

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2019/020

VENUE: Mindil Beach
73 Gilruth Avenue
THE GARDENS NT 0820

APPLICANT: Fiery Amigos Pty Ltd

EVENT: 2019 People's Choice Credit Union BASSINTHEGRASS Music Festival

LEGISLATION: Section 58 of the *Liquor Act*

DECISION OF: Ms Amy Corcoran (Commissioner)

DATE OF DECISION: 21 March 2019

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 Fiery Amigos Pty Ltd (**the Applicant**) for the sale of liquor between the hours of:

Saturday, 18 May 2019 from 1300 to 2300 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 '2019 People's Choice Credit Union BASSINTHEGRASS Music Festival' 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):

- All alcohol will be sold as one standard drink or less per serve with the exception of pre-mix cans (**RTDs**) at all 6 bars in general admission. The bars in the ticketed premium hospitality areas will not be subject to this condition, however, any alcohol sold in the premium hospitality area that is not otherwise available from the bars in general admission is not permitted to be possessed or consumed in the general admission area.

- No more than four (4) alcoholic drinks to be sold to any one person at any one time from 1300 to 2000 hours, then no more than two (2) alcoholic drinks sold to any one person at any one time from 2000 to 2200 hours, then no more than one (1) alcoholic drink from 2200 to 2300 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 under 13 years must be accompanied and supervised at all times by a ticket holding adult guardian.
- No pass-outs are permitted for patrons under the age of 18 years.
- Pass-outs for patrons 18 years and over will not be permitted after 1900 hours.
- 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.
- The Security Incident Register must indicate whether an incident involves a minor.
- A designated 'Dry Area' must be established and maintained.

Reasons

Background

3. On 7 February 2019, pursuant to section 58 of the Act, Fiery Amigos 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 '2019 People's Choice Credit Union BASSINTEGRASS Music Festival' on Saturday, 18 May 2019. The application was then referred to the Liquor Commission and to me pursuant to my delegation to deal with such special licence applications.
4. BASSINTEGRASS is an annual all-ages nationally recognised music festival which showcases an electric line up of internationally acclaimed and local artists. The event is coordinated by the Northern Territory Government owned company Northern Territory Major Events Company Pty Ltd (**NTMEC**). The age demographic for the event is between 13 and 40 years, with the median age reported to be between 18 to 24 years. Children 13 years and under must be under the direct supervision of a ticket holding adult guardian at all times.
5. Although this is an annual event, it is the first year that it will be held at Mindil Beach having previously been held at the Darwin Amphitheatre. The Applicant is anticipating a crowd of approximately 9,000 however the venue capacity is 10,000.
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. BASSINTEGRASS will commence at 1100 hours and finish at 2300 hours. Specifically, the Applicant is seeking a special licence for the following hours of trade:

Saturday, 18 May 2019 from 1300 to 2300 hours.
8. The sale of liquor to patrons at the event is proposed via 6 bars in general admission and 4 bars in separately ticketed premium hospitality areas. Beer, soft drinks, cocktails, ready to drink spirits (**RTDs**), wine and cocktails are proposed to be available for sale throughout the licensed area.

9. The Applicant has advised that the drinks at the general admission bars will be limited to one standard drink or less per serve with the exception of pre-mix spirits (or 'RTDs') which will be 1.2 standard drinks. The Applicant has confirmed beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength.
10. Complimentary tap water is available to patrons at the event from water stations. Upon entering the event, patrons will also receive a voucher entitling them to 4 free bottles of water. 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.
11. Designated Dry Areas where alcohol will not be permitted will be set up at the venue which will be clearly signed and be monitored by security.
12. Catering will be available throughout the venue during the event at "affordable price points".
13. 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.
14. The Applicant has confirmed that patrons who are minors will not be permitted pass-outs, however, patrons 18 years and over will be permitted pass-outs up until 1900 hours only.
15. The Applicant has advised paramedics will be engaged and present throughout the event.
16. A Traffic Management Plan has been prepared by Core Traffic Control and will be implemented for this event.
17. Licensing NT has advised that the Applicant (formally Relkdar Pty Ltd) has previously been granted special licenses for the annual BASSINTHEGRASS music festival and on review of previous years' compliance activity at the event returned "no adverse findings or matters of concern relating to the conduct of the special licenses".

Consultation

18. 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:

19. DOH advised that it has no adverse comment and went on to make the following statements:

“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.”

