

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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<b>MATTER:</b>	<b>APPLICATION FOR A SPECIAL LICENCE</b>
<b>REFERENCE:</b>	LC2019/049
<b>VENUE:</b>	Mindil Beach THE GARDENS NT 0820
<b>APPLICANT:</b>	Hamark Holdings Pty Ltd
<b>EVENT:</b>	Summer Session
<b>LEGISLATION:</b>	Section 58 of the <i>Liquor Act 1978</i>
<b>DECISION OF:</b>	Ms Amy Corcoran (Commissioner)
<b>DATE OF DECISION:</b>	5 June 2019

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### 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 a special licence to sell liquor to Hamark Holdings Pty Ltd (**the Applicant**) for the sale of liquor between the hours of:

Saturday, 8 June 2019 from 16:00 to 23:59 hours

2. The granting of approval is subject to the following 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**), 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.

**Nominee: MS LORRAINE PHELAN**

- 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 containers.
- g. No more than four (4) alcoholic drinks 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*.
- t. Food and drinks are not permitted to be taken into any designated smoking areas.
- u. 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 (n):**

- No more than four (4) alcoholic drinks to be sold to any one person at any one time from 1600 hours to 2200 hours and then no more than two (2) alcoholic drinks sold to any one person at any one time from 2200 hours to 2359 hours. To the extent that this condition is inconsistent with Condition 2(g) 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.
    - All patrons must be 18 years and over.
    - All patrons must be issued wristbands demonstrating that they have been checked for identification upon entry. No person is to be sold, consume or possess liquor if they are not wearing a wristband.

- Free potable water must be available to patrons;
- Liquor or any other beverages must not be sold to patrons in glass containers;
- No pass-outs from 19:00 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 80% 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.

## **Reasons**

### **Background**

3. On 22 March 2019 pursuant to section 58 of the Act, Hamark Holdings Pty Ltd 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 'Summer Session' on Saturday, 8 June 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. Summer Session is an over 18 year's music festival held at Mindil Beach. The Applicant estimates 2,500 persons will attend this year. Minors are not permitted at the event.
5. The Applicant initially sought a special licence for the following hours of trade:
 

Saturday, 8 June 2019 from 14:00 hours to 23:59 hours.

However, on 4 June the Applicant advised by email that it now only requires the bars to be open from 16:00 hours.
6. The sale of liquor to patrons at Summer Session is proposed via five bars. Beer, soft drinks, cocktails, ready to drink spirits (**RTDs**), wine and cocktails are proposed to be available for sale throughout the licensed area. Additionally, the Applicant indicates beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength.
7. Complimentary tap water is available to patrons at the event. There will be no BYO alcohol and patrons will be screened and bags checked upon entry to prevent BYO alcohol, illicit drugs, and weapons already intoxicated persons from entry.
8. 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.

9. The Applicant has confirmed qualified paramedics will be engaged and present during the event.
10. The Applicant has previously organised and managed this event and many other large music concerts in Darwin over a number of years.
11. Licensing NT have indicated that “nil compliance issues are evident on file for Summer Session 2018” providing me with the following summary from their 2018 Compliance Report for the same event:

“I can confirm the 9 June 2018 Summer Sessions' event was well executed and managed on a liquor and security aspect. All POS complied with liquor licence conditions and CCs [crowd controllers] were alert and vigilant in regards to dealing with anyone displaying signs of ABA [and ASB].

#### Positives

1. CCs [crowd controllers] employed and maintained a 'zero tolerance' approach to anti-social behavior mitigating the potential for incidences during the course of the night.
2. Experienced CC's were located in essential areas, roaming all areas.
3. No glass containers were sold.
4. Cleaners maintained the areas well.
5. Bars staff adhered to licence conditions.

#### Negative

1. CCs are to be more vigilant in respect to checking IDs prior to entry.
  2. Adequate signage was not available indicating free potable water was openly available to patrons.”
12. I also note from last year's decision that there was no evidence of non-compliance or adverse comments regarding the same event in 2016 or 2017 from either Licensing NT or NT Police.

### **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 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:

14. DOH advised it had no adverse comment and asked the Applicant to be reminded of its obligations under the *Tobacco Control Act*.

15. NTFRS advised that:

"NTFRS have no objection. NTFRS have made event organisers aware of NTFRS requirements for this event and we will be conducting a pre-event inspection."

16. NT Police advised that they "...support this application contingent to:

- Sale of full strength alcohol is only allowed after 1700 hours.
- No more than three (3) alcoholic drinks to be sold to any one person at any one time from 1400 hours to 2100 hours and then no more than two (2) alcoholic drinks sold to any one person at any one time from 2100 hours to 2300 hours. No sale of alcohol in the final hour of the event (Police advice is based on the outcome of 2018 event considering sale of alcohol starts at 1400 hours).
- Additional security above 'industry standards' and posted at strategic positions outside the external perimeter fencing sufficient to cover each side/potential blind spots to prevent unauthorised access to the licenced premises. Further, sufficient additional security for exiting choke points, particularly areas leading to and around the public bus/taxi zones.

