

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/127
VENUE:	Mindil Beach THE GARDENS NT 0820
APPLICANT:	Hamark Holdings Pty Ltd
EVENT:	Alison Wonderland – Awake Tour
LEGISLATION:	Section 58 of the <i>Liquor Act</i>
DECISION OF:	Ms Amy Corcoran (Commissioner)
DATE OF DECISION:	11 October 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 a special licence to sell liquor to Hamark Holdings Pty Ltd (**the Applicant**) for the sale of liquor between the hours of:

Saturday, 17 November 2018 from 16:00 to 23:59 hours

2. The granting of approval is subject to the following conditions, namely:
 - a. The liquor shall be sold at the event known as the “Alison Wonderland – Awake Tour” situated at Mindil Beach, The Gardens in the Northern Territory.
 - b. 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.
 - c. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.

Nominee/s: MS LORRAINE PHELAN

- 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 licensed crowd controllers for the first 100 hundred patrons and one additional crowd controller for each 100 hundred patrons thereafter.
- h. All liquor must be sold in open containers.
- i. No more than four (4) alcoholic drinks must be sold to any one person at any one time.
- j. 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.
- 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 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.
- m. 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.
- n. 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.
- o. 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.

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

Commission's instructions in accordance with Condition (p):

- No more than four (4) alcoholic drinks to be sold to any one person at any one time from 1600 hours to 2130 hours, then no more than two (2) alcoholic drinks sold to any one person at any one time from 2130 hours to 2359 hours. To the extent that this condition is inconsistent with Condition 2(i) above, this condition prevails.
- No provision of alcoholic drinks that:
 - 1. are designed to be consumed quickly and which are commonly referred to as a 'shot or shooters'; or
 - 2. are a cocktail containing more than a 30ml nip of spirit or liquor.

- The sale of alcoholic ice slushies is prohibited.
- Liquor or any other beverages must not be sold to patrons in glass containers.
- Soft drinks and water may be available from the bar but must also be available from separate outlets for those patrons under 18 years of age.
- Free potable water must be available to patrons.
- All patrons must be issued with colour coded wristbands upon entry clearly identifying patrons who are:
 1. 18+ years of age; and
 2. under 18 years of age.
- No person is to be sold, consume or possess liquor if they are not wearing an 18+ wristband.
- Children 15 years and under must be accompanied by a ticket holding guardian.
- No pass-outs are permitted for patrons under the age of 18 years.
- Pass outs for patrons 18 years and over are not permitted after 19:00 hours.
- Designated 'Dry Area' to be established and maintained.
- Crowd control arrangements shall comprise of static and roaming crowd controller to diligently monitor and enforce all licensing requirements and regulations pertaining to the sale of alcohol.
- At least 75% of crowd controllers employed must wear clothing that is readily identifiable. For example, high-viz vests with 'Crowd Controller', 'Security' or 'Safe Staff' or similar stated.

Reasons

Background

3. On 3 September 2018 pursuant to section 58 of the Act, Hamark Holdings Pty Ltd (**the Applicant**) lodged an application with the Director-General for the grant of a special licence to permit the sale of liquor to patrons attending an event known as 'Alison Wonderland – Awake Tour' on Saturday, 17 November 2018. The application was then referred to the Liquor Commission and to me pursuant to my delegation to deal with such special licence applications.

4. Alison Wonderland is an Australian electronic dance music DJ, producer and singer. The Awake Tour is part of a National music and dance tour.
5. The Applicant estimates approximately 2,000 persons will attend the ticketed music event held at Mindil Beach. This event is an all ages event with children 13 and under admitted free of charge with a ticket holding guardian whilst the Applicant recommends any children under the age of 16 to be accompanied by a ticket holding guardian.
6. All patrons will be issued colour coded wristbands to identify whether they are 18+ or under 18 years of age. Any patrons inside the venue without a wristband will be evicted.
7. Specifically, the Applicant is seeking a special licence for the following hours of trade:

Saturday, 17 November 2018 from 16:00 hours to 23:59 hours.

