

Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/040
VENUE:	Hagen Park Perry Drive TENNANT CREEK NT 0860
APPLICANT:	Tennant Turf Club
EVENT:	Tennant Creek Annual Race Meeting
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Mr Russell Goldflam (Acting Deputy Chairperson)
DATE OF DECISION:	15 May 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 the Tennant Turf Club for the sale of liquor on Saturday 19 May 2018 between the hours of 1100 hours and 2000 hours.
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.
 - b. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.
 - c. The Nominee is identified as Mr Andrew O'Toole
 - d. Persons under the age of 18 years must not be used in the sale or supply of liquor.
 - e. 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.

- f. Any person involved in Crowd Control, as defined under *the Private Security Act*, at the premises, must be licensed as required by that Act.
- g. Crowd Controllers are to be employed as per industry standards as follows: Two (2) licensed crowd controllers for the first 100 hundred patrons and one (1) additional crowd controller for each 100 hundred patrons thereafter.
- h. All liquor must be sold in open containers.
- i. No more than four (4) cans or bottles must be sold to any one person at any one time.
- j. 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.
- k. Liquor must not be sold or supplied to a person who is drunk, or to a person under the age of 18 years.
- l. 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.
- m. The Licensee must comply with all requirements and guidelines published by the Liquor Commission or Director-General, including guidelines related to the conduct of entertainment.
- n. Where the Licensee 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.
- 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 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.
- q. All liquor purchased for sale under the authority of this special licence MUST be purchased from a licensed retail outlet.
- r. The Licensee 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.
- 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 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.
- u. The Licensee 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*.
- v. Food and drinks are not permitted to be taken into any designated smoking areas.
- w. The Licensee or employee of the Licensee 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. The only liquor to be sold between 1100 and 1300 is to be light or mid-strength beer.
- b. The only liquor to be sold between 1700 and 2000 is to be light or mid-strength beer.
- c. The only liquor to be sold between 1300 and 1700 is to be wine (including sparkling wine), full-strength beer, mid-strength beer or light beer.
- d. Unless more than 500 people attend this event, no more than three Crowd Controllers are required to be in attendance. To the extent that this condition is inconsistent with Condition 2g above, this condition prevails.

Reasons

Background

- 4. Pursuant to section 58 of the *Liquor Act* (“the Act”), the Tennant Turf Club applied to the Director-General of Licensing on 18 April 2018 for a special licence to permit the sale of liquor to persons attending the event known as the Tennant Creek Annual Race Meeting, a day of thoroughbred horse racing and activities.
- 5. The applicant is seeking to sell liquor between the hours of 1100 hours and 2000 hours on Saturday 19 May 2018. It was stated in the Application that it was anticipated by the applicant that there would be 400 persons in attendance.
- 6. An exemption is also sought by the applicant from providing private security or crowd controllers in accordance with the industry standard. The applicant proposes instead that there be only three crowd controllers on site.
- 7. The applicant has previously been issued special licences for past Tennant Creek Race Days including in 2017 at a different venue. I have not been informed by Licensing NT of any previous compliance issues with respect to the applicant. In 2017, the applicant sought and was granted a Special Licence with a condition

that three Crowd Controllers be provided, following consultation with NT Police, who did not object to the Application.

8. In the Application, the applicant identified “Beer, wine, spirits” as the types of alcoholic beverages it proposed to sell. However, in an email dated 19 April 2018 to NT Licensing, the Nominee stated (in answer to the question “what type of alcohol will be sold at the event, ie light, mid and heavy beers etc”), “I would be thinking one heavy beer (Carlton Draught, I think), two mid-strength beers and one light beer.”

