

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/072
VENUE:	Berry Springs Recreation Reserve 1130 Cox Peninsula Road BERRY SPRINGS NT 0838
APPLICANT:	Berry Springs Recreation Reserve Incorporated
EVENT:	“Territory Day Celebrations - Fireworks”
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	25 June 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 Berry Springs Recreation Reserve Incorporated (“the applicant”) for the sale of liquor between the hours of 1700 hours and 2200 hours on Sunday 1 July 2018.
2. The granting of approval is subject to the following conditions, namely:
 - a. The liquor shall be sold at the event known as “Territory Day Celebrations - Fireworks” occurring at Berry Springs Recreation Reserve located at 1130 Cox Peninsula Road, Berry Springs in the Northern Territory (“the Premises”).
 - 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 Ms Leone Smith.

- 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. The licensee must ensure that at least two (2) crowd controllers are present at all times to monitor and control patron behaviour throughout the licensed trading hours.
- i. All liquor must be sold in open containers.
- j. No more than four (4) cans or bottles must be sold to any one (1) person at any one time.
- k. The licensee must ensure that water, soft drink 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. 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 Service from time to time.
- p. 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.
- q. 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.

- r. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.
- s. 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.
- t. 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.
- u. 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.
- v. 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*.
- w. Food and drinks are not permitted to be taken into any designated smoking areas.
- x. 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”).

It is to be NOTED that to ensure public order and safety, the licensee must obtain the appropriate approval to permit the fireworks display.

Reasons

Background

3. Pursuant to section 58 of the *Liquor Act* (“the Act”), Berry Springs Recreation Reserve Incorporated (“the applicant”) applied to the Director-General of Licensing (“Director-General”) on 21 May 2018 for a special licence to permit the sale of liquor to patrons attending an event known as “Territory Day Celebrations - Fireworks” occurring at Berry Springs Recreation Reserve located at 1130 Cox Peninsula Road, Berry Springs in the Northern Territory (“the Premises”).
4. The applicant advised that a crowd of 400 persons are expected to attend the event. As a result, this application was subsequently referred to the Commission on 21 June 2018 and to me in accordance with my delegation to deal with applications of this nature.
5. The applicant is seeking to sell liquor between for the sale of liquor between the hours of 1600 hours and 2200 hours on Sunday 1 July 2018. The materials provided disclosed that the applicant proposed to make beer, cider and spirits available for sale, including beer in low and full strength varieties. The application

disclosed that the nature and purpose of the event was for Territory Day Celebrations and that the Northern Territory Government had included the applicant

“... in their fireworks celebrations by providing funds for Howard & Sons Pyrotechnics to come and put a professional display on for the public at 8pm. The Reserve puts out sand tins in a controlled environment for the public to let their own fireworks off too”.

6. I was informed by the Acting Deputy Director-General that the applicant has been granted a “special liquor licence for the same event in 2017 and other special licences in August 2017 and October 2017 with no noted compliance issues”.

Consultation

7. 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”), Northern Territory Police, Fire and Emergency Services (“NT Police”), and Northern Territory Fire and Rescue Service (“NTFRS”) and seek their comment.

8. With respect to this application:

- a. The DOH had “no adverse comment”; and
- b. The NTFRS had “no objections”.

9. The NT Police however responded as follows:

“Please note that NTPOL support this application contingent to:

- Provision of industry standard security for expected crowd numbers
- Placing of adequate signage for patrons to know the liquor licensing boundary
- No BYO or alcohol to exit the event”.

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, 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.
12. However 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. 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.
15. As earlier noted there is no provision for formal objections to be made concerning such applications. The NT Police however have raised certain matters that they state their support is “contingent to”. As a result, the matters raised by NT Police were sent to the applicant for their response. The applicant responded as follows:

“RMI Security has been providing our security for the last 5 or 6 years at our Territory Day Celebrations. Based on our previous events, 2 guards have sufficed, due to the predominately family natured event that it is. We intentionally keep the event low key and “local” by not advertising the fact that people can let their own crackers off, as we don’t want to be attracting yahoo immature young crowds. Craig’s number is in the application if the police would like to ring him and verify what I have said.

For the last 6 years that I have been on the committee of the Berry Springs Recreation Reserve and the previous 5 or so before that, that I have been attending this event, it has generally been unchanged in the way it is operated. And I would say that can be said for the previous 10 years to that, when fireworks first came to Berry Springs Recreation Reserve.

We have never placed signage for a liquor licensing boundary, as the Reserve itself, is really the boundary per say. People come with their own crackers to let them off in a controlled and safe environment. They may bring their own picnic dinner & esky with drinks (alcoholic and or non), sit on a rug and enjoy the fireworks. Or they may opt to buy their food & alcohol at the reserve. The bar takings cover the cost of the security guards, ambulance and neon safety sign on the road. If there are any funds remaining, they are re-invested into the Reserve, which is a not for profit organisation run by volunteers, for the benefit & use of the local community. The food stalls are usually run by other local not for profit groups like the volunteer fire brigade.

We also offer free camping to patrons that would like to not drink & drive.

I would just like to re-iterate that we have **never** had an alcohol fuelled unwanted incident at the Territory Day Fireworks and for that reason I don't believe we need to change the way this friendly, easy going event has been run for the past 15-20 years".

16. I have considered the matters raised by NT Police and also the response from the applicant. I do not consider this to be a "high risk" event. I note that the applicant has conducted this event for a number of years and there is no evidence of any compliance issues before me. I further note that in terms of the number of persons estimated to be in attendance at this event, the applicant has stated that "over half" are likely to "be minors".
17. I find that this is a low-risk and family orientated event and one where I consider the applicant has put in place sufficient strategies to address any matters as they arise during the course of the event. I am satisfied as a result of the material provided by the applicant that it would conduct itself appropriately under any special licence granted to it.
18. For these reasons I do not intend to put in place a condition that the applicant complies with the industry standard for crowd controllers. I consider the proposal by the applicant to have "at least" two crowd controllers in attendance to be sufficient.
19. In relation to the question of "adequate signage for patrons to know the liquor licensing boundary", I note that it was a condition of the special licence granted for this occasion in 2017 and for the other special licences issued in 2017 that the boundary be clearly identified and I intend to include this condition within the licence once again as there has been no reason identified by the applicant as to why this should not be included.

20. In relation to the matter of “No BYO or alcohol to exit the event”, I note that this was not a condition of any earlier special licence and given the previous compliance history of this applicant and the nature of this event, I do not propose to include such a condition.
21. I do note however that the application was for the hours of trade to be from 1600 hours to 2200 hours on Sunday 1 July 2018. I note that the special licence granted last year specified the hours as commencing at 1700 hours. The applicant has not identified any basis for starting the hours of trade one (1) hour earlier.
22. Given that this *is* a family orientated event and that the significant purpose of the event is to celebrate Territory Day with the letting off of fireworks that can therefore only be seen as the sun goes down, I do not propose to provide for an additional hour of trade for the service of liquor. The provision of liquor at this event is said to be ancillary to the celebrations and not a primary purpose and I therefore do not intend to grant the additional hour as sought without a basis being identified as to why this should occur.
23. On the basis of the material before me, I find there is no basis to believe the applicant would not comply with the usual conditions of the special licence as sought. Given the nature of this event and for the reasons outlined above; I am, on balance, satisfied that the objects of the Act have been sufficiently addressed and I have decided to grant the special licence as outlined at the start of this Decision Notice.

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.



JODI TRUMAN
Deputy Chairperson
Northern Territory Liquor Commission