8. The sale of liquor to patrons at the event is proposed via 3 bars. Beer, soft drinks, cocktails, ready to drink spirits (**RTDs**), wine and cocktails are proposed to be available for sale throughout the licensed area. Additionally, the Applicant indicates beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength.
9. Complimentary tap water is available to patrons at the event from water stations. There will be no BYO alcohol and patrons will be screened and bags checked upon entry to prevent BYO alcohol, illicit drugs, weapons and already intoxicated persons from entry.
10. Food will be available at the event. The Applicant indicates that a “slushie van serving alcoholic (under 30ml per serve) and non-alcoholic slushies” will be at the event as well as a glitter stall.
11. In relation to security and crowd control arrangements, the Applicant indicates there will be sufficient crowd controllers present at the event to adhere to the industry standard for crowd control. Specifically, this is two licensed crowd controllers for the first one hundred patrons and one additional crowd controller for each one hundred patrons thereafter.
12. The Applicant has confirmed qualified paramedics will be engaged and present throughout the event.
13. A Traffic Management Plan has been prepared by Core Traffic Control and will be implemented for this event.
14. Licensing NT have advised that the Applicant has been issued special licenses to sell liquor at previous major events held in the Darwin region with “nil compliance issues evident on file”.

Consultation

15. 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 Police, Fire and Emergency Services (**NT Police**) and NT Fire, Rescue Service (**NTFRS**), St John’s Ambulance (**SJA**) and seek their comment. With respect to this application:

16. DOH advised that:

“The Department of Health is not able to support this event where underage persons would be permitted to attend. Health maintain the view that it is inappropriate for underage persons to be in attendance at events of this nature. Health has concerns for the wellbeing of underage persons being vulnerable when left along at such events. Health has concerns that underage persons will be left in the city late at night as the last buses leave the Darwin Interchange for Casuarina and Palmerston well before the completion of the event.

The Department of Health has no adverse comment to an adult only event. However, Health asks the Director-General of Licensing to consider patron and community safety & amenity when determining this application.

Health provide the comment on the understanding the applicant is aware of their responsibility with regard to smoking compliance at the venue. Licensing is requested to remind the applicant that food and drinks are not permitted to be taken into any identified smoking area. Appropriate signage is provided for the convenience of the applicant.”

17. The NTFRS advised that it *“NTFRS has no objection to the Special Liquor Licence Application on the proviso that all food vendors have an in date 3A30BE Dry Chemical Extinguisher and 1.2X1.8 Fire blanket present when cooking.”*

18. The NT Police advised that they *“...support this application contingent to:*

- *Only low to mid strength alcohol for sales*
- *Alcohol volume to be one standard drink or less per serve*
- *Staggered declining in alcohol sales as follows:*
 - *From 1400 hours to 2000 hours no more than four (4) cans or bottles must be sold to anyone (1) person at any one time;*
 - *From 2000 hours to 2200 hours no more than two (2) cans or bottles must be sold to any one (1) person at any one time;*

- *From 2200 hours to 2400 hours no more than one (1) can or bottle must be sold to any one (1) person at any one time.*
 - *Industry standard security for expected crowd controllers*
 - *No liquor or other beverages to be sold in glass containers*
 - *All liquor must be sold in open containers*
 - *Include CCTV for crowd monitoring.”*
19. SJA advised that the Applicant had “not confirmed our attendance at this event from either a Volunteer First Aid perspective or a Paramedic perspective, I believe they may be negotiating with private paramedics”.
20. I will address these comments separately below.

Assessment of the Application

21. As noted above, this is an application for a special licence under section 58 of the Act within Part VI of the Act. There are no specific criteria prescribed by 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.
22. 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 under section 6 of the Act.
23. However, pursuant to section 3(3) of the Act, the Commission when “exercising a power or performing a function under (the Act) 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”.
24. 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.”

25. As a delegate of the Commission, I am also bound to have regard to the objects of the Act when determining this application.
26. I note NTFRS’ position above and confirm that the Applicant will need to follow that directive.
27. In regards to SJA comments, the Applicant has confirmed it will be contracting private paramedics for the event.
28. In respect to DOH’s comments regarding smoking areas, I confirm that the Applicant is required to comply with the *Tobacco Control Act* under a special licence. I will address DOH’s concerns regarding an all-ages event below, however, the response to their concerns from the Applicant was as follows:

“Regarding comments made from the Department of Health, we would like to mention that Alison Wonderland is an all ages event just like BASSINTHEGRASS and Darwin Supercars RACE & ROCK concert except the capacity of Alison Wonderland will be no where near as high in patron numbers. The same RSA rules and security monitoring will apply.

