

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/020
PREMISES:	Freds Pass Sport and Recreation Reserve 20A Bees Creek Road FREDS PASS NT 0822
APPLICANT:	Freds Pass Rural Community Show Incorporated
EVENT:	Freds Pass Rural Community Show
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	8 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 Freds Pass Rural Community Show Incorporated for the sale of liquor between the hours of:
 - a. 1600 hours and 2330 hours on Friday 18 May 2018;
 - b. 1000 hours on Saturday 19 May 2018 and 0030 hours on Sunday 20 May 2018;
 - c. 1000 hours and 1600 hours on Sunday 20 May 2018.
2. The granting of approval is subject to the following conditions, namely:
 - a. The liquor shall be sold at the event known as the "Freds Pass Rural Community Show" occurring at the Premises known as the Freds Pass Sport and Recreation Reserve located at 20A Bees Creek Road, Freds Pass in the Northern Territory.
 - b. 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.

- c. A nominee MUST BE present during all trading hours and must ensure compliance with the conditions.
- d. The Nominee is identified as Mr Ian Sloan.
- e. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- f. 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.
- g. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.
- h. Crowd controllers are to be employed as per the submission lodged by the applicant of static and roaming crowd controllers noting the minimum provided of four (4) roaming guards plus twelve (12) guards concentrated around the licensed area.
- i. All liquor must be sold in open containers.
- j. No more than four (4) cans or bottles may 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. Where the Licensee is operating from enclosed premises, the Licensee must prominently display on the licensed 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 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 venue 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”).
- x. The Licensee is not to provide alcoholic drinks that are:
 - i. Designed to be consumed quickly and which are commonly referred to as a “shot” or “shooters”; or
 - ii. A cocktail containing more than a 30ml nip of spirit or liquor.
- y. Designated ‘Dry Area’ to be established and maintained;
- z. At least 75% of crowd controllers employed must wear clothing that is readily identifiable. For example: Hi-Viz vests with 'Crowd Controller', 'Security' or 'Safe Staff' or similar stated.
- aa. For the purpose of fire safety:
 - i. Dry chemical powder extinguishers (3A40B:E) to be located with each stage performing area where there is power being used and at all the food stall vendors areas along with fire blankets;

- ii. Within the Fred's Pass Hall Building - All doors (including caged area) to be held in the open position whilst show is open to the public. No persons to occupy this building overnight when building is locked/secured.
- iii. Licensee is to ensure that all fire safety equipment at Freds Pass is being maintained six monthly as per Australian Standards (AS 1851).

Reasons

Background

3. Pursuant to section 58 of the *Liquor Act* ("the Act"), Freds Pass Rural Community Show Incorporated applied to the Director-General of Licensing on 20 March 2018 for a special licence to permit the sale of liquor to patrons attending an event known as the "Freds Pass Rural Community Show" occurring at the Premises known as the Freds Pass Sport and Recreation Reserve located at 20A Bees Creek Road, Freds Pass in the Northern Territory.
4. The application was then referred to the Liquor Commission on 20 April 2018 and to me pursuant to my delegation to deal with such special licence applications.
5. The Freds Pass Rural Community Show is an annual agricultural show with attractions and entertainment that is described as primarily targeted towards a "family orientated crowd". The entertainment and attractions for this year's show include equestrian events, a dinner feast, arts and crafts, a fireworks display and live music.
6. The event occurs over three (3) days and the applicant estimates a crowd of approximately 20,000 persons will attend the event over those three (3) days. The applicant is seeking to sell liquor between the hours of:
 - a. 1600 hours and 2330 hours on Friday 18 May 2018;
 - b. 1000 hours on Saturday 19 May 2018 and 0030 hours on Sunday 20 May 2018;
 - c. 1000 hours and 1600 hours on Sunday 20 May 2018.
7. The applicant wishes to offer a full range of alcoholic beverages including light, mid and full strength content options as well as cider, wine and ready to drink ("RTD") spirits. The applicant indicates they will also adopt and enforce a designated "dry area" within the licensed area where patrons must not possess or consume liquor. This area is known as "Side Show Alley" and is an area anticipated to predominantly entertain children and families.
8. In relation to private security and/or crowd control, the applicant sets out in the application that:

“There are always four roaming guards for Friday, Saturday and Sunday which are 24 hour security. 19/5/2018 – 4 roaming guards plus 12 guards are concentrated around the bar and licensed area from 6.00pm – 12.30am. If additional security is required due to crowds then the security firm is advised and immediately brings in additional guards to cover anything unexpected. 20/5/18 - 4 roaming guards plus 12 guards are concentrated around the bar and licensed area. Again if additional security is required due to crowds then the security firm is advised and immediately brings in additional contingency guards”.

