

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2019/096
VENUE:	Todd River between Schwartz Crescent and Wills Terrace ALICE SPRINGS NT 0870
APPLICANT:	Henley on Todd Incorporated
EVENT:	2019 Rotary Henley on Todd Regatta
LEGISLATION:	Part VI of the <i>Liquor Act 1978</i> (“Special Licences”)
PROPOSED DATE:	16-17 August 2019
DECISION OF:	Mr Russell Goldflam (Acting Deputy Chairperson)
DATE OF DECISION:	29 July 2019

Decision

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act 1978* (“the Act”) the Commission has determined to grant the special licence to sell liquor to Henley on Todd Incorporated (“the applicant”) for the sale of liquor:
 - a. On Friday 16 August 2019 from 16:30 hours to 23:00 hours
 - b. On Saturday 17 August 2019 from 11:00 hours to 18:00 hours
2. The licence is subject to the following standard conditions:
 - 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. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.
 - i. **Nominees: Kim Flitcroft and Brad Gaddes**
 - b. Persons under the age of 18 years must not be used in the sale or supply of liquor.

- c. 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.
- d. Any person involved in Crowd Control, as defined under *the Private Security Act 1995*, at the premises, must be licensed as required by that Act.
- e. 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.
- f. All liquor must be sold in open containers.
- g. No more than four (4) cans or bottles must be sold to any one person at any one time.
- h. 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.
- i. Liquor must not be sold or supplied to a person who is drunk, or to a person under the age of 18 years.
- j. 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.
- k. 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.
- l. 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.
- m. 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.
- n. 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.
- o. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.

- p. 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.
- q. 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.
- r. 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.
- s. 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 2002*. Food and drinks are not permitted to be taken into any designated smoking areas.
- t. 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).

3. The licence is subject to the following additional conditions

- a. Spirits must not be sold in containers with more than 5% alcohol by volume.
- b. Wine (including sparkling wine) must not be sold in containers with more than 150 ml.
- c. The only liquor that may be sold before 13:00 hours is to be mid-strength or light beer.
- d. At least 10 Crowd Controllers, or the number required by the condition set out at paragraph 2e above, whichever is the lesser, are required to be in attendance between 16:30 hours and 23:00 hours on Friday 16 August 2019. To the extent that this condition conflicts with the condition set out at paragraph 2e above, this condition prevails.
- e. At least 8 Crowd Controllers, or the number required by the condition set out at paragraph 2e above, whichever is the lesser, are required to be in attendance from 11:00 hours to 18:00 hours on Saturday 17 August 2019. To the extent that this condition conflicts with the condition set out at paragraph 2e above, this condition prevails.

Reasons

Background

- 4. Pursuant to section 58 of the *Liquor Act* (“the Act”), the applicant applied to the Director-General of Licensing on 7 May 2019 for a special licence to permit the

sale of beer, cider, wine and spirits on 16 and 17 August 2019 to persons attending the Henley on Todd dry river regatta at Alice Springs on 17 August, and a pre-regatta concert on the previous evening. The Henley on Todd regatta is an iconic annual event on the Alice Springs recreational and tourism calendar which has been running for 58 years. In 2019, however, the event will also include, for the first time, a concert on the evening before the regatta.

5. The applicant is a non-profit organisation, and any profits from the event, which relies heavily on volunteer staff, will be dispensed by the combined Alice Springs Rotary Clubs, which auspice the event, to charitable causes.
6. The applicant has identified light, mid-strength and heavy beer, cider, UDL pre-mixed spirits and still and sparkling wine as the types of alcoholic beverages it proposes to sell, from a “public bar” and a “corporate bar”.

A major event

7. The Henley on Todd regatta is a “major event”. The Notes to the Special Liquor Licence Application published by the Northern Territory Department of Business (“the Application Notes”) state:

A major event or function is essentially an event where “Risk” of impact on amenity, public safety and order is considered to be high due to the nature of the function and the potential size of the crowd. Some examples of functions that would be classed as major events are: New Year’s Eve Street Party, Greek Glenti and V8 Supercar’s.

