

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/044
VENUE:	Finke Desert Race Start/Finish Line Complex Lot 6333 South Stuart Highway ALICE SPRINGS NT 0870
APPLICANT:	Finke Desert Race Incorporated
EVENT:	Tatts Finke Desert Race
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Mr Russell Goldflam (Acting Deputy Chairperson)
DATE OF DECISION:	18 May 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 the Finke Desert Race Incorporated ("the applicant") for the sale of liquor during the following periods:
 - 15:00 hours to 22:00 hours on Friday, 8 June 2018
 - 10:00 hours to 18:00 hours on Saturday, 9 June 2018
 - 10:00 hours to 18:00 hours on Sunday, 10 June 2018
 - 10:00 hours to 18:00 hours on Monday, 11 June 2018
1. The granting of approval is subject to the following standard conditions, namely:
 - 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. **Nominee: Giselle Greenfield**
 - 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*, 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*. 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. 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. On 8 June 2018, the only liquor that may be sold after 2100 is to be mid-strength or light beer.
- d. On 9, 10 and 11 June 2018, the only liquor that may be sold before 1300 and after 1700 is to be mid-strength or light beer.
- e. A minimum of eight Crowd Controllers is required to be in attendance on 8 June 2018, and a minimum of five Crowd Controllers is required to be in attendance on 9, 10 and 11 June 2018. To the extent that this condition is inconsistent with Condition 1(e) 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 14 March 2018 for a special licence to permit the sale of beer, wine and spirits to persons attending the Start/Finish line of the motorsport event known as the Tatts Finke Desert Race.
- 5. I proceed on the basis that the Tatts Finke Desert Race 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.

6. The Application Notes provide that a special liquor licence for a major event must be lodged no later than 3 months before the event. The applicant has not complied with this requirement, or applied for an abridgement of time. On this occasion, I have decided to waive compliance with this requirement. This dispensation is not intended to be a precedent. Applicants should from now on comply with the relevant time limits.

7. I note that the Application Notes also specify a requirement in relation to special liquor licences for major events that:

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. The special licence may be cancelled if adequate security is not provided during the function.

The applicant is expected to comply with this requirement in a timely manner.

8. The applicant has complied with other provisions in the Application Notes applicable to major events.

9. The applicant is seeking to sell liquor from 1500 to 2200 hours on 8 June 2018, during pre-race scrutineering, then from 1000 to 1800 hours on the following three days (a Prologue Day and two Race Days). It was stated in the Application that it was anticipated by the applicant that up to 5000 people would attend the scrutineering, and that between 2,500 and 3,000 people would attend the event on each of the three following days.

10. 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 six roving Security Guards provided by Talice Security on the scrutineering day, and four on each of the three following days.

11. The applicant has previously been issued special licences for past Finke Desert Race events special conditions being imposed, on occasion without a condition regarding the minimum number of crowd controllers required. I have not been informed by Licensing NT of any previous compliance issues with respect to the applicant.

12. In the Application, the applicant identified “Beer, wine and mixed drinks (cans)” as the types of alcoholic beverages it proposed to sell.

Consultation

13. 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 St John Ambulance (“SJA”), the Department of Health (“DOH”), Northern Territory Fire and Rescue Services (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.

14. With respect to this application:

- a. SJA said they had “no concerns” with the application.
- b. The DOH had “no adverse comment” but requested that the applicant be reminded of its obligations in relation to smoking.
- c. The NTFRS had “no objections” to the application.
- d. The NT Police raised concerns in relation to security arrangements, stating:

the security numbers noted as 5 total will not be adequate, as such we request to be provided with a security management plan, to ensure all risks are mitigated. Security numbers need to be reconsidered and align as close as possible to industry standards, I accept numbers are likely to be between 2000-3000 patrons ordinarily requiring 20-30 security officers. I accept that this may not be necessary however 5 certainly remains inadequate, when regard is given to their functions namely: public safety, event management, crowd control in context of liquor consumption, RSA monitoring, Car Park and environs Patrol and asset protection.

- e. The NT Police also raised concerns regarding liquor arrangements, stating:

As raised last year and will be raised in all event applications received going forward the NT Police standing policy position as it relates to Alcohol Volume is that the management of alcohol consumption is an integral part of effective event management. It must incorporate harm minimisation strategies, with a clear focus on how alcohol is served which will ultimately determine alcohol-related behaviours and the acceptability of such behaviours from a community perspective.

All liquor sold to be of a mid-strength variety. Cider, beer and pre-mixed spirits are all readily available in cans for wholesale purchasing. This is in keeping with similar events conducted elsewhere, and factors in consideration of high activity, day time alcohol consumption (effects of sun exacerbating the effects of alcohol)... one standard drink or less per serve and a maximum of

4 four drinks or less per transaction with a staggered decline in drinks per transaction towards the conclusion of the event. This position brings the NT Police in line with National best practice and provides the basis for consistent, whole of government messaging, giving consideration to Road Safety and Health Education. As such the NT Police will oppose any condition that allows the sale of full strength beer, cider, and spirits under 47F(2) on the basis of impacts to amenity, public safety, health and social conditions. All liquor be sold of a mid-strength variety.

15. NT Police also raised other concerns in relation to the operation of the event. Those concerns did not specifically relate to the matters the subject of this Decision Notice.
16. NT Police suggested a stakeholder meeting to develop an integrated response. I have not been informed whether the proposed meeting took place. I consider this is an eminently sensible suggestion and encourage all applicants for major event special liquor licences to take the initiative and convene such meetings.
17. The applicant responded disputing the need for greater security arrangements, stating:

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 interstaters 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.