9. The applicant has previously been issued special licences for the event in previous years. A special licence for the 2017 event was granted in virtually the same terms and conditions as sought in this present application. The only distinguishing feature being that an additional one and a half (1 ½) hours is sought for the Friday evening and an additional one (1) hour on the Sunday evening. I have been informed by Licensing NT that there are “nil compliance issues ... evident on file for the Freds Pass Rural Community Show in recent years”.

Consultation

10. 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”), St John Ambulance (“SJA”), NT Fire and Rescue Service (“NTFRS”), and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.

11. With respect to this application:

- a. The DOH had “no adverse comment”.
- b. SJA advised there were “no problem” from their perspective.
- c. The NTFRS advised that they had:

“... no objections ... on the following conditions:

1. Dry chemical powder extinguishers (3A40B:E) to be located with each stage performing area where there is power being used and at all the food stall vendors areas along with fire blankets.
2. **Fred’s Pass Hall Building** ... All doors (including caged area) to be held in the open position whilst show is open to the public. No persons to occupy this building overnight when building is locked/secured.
3. Organisers are to ensure that all fire safety equipment at Fred’s Pass is being maintained six monthly as per Australian Standards (AS 1851)”.

- d. The NT Police responded as follows:

“NT Police would like to provide the following comment with regard to this application on the basis of the application received and the responses to a number of queries put forward by NTPOL:

- The event be restricted to the sale of low and medium strength alcohol proper with the exception of the “50km feast dinner” subject to appropriate security numbers. The reliance of such events on high range or heavy alcohol sales is not in keeping with community and or Police expectations, does not satisfy alcohol harm minimisation and when considering the adverse impacts of alcohol on the Northern Territory, the need to focus on comfort, safety and security of patrons and service providers support an event with low and medium range alcohol in the common areas or general public areas of the event.
- In relation to the number of patrons, NTPOL is concerned that there are insufficient mechanisms in place to determine the number of patrons present. NTPOL recommends that the applicant be required to keep a tally of patron numbers during event to include capacity to report on same if and when requested to by police and or Licensing Inspector, and that industry standards be maintained for event 2 security:100 patrons and 1:100 thereafter. In the current proposal there is a massive proposed licensed area (as outlined in the “site map”) and the proposed security officers versus patrons for the event does not satisfy industry standards.
- NTPOL also has concerns regarding the management of any additional security that may be required if number exceed the expected and believe further consideration of the mechanisms to implement additional security personnel is required to ensure public safety.
- In relation to the “50km Feast” NTPOL recommends industry standards be adhered to for security. 3 security officers for that event alone will be needed in addition to those on the gates”.

Assessment of the Application

12. 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.
13. As a result, it has previously been determined by this 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.

14. 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”.

15. 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.”

16. 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.

17. In relation to the matters raised by NTFRS and NT Police I requested that the applicant provided a response. I have been informed that the applicant has addressed the matters raised by NTFRS. I have therefore included those conditions within the licence as they appear reasonable in all the circumstances and have already been complied with by the applicant.

18. In relation to the matters raised by NT Police, the applicant responded on 3 May 2018 as follows:

“We have real concerns regarding mid strength – this will affect the viability of the bar and the Show.

I will come back with answers tomorrow for security”.

19. On 4 May 2018, the applicant provided a further response as follows:

“Please see revised map on required liquor licencing area. Liquor past this point will not be permitted.

Signage will be placed around the reserve all in areas marked “no alcohol permitted” in around the specific areas.

In regards to patrons – is the liquor licencing referring to the 2-days of the show or just the concert. We have security on all gates – 6 in total and patrons are checked when entering the reserve to ensure that they are not carrying any alcohol.

The maximum we have attend the concert in the evening is between 800 and 1,500 people. Once the fireworks are completed the majority of families leave the reserve and the concert is usually enjoyed by mature aged people who know their limits with drinking of alcohol. The maximum number of guards that are intended for the Saturday evening has increased to 15 guards to ensure that if we get more then we have this covered with security.

