

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/110
VENUE:	Todd River between Schwartz Crescent and Wills Terrace ALICE SPRINGS NT 0870
APPLICANT:	Henley on Todd Incorporated
EVENT:	Tatts Finke Desert Race
LEGISLATION:	Part VI of the <i>Liquor Act</i> (“Special Licences”).
DECISION OF:	Mr Russell Goldflam (Acting Deputy Chairperson)
DATE OF DECISION:	13 August 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 the special licence to sell liquor to Henley on Todd Incorporated (“the applicant”) for the sale of liquor from 11:00 hours to 18:00 hours on Saturday, 18 August 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. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.
 - i. **Nominee: Kim Flitcroft**
 - 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 must 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. The only liquor that may be sold before 1300 is to be mid-strength or light beer.
- d. A minimum of six Crowd Controllers is required to be in attendance. To the extent that this condition is inconsistent with Condition 1(e) above, this condition prevails.
- e. The licensee must provide to Licensing NT the names of all crowd controllers to be employed at the event not later than 16:00 hours on Thursday 16 August 2018.

Reasons

Background

- 4. Pursuant to section 58 of the *Liquor Act* ("the Act"), the applicant applied to the Director-General of Licensing on 22 May 2018 for a special licence to permit the sale of beer, cider, wine and spirits on 18 August 2018 to persons attending the Henley on Todd dry river regatta at Alice Springs, and on 17 August 2018 for unspecified activities.
- 5. The applicant has identified light, mid-strength and heavy beer, cider, UDL pre-mixed spirits and still and sparkling wine as the types of alcoholic beverages it proposed to sell.

A major event

6. The Henley on Todd regatta is 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.

7. The Application Notes provide that a special liquor licence for a major event must be lodged no later than 3 months before the event. The applicant has not complied with this requirement, or applied for an abridgement of time. On 16 August 2017, a Special Licence was granted to the applicant for the 2017 Henley on Todd regatta with the following notation:

The licensee is placed on notice that this event is considered a Major Event and in accordance with the Application Notes contained in the application form submitted for this licence, future applications of this nature must be lodged with the Director-General of Licensing no later than **three (3) months** before the event. Failure to submit the application as required may, in the absence of exigent circumstances, result in the application being refused.

8. The repeated failure of the applicant to lodge its application on time, after having been warned not to do so, and without displaying either the courtesy or common sense of seeking to explain or excuse the delay, is of considerable concern to the Commission.
9. On this occasion, after serious consideration, the Commission has decided to waive compliance with this requirement, having regard to the following matters:
 - The applicant is a non-profit organisation, and any profits from the event will be dispensed by the combined Alice Springs Rotary Clubs, which auspice the event, to charitable causes
 - The delay in submitting the application was minor, namely five days
 - The delay does not appear to have hindered the process of preparing the brief for consideration by the Commission
 - None of the agencies consulted for the purpose of considering the application has objected to the grant of the licence
 - The applicant has a generally good record of compliance with licensing requirements for this event in previous years

10. The Commission notes that the Application Notes also specify a requirement in relation to special liquor licences for major events that:

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 applicant has only partially complied with this requirement. The applicant has not, so far as the Commission is aware, provided the names of the security persons to be employed for the function.

11. The applicant has (albeit only after prompting by Licensing NT) complied with other provisions in the Application Notes applicable to major events.
12. The applicant is again warned that failure to comply with the requirements regarding major event applications may result in the refusal to grant a special licence.

Event security and crowd control

13. The applicant estimates that 5000 people will attend the regatta, a family-oriented event with several competitive activities scheduled specifically for children.
14. An exemption is sought by the applicant from providing private security or crowd controllers in accordance with the industry standard. The applicant proposes instead that there be six Security Guards provided by Talice Security, and note that there will also be police, St John's Ambulance officers and Rotary volunteers on patrol at the event. The applicant relies on the fact that it has successfully run the event for 57 years along similar lines without serious security incidents. The applicant also states "The Board is working with Ernst Young to identify and develop a risk management strategy for the next 5 years and from a risk management perspective, this has been identified as a low risk issue."
15. The applicant was issued a special licence for the 2017 Henley on Todd regatta with a special conditions that 6 crowd controllers be provided. Licensing NT has advised that no compliance issues were raised with respect to the applicant following that event.

Friday 17th August 2018

16. The applicant also applied to sell liquor from 15:00 hours to 21:00 hours on Friday 17th August 2018, the day prior to the regatta. The application contained no supporting information or rationale for this. The Henley on Todd website does not refer to any events scheduled for this period. On 12 August 2018, the Commission sought clarification about this from the applicant, and was informed by the applicant that it does not intend to sell liquor on 17th August 2018. Accordingly, the Commission regards this part of the application as having been withdrawn, and this part of the application is refused.

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. Accordingly, comment was sought from the Department of Health (“DOH”), Northern Territory Fire and Rescue Services (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”).
18. None of these stakeholders raised concerns about the application.

Assessment of the Application

19. 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.
20. 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 I am bound to apply the public interest and community impact test as provided for under section 6 of the Act.
21. 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”.
22. 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

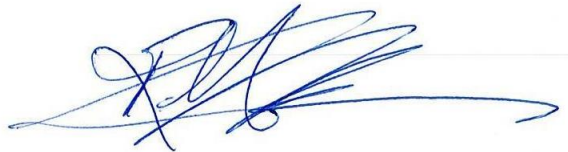
(c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.”

23. As I have been delegated the authority to make this decision, I too am bound by these objects and they have been considered carefully by me when determining this application.
24. The Commission considers that the objects of the Act are served by imposing restrictions on the supply of liquor in addition to the “standard conditions” at this event. The Commission has determined conditions calculated to reduce the risk of harm associated with the consumption of liquor while at the same time permitting the sale and responsible consumption of liquor at this family-oriented sporting event.
25. The Commission has regard to the size, location and configuration of the venue, the proposed hours of trading, the anticipated number of patrons, and the nature of the event.
26. 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 in a restaurant (150 ml), or a 375ml can of medium strength mixed spirits.
27. Accordingly, the conditions of the licence that the Commission has determined to issue do **not** permit the sale of high strength mixed spirits products such as Johnny Walker Scotch & Cola (6.5%) or Bulleit Bourbon and Cola (6%), as has proposed by the applicant.
28. Although this measure has not been proposed by the applicant or any of the stakeholders who were consulted, the Commission considers that there should also be a restriction on the strength of liquor sold before 13:00 hours. The Commission notes that this condition has been imposed on recently issued special licences for similar events. In the view of the Commission, this measure should be imposed for the following reasons:
 - to reduce the risk that patrons (and in particular patrons who intend to participate in or attend competitive events later in the day) will consume liquor to harmful excess at the event
 - to reduce the risk that patrons, and particularly children, attending the event at lunchtime will be confronted by or exposed to intoxicated persons
 - to discourage a culture of heavy and sustained liquor consumption at public events in the Northern Territory
 - to be consistent with the conditions of licences that have been recently granted for similar events
29. Taking these matters into account, the Commission has determined that the conditions set out at paragraph 3 (a), (b) and (c) above should be imposed.
30. The Commission has determined that an exemption be granted to the applicant regarding security numbers, as specified at paragraph 3(d) above. In doing so the

Commission has had regard to the matters discussed at paragraphs 13 to 15 above.

Notice of Rights:

31. 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. I am exercising the power to make a Commission decision pursuant to the delegation made to me by the Commission.
32. 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.
33. 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

13 August 2018