

Licensing Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/006
VENUE:	Humpty Doo Village Green Community Hall 85 Challoner Circuit HUMPTY DOO NT 0836
APPLICANT:	Lions Club of Litchfield Incorporated
EVENT:	ANZAC Day Ceremony
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Dr Charles Douglas (Health Member) Mrs Amy Corcoran (Community Member)
DATE OF HEARING:	16 April 2018
DATE OF DECISION:	16 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 the special licence to sell liquor to Lions Club of Litchfield Incorporated for the sale of liquor on Wednesday 25 April 2018 between the hours of 1000 hours and 1300 hours at the Humpty Doo Village Green Community Hall, 85 Challoner Circuit, Humpty Doo in the Northern Territory.
2. The granting of approval is subject to the following conditions, namely:
 - a. The only alcoholic beverage permitted for sale is beer;
 - b. Beer must be available for sale in a variety of low, mid and full strength options;
 - c. For the purpose of fire safety, the gates enabling access and exit to and from the premises MUST be padlocked in the open position for the duration of the event.

- d. 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.
- e. A nominee MUST BE present during all trading hours and must ensure compliance with the conditions.
- f. Nominees are identified as:
 - i. Mr Trevor Robert Smart;
 - ii. Mr Paul Anthony Wenborn;
 - iii. Mr Christopher Graeme Blackham-Davison.
- g. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- h. 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.
- i. All liquor must be sold in open containers.
- j. No more than four (4) cans or bottles must be sold to any one person at any one time.
- k. 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.
- l. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.
- m. 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.
- n. The Licensee must comply with all requirements and guidelines published by the Director General, including guidelines related to the conduct of entertainment.
- o. 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.

- p. 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.
- q. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.
- r. 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.
- s. 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.
- t. 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.
- u. 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*.
- v. Food and drinks are not permitted to be taken into any designated smoking areas.
- w. 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 58 of the *Liquor Act* (“the Act”), Lions Club of Litchfield Incorporated (“Litchfield Lions Club”) applied to the Director-General of Licensing on 10 February 2018 for a special licence to permit the sale of liquor to patrons attending an ANZAC Day Ceremony at the Humpty Doo Village Green Community Hall (“the hall”) located at 85 Challoner Circuit, Humpty Doo in the Northern Territory.
4. The applicant is seeking to sell liquor between the hours of 10.00am and 1.00pm on Wednesday 25 April 2018. It was stated in the Application that it was anticipated by the applicant that a crowd of “600 persons” will attend the “ANZAC Day Ceremony and Sausage Sizzle”. However the applicant later advised that they were in fact “expecting 300 to 350 visitors” with seating to “be provided for approximately 300 guests”. The applicant further stated that:

“This is a family orientated event where at least 55-60% of the guests will be women and children. It is expected that less than 100 people will be consuming alcohol on the day”.

5. The applicant seeks only to sell beer during those hours and proposes that it be available for sale in a variety of low, mid and full strength options, all of which will be opened at point of sale. Due to the nature of the event, an exemption is also sought by the applicant from providing private security or crowd controllers at the event.
6. The applicant has previously been issued special licences for past ANZAC Day Ceremonies. The Commission has been informed by Licensing NT that there have been “nil” compliance issues with respect to the applicant for past ceremonies however the Commission notes that in 2017 a special licence condition was imposed in relation to fire safety as a result of concerns raised by the Northern Territory Fire and Rescue Service (“NTFRS”). The Commission will return to this aspect later in these reasons.
7. It is understood by the Commission that the applicant has conducted an ANZAC Day march and ceremony at this venue since “the 1990’s” and the applicant has reported that there “have been no known incidents with any personnel attending this ceremony in the last 25 years”.

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”), NT Police, Fire and Emergency Services (“NT Police”) and NTFRS and seek their comment.
9. With respect to this application:
 - a. The DOH made no adverse comment.
 - b. The NT Police supported the application contingent to:
 - i. “Industry standard security numbers for expected crowd numbers” and
 - ii. “Maximum of 4 drinks per transaction with a staggered decline towards the conclusion of the event”.
 - c. The NTFRS however advised that they did not support the application and relevantly stated as follows:

“We advised the occupants in April 2017 ... to engage the services of a private building certifier to gain an occupancy permit for the steel bar enclosure of the hall and that until this has been resolved NTFRS will not support any future Liquor License Applications for the Community Hall at the Humpty Doo Village Green”.