We have also implemented the same terms and conditions as above-mentioned events:

- *Children 13 years and under will be admitted free of charge with a ticket holding guardian;*
- *The promoter recommends any youths under 16 years of age who attend the event are accompanied by a ticket holding guardian.”*

29. In respect to the various conditions requested by NT Police, the Applicant has provided a response by email on 12 September which includes the following excerpts:

“Low to mid-strength beer only – We will continue to provide low and mid-strength products in our bars, but we believe to compete fairly in the current commercial market place, full strength products must be available. We continue to uphold the same high RSA standards as we do with all our events.

Alcohol volume to be one standard drink or less per serve – We request to be able to serve pre-mix cans and wine. We also request to sell full strength beer / cider which are 1.4 standard drinks bearing in mind some mid-strength drinks are a 1.2 standard drink.

Staggered decline in alcohol sales – Our gates will open at 4pm. We suggest 4 alcoholic drinks to be sold to any one person at one time between 4pm – 10pm. Then 2 drinks per person between 10.00pm-12.00am.

Industry standard security for expected crowd controllers - Noted and will adhere to condition set.

No liquor or other beverages to be sold in glass containers - Noted and will adhere to condition set.

All liquor must be sold in open containers – Noted and will adhere to condition set.

Include CCTV for crowd monitoring – we will not be supplying CCTV at this event but invite NT Police to come on site if they wish to use their monitoring equipment.”

30. In regards to the matters raised by the NT Police and DOH that are in contention, I comment as follows:

a. *All ages event*

It is important to consider the appropriateness of this event as an all-ages event. DOH have a policy view that events such as these are inappropriate for minors, highlighting concerns regarding their vulnerability if left alone at such events as well as being stranded after the event due to a lack of public transport.

There are of course certain events where it is inappropriate that children be allowed to attend. The question is whether this is such an event or whether the event provides a valued and appropriate entertainment option for children in the greater Darwin area.

Interestingly, the DOH did not raise such concerns with BASSINTHEGRASS. Further, NT Police raised no concerns that this event was an all ages event in the first instance, however, when I requested their position on the matter they only stated that the Applicant must comply with relevant legislation including the *Care and Protection of Children Act*.

The Applicant advised that:

“Alison Wonderland is a nation-wide tour and all other venues around Australia (except for some already licensed late night venues) will be holding this event as an all ages event.”

Given the Awake Tour is generally an all-ages event nationally, it can only be assumed that the content is appropriate for younger audiences and I would accept the Applicant’s suggestion that this concert is similar in target audience to perhaps BASSINTHEGRASS.

I note that the venues in other capital cities that are allowing minors are theatre type venues and the concert time does not generally last longer than 4 – 5 hours. This event is different given the event lasts 8 hours and the venue is open air and not located in the city or built up area but rather slightly away from general conveniences such as taxi ranks. However, this event's circumstances are also not dissimilar to BASSINTEGRASS.

Unlike the Applicant, BASSINTEGRASS does provide a free bus service after their event to the relevant bus interchanges, however, the patron numbers attending this event is significantly less than the 7,500 that attend BASSINTEGRASS and therefore requiring greater transport options.

The Application states that:

“This will be an all ages event. Children 13 years and under will be admitted free of charge with a ticket holding guardian. The promoter recommends any children under 16 years of age who attend the event are accompanied by a ticket holding guardian.”

I note BASSINTEGRASS strongly discourages parents from bringing babies and toddlers as the “noise and environment is potentially distressing and the facilities are not designed to accommodate infants”. I suggest this should be included in the Applicant's ticket information for this event.

Based on the specific circumstances of this event and to reduce the risk of children being left vulnerable at the event or even stranded after the event, it is appropriate that that children 15 years and under must also be accompanied and supervised by a ticket holding guardian.

