

Delegate of the Licensing Commission

Decision Notice

MATTER: APPLICATION FOR A SPECIAL LICENCE

VENUE: Finke Desert Race Start/Finish Line Complex
Lot 6333 South Stuart Highway
ALICE SPRINGS NT 0870

REFERENCE: LC2019/071

APPLICANT: Finke Desert Race Incorporated

EVENT: Tatts Finke Desert Race

LEGISLATION: Section 58 of the *Liquor Act 1978*.

DECISION OF: Mr Russell Goldflam (Acting Deputy Chairperson)

DATE OF DECISION: 3 June 2019

Decision

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act 1978* ("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:
 - 16:00 hours to 22:00 hours on Friday, 7 June 2019
 - 10:00 hours to 18:00 hours on Saturday, 8 June 2019
 - 10:00 hours to 17:00 hours on Sunday, 9 June 2019
 - 10:00 hours to 18:00 hours on Monday, 10 June 2019
2. 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. **Joint nominees: Damien Ryan and Ben Morgan**

- 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 aluminium cans or plastic cups.
- g. No more than four (4) cans 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. **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 7 June 2018 the only liquor that may be sold after 2100 is to be mid-strength or light beer.
- d. On 8, 9, and 10 June 2018, the only liquor that may be sold before 1300 and after 1700 is to be mid-strength or light beer.
- e. 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.

- f. 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.
- g. 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.
- h. A minimum of ten Crowd Controllers are required to be in attendance on 7 and 8 June 2019; and a minimum of six Crowd Controllers are required to be in attendance on 9 and 10 June 2019. To the extent that this condition is inconsistent with Condition 2(e) above, this condition prevails.
- i. The Licensee is required to provide to the Director-General of Licensing the names and numbers of all Crowd Controllers engaged for the event by 4.00 pm on 5 June 2019. If this condition is not complied with, at 4.01 pm on 5 June 2019 the licence is to be cancelled.

Reasons

Background

4. Pursuant to section 58 of the Act, the Applicant applied to the Director-General of Licensing on 13 May 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, an event constituting Round 2 of the Australian Off Road Championships.
5. The Applicant estimates that 6,000 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). This is an increase of about 1,000 patrons per day on the estimated numbers for this event in 2018.
6. The Applicant has provided detailed information regarding the running of the event, and in particular, the proposed operation of the licence, including evidence that the proposed co-nominees are appropriately qualified.

A very late application

7. As the Applicant was reminded by the Commission in relation to the 2018 Tatts Finke Desert Race, 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.

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. The Applicant has not complied with this requirement, or applied for an abridgement of time. In 2018, the Applicant’s application was a week late, and no application for an extension of time was made. On that occasion, the Commission issued a special licence with the following warning to the Applicant:

This dispensation is not intended to be a precedent. The Applicants should from now on comply with the relevant time limits.

9. Notwithstanding this warning, the Applicant has in 2019 lodged its application three weeks before the event, or in other words, 2 months and one week late. This conduct shows a disturbing disregard of the Commission’s previous decision; an attitude that, if displayed in a court, would potentially be regarded as contemptuous; and a pattern of behaviour that calls into question the fitness of the applicant to be granted a special licence, and indeed, the Applicant’s capacity to professionally and responsibly run a complex and high-risk event such as the Tatts Finke Desert Race.
10. As is apparent from the assessment of this application below, this delay has significantly impeded Licensing NT from compiling the material the Commission requires in order to consider this application, and impaired the Commission’s opportunity to fully inform itself in relation to the issues that arise for consideration.
11. Perhaps the Licensee will consider that it would be appropriate in the circumstances to offer an apology to the Director-General of Licensing and the Commission, an explanation for its egregious flouting of the prescribed procedures, and an undertaking not to embarrass itself by continuing such conduct in the future. Alternatively, perhaps the licensees consider that the Tatts Finke Desert Race is such an important and iconic event in the cultural life of Alice Springs that its organisers can thumb their noses at the regulatory authorities with impunity.

Consultation

12. As this is an application for a special licence there is no requirement under the Act for advertising of such an application, and nor is there provision for formal objections to be made concerning such an application. Despite this, quite properly, the Director-General sought comment from relevant stakeholders, namely St Johns Ambulance (SJA), the Department of Health (DOH), Northern

Territory Fire and Rescue Services (NTFRS), NT Police, Fire and Emergency Services (NT Police) and the Alice Springs Town Council (ASTC).

