

# Delegate of the Liquor Commission

## Decision Notice

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<b>MATTER:</b>	APPLICATION FOR A SPECIAL LICENCE
<b>REFERENCE:</b>	LC2018/123
<b>PREMISES:</b>	Mindil Beach The Gardens NT 0820
<b>APPLICANT:</b>	Hamark Holdings Pty Ltd
<b>EVENT:</b>	“Electric Storm Festival”
<b>LEGISLATION:</b>	Section 58 of the <i>Liquor Act</i> .
<b>DECISION OF:</b>	Ms Pauline Reynolds, (Commissioner)
<b>DATE OF DECISION:</b>	9 October 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”) I have determined to grant the special licence to sell liquor to Hamark Holdings Pty Ltd. (“the applicant”) for the sale of liquor between the hours of 1400 hours and 2359 hours on Saturday 27 October 2018.
2. The granting of approval is subject to the following conditions, namely:
  - a. The liquor shall be sold at the event known as “Electric Storm Festival.” occurring within the Mindil Beach Precinct at The Gardens, Darwin 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 Nominee is identified as Lorraine Phelan.
  - 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.  
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.
- h. All liquor must be sold in open containers.
- i. No more than four (4) alcoholic drinks must be sold to any one person at any one time.
- j. The holder of the special licence 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.
- k. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.
- l. 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.
- m. Where the holder of the special licence 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.
- n. 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.
- o. The holder of the special licence 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.
- p. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.
- q. The holder of the special licence must ensure that no liquor or other beverages are sold in glass containers.

- r. The holder of the special licence 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 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.
- 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 holder of the special licence or an employee of the holder of the special licence shall exclude or remove from licensed premises any person who is wearing colours, insignia or emblems of an outlaw motorcycle gang (“Bikie Gang”).
- x. For the purpose of fire safety, The holder of the special licence an employee of the holder of the special licence shall ensure there are dry chemical powder extinguisher/s (3A40B:E) to be located at any food stall vendors along with a 1.2 x 1.8 metre fire blanket/s. Further that there are dry chemical powder extinguisher/s (3A40B:E) to be located on the stage area, sound desk, media tent and big screen if used. Such fire extinguisher/s and fire blanket/s are to be maintained per Australian Standards (AS 1851).

## **Reasons**

### **Background**

1. Pursuant to section 58 of the Liquor Act (“the Act”), on 16 August 2018, 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 “Electric Storm” occurring within the Mindil Beach Precinct at The Gardens, Darwin in the Northern Territory (“the Premises”).
2. The applicant is seeking the following hours of trade:  
Saturday, 27 October 2018 from 1400 hours to 2359 hours.
3. Electric Storm 2018 is the sixth year of the Electric Storm Festival.
4. The Electric Storm Music Festival is a Halloween costume with a best dressed competition involved.
5. Unchanged from previous years, Electric Storm 2018 will display a line-up of DJ and MC performances. In addition to DJ and MC performances, “Silent Disco” will debut at Electric Storm 2018. “Silent Disco” will enable patrons to

listen and dance to music on individual sets of wireless headphones as music is broadcast via radio transmitter.

6. Electric Storm 2018 will be held Saturday 27 October 2018 within the Mindil Beach Precinct at The Gardens. Approximately 3,000 persons are expected to attend the music festival with gates opening to ticket holders at approximately 1600 hours.
7. Electric Storm 2018 is 18 years plus event with the target audience being persons aged between 18 and 40 years.
8. Hamark Holdings Pty Ltd propose alcoholic beverages be sold to patrons via four bars offering for sale beer, ready-to-drink spirits, cocktails and wine.
9. 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.

## Consultation

10. 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”), Northern Territory Fire and Rescue Service (“NTFRS”) and St Johns Ambulance and seek their comment. Given the location of this venue I was advised that the City of Darwin was also consulted
11. Department of Health has no adverse comment. However, Health asks the Director-General of Licensing to consider patron and community safety & amenity when determining this application. Health requests the venue clearly displays signage to delineate the Non-Smoking areas from the Smoking Areas.  
  
The Department of Health notes the inclusion of an Illicit Drug Control Policy in the Event Management Plan.  
  
Further the applicant seeks an exemption to allow drinks into an area excluded from the identified Outdoor Eating and Drinking Area which the Tobacco Control Act does not allow. The applicant is reminded that food and drinks are not permitted to be taken into any identified outdoor smoking area.
12. The Northern Territory Fire and Rescue Service have no objection and submit in their response:
  - NTFRS has no objection to the Special Liquor Licence Application on the proviso that all food stall holders have a 3A30BE Dry Chemical extinguishers and where deep fryers are used a 1.2x1.8 fire blanket present.
13. Northern Territory Police support the application contingent to:
  - Only low to mid strength alcohol for sales
  - Alcohol volume to be one standard drink or less per serve

- Staggered declining in alcohol sales as follows:
    - From 1400 hours to 2000 hours no more than four (4) cans or bottles must be sold to anyone (1) person at any one time;
    - From 2000 hours to 2200 hours no more than two (2) cans or bottles must be sold to any one (1) person at any one time;
    - From 2200 hours to 2400 hours no more than one (1) can or bottle must be sold to any one (1) person at any one time.
  - Industry standard security for expected crowd controllers
  - No liquor or other beverages to be sold in glass containers
  - All liquor must be sold in open containers.
14. St John Ambulance Australia (NT) Incorporated submit they are not involved in this event.

Steve Yapp Security & Investigations will provide medical support to the Event through the use of two paramedics on site.

Paramedics will report all information to the Event Manager & Head of Security and will work under the direction of the NT Police in the event of an emergency.

St John Ambulance will be made aware of the event & will be contacted if transportation of injured or ill patients is needed from the precinct to the Royal Darwin Hospital,

## Assessment of the Application

15. 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.
16. 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 as provided for under section 6 of the Act.
17. 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”.
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. I note the response from NT Police and further note the “support” of the application. I consider the response from the applicant to the matters raised as contingencies by the NT Police to be reasonable. This event has a good history and is in my opinion a low risk event. It is clear that the application has put in place management initiatives and risk strategies to deal with issues that may arise during the course of the event.
21. 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. There is nothing to indicate a need for a staggered decline in drinks for this particular event and such response from NT Police appears to be a general policy rather than a response directed to this matter. I therefore do not impose such a condition.
22. With respect to the response provided by NTFRS, I consider those conditions to be relevant and important to public safety and intend to include those conditions within the licence.
23. 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:**

24. 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.
25. 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.

26. 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.

A handwritten signature in black ink, appearing to be 'Pauline Reynolds', written in a cursive style.

**PAULINE REYNOLDS**

Commissioner  
Northern Territory Liquor Commission