

# Licensing Commission

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR A SPECIAL LICENCE</b>
<b>REFERENCE:</b>	LC2018/007
<b>PREMISES:</b>	<b>Ross River Resort Campground</b> 7829 Ross Highway HALE NT 0872
<b>APPLICANT:</b>	Wide Open Space Festival Pty Ltd
<b>EVENT:</b>	Wide Open Space Festival
<b>LEGISLATION:</b>	Section 58 of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Ms Jodi Truman (Deputy Chairperson) Dr Charles Douglas (Health Member) Mrs Amy Corcoran (Community Member)
<b>DATE OF HEARING:</b>	16 April 2018
<b>DATE OF DECISION:</b>	16 April 2018

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### **Decision**

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act* ("the Act") the Commission has determined to grant the special licence to sell liquor to Wide Open Space Festival Pty Ltd for the sale of liquor between the hours of:
  - a. 1200 hours on Friday 4 May 2018 and 0100 hours on Saturday 5 May 2018;
  - b. 1100 hours on Saturday 5 May 2018 and 0100 hours on Sunday 6 May 2018;
  - c. 1100 hours and 2359 hours on Sunday 6 May 2018.

2. The granting of approval is subject to the following conditions, namely:
  - a. The liquor shall be sold at the event known as the “Wide Open Space Festival” occurring at the Premises known as the “Ross River Resort Campground” located at 7829 Ross Highway, Hale in the Northern Territory.
  - b. 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.
  - c. A nominee MUST BE present during all trading hours and must ensure compliance with the conditions.
  - d. The Nominee is identified as Mr James Andrew Cocking.
  - e. Persons under the age of 18 years must not be used in the sale or supply of liquor.
  - f. 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.
  - g. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.
  - h. Crowd controllers are to be employed as per industry standards as follows:
    - i. Two (2) licensed crowd controllers for the first one hundred (100) patrons and one (1) additional crowd controller for each one hundred (100) patrons thereafter.
  - i. All liquor must be sold in open containers.
  - j. No more than four (4) cans or bottles must be sold to any one person at any one time.
  - k. The licensee must ensure that water, soft drink, 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.
  - l. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.

- m. 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.
- n. The Licensee must comply with all requirements and guidelines published by the Director General, including guidelines related to the conduct of entertainment.
- o. 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.
- p. The Licensee must comply with the Instructions of a Licensing Inspector, an authorised Member of the Northern Territory Fire and Rescue Service or a delegate of the Chief Health Officer upon production of an identify card or other authorisation.
- q. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.
- r. 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.
- s. 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.
- t. 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 identify card or other authorisation.
- u. The Premises must clearly display signage to delineate the Non Smoking area from the Smoking Areas and 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 Licensee or an employee of the Licensee shall exclude or remove from licensed premises any person who is wearing colours, insignia or emblems of an outlaw motorcycle gang (“Bikie Gang”).

## **Reasons**

### **Background**

3. Pursuant to section 58 of the *Liquor Act* (“the Act”), Wide Open Space Festival Pty Ltd applied to the Director-General of Licensing on 9 February 2018 for a special licence to permit the sale of liquor to patrons attending an event known as Wide Open Space Festival (“the Festival”) at Ross River Resort Campground located at 7829 Ross Highway, Hale in the Northern Territory.
4. The Festival is a music festival with dance, craft and performance workshops. A “healing space” is also to be open throughout the festival with “massage and alternative and traditional healing treatments” available.
5. The applicant is seeking to sell liquor between:
  - a. 1200 hours on Friday 4 May 2018 and 0100 hours on Saturday 5 May 2018;
  - b. 1100 hours on Saturday 5 May 2018 and 0100 hours on Sunday 6 May 2018;
  - c. 1100 hours and 2359 hours on Sunday 6 May 2018.
6. It was stated in the Application that it was anticipated by the applicant that a crowd of approximately “1,800 persons are expected to attend” with beer, cider, wine and spirits proposed to be offered for sale. Although the applicant anticipates that a crowd of approximately “1,800 persons” will attend, the applicant proposed in its application to have only seven “(7) guards on duty at peak times”. The Commission will return to this aspect later in these reasons.
7. The applicant has previously been issued special licences for the Festival in 2015, 2016 and 2017. The Commission has been informed by Licensing NT that there are “no records of previous incidents for this event or compliance issues arising from the special licence”.

