

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2018/015

VENUE: **Banyan Farm Tourist Park**
Woolianna Road
DALY RIVER NT 0822

APPLICANT: Palmerston Game Fishing Club Incorporated

EVENT: 2018 Club Marine Insurance Barra Nationals

LEGISLATION: Section 58 of the *Liquor Act*

HEARD BEFORE: Ms Richard Coates (Chairperson)
Dr Charles Douglas (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 19 April 2018

DATE OF DECISION: 19 April 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 a special licence to sell liquor to the Palmerston Game Fishing Club Incorporated (**the Applicant**) for the sale of liquor between the hours of:
 - a. Tuesday, 24 April 2018 from 16:00 hours to 20:00 hours;
 - b. Wednesday, 25 April 2018 from 16:00 hours to Thursday, 26 April 2018 02:00 hours;
 - c. Thursday, 26 April 2018 from 16:00 hours to Friday, 27 April 2018 02:00 hours;
 - d. Friday, 27 April 2018 from 16:00 hours to Saturday, 28 April 2018 02:00 hours;
 - e. Saturday, 28 April 2018 from 16:00 hours to Sunday, 29 April 2018 02:00 hours;

- f. Sunday, 29 April 2018 from 16:00 hours to Monday, 30 April 2018 02:00 hours;
- g. Monday, 30 April 2018 from 16:00 hours to Tuesday, 1 May 2018 02:00 hours; and
- h. Tuesday, 1 May 2018 from 16:00 hours to Wednesday, 2 May 2018 03:00 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 “Club Marine Insurance Barra Nationals” at the Premises known as the Banyan Farm Tourist Park located at Woolianna Road, Daly River 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. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.

Nominees: Mr Stephen John Tetley

Ms Gaye Elizabeth Wells

- c. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- d. 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.
- e. Any person involved in Crowd Control, as defined under *the Private Security Act*, at the Premises, must be licensed as required by that Act.
- f. All liquor must be sold in open containers.
- g. No more than four (4) cans or stubbies or glasses of wine may be sold to any one person at any one time.
- h. The licensee 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 an intoxicated person or to a person under the age of 18 years.
- j. 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.

- k. The Licensee must comply with all requirements and guidelines published by the Director-General, including guidelines related to the conduct of entertainment.
- l. Where the Licensee is operating from enclosed premises, the Licensee must prominently display on the licensed 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 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.
- n. The Licensee must comply with the requirements 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 licence **MUST** be purchased from a licensed retail outlet.
- p. 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.
- q. 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.
- r. 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 identity card or other authorisation.
- s. The venue clearly displays signage to delineate the Non Smoking area from the Smoking Areas. The venue must comply with smoking requirements contained in the *Tobacco Control Act*.
- t. Food and drinks are not permitted to be taken into any designated smoking areas.
- u. A Licensee or employee of a Licensee shall exclude or remove from licensed premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang).

Northern Territory Liquor Commission instructions in accordance with Condition (n) above:

- i. The sale of 'take away' liquor is only permitted to persons competing in 2018 Club Marine Insurance Barra Nationals tournament, for their own consumption on the river whilst in a boat;
- ii. A competitor in the tournament may purchase a maximum of six (6) unopened cans of light or mid strength beer per day, for consumption on a boat the following day;
- iii. 'Take away' liquor may be sold to competitors between the hours of 1600 and 2200 for the duration of the fishing tournament only.

Reasons

Background

3. On 4 April 2018 pursuant to section 58 of the Act, 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 the 2018 Club Marine Insurance Barra Nationals at Banyan Farm Tourist Park on Woolianna Road, Daly River in the Northern Territory.
4. The Club Marine Insurance Barra Nationals is a catch and release fishing tournament where competitors score points for all Barramundi caught over 40cm. The fishing tournament is well established having run for over 20 years, allowing competitors to fish in the Daly River whilst staying at Banyan Farm Tourist Park for the week of the tournament.
5. Specifically, the Applicant is seeking to sell liquor for the following hours:
 - Tuesday, 24 April 2018 from 16:00 hours to 20:00 hours;
 - Wednesday, 25 April 2018 from 16:00 hours to Thursday, 26 April 2018 02:00 hours;
 - Thursday, 26 April 2018 from 16:00 hours to Friday, 27 April 2018 02:00 hours;
 - Friday, 27 April 2018 from 16:00 hours to Saturday, 28 April 2018 02:00 hours;
 - Saturday, 28 April 2018 from 16:00 hours to Sunday, 29 April 2018 02:00 hours;
 - Sunday, 29 April 2018 from 16:00 hours to Monday, 30 April 2018 02:00 hours;
 - Monday, 30 April 2018 from 16:00 hours to Tuesday, 1 May 2018 02:00 hours; and
 - Tuesday, 1 May 2018 from 16:00 hours to Wednesday, 2 May 2018 03:00 hours.

