

# Northern Territory Liquor Commission

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR LIQUOR LICENCE</b>
<b>REFERENCE:</b>	<b>LC2020/035</b>
<b>VENUE:</b>	Finke Desert Race Start/Finish Line Complex Lot 6333 South Stuart Highway ALICE SPRINGS NT 0870
<b>APPLICANT:</b>	Finke Desert Race Incorporated
<b>EVENT:</b>	Tatts Finke Desert Race 2021, 2022, 2023
<b>LEGISLATION:</b>	Part 3 of the <i>Liquor Act 2019</i>
<b>DECISION OF:</b>	Mr Russell Goldflam (Member)
<b>DATE OF DECISION:</b>	7 December 2020

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### Decision

1. For the reasons set out below and in accordance with section 60(1) of the *Liquor Act 2019* (“the Act”) the Commission has determined to grant a liquor licence to the Finke Desert Race Incorporated (“the applicant”) and to issue a major event authority for the sale of liquor during the following periods:
  - 16:00 hours to 22:00 hours on Friday, 11 June 2021
  - 10:00 hours to 18:00 hours on Saturday, 12 June 2021
  - 10:00 hours to 17:00 hours on Sunday, 13 June 2021
  - 10:00 hours to 18:00 hours on Monday, 14 June 2021
2. The Commission approves Ms Leanne Southam and Ms Claire Lambley as the licensee’s designated nominees.
3. The licensed premises is the spectator area at the Tatts Finke Desert Race Start/Finish line at Lot 6333 South Stuart Highway Alice Springs labelled “Spectator Area” and marked as the yellow hatched area at page 69 of the brief of evidence provided by the Director to the Commission.
4. Except as otherwise stated below, the licence is subject to the conditions expressed and implied by Part 4 of the Act (“Conditions on licences and authorities”), the conditions set out in Division 12 (“Major event authority conditions”) of the *Liquor Regulations 2019* (“the Regulations”) and the following additional conditions:

- a. The area 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 licensee.
- b. The sale of liquor is subject to provision by the licensee to the Director by 12 April 2021 that the Minister for Infrastructure, Planning and Logistics has granted an Occupation Licence or Crown Lease to permit the running of the 2021 Tatts Desert Race (“the event”).
- c. All liquor must be sold in open metal cans or plastic cups.
- d. Spirits must not be sold in containers with more than 5% alcohol by volume.
- e. Wine (including sparkling wine) must not be sold in containers with more than 150 ml.
- f. On 11 June 2021 the only liquor that may be sold after 21:00 hours is to be mid-strength or light beer.
- g. On 12, 13, and 14 June 2021, the only liquor that may be sold before 13:00 and after 17:00 hours is to be mid-strength or light beer.
- h. At least one security officer is to be on duty near the area where liquor is stored on the premises at all times when members of the public are permitted to be on the premises, so as to guard against theft of liquor from the premises.
- i. The licensee is required to identify and establish a suitable area outside the licenced premises where support services can be provided to minors who may require assistance. The area must be clearly signposted. This area must be staffed when minors are present whilst the event is in progress, and those staff must prevent entry into the area by intoxicated adults.
- j. The licensee shall maintain a Security Incident Register in which details of consumption by or supply of liquor to a minor, or of an intoxicated minor, are to be entered, including the name and address of the person(s) involved.
- k. A minimum of ten Crowd Controllers are required to be in attendance on 11 and 12 June 2021; and a minimum of six Crowd Controllers are required to be in attendance on 13 and 14 June 2021. To the extent that this condition is inconsistent with the condition set out at Regulation 68(2) of the Regulations, this condition prevails.

## **Reasons**

### **Background**

5. The Finke Desert Race is an annual off-road motorsport event in which competitors race two and four wheel vehicles over a “there and back” course between Alice Springs and Aputula (also known as Finke), a small community about 230 km south of Alice Springs. The race was held every Queen’s Birthday Weekend in Central Australia from 1976 to 2019. In recent years the race has constituted Round 2 of the Australian Off Road Championship. In 2020, because of COVID-19 restrictions, the organisers were forced to cancel the event for the first time in its history.