### **Consultation**

8. 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 and Rescue Service (“NTFRS”) and seek their comment. With respect to this application, the Director-General also consulted with St John Ambulance and sought their comment.

9. With respect to this application:

- a. St John Ambulance indicated they “have no issues with the granting of the liquor licence as per the application previously forwarded”.
- b. The DOH made no adverse comment. It is noted that Mr Peter Boyle appeared at the public hearing listed for this application and spoke further to the response on behalf of the DOH, informing the Commission that he believed that last year’s festival was “very successful” and that this particular applicant had “done a lot of work” in relation to “smoking compliance” and appeared to have “heeded advice”. Mr Boyle went on to say there was “no concern in relation to alcohol consumption” from the perspective of DOH.
- c. The NT Police supported the application contingent to:
  - i. “Low to Mid strength beer being sold”;
  - ii. “A maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event. This is in line with what NT Police are suggesting for major events in Darwin”; and
  - iii. “Industry standard security for the event. 7 security is not enough for this occasion”.

The NT Police further noted “(t)he previous year Police received information of very drunk persons at the event. Extra security will assist with any concerns for public safety. NT Police will not be present at the event”.

- d. The NTFRS advised that they had “no objection to the issue of this special licence” and that an “Emergency Management Plan must be in place as per previous approvals for this event”.

## **Assessment of the Application**

10. 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.
11. As a result, this Commission has determined that an application for a special licence is **not** a licence with respect to which this Commission is bound to apply the public interest and community impact test as provided for under section 6 of the Act.

12. The Commission notes 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”.
13. 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.”
14. It is these objects that were considered carefully by this Commission when determining this application.
15. The Commission understands that this application is similar to previous applications and approvals. As earlier noted, although there is no formal obligation to consult, responses were sought from the relevant stakeholders and three (3) matters were raised. These, in general terms, related to:
  - a. Security (or crowd controller) numbers;
  - b. Maximum number of drinks and decline towards conclusion of the event; and
  - c. Emergency Management plans.
16. In relation to security (or crowd controller) numbers, the Commission notes that following receipt of the response from NT Police, the applicant responded and advised that it was:

“... boosting our security to include 3 more guards to support our 24hr operations at Wide Open Space – this will bring it up to 10 guards on at peak times. The nature of the event and our experience of 10 years have proven us to take responsible service seriously.

“I have started dialogue with the local Police and Wide Open Space is buying an industrial breathalyser for voluntary use by punters leaving the festival site”.

17. As previously noted the Commission acknowledges that there are no records of previous incidents for this event or compliance issues arising from the special licence that has been issued to the applicant in 2015, 2016 and 2017. However, the evidence provided to the Commission makes clear that the special licences that were issued to the applicant for the 2015, 2016 and 2017 events **all** contained a general provision as follows:

“Crowd controllers are to be employed as per industry standards as follows: Two (2) licensed crowd controllers for the first one hundred (100) patrons and one (1) additional crowd controller for each one hundred (100) patrons thereafter”.

18. This is therefore a condition about which the applicant has been required to comply as a condition of the special licence granted to the applicant for the last three (3) years
19. The Commission understands and accepts that the requirement for crowd controllers is not simply for compliance with provisions under the *Liquor Act*, but also to be able to address issues relating to general public safety that are known to arise from time to time when there is any mass gathering of people for events such as the one sought to be undertaken by the applicant at this Festival.
20. As a result industry standards have been prepared and put in place for some time to be able to ensure that such general safety concerns are considered and are capable and able to be dealt with by the applicant (or any applicant for that matter) should the need arise.
21. In relation to the issue of the numbers of persons anticipated to attend this Festival, the Commission notes that the applicant has stated that:

“Of the quoted 1800 people present approximately 400 are children, youth and accompanying parents and guardians. We require a parent or guardian to sign in children and youth on entry and agree to stay with their children throughout the event). A further 150 are crew and volunteers. Unlike other events like the Darwin festival, the Ross River Resort campground (festival site) is fenced and all patrons move regularly through strategic security control points, e.g. at the marquee where the point of sale (bar) is located; at the front gate (entry and ticket sales) where car searches are conducted; and the entry point to the Festival production site (cattle grid)”.