8. The Application Notes provide that a special liquor licence for a major event must be lodged no later than 3 months before the event. Commendably, this year the applicant has complied with this important requirement.
9. In its application, the applicant has expressly undertaken to comply with the following additional major event requirements:
 - a. The licensee must, no later than two weeks before the function, provide the Director-General of Licensing with the number and names of security persons to be employed for the function.
 - b. The licensee shall ensure that details of safe transport to and from the function are advertised no later than 1 week prior to the event in the local newspaper.
 - c. First Aid services shall be in a clearly defined area and in easy communication with the licensee, staff and security personnel.
 - d. A substantial number of persons involved in the sale of liquor must have RSA certification.

Commencement time

10. In its application dated 7 May 2019 and signed by Kim Flitcroft, one of the proposed licence nominees, and witnessed by Dale Mclver, Events Coordinator

for Henley on Todd, the applicant sought a licence to commence the sale of liquor on Saturday 17 August 2019 at 11:00 hours. The application includes the following statement: “The program will commence at 10.00am with the street parade and conclude at approx 4.45pm with the Battle Boat finale.”

11. On 30 May 2019, Ms McIver wrote to Licensing NT stating that on “Saturday 16th (sic: 17th) Regatta” 8 security personnel would be engaged on site from 10:30 hours to 17:00 hours
12. On 13 June 2019, Mr Flitcroft sent an email to Licensing NT stating “This is to confirm that Henley on Todd will require a Liquor Licence for... Saturday 17 August from 10.00am – 6.00pm.”
13. On 17 June 2019, Ms McIver wrote to Licensing NT stating “We request that the full bar service of all beverages be available *from the time the Bar opens at 11am*” (emphasis added).
14. On 26 July 2019, the *Centralian Advocate* published a prominent advertisement for the event stating that the street parade in Todd Mall would commence at 10:40 am, and the “regatta and racing begins” at 11:40 am.

Event security and crowd control

15. The applicant estimates that 5000 people will attend the regatta, a family-oriented event with several competitive activities scheduled specifically for children. The applicant estimates that 1000 people will attend the concert the previous evening.
16. An exemption is sought by the applicant from providing private security or crowd controllers in accordance with the industry standard. The applicant proposes instead that there be 10 Security Guards provided by Talice Security at the concert, from 6 pm to 10 pm; and 8 Security Guards at the regatta, from 10:30 am to 5 pm. The Commission observes that these times do not fully align with the proposed trading periods.
17. The Commission notes that there will also be police, St John’s Ambulance officers and Rotary volunteers on patrol at the event.
18. The applicant was issued a special licence for the 2017 and 2018 Henley on Todd regatta with a special condition that 6 crowd controllers be provided.
19. The applicant has successfully run the event for 58 years along similar lines without serious security incidents.

Harm mitigation measures

20. The applicant advises that it will implement the following harm mitigation measures at the regatta:
 - a. Entry to the event will only be permitted to persons who have purchased a ticket.
 - b. A free bus service will be provided to patrons and widely advertised.

- c. An information/education stand will be provided by Alcohol and Drug Services Central Australia.
- d. Free water will be available for patrons.
- e. Non-alcoholic drinks will be available for sale.
- f. A paid and experienced bar manager will be engaged to manage the public bar.
- g. Food stalls will be in operation.
- h. Liquor will be supplied from two bars, the “public bar” and the “corporate bar”.
- i. Liquor will be sold in accordance with the conditions set out at paragraphs 3a and 3b above.
- j. Two licence nominees, both of whom possess current RSA certification, are proposed.

The corporate bar

21. Licensing NT advises that entry to the corporate bar will be restricted to ticketed persons aged 18 years or over. The “VIP ticket” entitles the holder to five complimentary drinks (provided the ticket-holder is not refused service in accordance with standard RSA practice). After drinking their quota of five complimentary drinks, VIP ticket holders will be permitted to purchase further drinks at the bar. This advice is consistent with information on the applicant’s website.¹

Consultation

22. 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. Accordingly, comment was sought from the Department of Health (“DOH”), Northern Territory Fire and Rescue Services (“NTFRS”) and NT Police (“NT Police”), St John Ambulance and the Alice Springs Town Council.

