

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *LACT ACTIVATIONS PTY LTD APPLICATION FOR LIQUOR LICENCE [2023] NTLiqComm 7*

REFERENCE: LC2023/005

APPLICANT: LACT Activations Pty Ltd

PREMISES: Gardens Amphitheatre
21 Geranium Street
THE GARDENS NT 0870

PROPOSED EVENT: Red Hot Summer

DATE OF EVENT: 6 May 2023

LEGISLATION: Part 3 Division 4 of the *Liquor Act 2019*

DECISION OF: Mr Russell Goldflam (Delegate)

DATE OF DECISION: 24 March 2023

Decision

1. For the reasons set out below, in accordance with section 48 of the *Liquor Act 2019* (**the Act**), the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence with a major event authority to LACT Activations Pty Ltd (**the applicant**).
2. The applicant will be issued with a major event authority attached to the licence authorising the sale, supply or service of liquor to patrons at the event known as Red Hot Summer located at the Gardens Amphitheatre, 21 Geranium Street, The Gardens, NT, 0870 (**the premises**) on Saturday, 6 May 2023 from 13:00 hours until 24:00 hours.
3. The Commission approves Ms Danielle Jones as the designated nominee (**the nominee**).
4. The premises is the area bounded in red depicted on the plan at page 131 of the brief of evidence provided to the Commission under cover of a memorandum dated 7 March 2023 signed by Melissa Garde, Delegate of the Director of Liquor Licensing (**the Director**).

5. In addition to the major event conditions set out in Part 4 Divisions 1 and 12 of the *Liquor Regulations 2019 (the Regulations)*, the licence shall also be subject to the following additional conditions:
- a. 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.
 - b. The nominee must be present during all trading hours, supervise the sale of liquor and ensure compliance with these conditions.
 - c. The sale of liquor must be conducted by persons who hold a Responsible Service of Alcohol certificate or equivalent qualification approved by the Director.
 - d. Persons under 18 years must not be engaged in the sale or supply of liquor.
 - e. 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.
 - f. Liquor may only be served to patrons wearing an 18+ or VIP Entry wristband supplied and fitted by the licensee to patrons when they enter the premises.
 - g. Liquor may only be sold in opened cans or plastic containers.
 - h. Between 13:00 hours and 22:00 hours, no more than 4 serves of liquor may be sold, served or supplied at the event to one person at a time.
 - i. Between 22:00 hours and 23:00 hours, no more than 2 serves of liquor may be sold, served or supplied at the event to one person at a time.
 - j. Between 23:00 hours and 24:00 hours, no more than 1 serve of liquor may be sold, served or supplied at the event to one person at a time.
 - k. A call for last drinks must be issued no later than 23:30 hours.
 - l. Wine must only be sold in a serve of 150 ml in a plastic container.
 - m. Pre-mixed spirits must not be sold in cans containing more than 1.7 standard drinks (up to 4.8% alcohol by volume).

- n. Poured spirits and cocktails must not contain more than 30 ml of alcohol per serve.
 - o. No liquor may be served in the form of “shots” or “shooters”.
 - p. The licensee 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*. Food and drinks are not permitted to be taken into any designated smoking areas.
 - q. The licensee shall exclude or remove from the premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang).
6. The licence will be issued immediately following the publication of this decision notice.

Reasons

The Application

7. On 9 February 2023, the applicant applied for a licence to sell liquor at The Gardens Amphitheatre Darwin for “Red Hot Summer”, a concert featuring several of Australia’s most popular performing artists, on Saturday, 6 May 2023 between 13:00 hours and 24:00 hours. As the applicant estimated that up to 4,500 patrons might attend the event at any one time, the applicant applied for a liquor licence with a major event authority.
8. The proposed event is the Darwin leg of a national tour by performers including Paul Kelly, Bernard Fanning, Missy Higgins, Mark Seymour, Vika and Linda Bull, Ian Moss and Troy Cassar-Daley. The applicant anticipates that this line-up will appeal mainly to people over 30 years of age.

Consultation

9. As required by section 57 of the Act, notices of the application were published in the NT News on 18 February 2023, on the Northern Territory Government website and by way of a green sign displayed at the proposed premises.
10. In accordance with section 56 of the Act, notification was given to Department of Health, NT Police and the City of Darwin. The Director also notified the Northern Territory Fire and Rescue Service and St John’s Ambulance.
11. No objections to the application was received, and each of the above-named stakeholders responded without objection.

The licensee's record of compliance

12. The Director informed the Commission that the applicant, which has previously hosted events of a similar nature, has no record of non-compliance with the Act.
13. Similarly, the proposed nominee has previously been a liquor licence nominee for similar events, and has no record of non-compliance.

The referral

14. On 7 March 2023, pursuant to section 59 of the Act, the Director referred the application to the Commission. Pursuant to the Commission's delegation issued on 28 October 2019, I determined the application as a single member of the Commission "on the papers" without a public hearing, which I considered would not have been worthwhile.
15. The Director provided the following documents to the Commission with the referral (**the brief**):
 - a. application for liquor licence with major event authority;
 - b. probity documents for proposed nominee;
 - c. affidavit and Declaration of Associates pursuant to section 54 of the Act;
 - d. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
 - e. ASIC Company extract for applicant;
 - f. traffic management plan;
 - g. smoking management plan;
 - h. emergency response plan;
 - i. event operations plan;
 - j. event risk report;
 - k. site plan;
 - l. insurance certificate of currency; and
 - m. correspondence between Licensing NT, the applicant and stakeholders.

ASSESSMENT OF THE APPLICATION

16. In accordance with section 59 of the Act, I have considered:

- a. the applicant's affidavit required by section 54;
- b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
- c. the financial stability, general reputation and character of the applicant; and
- d. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.

