

Licensing Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/005
PREMISES:	Palmerston Sports Club 3 Maluka Street PALMERSTON NT 0830
APPLICANT:	Palmerston Sports Club Incorporated
EVENT:	ANZAC Day Gunfire Breakfast and early trade
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 Palmerston Sports Club Incorporated for the sale of liquor on Wednesday 25 April 2018 between the hours of 0430 hours and 0959 hours at the Palmerston Sports Club, 3 Maluka Street, Palmerston in the Northern Territory.
2. The granting of approval is subject to the following conditions, namely:
 - a. That this special licence is only to extend the hours of trade for the Licensee at the venue from between the hours of 0430 hours and 0959 hours on ANZAC Day being Wednesday 25 April 2018.
 - b. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.

- c. Crowd controllers are to be employed as per industry standards as follows:
 - i. Two (2) licensed crowd controllers for the first one hundred (100) patrons and one (1) additional crowd controller for each one hundred (100) patrons thereafter.
- d. That the Licensee must otherwise comply with all other conditions of its existing licence, namely Liquor Licence Number 81416300, save and except that:
 - i. There shall be no removal and consumption of liquor away from the licensed premises by any person during the hours of the special licence;
 - ii. 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; and
 - iii. The Licensee must ensure that water is available during the trading hours of this special licence. Commercially bottled water may be sold, otherwise water must be supplied free of charge on request.

Reasons

Background

- 3. Pursuant to section 32A of the *Liquor Act* (“the Act”), Palmerston Sports Club Incorporated applied to the Director-General of Licensing on 6 March 2018 for a temporary variation to its current liquor licence number 81416300. This was the process ordinarily undertaken by the applicant (amongst many others) over a number of years for variations with respect to trade on ANZAC Day, and was in fact the process undertaken in 2017 for that event.
- 4. Since that time however the Act has been amended and various changes in process have subsequently occurred. As a result, a determination was made by the Director-General to accept the application as in fact an application pursuant to section 58 of the Act, namely an application for a special licence to permit the sale of liquor to patrons attending the ANZAC Day commemorations at the Palmerston Sports Club located at 3 Maluka Street, Palmerston in the Northern Territory.

5. The applicant is seeking to sell liquor between the hours of 4.30am to 9.59am on Wednesday 25 April 2018. This is outside its trading hours already in existence under its current licence which are from 10.00am to 11.59pm on that day. It was stated in the Application that it was anticipated by the applicant that a crowd of “600 persons” would attend the “ANZAC Day Celebrations 2018”.
6. The applicant seeks:
 - a. to provide a “tot of rum” as the only liquor available between 0430 hours and 0630 hours as part of the “traditional Gunners breakfast”; and
 - b. to sell liquor during its ANZAC Day breakfast from 0700hours.
7. As previously noted, the applicant has previously been issued temporary variations to its current licence 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 and in fact was advised as follows:

“There is no recorded negative compliance history for this venue in a general all-encompassing nature and no specific negative compliance issues for any previous ANZAC Day services or variations. Licensing NT does note that the Palmerston RSL Sub Branch forms part of this club and has always been compliant in all issues of the liquor licensing and gaming machine compliance. As the club is directly linked to an RSL they fall under the 2009 Licensing Commission Decision that permits variations of licence conditions for licensed premises in these circumstances to allow for extended or early liquor trading. This club takes compliance very seriously.”

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 City of Palmerston, Department of Health (“DOH”), NT Fire and Rescue Service (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.
9. With respect to this application:
 - a. The City of Palmerston requested that consideration be given to the following:
 - i. “Consumption should be within the premises of the premises and alfresco dining area and only to members and bona fide guests.

- ii. That the sale of takeaway alcohol is not included in this variation and that takeaway sales are only permitted as per current licence conditions.
 - iii. Control of any additional noise and responsible service of alcohol should be in alignment with current licence requirements.
 - iv. Any planned events should cognisant (sic) that it is a public holiday and should take into consideration any impact this may have on the surrounding community and residents”.
- b. The DOH made no adverse comment in relation to the traditional gunshot breakfast, however they advised that they did not support the application:
 - i. “... for commencement of trade prior to the accepted commencement time of 09:00 hours (Public Holiday takeaway trading hours)”
 - ii. The Commission further notes that Mr Peter Boyle in fact personally attended at the public hearing of this application and confirmed the response outlined above. Mr Boyle further noted that he was concerned about what appeared to be a “bracket creep” generally in terms of the hours of alcohol consumption on ANZAC day.
 - iii. Mr Boyle further noted however that he had spoken “briefly” with the representatives of the applicant before appearing before the Commission and that it “appeared” to him as a result of those discussions that with respect to this applicant; “early morning liquor consumption was respected by all”.
- c. The NTFRS had no “objection”.
- d. The NT Police supported the “traditional gunshot breakfast – however will not support any alcohol consumption post gunshot breakfast”.

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 the nature of this application is similar to previous applications and approvals granted to the Applicant. As earlier noted, although there is no formal obligation to consult, responses were sought from the relevant stakeholders and in general terms the significant issue raised was the consumption of alcohol and its trade post what the applicant refers to as the “Gunners Breakfast” and prior to the commencement of the usual trading hours under the current licence.

16. As previously noted; the Commission understands that not only did the 2017 ANZAC Day event occur without issue; but that it does in fact appear that the Palmerston RSL Sub Branch which forms part of this club has “**always**” been compliant in all issues of the liquor licensing and gaming machine compliance. Further, that this club is known to take compliance “**very seriously**”.
17. Whilst the Commission notes the matters raised by those consulted; there has been no evidence provided to this Commission to suggest that compliance will not continue or that obligations of any special licence will not be taken seriously. Therefore there is no evidence before the Commission to suggest there should be any changes to the types of condition previously imposed upon the applicant for similar applications for ANZAC Day events such as the one relating to this special licence application.
18. 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:

19. 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.
20. 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.
21. 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 City of Palmerston, DOH, NTFRS and NT Police.



JODI TRUMAN
Deputy Chairperson
Northern Territory Liquor Commission

16 April 2018