23. All of these stakeholders except St John Ambulance responded, and none of them raised concerns about the application. The Commission notes that the applicant has met with the police to discuss the running of the event.

24. Licensing NT advises that the applicant has a generally good record of compliance with licensing requirements for this event in previous years.

¹ “VIP Ticket includes entry into the Event and access to the Exclusive Commodore Club VIP Area. Lunch and beverages are included (please note beverage package is for 5 alcoholic beverages per person, unlimited soft drinks and water).” Accessed at <http://henleyontodd.com.au/events/vip-tickets/>

Assessment of the Application

25. 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.
26. 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 the Commission is bound to apply the public interest and community impact test as provided for under section 6 of the Act.
27. 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”.
28. 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.”
29. 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.
30. The Commission considers that the objects of the Act are served by imposing conditions on the supply of liquor in addition to the standard conditions at this event. The Commission has determined conditions calculated to reduce the risk of harm

associated with the consumption of liquor while at the same time permitting the sale and responsible consumption of liquor at this family-oriented sporting event.

31. The Commission has regard to the size, location and configuration of the venue, the proposed hours of trading, the anticipated number of patrons, and the nature and history of the event.
32. Having resided myself in the locality of the Henley on Todd regatta for over 35 years, I have observed that the association of the event with the consumption, and in particular the conspicuously excessive consumption of alcohol, has changed markedly over the decades. In its early days, Henley on Todd was a proudly boozy affair, including a greasy pole competition to claim a bottle of Bundaberg Rum. The name of one of the grand finale battleships, Pistil Dawn, exemplifies the original spirit of the event. These days, the regatta is considerably more organised, civilised, orderly and sober. It is natural and legitimate to feel nostalgic about the good old days and to lament their passing, but the Commission is bound to discharge its functions under the *Liquor Act* 1978 as currently in force, in accordance with its provisions and Objects.
33. As is apparent from a perusal of paragraphs 10 to 14 above, the time the applicant has proposed liquor trading should commence on regatta day, Saturday 17 August 2019, has been fluid. The Commission has determined to fix that time as 11:00 hours, in accordance with the initial application.
34. In the Commission's view, an appropriate limit per serve of liquor for an event such as this is one and a half standard drinks (15 grams of pure alcohol). That is approximately the same amount of alcohol as in a can or stubby of full-strength beer, a glass of wine in a restaurant (150 ml), or a 375ml can of medium strength mixed spirits. The licence conditions have been calibrated accordingly.
35. In 2018, the Commission imposed a condition that before 13:00 hours only light or mid-strength beer could be sold at Henley on Todd.
36. As stated at paragraph 13 above, in an email from Ms McIver to Licensing NT dated 17 June 2019, the applicant requested that "full bar service of all beverages be available from the time the bar opens at 11 am". In support of that request, the applicant submitted as follows:

The Regatta has a solid history of responsible service and have never had any alcohol related incidents with patrons in the events history. The event is a major iconic Tourism event that draws crowds from locally, interstate and overseas visitors. The event is a ticketed event with ticket costs \$22 for adults. We have found with having a ticketed event in the past we do not get problem drinkers attending. This year we are hiring a professional Bar Manager to oversee the Public Bar operation and our main Licence (Kim Flitcroft) will oversee the Corporate bar. We will be having a requirement that all volunteers and staff must have an up to date RSA.

37. In considering whether to accede to the proposal that the 13:00 hours restriction be lifted, the Commission has had regard to this submission, as well as to the harm-mitigation measures the applicant has arranged as described at paragraph 20 above.
38. The Commission has also had regard to the arrangements set out at paragraph 21 above for the supply of liquor at the corporate bar. Those arrangements give the Commission pause. They provide a strong incentive to VIP ticket-holders to consume 7.5 standard drinks, the equivalent of a bottle of white wine or champagne, over the course of the afternoon. This is almost double the limit of alcohol that the National Health and Medical Research Council (“NHMRC”) recommends it is safe to drink on a single occasion²:

For healthy men and women, drinking no more than four standard drinks on a single occasion reduces the risk of alcohol-related injury arising from that occasion.³