6. On 14 May 2020, pursuant to section 52 of the Act, the applicant applied to the Director for a licence to permit the sale of liquor to persons attending the Start/Finish line of the race for a “July Race Weekend” on 3 and 4 July 2020, and for the planned running of the full Finke Desert Race in 2021, 2022 and 2023.
7. On 20 May 2020, the applicant informed the Director that the 2020 July Race Weekend had been cancelled, due to nationwide COVID-19 restrictions, and for this reason the Commission treats the 2020 component of the application as having been withdrawn.
8. For reasons explained below, the Commission has determined to refuse a liquor licence at this time for the planned 2022 and 2023 Tatts Finke Desert Races. Accordingly, except as otherwise stated, references below are solely to the 2021 event.
9. Based on its experience as the operator of previous Finke Desert Races, the applicant estimates that up to 7,000 patrons will attend on the first day of the event (scrutineering), with a similar number on the second day (prologue), and 3,000 to 3,500 on each of the subsequent two race days (when many spectators will be expected to camp along the race route).
10. The applicant has provided detailed and comprehensive information regarding the applicant’s finances, governance, operations and facilities, the running of the event, the proposed operation of the liquor licence, and the qualifications, experience and character of the proposed joint nominees.

## **Consultation**

11. Notification of the application was given by posting a notice of display and by placing notices in the Centralian Advocate. The objection period ended on 5 June 2020. No objections were received. The Director sought comment from relevant stakeholders, namely:
  - a. Northern Territory Fire and Rescue Services (“NTFRS”)
  - b. St Johns Ambulance (“SJA”)
  - c. The Department of Health (“DOH”)
  - d. The Alice Springs Town Council (“ASTC”)
  - e. The Department of Infrastructure, Planning and Logistics (“DIPL”)
  - f. NT Police, Fire and Emergency Services (“NT Police”)
12. In response:
  - a. NTFRS supported the application.
  - b. No response was received from SJA, DOH or ASTC but the Commission notes that in previous years these stakeholders had not raised concerns against granting a similar licence for the events.

- c. DIPL advised that in the past the applicant had been issued with an interim Occupation Licence each year to conduct the event, and that the Department was working with the applicant to secure a long term Crown lease over the site, but that this had not been finalised. (On 16 December 2019, DIPL had issued an Occupation Licence to the applicant for the purpose of holding the 2020 Finke Desert Race)
- d. The NT Police initially responded, on 21 May 2020, by stating that they would provide comment once confirmation was received of an event proceeding. At that stage it appears that it was anticipated by the Director that the July Race Weekend might be rescheduled to a later date in 2020. However, that did not occur.
- e. After the Director referred the application to the Commission, it suggested that further attempts to be made to obtain a response to the application from NT Police.
- f. On 28 August 2020, the following further response was received from NT Police:

NT Police do not support this application for the next 3 years, on the following basis:

- If something goes wrong next year, there would be no chance for a review as the licence would still apply for another 2 years.
- This would mean the licence is issued to the same person for the next few years, which again may need to change.
- While NT Police can see the point in wanting to save time, there are too many variables that would need to be addressed on a yearly basis.

## **Record of compliance**

13. The Director has informed the Commission that the applicant, which has been granted special liquor licences for many years for the Finke Desert Race, has no history of non-compliance with liquor licence conditions.

## **The referral**

14. On 13 July 2020 the Director referred the application to the Commission with a brief that included the following extensive material from the applicant:
  - Application for a new liquor licence or authority
  - Supplementary information application for a Major Event authority
  - Affidavit and Declaration of Associates
  - References, IDs and Resumes for the applicant's executive officers.
  - Public Interest Criteria and Community Impact Statement

- Letter Department of Infrastructure Planning and Logistics granting Occupation Licence for 2020
- Site Plan
- Event Management Plan
- Applicant's financial statements
- Certificate of Incorporation
- Applicant's constitution
- Smoking Management Plan
- Letter of support from TALICE Security
- NT COVID-19 Statement of Commitment

### **A delegated decision**

15. On 28 October 2019, the Commission delegated the power to issue a licence with a major event authority to a single member of the Commission. On 15 July 2020 the Chairperson of the Commission delegated the hearing of the application to Member Goldflam, who formed the opinion that in the circumstances a public hearing was not appropriate, and determined to conduct the hearing by way of written submissions only.
16. In forming this opinion the Commission had regard to the fact that prior to the commencement of the Act on 1 October 2019, liquor licence applications for major events had been dealt with by single members of the Commission under Part VI ("Special licences") of the *Liquor Act 1978*, which did not provide for public hearings. No submissions were made to the Commission that a public hearing should be conducted in this matter.