Over the 10 years of the event we have progressively designed our event to promote a positive family atmosphere (as we have grown our own families). We have ever increased the quality and quantity of the 'kids space' that we locate in the centre of the festival to promote maximum enjoyment and inclusion of families. Over my 20+ years of organising and attending festivals and events it has been noticeable that events that don't include children and families have increased drunkenness and anti-social behaviour.

Our target audience are predominantly professional people and music connoisseurs in the age range of 30-45 years of age”.

And further:

“In discussions with our security contractor, Mr Patrick Honan, we are developing the security plan and roster to ensure we have adequate numbers of security guards to match our needs. Currently we have plans for 10 guards to be on at the peak times. This enables static guards at strategic locations – entry points, the bar, main stages and resort side with roaming guards to patrol the licensed and camping areas.

There will be up to 15 Wide Open Space staff (including Bar Manager, Site Management, Festival Directors, Information Desk, First Aid and Medical team amongst others) with VHF radios distributed throughout the event to enable greater coverage as 'eyes, ears and mouthpieces' of the festival. The integrated communication between festival staff and security combined with the nature of the crowd, enable a discrete yet rapid security response as needed.

We are prepared to increase the number of rostered guards as necessary – up to this point; our experience with this event, numbers of patrons and the experience of our security contractor is that we have not needed to. As ticket numbers increase, we're discussing arrangements with our security contractor and prepared to recruit more crowd controllers if necessary.

We are open to recommendations from the (C)ommission”.

22. Whilst the Commission accepts what has been raised on behalf of the applicant as identified above, the fact remains that for the last three (3) years there has been a condition of the special licence granted to the applicant that it **must** comply with industry standards in relation to the number of crowd controllers to be employed. It is to the credit of the applicant that there have been no issues in those previous three (3) years, however given that it was a condition of those relevant licences that there be such compliance, the Commission finds no basis upon which that condition in relation to crowd controllers should be altered and declines to do so.



23. In relation to the maximum number of drinks to be served and a decline towards the conclusion of the event, the Commission notes that this appears to be a general response provided by NT Police with respect to a number of applications. The Commission hypothesizes that this may be a general policy stance taken by police. There may be reasons for such a stance. The Commission does not know.
24. As previously noted; there is in fact no requirement under the Act for advertising of special licence applications, or provision for formal objections. It is however clear that this Commission must consider the objects of the Act. To do so, the Commission relies upon the evidence and information placed before it. Therefore if there are relevant matters which the NT Police have to support a submission as to such a particular condition being imposed in a special licence, then that evidence and/or material should be provided to the Commission for its consideration with respect to the particular application.
25. With respect to this particular application however, the fact of the matter is that there has been no evidence or information provided to this Commission to support any finding that there is a need with respect to this particular special licence for a condition to be considered and/or imposed that provides for a decline as to the maximum number of drinks to be served towards the conclusion of the event.
26. In relation to the Emergency Management plan as raised by NTFRS, the Commission notes that there is evidence that the applicant is addressing this directly with NTFRS and the Commission has nothing further to say with respect to this aspect.
27. It is as a result of the matters outlined above that this Commission is, on balance, satisfied that the objects of the Act have been sufficiently addressed and the Commission has for the reasons outlined decided to grant the special licence and as outlined at the start of this Decision Notice.

### **Notice of Rights:**

28. 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.
29. 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.

30. 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 St John Ambulance, DOH, NT Police and NTFRS.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

**JODI TRUMAN**  
Deputy Chairperson  
Northern Territory Liquor Commission

16 April 2018