39. This NHMRC guideline is evidence-based. It was formulated after a detailed review and analysis of numerous data sets and research studies from Australia and internationally, focussing on the association of alcohol consumption with injury. The Commission accepts the expertise of the NHMRC and its opinion as embodied in the guideline.
40. The corporate bar arrangements lead the Commission to have reservations about the adequacy of the applicant’s understanding of and commitment to the principles of responsible service of alcohol.
41. Taking all of these matters into account, the Commission has determined that the 13:00 hours restriction should be maintained, for the following reasons:
- to reduce the risk that patrons (and in particular patrons who intend to participate in or attend competitive events later in the day, and patrons who are supplied with liquor at the corporate bar) will consume liquor to risky or harmful excess at the event
 - to reduce the risk that patrons, and particularly children, attending the event at lunchtime will be confronted by or exposed to intoxicated persons
 - to discourage a culture of heavy and sustained liquor consumption at public events in the Northern Territory
 - to be consistent with the conditions of licences that have been recently granted for similar events
42. The Commission has given serious consideration to imposing a condition inconsistent with the arrangements proposed for VIP ticket holders. Section 59 of the Act provides that when issuing a special licence, the Commission “must issue the special licence subject to any conditions the Commission considers appropriate”.

² Defined as “a sequence of drinks taken without the blood alcohol concentration reaching zero in between”.

³ National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Commonwealth of Australia, 2009), 51

43. As stated at paragraph 2j above, a standard condition of special licences is:

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.

44. The Code of Practice⁴ provides that:

- a. It is unacceptable to supply drink cards that provide a multiple of free drinks...
- b. It is unacceptable for any promotion that encourages a patron to consume liquor excessively...

45. In the view of the Commission, the VIP ticket arrangements sail perilously close to breaching the Code of Practice. However, the Commission has determined not to impose such a condition for the 2019 regatta, having regard to the following matters:

- a. The Commission has not been informed of any prior non-compliance issues or of any incidents indicative of alcohol-related harm at Henley on Todd.
- b. The applicant disclosed the VIP ticket arrangement to Licensing NT, which did not, so far as the Commission is aware, alert the applicant to a potential problem with this arrangement.
- c. The applicant, presumably in reliance on its discussions with Licensing NT, proceeded to implement the arrangement by offering VIP tickets for sale on its website.
- d. Members of the public who have purchased VIP tickets did so in reasonable expectation that the advertised arrangements would be honoured by the applicant.

46. The Commission places the applicant on notice that if it proposes to institute a similar arrangement for the 2020 Henley on Todd regatta, it should first seek the approval of the Commission to do so, and should not assume that such approval will be granted. Were it not for the considerations set out at paragraph 45 above, the Commission would have considered it appropriate to impose a condition inconsistent with the VIP ticket arrangements.

47. Accordingly, the Commission has determined that the conditions set out at sub-paragraphs 3a, 3b and 3c above should be imposed.

48. By email to Licensing NT dated 14 June 2019, the applicant referred to conditions imposed for the 2018 event equivalent to those set out at sub-paragraphs 2g, 3a and 3b above, and stated “The corporate marquee did not have these restrictions and would like to keep this the same for this years (sic) please.” The applicant is

⁴ Accessed at <https://nt.gov.au/industry/hospitality/responsible-promotion-of-alcohol-code-of-practice>

mistaken. The Decision Notice published by the Commission on 12 August 2018 did not exempt the corporate bar from any of the conditions in the licence. To be clear, the conditions imposed by way of this Decision Notice apply to the entire licensed premises, including the corporate bar.

49. The Commission has determined that an exemption be granted to the applicant regarding security numbers, as specified at sub-paragraphs 3d and 3e above. In doing so the Commission has had regard to the matters discussed at paragraphs 15 to 19 above.
50. Given the undertakings provided by the applicant set out at paragraph 9 above, the Commission considers that it is unnecessary to fix these matters as conditions of the licence. The Commission assumes and expects that the applicant will comply with these undertakings.

Notice of Rights:

51. 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.
52. 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.
53. 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

31 July 2019