### **A delayed decision**

17. Section 60(2)(b) of the Act provides that the Commission must make a decision within 28 days of the expiry of the objection period, which, as stated above, was 5 June 2020. On 13 July 2020 the Director referred the brief to the Commission, and on 15 July 2020 the Commission requested that inquiries be made of the NT Police regarding their response to the application. As stated above, the NT Police provided a response on 28 August 2020.
18. Since 28 August 2020 I have been engaged in the preparation, hearing and drafting of Decision Notices in relation to some ten other substantial Liquor Commission matters. In determining the priority of this matter, I took into account that it concerns an event that will not take place until June 2021. In my opinion each of the other matters I was required to deal with during this period was more urgent. The ensuing delay has been inconvenient to the applicant, for which I apologise. Pursuant to section 318 of the Act, the Commission extends the time permitted for the publication of this Decision Notice.

## **ASSESSMENT OF THE APPLICATION**

19. In accordance with section 59 of the Act, the Commission has considered:
- a. The applicant's affidavit required by section 54;
  - b. The suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
  - c. In relation to the applicant, a body corporate:
    - i. The financial stability and business reputation of the body corporate; and
    - ii. The general reputation and character of the secretary and executive officers of the body corporate;
  - d. Whether the applicant, including the nominees designated by an applicant, is a fit and proper person to hold a licence.
20. In accordance with section 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

### **The applicant**

21. The Commission finds that the applicant, an incorporated association, complies with section 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation, a term which is defined to include incorporated associations.

### **The applicant's associates**

22. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of section 54.
23. The Commission considers that it is appropriate to consider whether each of the following persons, each of whom is an associate of the applicant for the purpose of section 55, is a fit and proper person to be an associate of the applicant:
- Antony Yoffa (an executive officer of the applicant)
  - Kelsey Anne Branford (an executive officer of the applicant)
  - Claire Alison Lambley (an executive officer of the applicant)
  - Leanne Southam (an executive officer of the applicant)

24. Having had regard to the ample material tendered by the applicant attesting to the character, experience and qualifications of the above-named persons, the Commission finds that each of them is a fit and proper person to be an associate of the applicant.
25. The Commission does not consider that it is appropriate to consider whether any other person is a fit and proper person to be an associate of the applicant.

### **The suitability of the applicant's premises**

26. The premises are a substantial outdoor area adjacent to the Start/Finish line of the race track. The spectator area is equipped with a large toilet block, shaded areas, food and merchandise stalls, a designated smoking area, a separate "Kidz Zone" (outside the licensed premises), and a substantial building housing a bar, offices, media centre and information kiosk. The licensed premises are fenced and gated.
27. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

### **The financial stability, general reputation and character of the body corporate**

28. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

### **The general reputation and character of the applicant's secretary and executive officers**

29. Having been provided with appropriate evidence regarding their reputation, character and work history, the Commission assesses the general reputation and character of the applicant's executive officers to be satisfactory.

### **Whether the applicant is a fit and proper person to hold a licence**

30. The Commission assesses the applicant to be a fit and proper person to hold a licence.

### **Whether the licensee's nominee is a fit and proper person to hold a licence**

31. The applicant has nominated Leanne Southam and Claire Lambley as the licence nominees. They both hold current RSA certification and have provided appropriate documentation of their reputation, character and work history. The Commission assesses them to each be a fit and proper person to hold the licence.

