

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2018/003

PREMISES: **Kalymnos Club**
46 Batten Road
Marrara NT

APPLICANT: Hamark Holdings Pty Ltd

LEGISLATION: Section 57 of the *Liquor Act*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 4 April 2018

DATE OF DECISION: 4 April 2018

Background

1. Pursuant to section 58 of the *Liquor Act* (the Act), Hamark Holdings Pty Ltd lodged an application to the Director-General of Licensing for the grant of a special licence to permit the sale of liquor to patrons attending an event known as “King of the Ring” (a kickboxing and Muay Thai fighting event) at the Kalymnos Club, Marrara, between 1830 hours and 2359 hours on Friday, 13 April 2018. The applicant is anticipating that approximately 600 patrons will attend the event.
2. The application states that beer (including mid strength and light), spirits and wine will be available for sale.
3. The proposed nominee holds a Responsible Service of Alcohol Certificate.
4. The application states that crowd controllers will be engaged as per the industry standard and food will also be available for purchase by patrons.
5. The Kalymnos Club, the proposed premises for the special licence, is the holder of a full liquor licence and has been granted approval from the Director-General to allow the applicant to sell liquor from the premises if the special licence is granted.

6. Comment on the application was sought from the Department of Health, Northern Territory Police and Northern Territory Fire and Rescue Service. None of those agencies objected to the application.
7. The applicant has been issued special licences for past King of the Ring events and there were no compliance issues in respect of the earlier special licences.

The Hearing

8. Mr Andrew Chigwidden attended the hearing on behalf of the applicant and spoke in support of the application. He said that the event was first held in 2006 and that 2 or 3 have been held in most years since then. There have been three previous King of the Ring events at the Kalymnos Club and in all that time there have been no complaints.
9. Mr Chigwidden stated that the prime source of projected income from the event was through ticket sales and that the provision of alcohol was very much ancillary to the entertainment being provided. Food would be provided by the Darwin Hockey Club which had benefited in the past from its participation in these events.

Consideration of the Issues

10. As this was the first special licence application to be determined by the Commission, the panel considered whether it was bound to apply the public interest and community impact test set out in section 6(2) of the Act.
11. Section 6(1) of the Act provides:

“When a person (a **decision maker**) has regard to the objects of this Act in:

- (a) considering or determining an application under this Act in respect of a licence or licensed premises; or
- (b) determining the conditions of a licence,

the decision maker must apply the **public interest and community impact test** set out in subsection (2) as relevant to the application or conditions”.

Section 4 states:

“**licence** means a licence issued under Part III”.

As special licences are issued under Part VI of the Act they are therefore not a licence for the purposes of Section 6.

12. The panel also considered whether the other limb of section 6(1)(a)- namely an “application in respect oflicensed premises” brought the provisions of section 6(2) into play because the Kalymnos Club is licensed premises. Such a result would be illogical as there are foreseeably less risks associated with granting a special licence in respect of premises that are already operating in accordance with a liquor licence, than would be the case with a “greenfield site”.

In our view section 64 is determinative of this issue. It provides that the enforcement and compliance provisions of the Act apply “to the holder of a special licence and the premises in respect of which a special licence is issued as if that holder of a special licence were a licensee and those premises were licensed premises.

13. Accordingly the special licence if granted for this event will take precedence over the existing licence held by the Kalymnos Club, in respect of that part of the premises where the event is scheduled to take place so that the existing licence is not relevant to our determination. Therefore we do not consider this to be an application in “respect of licensed premises” so section 6(2) does not apply.
14. Although the public interest and community impact test does not govern this application, we are still bound to have regard to the objects of the Act as set out in section 3 which provides:

3 Objects

- (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.
- (3) A person exercising a power or performing a function under this Act must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.

15. We are satisfied that having regard to the applicant's prior history, that it will be well run and that alcohol will be provided in a responsible manner and its consumption will be ancillary to the main purpose of the event which is to entertain martial arts enthusiasts.
16. Pursuant to section 59(1)(a) of the Act we grant a special licence to Hamark Holdings Pty Ltd to sell liquor to patrons attending an event known as King of the Ring at the Kalymnos Club between the hours of 1830 and 2359 on Friday, 13 April 2018.

17. The conditions of the special licence are as follows:

1. The sale of liquor must be supervised by one or more persons nominated by the Licensee (Nominee), who each 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.

Nominee: Andrew John Chigwidden

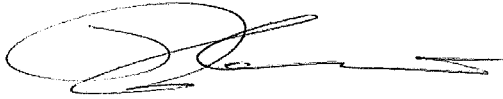
2. Persons under the age of 18 years must not be used in the sale or supply of liquor.
3. The boundary of the Premises must be clearly identified and access to the Premises must be restricted in a manner that allows for effective supervision by the Nominee.
4. Any person involved in Crowd Control, as defined under *the Private Security Act*, at the Premises, must be licensed as required by that Act.
5. Crowd Controllers are to be employed as per industry standards as follows: Two licensed crowd controllers for the first one hundred patrons and one additional crowd controller for each one hundred patrons thereafter.
6. All liquor must be sold in open containers.
7. No more than four (4) cans or bottles must be sold to any one person at any one time.
8. The licensee 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.
9. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.
10. The Licensee 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.
11. The Licensee must comply with all requirements and guidelines published by the Director-General, including guidelines related to the conduct of entertainment.
12. Where the Licensee is operating from enclosed premises, the Licensee must prominently display on the licensed 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.

13. The Licensee 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.
14. The Licensee must comply with the requirements 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.
15. All liquor purchased for sale under the authority of this licence **MUST** be purchased from a licensed retail outlet.
16. The licensee must make a record of all liquor obtained for sale under this licence that identifies the source of the liquor and the type and quantity of each type of liquor so obtained.
17. The licensee must record all liquor sold, including the type and quantity of that liquor, and must record the manner of disposal of any unsold liquor.
18. This 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.
19. The venue clearly displays signage to delineate the Non Smoking area from the Smoking Areas. The Venue must comply with smoking requirements contained in the *Tobacco Control Act*.
20. Food and drinks are not permitted to be taken into any designated smoking areas.
21. A Licensee or employee of a Licensee shall exclude or remove from licensed premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang).

Review of Decision

18. Section 120ZA of the *Liquor Act* (the Act) provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a special licence subject to conditions is a reviewable decision.
19. 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 (NTCAT). Any application for review of this decision must be lodged within 28 days of the date of the decision.

20. For the purposes 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, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
Chairperson
Northern Territory Liquor Commission

18 April 2018