20. The NTFRS advised that it had “no objection to the BASSINTHEGRASS Music Festival” as long as a specified list of matters relating to fire-fighting equipment, emergency panning, occupancy permits and NTRS inspections were met.
21. SJA advised that they had no concerns regarding the licence request and that they are supplying Paramedics and Volunteers to this event as requested by NTMEC.
22. The NT Police “support the application contingent to:
- a. *Alcohol volume to be one standard drink or less per serve*
 - b. *Liquor to be sold at a maximum number to any one person at one time as follows:*
 - *From 1300 hours to 1800 hours no more than four (4) cans or bottles;*
 - *From 1800 hours to 2200 hours no more than two (2) cans or bottles;*
 - *From 2200 hours to 2300 hours no more than one (1) can or bottle;*
 - c. *Industry standard security for expected crowd numbers*
 - d. *All liquor to be sold in open containers*
 - e. *No liquor or other beverages to be sold in glass containers*
 - f. *Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years*
 - g. *Ensure to identify minors in the Security Incident Register*
 - h. *Additional security ‘above ‘ industry standards’ and posted in strategic positions outside the external perimeter fencing to prevent unauthorised access to the licensed premises.”*

23. I will discuss the NT Police comments below along with the other stakeholder comments.

Assessment of the Application

24. 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.

25. 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.

26. 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”.

27. 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.”

28. As a delegate of the Commission, I am also bound to have regard to the objects of the Act when determining this application.

29. 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 and has been provided a copy of DOH’s email above.

30. I note NTFRS' position above and confirm that the Applicant will need to follow all directives by NTFRS.

31. The matters raised by the NT Police are considered below:

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

The Applicant advised that it would agree to alcohol volumes at one standard drink or less per serve in the general admission areas with the exception of all "pre-mix" drinks which will be 1.2 standard drinks. This proposal is the same as agreed last year by the parties. However, unlike last year, the Applicant has requested that such requirement not cover the bars in the "ticketed premium hospitality areas" which this year are restricted to patrons who are 18+ years of age.

Given there have been no adverse compliance issues raised by Licensing NT or NT Police from previous years' events and the number of mitigation initiatives put in place by the Applicant, I will impose the same condition agreed to last year in the licence in respect to the general admission bars only, however, no alcoholic beverages shall be taken into the general admission area which are not available from the general admission bars.

b. *Staggered decline in alcohol sales*

The Applicant has agreed to a staggered decline, however, suggested the same method as last year's event namely, that the four (4) drinks per person at one time continue until 2000 hours rather than 1800 hours as requested by NT Police. It is noted that this year, the Applicant seeks to commence the sale of alcohol from 1300 hours, an hour earlier than last year's event.

The Applicant has submitted that the event will only reach its highest attendance numbers at around 1900 hours.

Taking into account the earlier bar opening time, the limitation at the general admission bars of one standard drink or less per serve (except for pre-mix drinks), the number of mitigation initiatives put in place by the Applicant and no compliance issues from last year's event being raised, I will impose the same condition from last year for the staggered decline of alcoholic drinks being:

- From 1300 to 2000 hours no more than four (4) drinks must be sold to anyone (1) person at any one time;
- From 2000 to 2200 hours no more than two (2) drinks must be sold to any one (1) person at any one time;
- From 2200 to 2300 hours no more than one (1) drink must be sold to any one (1) person at any one time.

- c. *Industry standard security for expected crowd numbers*
- d. *All liquor to be sold in open containers*
- e. *No liquor or other beverages to be sold in glass containers*
- f. *Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years*

The matters listed by NT Police at (c)(d)(e) and (f) are all usual special licence conditions for events of this nature and will be included in this special licence.

- g. *Identify minors in the Security Incident Register*

The Applicant has agreed and confirmed that it will ensure minors are recorded or identified as minors in the Security Incident Register and I have included this as a condition of the special licence.

- h. *Additional security 'above ' industry standards' and posted in strategic positions outside the external perimeter fencing to prevent unauthorised access to the licensed premises.*

The Applicant has noted this request of NT Police and confirmed rosters have been appropriately constructed for required personnel to fulfil this request.

32. 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:

33. 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.
34. 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.

35. 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.

A handwritten signature in black ink, consisting of a stylized initial 'A' followed by a long horizontal line.

AMY CORCORAN
Commissioner
Northern Territory Liquor Commission

21 March 2019