### **Public notice and consultation**

32. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

## **Whether issuing the licence is in the public interest**

33. To determine whether the issue of the license is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:
- (a) Minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
  - (b) Ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
  - (c) Safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
  - (d) Protecting the safety, health and welfare of people who use licensed premises;
  - (e) Increasing cultural, recreational, employment or tourism benefits for the local community area;
  - (f) Promoting compliance with this Act and other relevant laws of the Territory;
  - (g) Ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
  - (h) Preventing the giving of credit in sales of liquor to people;
  - (i) Preventing practices that encourage irresponsible drinking;
  - (j) Reducing or limiting increases in anti-social behaviour.
34. Having considered each of these objectives, and having particular regard to the location of the premises, the history, nature and reputation of the event, and its role as a major sporting and tourism event on the Northern Territory calendar, the Commission is satisfied that it is in the public interest to issue the licence.

## **Whether the issue of the licence will have a significant adverse impact on the community**

35. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must have consider the following matters set out at section 49(3) of the Act:
- (a) The risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
  - (b) The geographic area that would be affected;
  - (c) The risk of harm from the excessive or inappropriate consumption of liquor;
  - (d) The people or community who would be affected;

- (e) The effect on culture, recreation, employment and tourism;
- (f) The effect on social amenities and public health;
- (g) The ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) The effect of the volume of liquor sales on the community;
- (i) The community impact assessment guidelines issued under section 50;
- (j) Any other matter prescribed by regulation.

36. The Commission notes there are no such “other” matters prescribed by regulation.

37. The applicant bears the onus of satisfying the Commission of the relevant matters. Even if there are no objections, the applicant must still satisfy this Commission of those matters.

38. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50.

39. The guidelines are as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> </ul>

	<ul style="list-style-type: none"> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community.</p> <p>This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> </ul>

	<ul style="list-style-type: none"> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>
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40. As can be seen from the above, there are numerous matters the Commission must consider and the applicant must address (and satisfy the Commission of) under the public interest and community impact test and guidelines. The guidelines do state however that:

...the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

41. In addition, section 50(4) provides that the guidelines “may have general, limited or varied application”. Although there are many matters for the Commission to consider, like any application, some of the matters are more relevant to this application than others.

42. In considering these issues, it is also important to keep in mind that the onus is on the applicant: section 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

### **The 2022 and 2023 Finke Desert Races**

43. The applicant has gone to considerable lengths to prepare this application, a task which is substantially more onerous than the applications required in previous years for major event authorities. Under the 1978 Act, applicants for major event licences were not required to address the public interest and community impact test. The 2019 Act is more stringent in that regard.

44. In these circumstances it is readily understandable that the applicant has sought to avoid the need to repeat this exercise every year, by enlarging the scope of the application to include the 2022 and 2023 events.

45. Nevertheless, the Commission has determined to refuse the applications for 2022 and 2023, for three reasons. First, the COVID-19 pandemic has required a radically more cautious approach to the planning of large-scale public events than previously prevailed. Second, the applicant’s licence to occupy the land required to run the event is currently only conferred from year to year. Indeed, the Commission has not been informed whether an Occupation Licence has been granted for 2021. Third, the NT Police are opposed to the grant of a liquor licence for three years for the cogent reasons set out at paragraph 12.f) above.

46. Having considered all of these matters, the Commission is satisfied, in accordance with section 49 of the Act, that:

- a. The applicant is a fit and proper person; and

- b. Issuing the licence or authority for 2021 is in the public interest; and
- c. The licence or authority will not have a significant adverse impact on the community.

## **Crowd controller condition**

47. Section 83(1) of the Act provides:

Each licence and authority is subject to the conditions prescribed for it by regulation.

48. Regulation 68(2) of the Regulations provides:

A licensee with a major event authority must employ or hire at least:

- (a) 2 licensed crowd controllers for the first 100 patrons attending the event;
- (b) One additional licensed crowd controller for each additional 100 patrons attending the event.

49. This is consistent with a standard condition that was imposed on Special Licences for major events under the *Liquor Act 1978*, which was in force until 1 October 2019.

50. If industry standards were adhered to, 71 crowd controllers would be required on each of the first two days, and 31 crowd controllers would be required on each of the second two days. The Commission estimates that the cost of providing this many crowd controllers would be in the order of \$200,000, an amount that the Commission accepts would put at risk the financial viability of the entire event.

