

# Delegate of the Liquor Commission

## Decision Notice

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<b>MATTER:</b>	<b>TWO APPLICATIONS FOR SPECIAL LICENCES</b>
<b>REFERENCE:</b>	LC2018/130
<b>VENUE:</b>	Anzac Oval Wills Terrace ALICE SPRINGS NT 0870
<b>APPLICANT:</b>	Alie Springs Golf Club Incorporated
<b>EVENT:</b>	Masters Games Opening and Closing Ceremonies
<b>LEGISLATION:</b>	Part VI of the <i>Liquor Act</i> (“Special Licences”)
<b>DECISION OF:</b>	Mr Russell Goldflam (Acting Deputy Chairperson)
<b>DATE OF DECISION:</b>	30 September 2018

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### 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 the Alice Springs Golf Club Incorporated (“the applicant”) for the sale of liquor, namely full-strength, mid-strength and light beer, still and sparkling wine and pre-mixed UDL spirits, from 17:00 hours to 23:00 hours on Saturday, 13 October 2018, and from 17:00 hours to 23:00 hours on Saturday, 20 October 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: Lynette Marie Howes**
  - 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 larger than 150 ml.
- c. Liquor must be sold in either opened cans or soft plastic cups. Liquor must not be sold in glass containers.
- d. A minimum of twenty nine (29) Crowd Controllers is required to be in attendance. To the extent that this condition is inconsistent with the Condition set out at paragraph 2(e) above, this condition prevails.
- e. Notwithstanding the Condition set out at paragraph 2(g) above, from 22:00 hours on 13 October 2018 and 20 October 2018, no more than two drinks may be served per person per transaction.
- f. The holder of the special licence must provide to Licensing NT not later than 16:00 hours on 6 October 2018 the names of all crowd controllers to be employed at the events.
- g. The holder of the special licence shall ensure details of safe transport to and from the function are advertised in the *Centralian Advocate* no later than 1 week prior to the events.
- h. The holder of the special licence shall ensure that a substantial number of persons involved in the sale/supply of liquor on the licensed premises have completed a Responsible Service of Alcohol Course approved by the Director-General of Licensing.

## **Reasons**

### **Background**

4. Pursuant to section 58 of the *Liquor Act* (“the Act”), the applicant applied to the Director-General of Licensing on 23 August 2018 for special licences to permit the sale of liquor on 13 October and 20 October 2018 to persons attending the Opening and Closing Ceremonies of the Alice Springs Masters Games, a biennial event showcasing an array of sports for persons over the age of 30 years.
5. The applicant has identified light, mid-strength and heavy beer, UDL pre-mixed spirits and still and sparkling wine as the types of alcoholic beverages it proposes to sell.

### **A major event**

6. The Masters Games Opening and Closing Ceremonies are “major events”. 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 extension of time.
8. The failure of the applicant to lodge its application on time and without displaying either the courtesy or common sense of seeking to explain or excuse the delay, is of concern to the Commission.
9. Preparation of the brief by Licensing NT for presentation to the Liquor Commission was complicated by the similarly late submission – and subsequent late withdrawal (on 14 September 2018) – of an application on behalf of the Alice Springs Apex Club to operate one of the two Anzac Oval bars proposed for these events. The Commission notes that the long-standing former practice of two separate licensees operating at the Alice Springs Masters Games Opening and Closing Ceremonies, which has been a source of discussion and debate for some years, was an arrangement which may have given rise to a higher level of risk management for the licensees. Although the Commission makes no comment as to the merits of the abandoned Apex Club application (which it has not been provided with), the withdrawal of the Apex Club application has simplified the task of the Liquor Commission in determining this matter. The Commission commends the Apex Club for taking a carefully and responsibly considered approach to the assessment of risk posed by having two licensees at these events, which in turn led it to withdraw its application.

10. On this occasion, after serious consideration, the Commission has decided to waive compliance with the three month notice requirement, having regard to the following matters:
- The events are of major significance to the local economy
  - The events enjoy broad community support
  - The events are sponsored and supported by the Northern Territory Government through the Department of Tourism and Culture, which has overall responsibility for organisation of the Alice Springs Masters Games
  - The applicant has a generally good record of compliance with licensing requirements for these events in previous years
11. The Commission notes that the Application Notes also specify the following requirements in relation to special liquor licences for major events:
- 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 Licensee shall ensure details of safe transport to and from the function are advertised in the Northern Territory News (*or regional papers*) no later than 1 week prior to the function.
  - The Licensee shall ensure that a substantial number of persons involved in the sale/supply of liquor on the licensed premises have completed a Responsible Service of Alcohol Course approved by the Director-General of Licensing.
12. Despite having been notified of these requirements, the applicant has not adverted to them in its applications, and accordingly, the Commission is concerned that the applicant does not intend to comply with them. To address this concern and ensure compliance, the Commission has determined to incorporate these requirements into the conditions of the licence.
13. The applicant is placed on notice that 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.