18. In relation to liquor arrangements the applicant responded:

Beer products offered are heavy, -mid-strength and light. Previous sales indicate a majority preference for mid-strength beer and that makes up the bulk of the order. All cider, beer and pre-mixed spirits are sold in cans only (there is no glass containers). There is a large shaded area near the bar area. 4 drinks per transaction has been our maximum for years although this is not the bulk of sales.

19. The reference above by the applicant to the supply of “cider” is in direct response to the NT Police comments, but at odds with the terms of the initial application, which did not identify cider as a product the applicant wishes to sell.
20. The applicant also addressed the other concerns referred to at paragraph 15 above.
21. Special liquor licences have been granted to the applicant for at least the previous five years. In 2017, the special licence specified that a minimum of five crowd controllers be provided. In 2016, the special licence specified that the industry standard be complied with (one crowd controller per hundred patrons), notwithstanding that the applicant had applied to conduct the event with five crowd controllers present, a proposal that was not opposed by NT Police.

Assessment of the Application

22. 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.
23. 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 I am bound to apply the public interest and community impact test as provided for under section 6 of the Act.
24. 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”.
25. 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.”

26. 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.
27. Although there is no formal obligation to consult, responses were sought from the relevant stakeholders, and the following matters requiring consideration were raised by the NT Police:
 - (a) Maximum 4 drinks per transaction
 - (b) Only mid-strength beer, cider and spirits to be sold
 - (c) One standard drink or less per serve
 - (d) A staggered decline in drinks per transaction towards the conclusion of the event
 - (e) Security numbers to align “as close as possible” to industry standards
28. The NT Police proposal at paragraph (a)) above is in any case one of the standard conditions for Special Licences (see paragraph 1(g) above).
29. The NT Police elaborate the condition sought at paragraph (b)) by stating:

All liquor sold to be of a mid-strength variety. Cider, beer and pre-mixed spirits are all readily available in cans for wholesale purchasing... This position brings the NT Police in line with National best practice... the NT Police will oppose any condition that allows the sale of full strength beer, cider, and spirits under 47F(2) on the basis of impacts to amenity, public safety, health and social conditions. All liquor be sold of a mid-strength variety.
30. This proposal is poorly conceived and articulated, and inadequately supported. It appears to imply that the sale of cider and mixed spirits at a strength equivalent to mid-strength beer (3.7% ABV) would be acceptable. However, no such products are readily available. The strength of all readily available cans of cider and mixed spirits is no less than that of full-strength beer, namely about 5% alcohol by volume (“ABV”). The NT Police oppose the sale of full-strength beer, but do not state that they oppose the sale of wine, which is stronger than full strength beer. If some products are sold which are 5% ABV or greater, there is no apparent reason for or benefit obtained by prohibiting the sale of full strength beer.
31. The references to “National best practice” and “impacts to amenity, public safety, health and social conditions” are vague and unsubstantiated. The reference to “47F(2)” is inapt: this provision of the *Liquor Act* permits objections to be made to various specified types of applications. An application under s 57 for a special

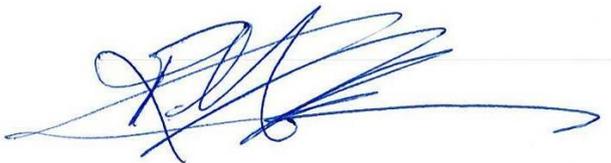
liquor licence is not one of them. The police have been consulted about this matter, but they have no legal standing to object to the application pursuant to s 47F.

32. In my opinion, having regard to the records the applicant has provided of the moderate levels of liquor consumption at a similar previous event, the applicant's proposal to sell heavy, mid-strength and light beer, as well as wine and pre-mixed spirits in cans is reasonable, and I have decided to permit the sale of these products at this event.
33. In relation to the conditions sought by NT Police at paragraphs (d)) above, I note that they appear to be a general response provided by NT Police with respect these types of applications. I note that the Commission has hypothesised recently that this may be a general policy stance taken by police.
34. The NT Police proposal that volume be limited to no more than one standard drink per service, if accepted, would effectively restrict the applicant to the supply of light or mid-strength beer, or 100 ml serves of wine. This is because full strength beer and RTD pre-mixed spirits are usually packaged in containers of 375 ml, with 1.4 standard drinks (or higher, depending on the strength of the RTD product) per serve. It would be impracticable to require full-strength beer to be served only in measures of 280 ml.
35. I do not, however, consider that the objects of the Act are well served by permitting the supply of these types of liquor in unlimited quantities. In my view, an appropriate limit for an event such as this is one and a half standard drinks (15 grams of pure alcohol) per serve. 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.
36. I also consider that there is merit in the NT Police submission that there should be a staggered decline in drinks towards the conclusion of the event. Similarly, I consider that there should be a restriction on the strength of liquor sold during the morning, before 1300 hours.
37. Taking these matters into account, I have determined that the conditions set out at paragraph 3 (a), (b), (c), and (d) above should be imposed.
38. In considering the condition sought by NT Police at paragraph (e)) above regarding security crowd controller numbers, 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.
39. I have determined that an exemption be granted to the applicant regarding security numbers, as specified at paragraph 3(e) above. 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;
- 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.

Notice of Rights:

40. 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.
41. 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.
42. 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

21 May 2018