51. This issue arose in the course of considering the applicant's similar applications in both 2018 and 2019. In 2018, NT Police raised concerns about the low numbers of crowd controllers being proposed.

52. In responding to this issue in relation to the 2018 application for this event, the applicant stated as follows:

The security numbers are considered adequate given this is a family event. People don't come to our event to drink per se, it is an event where 90% of our competitors and crews are interstate and this is an annual catch up. All competitors are racing the following day; it is not a night to celebrate; that comes afterwards. Last year's bar takings on the Friday night were \$14,000 which at an estimate is 1750 drinks in total. The remaining three days (Sat, Sun and Monday) the bar takings totalled \$12,000 or an estimate of 1,500 drinks or 500 per day. These are not big numbers.

The Committee members can't recall Police being involved in any incidents at the start line facility for the past 15 years. We work actively with security, Police and St John Ambulance at all times. There will be a group of Volunteers managing car parking (as there has been for many years). All areas are lit at night time and there is separate security on site from dusk to dawn for 10 nights.

53. In the material provided in support of the 2019 application, the applicant submitted that:

- Only two people of the 19,700 who attended over four days in 2018 were refused entry by security staff
- The event is a not-for-profit enterprise, with any funds raised invested in “improving facilities and advertising safety messages”
- In the fifteen years that the event has occupied its current site there has not been one alcohol related incident that required a police response over the event weekend
- Talice Security have partnered with the applicant for 15 years and “have done an excellent job”
- The first and second days of the event (Friday evening scrutineering and the running of the time-trial prologue) are both family-oriented events with bar sales totalling less than one drink per person in previous years. Bar sales are less than one drink per 10 people on the first day of the race proper, and less than one drink per person on the final day. “Most people are waiting to celebrate that evening at the Presentation function at the Convention Centre.”

54. In its decision to approve the grant of a special licence to the applicant for the 2018 Tatts Finke Desert Race, the Commission stated as follows:<sup>1</sup>

In considering the condition sought by NT Police [that security numbers be “as close as possible” to industry standards]... I have had regard to the fact that in previous years NT Police have maintained a very substantial presence at the event, conducting thousands of random breath tests and extensive patrols along the race route. A focus of these patrols is the spectators who attend the Tatts Finke Desert Race, many of whom purchase substantial quantities of takeaway liquor in Alice Springs, transport it by private vehicle to a camping spot adjacent to the Finke Desert Race track, camp there for the long weekend, consume the liquor and drive back to Alice Springs.

I have determined that an exemption be granted to the applicant regarding security numbers [to permit a minimum of eight crowd controllers to be in attendance on the first day of the event, and a minimum of five on each subsequent day] In doing so I have had regard to the following:

- a. In some previous years this event has proceeded with fewer controllers, without, as far as I am aware, adverse incident;
- b. The applicant will utilise the professional services of Talice Security;
- c. The additional restrictions in the licence on the sale of liquor will likely reduce the risk of anti-social behaviour by intoxicated patrons;

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<sup>1</sup> Northern Territory Liquor Commission, *Application for a Special Licence* LC2018/044 (18 May 2018).

- d. The applicant has arranged for emergency services officers and parking attendants to be present;
- e. There will be a substantial police presence at the event;
- f. From past experience of this event, it is reasonable to expect that patrons on and in the vicinity of the premises are likely to be relatively well-behaved; and
- g. Although there is an appreciable risk that anti-social, irresponsible or hazardous behaviour at the Tatts Finke Desert Race will result in alcohol-related harm, such behaviour is substantially more likely to occur at other locations than on or in the vicinity of the licensed premises, and accordingly, the presence of more security staff on or in the vicinity of the licensed premises is unlikely to substantially mitigate the risk of such harm occurring.

55. As noted in the Commission's 2019 decision in relation to this event,<sup>2</sup> the Director of Talice Security reported that at the 2018 event, there were no incidents of disturbance or anti-social behaviour, no patrons (of the 45 checked) found to be underage, no-one refused service due to intoxication, no evictions, two refusals at the gate for intoxication, two lost children, one first aid assistance episode and 32 refusals of entry after hours to persons who wished to camp in the start line car park.