#### **Event security and crowd control**

14. The applicant estimates that 5000 – 6000 people will attend each of the two events.

15. 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 29 Security Guards provided by Wilsons Security. The event organiser contends that its budget does not extend to the provision of the industry standard 50 or 60 crowd controllers. The Commission is advised that Masters Games Opening and Closing Ceremonies have been managed in previous years along similar lines without serious security incidents or compliance issues.

### **Event Risk Management**

16. The Applicant has provided a comprehensive and detailed Risk Management Plan for the event.
17. The Risk Management Plan identifies the risk of patrons becoming affected by alcohol as being likely, with a minor consequence. Under the Risk Management Plan, this constitutes a “Moderate Level” risk for which Management Responsibility must be specified.
18. The Risk Management Plan identifies the following preventative actions for this risk:
- Bar and control staff with Responsible Service of Alcohol qualifications positioned at bars to monitor patrons showing signs of intoxication and/or anti-social behaviour or deemed drunk under the relevant Liquor Licence Act [sic]
  - All staff are aware of obligations under Liquor Licence Act
  - Liquor licence holder trained and aware of obligations under the Liquor Licence
  - Drink service personnel will be briefed on responsible service protocols
  - Patrons deemed to be drunk to be monitored for behaviour changes
19. The Risk Management Plan identifies the following response actions for this risk:
- Patrons presenting at the gate showing signs of intoxication and/or anti-social behaviour or deemed drunk will be refused entry.
  - Patrons inside the venue showing signs of intoxication and/or anti-social behaviour or deemed drunk may be required to leave the venue.
  - Patrons who are showing signs of intoxication and/or anti-social behaviour are refusing to leave will be removed by security, Police to be called on if necessary
  - Police presence, police to take control if required.

20. The Risk Management Plan further identifies the resource requirements, management and staff responsibilities, reporting and monitoring requirements associated with the management of this risk, including a requirement that crowd control base will record all incidents in a log, that all issues are to be reported to the Event Manager, and that the head of crowd control report incidents if required to police.
21. The Risk Management Plan identifies the risk of insufficient security personnel as being unlikely, with a moderate consequence. Under the Risk Management Plan, this also constitutes a “Moderate Level” risk for which Management Responsibility must be specified.
22. The Risk Management Plan identifies the following preventative actions for this risk:
  - Event Manager has contracted a professional security organisation with an extremely high experience level of similar events
  - Event Manager has conducted pre-event briefings leading up to the event to evaluate crowd numbers
  - Event Manager has consulted with Police and relevant Council Departments for correct security/crowd ratio
  - Ensure historic data on walk-ups at the past events are factored in to estimations on crowd numbers if applicable
  - Ensure contingency plans are in place in anticipation of rostered staff no shows, by employing additional required staff to cover shortfall
  - There will be 29 security personnel attending this event
  - Overnight security personnel are trained in asset protection and a similar security officer is on call if required
23. The Risk Management Plan identifies the following response actions for this risk:
  - Ensure priority areas are identified and security maintains these areas as a priority
  - If extra staff is required, site manager will contact Security Base
  - If security contractor is unable to supply, additional personnel will be sourced from other local providers.

## Consultation

24. 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”), St John’s Ambulance, Northern Territory Fire and Rescue Services (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”).
25. DOH had no adverse comment to make, but reminded the applicant of its responsibility with regard to smoking compliance at the venue.
26. St John’s Ambulance, on being informed that appropriate arrangements had been made for onsite first aid coverage, raised no objection to the application.
27. NTFRS raised no concerns.
28. NT Police indicated that they supported the application on the following conditions:
  - Industry standard security for the expected crowd numbers
  - Low to mid strength alcohol
  - Maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event
  - Request that responsible alcohol consumption messaging be provided to patrons throughout the event with an emphasis on a safe plan to get home if you are drinking – Sober Bob or call someone sober.
29. In response to the concerns regarding security, the event organiser undertook (by email from Jim Lawrie dated 26 September 2018) to increase crowd controller numbers from 19 to 29. The applicant also agreed to a staggered decline in drinks per transaction towards the conclusion of the event, and to provide responsible alcohol consumption messaging and Sober Bob signage to be placed at the bar and surrounds during the event.
30. The applicant however maintained its request to supply full strength beer, RTDs in 375 ml cans at strength between 4.6% and 4.8%, and wine served in soft plastic cups, at 100ml per serve.
31. Additionally, in support of the applications the Commission has received and notes written representations from the Hon. Dale Wakefield MLA, the Member for Braitling, and oral representations to Licensing NT staff from Mr Murray Stewart, Chair of the Desert Sports Foundation. Curiously, Mr Stewart declined the request by Licensing NT that he put his representation in writing, and instead advised Licensing NT that “as a columnist with the Centralian Advocate he would be placing them in writing in his column”. As stated at paragraph 24 above, the *Liquor*