6. The Applicant proposes to sell liquor to patrons from a bar selling beer, wine and spirits. Further, the applicant indicates non-alcoholic drinks and meals will also be provided each evening.
7. In addition to the proposed licensed area, the Applicant requests they be permitted to sell liquor to competitors of the tournament between 16:00 hours and 22:00 hours on each day of the tournament, for competitors to consume on the Daly River, in their boat, the following day.
8. Including competitors and committee members of the Palmerston Game Fishing Club Incorporated, the Applicant estimates approximately 220 persons will be in attendance throughout the tournament.
9. This year for the first time, the Applicant is using a cashless purchasing system which involves an identification card being issued at registration to each competitor and bona fide attendees. The card is required in order to purchase food and drinks throughout the tournament. This is another safe guard to ensure no “outsiders” will be able purchase liquor at the event.
10. The Applicant also confirmed that as in previous years, advanced first aid officers will be present throughout the tournament.
11. The Applicant has previously been issued special licences for past Barra National tournaments. The Commission has been informed by Licensing NT that there have been no compliance issues with respect to the Applicant for previous tournaments.
12. In relation to private security and crowd controller arrangements, the Applicant indicates licensed private security personnel and crowd controllers will not be engaged to provide services at the 2018 Club Marine Insurance Barra Nationals. Instead the nominee, volunteers and committee members shall monitor the general behaviour of patrons throughout the tournament. These arrangements are unchanged from those identified in last year’s special licence application for the same tournament and the liquor licence granted.

Consultation

13. 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 and Rescue Service (**NTFRS**) and seek their comment.
14. With respect to this application:
 - a. The NT Police had no objection and was *“happy with ... the measures put in place by the organisers”*.
 - b. The NTFRS had no objection.

- c. The DOH raised concerns that the site map was “*non-compliant with the requirements of Section 5B of the Tobacco Control Act*”. After receiving this feedback via email from DOH, the Applicant updated their site map to address DOH’s concerns.

Assessment of the Application

15. 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. Usually the Director-General would determine a special licence application under a delegation from the Commission where patron attendance is less than 300. However, in addition to on-premise consumption, the Applicant is also seeking authority for the sale of liquor for consumption on the river away from the licensed premises ie, ‘take away liquor’.
16. Section 24(2) of the Act states that “no new take away licences may be issued during the moratorium period of 5 years”. Further, if the condition for the provision of take away liquor were granted, would the applicant be required under section 31A of the Act to use the approved scanner and determine whether an individual wanting to purchase take away liquor is prohibited in doing so and on the banned drinkers register?
17. Due to concerns over these issues, the Director-General declined to determine this matter in accordance with the Commission’s delegation pursuant to section 37 of the *Liquor Commission Act* and referred the matter to the Commission to decide.

Is this special application subject to section 24(2) of the Act?

18. Section 24(4) defines take away liquor licence to mean “*a licence that permits the sale of liquor for the consumption away from the licensed premises*”. “Licence” is defined under section 4 as “*a licence issued under Part III*”. However, the Applicant is seeking a special licence which is issued under Part VI of the Act. Therefore, this application is not caught by the moratorium under section 24(2) because of the Act’s construction that it is confined to Part III licences only.

Would section 31A of the Act apply to take away sales under a proposed special licence such that the approved scanner system must be used at purchase?

19. Section 31A of the Act is also within Part III of the Act and so it would be generally confined to its application to Part III “licences”, however section 31A(1)(a) potentially broadens the scope.
20. Section 31A(1) of the *Liquor Act* states that the section “*applies to the sale of liquor:*
 - (a) *in a way prescribed by regulation; or*
 - (b) *under a licence prescribed by regulation.*”

21. If there was any doubt as to whether section 31A could apply to a special licence it is resolved by Regulation 5A of the Liquor Regulations which provides:

“Section 31A of the Act applies to the sale of liquor to an individual under a licence that is subject to a condition under section 31 of the Act that allows a licensee to sell liquor for the consumption away from the licensee’s licensed premises.”

22. Section 31 conditions are only imposed in respect to Part III licences, therefore, the Regulations don’t capture special licences issued under Part VI and the section 31A would not apply to take away sales permitted under a special licence.

The final consideration for the Commission is whether the granting of a take away liquor licence would, in the circumstances, be in accordance with the objects of the Act?

23. 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”.

24. 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:

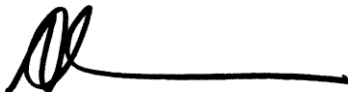
- (a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;
- (b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and
- (c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.”

25. The Applicant is seeking a similar condition for take away liquor to that which was granted by the Director-General in 2017 under Condition 13 of the special licence. It permitted the sale of take away liquor such that “a competitor in the tournament may purchase a maximum number of 6 unopened cans of light or mid-strength beer per day, for consumption on a boat the following day.

26. It is relevant to note that all competitors in the tournament are prohibited from bringing their own alcohol into the licensed area. A breach of this condition would result in their expulsion from the tournament. Although the Applicant may not be able to prohibit competitors from stocking their boats with their own alcohol in the camping grounds, the limit of 6 light or mid-strength beers tends to encourage a more responsible level of alcohol consumption than might be envisioned if the competitors were left entirely to make their own arrangements.
27. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the objects of the Act have been sufficiently addressed and the Commission has for the reasons outlined decided to grant the special licence as set out at the start of this Decision Notice.

Notice of Rights:

28. 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.
29. 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.
30. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the only affected person is the Applicant..



AMY CORCORAN
Commissioner
Northern Territory Liquor Commission
26 April 2018



I **RICHARD COATES**, Chairperson, agree with this decision.



I **CHARLES DOUGLAS**, Commissioner, agree with this decision.