

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	2018/103
PREMISES:	Lot 783 Carpentaria Highway BORROLOOLA NT 0854
APPLICANT:	Borroloola Amateur Race Club Incorporated
EVENT:	Borroloola Rodeo
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	7 August 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 Borroloola Amateur Race Club Incorporated for the sale of liquor between the hours of:
 - a. 1200 hours (noon) on Friday 17 August 2018 and 2359 hours on Friday 17 August 2018;
 - b. 1200 hours (noon) on Saturday 18 August 2018 and 2359 hours on Saturday 18 August 2018; and
 - c. 1200 hours (noon) on Sunday 19 August 2018 and 2359 hours on Sunday 19 August 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 “Borroloola Rodeo” occurring at the Premises known as Lot 783, Carpentaria Highway, Borroloola 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 Donald Anthony Garner.
- 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 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.
- i. All liquor must be sold in open containers.
- j. Liquor to be sold at a maximum number to any one person at any one time as follows:
 - i. From 1200 hours (noon) to 2159 hours no more than two (2) cans or bottles must be sold to any one person at any one time.
 - ii. From 2200 hours to 2300 hours no more than one (1) can or bottle must be sold to any one person at any one time.
- k. The sale of liquor is restricted to mid-strength canned products only; those being products with an alcohol volume content not greater than 3.5%.
- l. 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.
- m. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.

- n. 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.
- 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 and Rescue 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”).

Reasons

Background

3. Pursuant to section 58 of the *Liquor Act* (“the Act”), Borroloola Amateur Race Club Incorporated applied to the Director-General of Licensing on 17 July 2018 for a special licence to permit the sale of liquor to patrons attending an event known as the “Borroloola Rodeo” occurring at the Premises located at Lot 783 Carpentaria Highway, Borroloola in the Northern Territory.
4. The applicant is known to Licensing NT having previously sought and obtained special licences to conduct similar events since “at least 2009”. Information provided to me by Licensing NT states that:

“In 2009 the service of alcohol included heavy beer and there were issues reported in relation to the conduct of the event. A meeting was held between the applicant, NT Police and Licensing NT to make arrangements for the future events.

Events since that time have restricted liquor sales to mid-strength alcohol, effective and experienced crowd controllers have been engaged for the event and more robust fencing and lighting were installed to prevent similar issues to those identified in 2009 recurring.

Since 2009 there have been no significant incidents at the event itself, and the applicant has operated the bar without incident or any compliance issues”.

5. The applicant is seeking to sell liquor between the hours of 1200 hours (noon) and 2359 hours on Friday 17, Saturday 18 and Sunday 19 August 2018. It was stated in the application that it was anticipated that a crowd of approximately 1,000 persons would attend over the course of the three (3) day event. There will be rodeo and camp draft events with Country and Western music intended to be played in the arena adjacent to the bar on Friday and Saturday night between 7pm and 11pm. Accompanying the event is a family carnival with sideshow style concession stands, activities, western retail outlets and show bags.

Consultation

6. 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”), NT Fire and Rescue Service (“NTFRS”), and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.
7. With respect to this application; the DOH advised that they had “no adverse comment”.

8. On 19 July 2018, NTFRS advised that it had “no objections on the following conditions:

Event organisers to ensure the following:

- Food providers are equipped with a fire extinguisher & fire blanket (min 1 x 1m), regardless of whether a deep fat fryer is being used or not.
 - If a deep fat fryer is being used than a minimum 1.8 x 1.2m fire blanket is required.
 - All fire equipment (hose reels, extinguishers & blankets) on this site are being maintained six monthly as per Australian Standards (AS 1851).”
9. This information was forwarded to the applicant who confirmed that the Committee for the event had been advised of the requirements.
10. The NT Police advised that they “support this application contingent to:
- Maximum 2 drinks per person with staggered decline towards the conclusion of the event
 - RSA for all staff handling alcohol
 - No BYO or alcohol to exit the event
 - Crowd controllers to be employed at the industry standard (2 for first 100, 1 for every 100 thereafter)”.

11. This information was forwarded to the applicant who confirmed as follows:

“I have read the conditions the Police have requested and understand them. In relation to everyone having a RSA in the past years there was only a requirement for me to hold a RSA. Everyone else who volunteered worked under my supervision. I request this be the case this year as people who volunteer their time don't want to do an online course, don't have any issues with what the Police have commented on and I will liaise constantly with the Police throughout the event to ensure everything runs smoothly”.

12. This response was provided to the NT Police on 24 July 2018 and no further correspondence was received in relation to the request made by the applicant.

Assessment of the Application

13. 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.

14. 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.
15. 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”.
16. 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.”
17. 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.
18. As earlier noted, it is my understanding of the material before me that this application is similar to an application for, and granting of, special licences to the applicant for similar events in 2015, 2016 and 2017. I have been provided with a copy of those special licences. The hours of service are the same. The premises are the same. The type of alcohol sought to be supplied for sale is the same. I have been informed that there were no compliance issues following those events and further that there have been no compliance issues since 2009.

19. Although there is no formal obligation to consult, responses were sought from the relevant stakeholders and apart from one matter raised; the applicant has agreed to comply with each of the requests made by NTFRS and NT Police. The only matter outstanding from those requests is the request by NT Police that “all” staff “handling” alcohol have “RSA” certification.
20. As noted by the applicant this is not a requirement that has been previously in place. Instead, the nominee has been the person to hold a Responsible Service of Alcohol (“RSA”) certificate (or equivalent) and to then “supervise” the sale of liquor. This is a condition in place for every single special licence I have been involved in. I have not seen a condition of any special licence where “all” persons involved in the sale of liquor have been required to hold an RSA certificate.
21. In this matter I have not been provided with any basis whatsoever as to why such a condition should be put in place with respect to this applicant. There have been no issues surrounding this event that have been identified to me that would require such a condition. Further given the applicant’s willingness to comply with other new conditions proposed by NT Police, in particular the staggered decline of service and only two (2) drinks per person, I am satisfied that the applicant (and its nominee) take the conditions of their licence seriously and the requirements of the responsible service of alcohol seriously. I therefore do not consider that such a condition should be part of any special licence granted to the applicant and I decline to make that a condition of this special licence.
22. It is as a result of the matters outlined above that I am satisfied, on balance, 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.

Notice of Rights:

23. 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.
24. 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.
25. 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