Assessment of the Application

10. 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.
11. As a result, this Commission has determined that an application for a special licence is **not** a licence with respect to which this Commission is bound to apply the public interest and community impact test as provided for under section 6 of the Act.
12. The Commission notes 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”.
13. 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.”
14. It is these objects that were considered carefully by this Commission when determining this application.
15. The Commission understands that this application is similar to previous applications and approvals. As earlier noted, although there is no formal obligation to consult, responses were sought from the relevant stakeholders and three (3) matters were raised. These, in general terms, related to:

- a. Security (or crowd controller) numbers;
 - b. Maximum number of drinks and decline towards conclusion of the event;
and
 - c. Fire safety concerns with respect to the steel bar enclosure of the hall.
16. In relation to security (or crowd controller) numbers, it is noted that the applicant seeks an exemption from providing private security or crowd controllers at the event. The Commission is aware that a similar exemption was sought, and granted, with respect to the special licence issued for this event in 2017. The Commission also notes that the event is one centred entirely on *commemorating* ANZAC Day and is family oriented. ANZAC Day events are traditionally “commemorative” rather than “celebratory”, making this type of an event very different to a “festive” occasion.
17. The Commission understands that the 2017 event occurred without issue, despite there being no security or crowd controllers in attendance, and in such circumstances the Commission has determined there does not need to be a condition included within the special licence with respect to the provision of security or crowd controllers for this event.
18. In relation to the maximum number of drinks to be served and a decline towards the conclusion of the event, the Commission notes that this appears to be a general response provided by NT Police with respect to a number of applications. The Commission hypothesizes that this may be a general policy stance taken by police. There may be reasons for such a stance. The Commission does not know.
19. As previously noted; there is in fact no requirement under the Act for advertising of special licence applications, or provision for formal objections. It is however clear that this Commission must consider the objects of the Act. To do so, the Commission relies upon the evidence and information placed before it.
20. Therefore if there are relevant matters which the NT Police have to support a submission as to such a particular condition being imposed in a special licence, then that evidence and/or material should be provided to the Commission for its consideration with respect to the particular application.
21. With respect to this particular application however, the fact of the matter is that there has been no evidence or information provided to this Commission to support any finding that there is a need with respect to this particular special licence for a condition to be considered and/or imposed that provides for a decline as to the maximum number of drinks to be served towards the conclusion of the event.

22. In these circumstances the Commission has determined that given the nature of the event it is reasonable for the previously imposed condition of “no more than four (4) cans or bottles must be sold to any one person at any one time”, to be included again. However the Commission finds no basis for imposing an additional condition with respect to those numbers being reduced towards the conclusion of the event.
23. In relation to the fire safety concerns with respect to the steel bar enclosure of the hall where the event is to be held, the Commission notes it has been provided with a number of photographs of the event location. Having considered those photographs carefully the Commission has determined that the concern of the NTFRS (whilst reasonable and understandable) can be addressed on this occasion by the imposition of the condition that the gates enabling access and exit to and from the premises MUST be padlocked in the open position for the duration of the event.
24. The Commission also notes however that it is important to identify that the hall is not the property of the applicant, but in fact owned by the Litchfield Shire. Request was made by the Commission for information from the Litchfield Shire as to what, if anything, it was doing with respect to the fire safety concerns raised by NTFRS given it had been advised in 2017 that NTFRS would not support any future Liquor License Applications for the venue until an occupancy permit for the steel bar enclosure of the hall had been obtained.
25. In response to this query, the Commission received a copy of correspondence from Litchfield Council that it had “engaged a surveyor and building certifier to identify the need and undertake certification work for the Hall on Humpty Doo Village Green”. It is further noted that it was anticipated that the “project will be finalised before 30 June 2018”.
26. Given these matters appear to be under way, the Commission intends to say nothing further on this issue other than to note that it is hoped this will not be an issue to be considered with any future applications (should they be made).
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 and as outlined 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 affected persons are the applicant and the person who made “a submission” during the process that resulted in the decision being made. With respect to this application that is DOH, NT Police and NTFRS.



JODI TRUMAN
Deputy Chairperson
Northern Territory Liquor Commission

16 April 2018