56. In the material provided to the Commission in support of the current application, the Operations Manager of Talice Security declared that, similarly, at the 2019 event, there were no incidents of disturbance or anti-social behaviour, no patrons (of the 32 checked) found to be underage, no-one refused service due to intoxication, no evictions, one refusal at the gate for intoxication, one lost child, one first aid assistance episode and 22 refusals of entry after hours to persons who wished to camp in the start line car park.

57. In light of this, the Commission has determined to fix crowd controller numbers at a level similar to that imposed for the 2019 event. In doing so, the Commission relies on Regulation 22 of the Regulations, which relevantly state:

To avoid doubt, any conditions under these Regulations are subject to variation by... the Commission under sections 112 and 113 of the Act.

58. Noting that the applicant has in its application sought approval to engage security officers in similar numbers to previous years, and supported that application by providing the information referred to above from the security service provider, I consider that it is appropriate to consider this aspect of the application as an application made under section 112 of the Act to vary conditions of a licence, namely the condition set out at Regulation 68(2) of the Regulations.<sup>3</sup>

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<sup>2</sup> Northern Territory Liquor Commission, *Application for a Special Licence* LC2019/071 (3 June 2019).

<sup>3</sup> In this regard, the Commission's follows its decision (Chairperson Coates presiding) in the application by the Darwin Waterfront Corporation for a liquor licence and major event authority for a New Year's Eve Concert: Northern Territory Liquor Commission, *Application for a Licence with a Major Event Authority* LC2020/057 (3 December 2020).

59. The Commission recommends that in the course of the forthcoming technical review of the Act and Regulations, the Regulations be amended to more clearly confer power on the Commission to depart from the prescribed authority conditions in cases such as this.

### **Other conditions**

60. The Commission is empowered by section 87 of the Act to fix a broad range of conditions, at its discretion.
61. In 2018 and 2019, the Commission fixed several conditions regulating the type and quantity of liquor that could be sold at various times. In doing so, the Commission had particular regard to the submissions of both the applicant and the NT Police. In its current application, the applicant has not expressly sought a change to the conditions imposed over the last two years, or submitted that they were unduly restrictive.
62. In these circumstances, the Commission has determined to maintain the same conditions as those imposed in 2018 and 2019.

### **COVID-10 conditions**

63. In a recent decision regarding an application for a liquor licence and major event authority, the Commission declined to adopt a recommendation by the Director that a special condition be imposed that the applicant comply with any Chief Health Officer directions as they apply at the time of the event.<sup>4</sup> As the Commission observed on that occasion, section 92 of the Act requires a licensee to comply with any public health notice in relation to the licensed premises issued by the Chief Health Officer under the *Public and Environmental Health Act 2011*. In addition, Regulation 68(1)(c) of the Regulations requires the licensee to comply with any reasonable order or direction given by an officer producing identification and acting with authority under that Act.
64. The Commission notes that the applicant has submitted a COVID-19 Safety Plan, made a Statement of Commitment to adhere to physical distancing measures and health and hygiene principles, and completed both the NT COVID-19 Community Business and Organisation Checklist and the NT COVID-19 Sport and Active Recreation Organisation Checklist.
65. Having regard to these matters, the Commission does not consider it is necessary or appropriate impose any specific COVID-19 conditions on the licence.

### **The objects of the Act**

66. Finally, section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.

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<sup>4</sup> Northern Territory Liquor Commission, *Application for a Liquor Licence and Major Event Authority* (27 August 2020).

67. Throughout its consideration of this application, the Commission has steadily borne the purposes in section 3 of the Act in mind. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
68. For these reasons, the Commission has determined that the application should be granted in part, and that a licence and authorities be issued on the conditions set out at the commencement of this Decision Notice.

## **NOTICE OF RIGHTS**

69. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
70. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the licensee.



Russell Goldflam

MEMBER  
NORTHERN TERRITORY LIQUOR COMMISSION

7 December 2020