For added measures to assist the running of an all ages event, the Applicant should also establish and maintain a designated ‘Dry Area’ similar to that required at BASSINTEGRASS and soft drinks must also be made available from outlets other than the bars for those patrons under 18 years of age.

b. *Low to mid-strength beer only*

The Applicant has operated many major events under a special licence where this was not a condition of licence. The NT Police have not provided reasons why this condition should be imposed for this licence. This condition was also not imposed under BASSINTEGRASS's 2018 special licence. I therefore find there is no basis to impose such a condition at this event and I decline to do so.

- c. *Staggered decline in drinks per transaction towards the conclusion of the event*

The Applicant agreed to a staggered decline however, suggested a different method than the NT Police. Given this is an all ages event and the Applicant is relying heavily on the fact that this event is similar to that of BASSINTEGRASS, I will impose a condition for a two staged staggered decline of alcoholic drinks reducing the number of drinks from 4 to 2 drinks at 2130 hours which is an hour earlier than suggested by the Applicant. Such condition will provide:

- *From 1600 hours to 2130 hours no more than four (4) drinks must be sold to anyone (1) person at any one time; and*
- *From 2130 hours to 2359 hours no more than two (2) drinks must be sold to any one (1) person at any one time.*

- d. *Alcohol volume to be one standard drink or less per serve*

The Applicant has provided feedback that they wish to sell an array of drinks in a variety of strengths, although there will be some drinks available in one standard drink or less measures.

Food, light and mid-strength beer and non-alcoholic beverages (including complimentary water) will be readily available during the event encouraging responsible consumption of alcohol. This, along with the above staggered drinks condition, should be sufficient to assist with the responsible service and consumption of alcohol by patrons at this event.

- e. *Include CCTV for crowd monitoring*

Licensing NT has advised that it is not aware of any special licensed event required to have CCTV. No reasons were provided by the NT Police as to why this particular event should require CCTV and accordingly, I see no basis to impose such a unique condition for this special licence. The NT Police are free of course to utilise their mobile CCTV systems if they desire.

31. Two further issues that were not necessarily addressed by any of the stakeholders but I believe are of particularly relevance to an all ages event, being:

- a. pass-outs; and
- b. the Applicant's proposal to sell ice slushies both alcohol and non-alcoholic at the event.

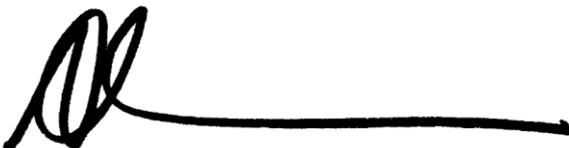
32. I requested further feedback from the Applicant and the NT Police regarding their position on pass-outs for this event. The Applicant advised, no pass-outs will be permitted for patrons under 18 years of age however, those 18 and over will be permitted to leave and return prior to 10pm. The NT Police advised that:

“pass-outs increase the risk of contraband/alcohol and drug affected patrons of all ages coming into the venue, increasing risk and increasing requirements for all sexes security searching. (Police had significant issues associated with intoxicated youths (mostly scantily clad females) who had smuggled alcohol into the venue via yoghurt sachets allegedly strapped to the inside of their legs during the BASSINTHEGRASS event. It was identified that there were no or insufficient female security guards to conduct any frisk or pat down searching of females in the line-up).”

33. The Applicant’s stance that no children will be allowed pass-outs will go some way to reducing this risk highlighted by NT Police. However, there is still risk of permitting adults to come and go from the event particular after dark and it is appropriate in the circumstances to also impose a no-pass out policy for adults after 7pm.
34. Finally, the sale of alcoholic slushies is not appropriate at an all-ages event. A slushie is a product which is inherently appealing to minors and serving alcoholic slushies raises a number of issues including concerns surrounding marketing of alcohol to children and compliance. The Applicant is prohibited from supplying alcoholic slushies at this event.
35. 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 set out at the start of this Decision Notice.

Notice of Rights:

36. 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.
37. 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.
38. 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.



AMY CORCORAN
Commissioner
Northern Territory Liquor Commission
11 October 2018