Consultation

9. 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 Barkly Shire Council, the Department of Health (“DOH”), Northern Territory Fire and Rescue Services (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.
10. With respect to this application:
 - a. The Barkly Shire Council did not respond to the invitation to comment issued on 27 April 2018 and renewed on 30 April 2018.
 - b. The DOH had “no adverse comment” but requested that the applicant be reminded of its obligations in relation to smoking.
 - c. The NTFRS had “no objections” to the application.
 - d. The NT Police responded as follows:

The Superintendent is supportive of the following conditions be put forth in light of how Tennant Creek has been lately and the alcohol related harm issues they have surrounding alcohol. The applicant really does need to ensure they have adequate security considering the liquor restrictions on Tennant Creek.

- Low to Mid Strength alcohol only be provided
- Minimum of 5 security guards
- 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event
- Alcohol volume to be one standard drink or less per service
- Last drinks implemented before closure of event

Assessment of the Application

11. 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.

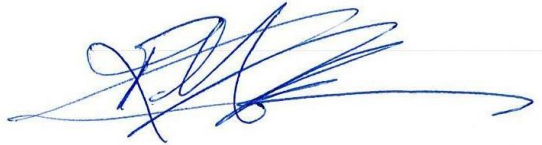
12. As a result, it has previously been determined by the Commission that an application for a special licence is **not** a licence with respect to which I am bound to apply the public interest and community impact test as provided for under section 6 of the Act.
13. The Commission has previously noted 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”.
14. 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.”
15. 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.
16. Although there is no formal obligation to consult, responses were sought from the relevant stakeholders and two (2) matters were raised, both by the NT Police, that require consideration. These, in general terms, relate to:
 - a. Type of alcohol to be supplied and the conditions upon which it is supplied as identified in the response.
 - b. Security (or crowd controller) numbers.

17. In relation to the type of alcohol to be sold, as is indicated above, unfortunately the applicant has been somewhat vague and inconsistent, initially applying to sell beer, wine and spirits, but subsequently identifying only heavy, mid-strength and light beer.
18. In relation to the maximum number of drinks to be served and a decline towards the conclusion of the event, I note that this appears to be a general response provided by NT Police with respect these types of applications. I note that the Commission has hypothesised recently that this may be a general policy stance taken by police.
19. The NT Police proposal that volume be limited to no more than one standard drink per service, if accepted, would effectively restrict the applicant to the supply of light or mid-strength beer, or 100 ml serves of wine. This is because full strength beer and RTD pre-mixed spirits are usually packaged in containers of 375 ml, with 1.4 standard drinks (or higher, depending on the strength of the RTD product) per serve. It would be impracticable to require full-strength beer to be served only in measures of 280 ml.
20. Nevertheless, as this Commission has recently noted, liquor is consumed in Tennant Creek at twice the rate per capita for the Northern Territory, and two and a half times the National Health and Medical Research Council's guidelines of a lifetime average two standard drinks per day. As the Commission recently observed:

At the average 2016 Tennant Creek levels of 5.3 standard drinks per person per day, males are 7 times more likely to die of alcohol-caused disease or injury than the average Australian; females are 10 times more likely to die of disease, and 4.5 times more likely to die of injury. The average Tennant Creek drinker has a one in four chance of being hospitalised over their lifetime as a result of alcohol-caused injury.
21. Having regard to these circumstances, I consider that there is merit in the NT Police submission, and that limits should be imposed on the consumption of liquor at this event, although I am also mindful of the object of enhancing community amenity, and the public interest in the consumption of liquor at this community event.
22. Taking these matters into account, I have determined that full strength beer and wine (including sparkling wine) should be available for sale at this event on a restricted basis, namely between 1300 and 1700 hours.
23. In relation to security crowd controller numbers, I have determined that an exemption be granted to the applicant substantially in the terms sought. In doing so I have had regard to the fact that in 2017 this event proceeded with 3 crowd controllers, without objection from the police, and without incident; that the applicant will utilise the services of an established professional private security operator; that the availability of security guards in Tennant Creek is limited; and that the additional restrictions in the licence on the sale of liquor will likely reduce the risk of anti-social behaviour by intoxicated patrons.

Notice of Rights:

24. 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.
25. 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.
26. 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