13. With respect to this application:

- a. The Commission has not yet received a response from the SJA, but notes that in 2018 the SJA responded that it had no concerns about the grant of a similar licence for the equivalent 2018 race.
- 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. No response has yet been received from ASTC, but the Commission notes that one of the proposed joint nominees is the Mayor of Alice Springs, Damien Ryan. Considering this, the Commission considers it unlikely that the ASTC will oppose the grant of the special licence.

e. The NT Police responded as follows:

1. Please ensure that comprehensive security processes are put in place to secure alcohol during the event. Police are aware that Talice security are on the site all night at the Start/Finish Line. The Finke end last year was problematic with alcohol being stolen and that should be addressed by having security at that end during the night as well.
2. Ensure free portable [sic: potable] water is available in licensed areas for the duration of the event.
3. Maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event.
4. Alcohol volume to be one standard drink or less per serve.
5. All ages event where alcohol is available. Licensee is required to remove an intoxicated person in accordance with Liquor Act, a suitable place is identified or erected outside the licenced area where support services can be continued to minors who may require assistance. Any such area should restrict contact where possible between intoxicated adults and minors. The area should be clearly signposted. This area is to be staffed when minors are present whilst the event is in progress.
6. Ensure to identify minors in the Security Incident Register.

14. Special liquor licences have been granted to the Applicant for at least the previous six years. Notwithstanding the comment by police at paragraph 13(e)(1) above, Licensing NT records do not indicate a history of non-compliance with licence conditions by the Applicant.

Assessment of the Application

15. 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.
16. 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.
17. 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”.
18. 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.”
19. 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.
20. With one exception, I consider that the responses by the police are well-founded and that conditions reflecting them should be included in the licence.

Due only to the applicant's failure to lodge the application in a timely manner, it was impracticable to provide the applicant with an opportunity to reply to the police responses.

21. The Commission does not however accept that alcohol volume be no more than one standard drink per serve, for the following reasons set out in the 2018 Decision Notice for this event:

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.

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.

22. The Commission has determined to fix conditions to similar effect in relation to the 2019 licence.

Security staff

23. The application form completed by the applicant states:

You need to have sufficient people involved in crowd control during your event, i.e. two for the first 100 patrons and one for every extra 100 or part thereof (*Industry Standard of Licensed Crowd Controllers*). They must all be fully licensed as crowd controllers under the *Private Security Act 1995*".

24. The Applicant's executive officer, Mr Antony Yoffa, signed a declaration on 9 May 2019 that included an express statement that he understood that this particular condition applies.
25. Despite these clear words, and Mr Yoffa's signed declaration that he understood them, the applicant proposes, without explanation as to why the industry standard should not be adhered to in relation to this event, to have nine security guards "to support event organisers" (who are presumably not licensed) on 7 and 8 June 2019, when at least 6,000 patrons are expected, and five security guards on the second two days of the four day event, when at least 3,000 patrons are expected. If industry standards were adhered to, 61 guards would be required on each of the first two days, and 31 guards would be required on each of the second two days.

26. The same issue arose in the course of considering the applicant's application for a licence for this event in 2018. On that occasion, NT Police raised concerns about the low numbers of crowd controllers being proposed. Unfortunately, in consulting about the 2019 application, Licensing NT mistakenly informed stakeholders that Security would be "Talice – as per industry standards". It may reasonably be inferred that this error was a result of the haste with which the applicant's application had to be processed by Licensing NT, due to the lateness of the application, which precluded the usual procedure by which preparation of the brief is reviewed and checked by officers within Licensing NT.
27. Had NT Police been made aware of the proposed security arrangements, I consider that it is likely that they would have raised a concern about them.
28. 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 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.

29. In the material provided in support of the 2019 application, the Applicant relevantly submits 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."

30. The Director of Talice Security Service, which it is proposed will provide security for the operation of the licence, has provided material that corroborates and supports the above submissions. In particular, he notes 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.
31. The Commission accepts these submissions, and has determined to fix crowd controller numbers at a level similar to that imposed for the 2018 event, with a modest increase proportional to the forecast increase in numbers in 2019.
32. The Applicant has undertaken to supply that the names and numbers of security personnel at least two weeks prior to the function. The Commission has not been informed whether this undertaking has been complied with. The Commission has determined to fix a condition in relation to this issue. Failure to comply will result in the immediate cancellation of the licence.

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. I am exercising the power to make a Commission decision pursuant to the delegation made to me by the Commission.
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 persons are the applicant and the person who made "a submission" during the process that resulted in the decision being made. With respect to this application that is DOH, NTFRS and NT Police.



RUSSELL GOLDFLAM
Acting Deputy Chairperson
Northern Territory Liquor Commission
3 June 2019