maintain a designated ‘Dry Area’

similar to that required at BASSINTHEGRASS and soft drinks must also be made available from outlets other than the bars for those patrons under 18 years of age.

The NT Police also requested that a separate area outside the licensed area be set up where support services can support minors who may need assistance. The area should be well lit and signposted and staffed when minors are present. This is a reasonable request by the NT Police and the Applicant has not indicated that they are not agreeable. The Applicant should work with NT Police regarding the location of this area.

f. *CCTV monitoring*

The NT Police has requested that the Commission impose CCTV monitoring as a condition of this special licence application and also for all major events going forward. This, in my view, is a significant policy request and one which requires detailed consideration by the Liquor Commission and stakeholder engagement.

A detailed paper was submitted by NT Police to support its submission.

The Applicant's response to this request is set out below:

"Hamark Holdings have arranged to meet with NT Police to talk in more detail about their request for CCTV.

We currently employ experienced Event Staff, Paramedics and Security and we receive approximately 2000+ patrons per event. We feel our team can manage our events without the assistance of CCTV.

Our events have been compared to BASSINTHEGRASS, but there is a big difference in the patron attendance between Hamark events and the BASSINTHEGRASS event.

Hamark Holdings would not be able to financially continue running events with the extra cost of CCTV operations.

We continue to welcome NT Police to set up their CCTV equipment at any of our events."

NT Police have advised that Northern Territory Major Events (NTMEC) who run BASSINTHEGRASS engaged an external CCTV contractor to monitor internal and external environs' of the venue having a total of 12 'pan and tilt zoom cameras' and 5 static cameras while the event was in progress including a contracted CCTV operator.

Although, based on advice from NT Police that major events are using CCTV, it must be noted that unlike the Applicant, NTMEC is an organisation wholly owned by the Northern Territory Government. BASSINTHEGRASS is also an event at least 3 times the size of this event.

As mentioned above, Licensing NT have advised that across all the events which the Applicant has managed under a special licence there have been no adverse outcomes recorded

I also accept the concerns raised by the Applicant that the additional cost of CCTV could make these events unsustainable given the significant costs already outlaid for the requisite security staff and red shirt staff being an additional and valuable initiative of the Applicant.

I am not convinced that CCTV is necessary for the Applicant to ensure the good management and security of this event and I am not minded to impose such a requirement. The NT Police are free of course to utilise their mobile CCTV systems if they desire.

If the NT Police intend to pursue this CCTV policy for all future major events held in the Northern Territory, I suggest the appropriate course of action would be to write to the Chairman of the Liquor Commission to seek full consideration by the Commission.

34. Major events, whether music events such as this one, horse racing, cultural festivals or motorsports provide a great deal of benefit and enjoyment to the Northern Territory community. In a media release earlier this month for BASSINTHEGRASS, Minister for Tourism Sport and Culture, Lauren Moss, stated that such events “play a vital role in enhancing the liveability and vibrancy of our city, which is so important in keeping people in the Territory”.
35. The support of both event organisers and NT Police is very much key to ensuring these events continue to be offered including working towards the minimisation of associated risks. I commend both the Applicant and NT Police for working together in partnership to improve the management and safety of this event.
36. It is as a result of the matters outlined above that I am, on balance, satisfied that the objects of the Act have been sufficiently addressed and for the reasons outlined I have decided to grant the special licence as set out at the start of this Decision Notice.

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.

A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long horizontal line extending to the right.

AMY CORCORAN
Commissioner
Northern Territory Liquor Commission

20 February 2019