#### All Ages Event

- 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.
- This area should be well lit and clearly signposted.
- This area is to be staffed when minors are present whilst the event is in progress.
- Ensure to identify minors in the Security Incident Register. Minors to have tamper proof wristbands upon entry. Removing or tampering being grounds for being required to be removed from the event.

NT Police would like to reiterate that the organisers should not use this event to maximise the sale of alcohol to patrons."

17. SJA did not provide any comment except that they "have not been requested at this time to attend this event. I do note that they have Paramedics attending this event, it would pay to ensure that these Paramedics are registered Paramedics

with APHRA as it is now an offence to claim being a paramedic within the appropriate registration.”

18. I will address these comments separately below.

## **Assessment of the Application**

19. 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.

20. 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.

21. 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”.

22. 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.”

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

24. In respect to DOH's comments, I confirm that the Applicant is required to comply with the *Tobacco Control Act 2002* under a special licence and have been provided a copy of DOH's comments.
25. SJA advised that have not been asked to provide medical support at this event. The Applicant has specified in its Application: "a first response medical service for event patrons is provided by paramedics" and in a subsequent email confirmed that these "paramedics are registered paramedics with APHRA."
26. In respect to the various conditions requested by NT Police, I note this is an 18 years plus event therefore the conditions which relate to an "all ages event" are not relevant. In respect to the other comments made by NT Police, the Applicant has provided the following response:

"Sale of full strength alcohol is only allowed after 1700 hours - The bars now open at 4pm and not 2pm and we request that we are permitted to sell full strength alcohol from this time. We have not had any issues with this previously and have had no issues with Police or licensing regarding the sale of full strength alcohol at this time. We have been complimented by Police and licensing on our responsible service of alcohol after and during all of our events.

No more than three (3) alcoholic drinks to be sold to any one person at any one time from 1400 hours to 2100 hours and then no more than two (2) alcoholic drinks sold to any one person at any one time from 2100 hours to 2300 hours. No sale of alcohol in the final hour of the event (Police advise is based on the outcome of 2018 event considering sale of alcohol starts at 1400 hours) – As previous events, we would request that a maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event. 4 alcoholic drinks to be sold to any one person at one time between 4pm-10pm. Then 2 drinks per person between 10pm -11pm, then 1 drink per person between 11pm-12am. We have received compliments on our responsible service of alcohol from licensing and police with these procedures in place at all of our events.

Additional security above 'industry standards' and posted at strategic positions outside the external perimeter fencing sufficient to cover each side/potential blind spots to prevent unauthorised access to the licenced premises. Further, sufficient additional security for exiting choke points, particularly areas leading to and around the public bus/taxi zones - We place security at certain points of the venue to prevent any unauthorised access at every event we do and believe we do not need anymore than the industry standard to operate this event safely. We also move security to the bus/taxi zone when patrons start leaving the venue. We have received compliments on our event operations at all recent events when operating with an industry standard security protocol in place."

27. In regards to the conditions requested by the NT Police I comment as follows:
  - a. Sale of full strength alcohol is only allowed after 1700 hours.



The Applicant has advised that it now only requests bars are open from 16:00 hours as opposed to the original request of 14:00 hours.

There has been no adverse comments or compliance history raised by either Licensing NT or the NT Police in regards to last year's events and accordingly, I find no evidence to support the delayed commencement of full strength alcohol from 16:00 hours to 17:00 hours.

- b. No more than three (3) alcoholic drinks to be sold to any one person at any one time from 1400 hours to 2100 hours and then no more than two (2) alcoholic drinks sold to any one person at any one time from 2100 hours to 2300 hours. No sale of alcohol in the final hour of the event (Police advice is based on the outcome of 2018 event considering sale of alcohol starts at 1400 hours).

Last year, a staggered decline of drinks was a condition of the special licence. The above suggested condition is more stringent than that imposed last year however, no compliance concerns have been raised by NT Police regarding why such condition is appropriate this year. Accordingly, I intend to impose the same condition as last year with regards to the staggered decline save and except for the starting time.

I note the Applicant has indicated it would be happy to reduce drinks to just 1 per person per transaction from 11pm and this is entirely a matter for it. The Commission encourages any initiatives volunteered by Applicants or licensees to aid the responsible service and consumption of alcohol.

- c. Additional security above 'industry standards' and posted at strategic positions outside the external perimeter fencing sufficient to cover each side/potential blind spots to prevent unauthorised access to the licenced premises. Further, sufficient additional security for exiting choke points, particularly areas leading to and around the public bus/taxi zones.

Industry standard for crowd control was provided last year by the Applicant in accordance with their special licence. Both the comments of the Applicant above and also the feedback received from Licensing NT from last year's event indicates the crowd controllers are well managed by the Applicant and provide an appropriate level of supervision. Licensing NT stated in regards to last year's event that "CCs [crowd controllers] employed and maintained a 'zero tolerance' approach to anti-social behavior mitigating the potential for incidences during the course of the night" and "experienced CC's were located in essential areas, roaming all areas".

With otherwise no adverse comments received from Licensing NT and NT Police regarding the management of the event last year, I find no reason to impose a more onerous security condition in this year's special licence.

- 28. 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:**

29. 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.
30. 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.
31. 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.



**AMY CORCORAN**

Commissioner  
Northern Territory Liquor Commission

5 June 2019