

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/078
PREMISES:	Filipino Community Centre 4 Batten Road MARRARA NT 0812
APPLICANT:	Shyam Thapa trading as Gorkha Paltan
EVENT:	“The Original Duo and Frenz”
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	3 July 2018

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 the special licence to sell liquor to Mr Shyam Thapa trading as Gorkha Paltan (“the applicant”) for the sale of liquor between the hours of 1830 hours and 2330 hours on Friday 20 July 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 Original Duo and Frenz” occurring at the Filipino Community Centre located at 4 Batten Road, Marrara in the Northern Territory (“the Premises”).
 - 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 Nominees are identified as Mr Sanod Khatiwada and Mr Shyam Bahadur Thapa.

- 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 (1) person at any one time.
- k. The licensee must ensure that water, soft drink 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. 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 Service from time to time.
- p. 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.
- q. 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.

- r. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.
- s. 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.
- t. 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.
- u. 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.
- v. 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*.
- w. Food and drinks are not permitted to be taken into any designated smoking areas.
- x. 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”), Mr Shyam Thapa trading as Gorkha Paltan (“the applicant”) applied to the Director-General of Licensing on 19 June 2018 for a special licence to permit the sale of liquor to patrons attending an event known as “The Original Duo and Frenz” occurring at the Filipino Community Centre located at 4 Batten Road, Marrara in the Northern Territory (“the Premises”).
4. The applicant is seeking to sell liquor between the hours of 1830 hours and 2330 hours on Friday 20 July 2018. The applicant advised that a crowd of approximately 300 persons are expected to attend the event. This crowd is expected to cover a wide range of age groups. It was stated in the application that the nature and purpose of the event is to bring “one of the famous duos of a popular band of Nepal” who are “performing their musical tour all over Australia. There will be live music performed by a band and Dance”.

5. The applicant proposes that a range of beer including mid low to mid strength will be available along with wine and premixed alcohol drinks. Authentic Nepalese food will also be available.
6. I have been informed by Licensing NT that the applicant has held a special licence for two (2) events in 2017. There was no evidence provided to suggest any negative compliance history for those previous events.

Consultation

7. 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”), Northern Territory Police, Fire and Emergency Services (“NT Police”), and Northern Territory Fire and Rescue Service (“NTFRS”) and seek their comment.
8. With respect to this application, the DOH replied that they had no adverse comment and provided some additional information which was forwarded to the applicant.
9. The NT Police replied on 22 June 2018 stating “NTPOL supports this application contingent to low to mid strength beer”. This response was provided to the applicant who responded on 25 June 2018 stating “We providing low to mid-strength beer on that day”. That response was provided to NT Police who responded on 28 June 2018 stating “Nil objections from NTPOL”.
10. The NTFRS replied on 20 June 2018 stating

“NTFRS has no objection to the Special Liquor Licence Application - Gorkha Paltan - The Original Duo and Frenz - Friday 20 July 2018 as long as the stage area, ramp and back stage dressing room areas are not used in any shape way or form. To date the certifiers have not certified the stage, ramp and back stage areas for use. (See areas not to be used Attachment).
11. This response was provided to the applicant who responded on 21 June 2018 stating (inter alia) “I have read the fire and safety compliance and understood this direction”.

Assessment of the Application

12. 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.
13. 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.

14. However 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”.
15. 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.”
16. 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.
17. I note the responses given by the applicant to the comments provided by NT Police and NTFRS. It is clear from the special licence application provided to NT Police (and all stakeholders) that the applicant is seeking to provide not just low and mid strength beer, but also wine and pre-mixed spirits. When the response of the applicant was sent to NT Police confirming that low and mid strength beer would be included, the NT Police responded that there were nil objections. The response did not indicate that this was the only type of liquor that would be provided. The applicant has confirmed that it proposes to make a range of products available including pre-mix spirit cans, wine by the glass, and beer in low/mid-strength variety as well as heavy
18. The evidence provided to me indicates that the applicant has been able to appropriately conduct an event such as this in recent times on two (2) separate occasions, one of which included beer, wine and spirits and there was no evidence of any compliance issues. It is clear that this event is an event inclusive of families and is focussed on a band that is famous for its music within the Nepalese

community. There will be authentic Nepalese food at the event. I therefore do not consider this to be a high risk event.

19. I am satisfied as a result of the material provided by the applicant that it would conduct itself appropriately under any special licence granted to it. On the basis of the material before me, I find there is no basis to believe the applicant would not comply with the usual conditions of the special licence as sought. Given the nature of this event and for the reasons outlined above; I am, on balance, satisfied that the objects of the Act have been sufficiently addressed and I have decided to grant the special licence as outlined at the start of this Decision Notice.

Notice of Rights:

20. 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.
21. 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.
22. 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.



JODI TRUMAN
Deputy Chairperson
Northern Territory Liquor Commission