Act does not provide for objections for special licences. Similarly, the Act makes no provision for supporting submissions in relation to applications for special licences. Nevertheless, the Commission welcomes comments or submissions by interested persons in relation to such matters. The Commission notes, however, that such comments or submissions should be directed to the Commission in writing, so that they can be more readily and accurately considered and evaluated. In determining these applications, the Commission has had no regard to media statements or reports relating to the applications.

### **Assessment of the Application**

32. 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.
33. 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.
34. 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”.
35. 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.”

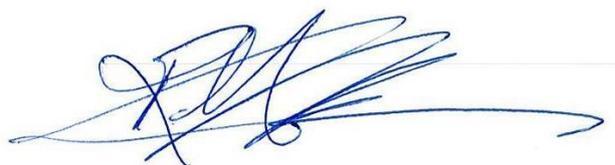
- 36. As I have been delegated the authority to make this decision, I too am bound by these objects and they have been considered carefully by me when determining this application.
- 37. The Commission considers that the objects of the Act are served by imposing restrictions on the supply of liquor in addition to the “standard conditions” at these events. 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 these popular social events.
- 38. The Commission has particular regard to the size, location and configuration of the venue, the proposed hours of trading, the anticipated number of patrons, the character and history of the events, and the event Risk Management Plan.
- 39. NT Police submit that the only liquor sold at these events should be mid-strength or light beer. NT Police have not sought to substantiate this submission by either advancing reasons or citing evidence. In relation to the NT Police submission on this issue, the Commission makes the following observations:
  - a. The licence conditions proposed by NT Police would, if imposed, be significantly more restrictive than the conditions imposed on the applicant in relation to similar previous events. The Commission considers that in order to impose such significantly restrictive changes, it would require provision of material tending to establish to the Commission’s satisfaction that the conditions previously imposed are inconsistent with or unsupportive of the objects of the Act, and in particular the primary object of harm minimisation set out at s3(1)(a) of the Act.
  - b. The only justification for the submission on this issue provided by NT Police is their assertion that “Alice Springs Police only support mid-strength or light beer at all events”. This assertion is incorrect: NT Police have not always or consistently adopted this position. For example, NT Police did not oppose the sale of full strength beer at the August/September 2018 Red Centre Nats event at Blatherskite Park.
  - c. Nevertheless, it is the case that in 2018 NT Police have frequently adopted this position in relation to applications for similar special licences, giving the appearance that the proposed restriction is put forward as a general police policy stance, rather than as a response based on an individualised assessment of the merits of an application. The Commission is not assisted by being confronted with an apparent policy position unsupported by argument, evidence or reference to recognised best practice standards.
  - d. The Commission has made similar observations about this matter in several Decision Notices it has issued in 2018. NT Police have now been repeatedly placed on notice about this by the Commission: unless the apparent policy position taken by NT Police is supported by properly articulated reference to argument, evidence and reference to recognised best practice standards, the Commission is unlikely to give the police

submission substantial weight in determining applications for special licences.

40. In the Commission's current view, an appropriate limit for events 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. Although the applicant has offered to restrict wine to serves of 100 ml, the Commission considers that in the interest of consistency and fairness, patrons who prefer to drink wine should be permitted to purchase it in serves of one a half standard drinks, like the patrons who purchase pre-mixed spirits or full strength beer at the events. That said, the licence conditions imposed do not prevent the applicant from selling wine in serves of 100 ml if it wishes to do so.
41. 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 14, 15, 21, 22 and 23 above. The Commission notes that no material has been placed before the Commission tending to establish that problems have arisen at previous similar events because of a lack of crowd controllers.
42. Taking these matters into account, the Commission has determined that the additional conditions set out at paragraph 3 above should be imposed.

**Notice of Rights:**

43. 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.
44. 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.
45. 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

1 October 2018