17. In accordance with section 49 of the Act, I have also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community.

The applicant

18. The applicant has provided adequate documentation regarding planning and management of the event. The applicant has previously been granted a liquor licence.

The applicant's associates

19. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. I am satisfied that the applicant has complied with the disclosure requirements of section 54, and that for the purpose of this application no issues of concern arise concerning any associates of the applicant.

The suitability of the applicant's premises

20. The premises are at the Gardens Amphitheatre, Darwin. To enhance pedestrian safety, the applicant's detailed Traffic Management Plan includes the closure of a section of an adjacent major public street, Gardens Road, for two periods of approximately two hours at the beginning and end of the event, as well as temporary signage, traffic control devices, speed restrictions, pick-up zones and taxi ranks.

21. I assess the premises as suitable for the supply and consumption of liquor in the manner set out in the application.

The financial stability, general reputation and character of the body corporate

22. Although no information was included in the brief provided to the Commission regarding the applicant's financial circumstances, I infer from the applicant's satisfactory record of presenting similar events that it is financially stable. I assess the applicant as having a satisfactory business reputation and as being financially stable for the purpose of this application.

Whether the applicant and nominee are a fit and proper person to hold a licence

23. Section 51(3) of the Act provides that an applicant is assumed to be a fit and proper person in the absence of evidence to the contrary. No such evidence was provided to the Commission. I assess both the applicant and the nominee to be a fit and proper person to hold a licence.

Public notice and consultation

24. I am satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

Whether issuing the licence is in the public interest

25. To determine whether the issue of the licence is in the public interest, I am required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:

- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed

premises receives training suitable to the person's role in the business;

- (h) preventing the giving of credit in sales of liquor to people;
- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

26. Having considered each of these objectives, and having particular regard to the impressively detailed planning for the event undertaken by the applicant, as well as the applicant's satisfactory record of successfully conducting such events, I am satisfied that it is in the public interest to issue the licence.

Whether the issue of the licence will have a significant adverse impact on the community

27. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, I must consider the following matters set out at section 49(3) of the Act:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;
- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50;
- (j) any other matter prescribed by regulation.

28. I note there are no such "other" matters prescribed by regulation.

29. Having considered each of these matters, and having particular regard to the brief duration of the event and its location in a purpose-built venue located in

an entertainment and recreational precinct at some distance from residential areas, I am satisfied that the issue of the licence will not have a significant adverse impact on the community.

30. Having considered all of these matters, I am satisfied, in accordance with section 49 of the Act, that:

- a. the applicant is a fit and proper person; and
- b. issuing the licence or authority is in the public interest; and
- c. the licence or authority will not have a significant adverse impact on the community.

Conditions

31. In fixing the conditions set out at paragraph 5 above, I have had regard to:

- a. the nature, scale, location and time of the event;
- b. the conditions that have been fixed for other similar events;
- c. the measures proposed by the applicant;
- d. the responses of stakeholders who were consulted;
- e. the public interest and community impact assessment; and
- f. the conditions prescribed in the Regulations.

32. The applicant has submitted that the sale and service of wine by the bottle be permitted at this major event. I consider that there is considerable force in this submission, noting that:

- a. when a bottle of wine is purchased, it would be decanted into and served in a plastic carafe;
- b. the sale of wine by the bottle would not be permitted after 22:00 hours;
- c. the applicant would charge at least \$40 for a bottle of wine sold at the event, a practice that would likely discourage less mature drinkers;
- d. it is anticipated that most patrons of the event will be over 30 years of age;
- e. having regard to the type of music on the program, the availability of wine by the bottle would be in keeping with the ambience and mood of the event;

- f. the applicant has given close attention to responsible service of alcohol and associated risk management in its plans for the event; and
 - g. in October 2022, the applicant produced and managed “Electric Storm”, a Halloween themed concert, at the same premises, and Licensing NT inspectors who attended that major event reported favourably on the manner in which it was operated.
33. However, Regulation 69(2) of the Regulations provides that for a major event, “no more than 4 containers of liquor may be sold, served or supplied at the event to one person at a time”. In my view, in this regulation the expression “containers of liquor” is intended to mean “containers comprising a single serve of liquor”. Also in my view, the Commission has no power to fix a condition of a licence that is inconsistent with a condition prescribed by the Regulations, which are issued by the Minister for Alcohol Policy.
34. If I am wrong about that, I consider that as a matter of policy and practice the Commission should not in any case fix a condition of a licence that would be inconsistent with a condition prescribed in the Regulations.
35. Furthermore, in my view Regulation 69(2) is strongly supported by sensible policy considerations, with long-standing practice in the regulation of major events in the Northern Territory, and with the purposes of the Act. Although in an individual case such as this, there are attractive arguments in favour of departing from the standard established by Regulation 69(2), to do so (if it were permitted, which I believe it is not) could establish a precedent that may lead to the weakening of the regulatory scheme for major events.
36. Accordingly, notwithstanding the force of the applicant’s submission on this issue, I have declined to authorise the sale of wine by the bottle.

The objects of the Act

37. Finally, section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act.
38. Throughout my consideration of this application, I have steadily borne the purposes in section 3 of the Act in mind. I consider that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.

39. For these reasons, I determined that the application should be granted, and that a licence and authorities be issued on the conditions set out at the commencement of these reasons.

NOTICE OF RIGHTS

40. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of *Northern Territory Civil and Administrative Tribunal Act 2014* (**the NTCAT Act**) provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

41. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the applicant.



Russell Goldflam

MEMBER

NORTHERN TERRITORY LIQUOR COMMISSION

24 March 2023