In the 38 years of the Show there has never been a recorded incident at the bar area or any issues relating to alcohol over indulgence or harm.

Please see information from the Bar Operator also on the comments received.

It is impossible for us to monitor those entering the stage area specifically as the reserve is 178 hectares and we cannot fence the entire reserve due to budget restrictions. Temporary fencing is placed around perimeter of the grounds so that patrons cannot enter illegally. Security is always around the bar area.

The Show is a not for profit organisation and we are currently spending over \$22,000 on security in 2018 and increase of almost \$6,000 from 2017. We have also increased our fencing and signage requirements as well to ensure that we adhere to the liquor licencing requirements with an additional cost of almost \$5,000.

We are happy for the liquor licencing to come out and see the bar area and inform us what further we need to do and additional money expenditure that we currently have not budgeted for.

Information received from the Bar Operator via email.

With both points there has never been any issues in the past.

Are they talking about the whole event or just the Saturday Night?

If it is just Saturday maybe we reduce the licensed area to be just the bar area and the lawns out the front and maybe over to the toilets?

Mid strength is not an option at this stage. We will not be able to get the stock here in time for the event. !! We would not be in a position to run the bar .!

The event has been run for many years with no alcohol related issues

There is a community expectation for there to be a range of both full strength and mid strength beverages

There is a good selection of soft drinks and complimentary tap water.

The operators are reputable with a history in licensed premises and running such events. Everyone is very aware of their obligations under the liquor act.

This is a popular community event enjoyed by many locals and tourists.

20. It is apparent from the above that the applicant was somewhat taken aback by the “conditions” proposed by NT Police. It is also apparent that the applicant has a genuine desire to provide for a safe and family friendly event. That all bodes well for the community and it is apparent that this is consistent with the applicant’s conduct in the past for this event. As earlier noted, although information provided by NT Police is duly considered, I am not bound by any such response when determining the manner in which to exercise my discretion with respect to an application for a special licence.
21. In relation to these matters, I note that it appears from the material provided to me that the conduct of this event has been appropriate and successful for a number of years now. In particular, there has been no compliance issues in relation to the special licence granted “in recent years”. I note the 2017 special licence did not provide for any restriction in terms of the alcohol to be sold during the course of the event, nor did it provide for the industry standard in relation to the number of crowd controllers. In fact in terms of crowd controllers, the industry standard was not provided for but an exemption included in specific terms.
22. Given these circumstances and also the additional efforts already made by the applicant with respect to crowd control at this event I have determined that there is no basis to support a finding that there MUST be a specific condition that provides for these matters within the special licence. Given the successful history of this event which has occurred without such condition being included for a number of years now, I do not consider there is a need with respect to this particular special licence for such conditions to be considered and/or imposed and I decline to do so.
23. I note the applicant’s reference to its successful history over the last “38 years”. They have a right to be duly proud of that history. I have nothing before me to suggest that will not continue or that measures are required to be put in place to deal with an identified risk with this particular event.
24. It is as a result of the matters outlined above that I am, on balance, satisfied that the objects of the Act have been sufficiently addressed and for the reasons outlined I have decided to grant the special licence as outlined at the start of this Decision Notice.
25. Before finalising this Notice, I do however wish to make a further matter clear to the Applicant. It is apparent from the material before me that when the special licence was issued in 2017 the Applicant was put on notice within the Decision

Notice that “(a)ll future applications must be lodged with the Director-General of Licensing in a timely manner, specifically, no later than three (3) months before the event date”. Reference to the need to engage with other relevant stakeholders was also made. That did not occur **again** this year.

26. These warnings should not be considered by the applicant to be mere words. Such time limitation periods should, and **must**, be complied with. Assessing such applications takes time and that is the reason why there are time limitation periods put in place. Given there has been a recent change in the legislation and given that the matter has been referred to this Commission, I have determined on this occasion **only** to deal with the application despite this failure.
27. The applicant should however now be on notice that these failures will not continue to be tolerated. This event has been conducted for a number of years now and this issue was correctly brought to the attention of the applicant by the Delegate of the Director General on the last occasion. Arrangements for the event itself commence many months in advance. Obtaining a special licence to sell and supply liquor is part of that process and the time limitations imposed must be complied with.

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. I am exercising the power to make a Commission decision pursuant to the delegation made to me by the Commission.
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 person is the applicant.



JODI TRUMAN
Deputy Chairperson
Northern Territory Liquor Commission