

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION:	<i>ROSS RIVER RESORT PTY LTD APPLICATION FOR MAJOR EVENT AUTHORITY</i> [2023] NTLiqComm 9
REFERENCE:	LC2023/007
APPLICANT:	Ross River Resort Pty Ltd
PREMISES:	Ross River Resort 7829 Ross Highway Hale NT 0872
LIQUOR LICENCE:	80117547
PROPOSED EVENT:	Wide Open Space Festival 2023
DATE OF EVENT:	28 to 30 April 2023
LEGISLATION:	Part 3 Division 4 of the <i>Liquor Act 2019</i>
DECISION OF:	Mr Russell Goldflam (Chairperson)
DATE OF DECISION:	19 April 2023

Decision

1. For the reasons set out below, in accordance with s 48 of the *Liquor Act 2019* (**the Act**), the Northern Territory Liquor Commission (**the Commission**) has determined to issue a major event authority to Ross River Resort Pty Ltd (**the applicant**) in addition to the existing authorities attached to the applicant's current liquor licence 80117547 issued on 9 April 2020 (**the licence**).
2. The applicant will be issued with a major event authority authorising the sale, supply or service of liquor to patrons of the Wide Open Space Festival (**WOS**) located at the Ross River Resort, 7829 Ross Highway, Hale, NT, 0872 within the area designated in the licence (**the premises**) from noon until 01:00 hours the following day on 28, 29 and 30 April 2023.
3. 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. One or more of the following persons must be present during all trading hours to supervise the sale of liquor and ensure compliance with these conditions:
 - Leeanne Joy Donald
 - Laura Jane Devlin
 - Caisley Sinclair
 - 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 of Liquor Licensing (**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+ 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. Wine must only be sold in a serve of 150 ml in a plastic container.
 - i. Poured spirits and cocktails must not contain more than 30ml of alcohol per serve.
 - j. No liquor may be served in the form of “shots” or “shooters”.
 - k. 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.
 - l. 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).
4. The licence will be issued immediately following the publication of this decision notice.

Reasons

The Application

5. The Wide Open Space Festival is a well-established annual Northern Territory music event, that has grown from a “doof” attracting a couple of hundred people in 2009 to, in the words of the WOS website, a “feast of music, arts and performance deeply inspired by desert culture (both traditional and contemporary) and the ancient landscape” of the Tjoritja/MacDonnell Ranges. In 2021 some 1,800 patrons attended WOS.
6. WOS is held within the footprint of the applicant’s licensed premises in a campground on the applicant’s property, approximately 600 metres from the applicant’s bar, restaurant and function centre, which are located in the old Ross River Station homestead. Attached to the applicant’s licence are a restaurant authority, a lodging authority, a public bar authority, a special event authority and a late night authority. If WOS were reasonably expected to be attended by less than 1,500 patrons, it seems that the applicant would be authorised to supply liquor at WOS under the terms of its current licence. However, it is common ground between the applicant and the Director that rather more than 1,500 patrons are expected. Accordingly, pursuant to s 47(1) of the Act, a major event authority is required if WOS is to be an event at which liquor is supplied and consumed.
7. WOS is produced and managed by Wide Open Space Festival Pty Ltd (**WOSF Pty Ltd**), and until 2018, liquor was supplied and consumed at WOS under liquor licences issued to WOSF Pty Ltd. Those licences were issued under the repealed *Liquor Act 1978*. That arrangement has not continued since the commencement of the Act in October 2019. In 2019, WOS had a year off. In 2020 and 2022, WOS was cancelled due to the COVID-19 pandemic. In 2021, WOS was held and liquor was supplied and consumed under the authority of the applicant’s current licence. Presumably, it was not reasonably expected that as many as 1,500 patrons would attend the event that year.
8. As the applicant estimated that more than 1,500 patrons might attend the 2023 event, and following consultation with Licensing NT, on 5 April 2023 the applicant applied for a liquor licence with a major event authority to authorise the supply and consumption of liquor at WOS. On 17 April 2023, the Commission received the Director’s referral of the application.
9. On 21 March 2023, the applicant and WOSF Pty Ltd executed an “Agreement in regards to Liquor sales and licensing requirements for Wide Open Space”. The preamble to that Agreement stated, in part:

Under the previous *Liquor Act*, WOS arranged a Special Licence for the event permitting it to responsibly sell alcohol. In 2019, the *Liquor Act* was changed which prevented a special licence to be applied for on premises already licensed.

10. The Commission agrees that under the 2019 Act a special licence cannot be issued for premises that are already licensed. Moreover, it is the tentative view of the Commission that the Act completely precludes more than one liquor licence operating over the same premises at the same time. Accordingly, the Commission considers that the instant application, which is for the issue of a new licence, is misconceived. The Commission has instead determined to proceed by issuing a new major event authority to be attached to the applicant's existing licence. When I consulted with them, both the applicant and the Director agreed that the Commission deal with the application in this manner. Accordingly, it is unnecessary to now further consider, still less reach a conclusion as to whether or not under the Act only one licence can exist over the same premises at the same time.
11. By an instrument of delegation made on 28 October 2019, the Commission delegated to a single member of the Commission the power to determine an application for a major event authority. Accordingly, I have considered and determined the application as a single member of the Commission "on the papers" without a public hearing, which I consider would not have been worthwhile.

The referral

12. The Director provided the following documents to the Commission with the referral, including:
 - a. application for liquor licence with major event authority;
 - b. liquor licence 80117547;
 - c. site plans;
 - d. agreement for the engagement of crowd controllers;
 - e. affidavit and declaration of associates pursuant to ss 54 and 55 of the Act;
 - f. public interest and community impact assessment pursuant to ss 49 and 51 of the Act;
 - g. special licences issued to WOSF Pty Ltd for WOS, 2015 to 2018;
 - h. agreement between applicant and WOSF Pty Ltd for the sale of liquor at WOS;
 - i. ASIC Company extracts for applicant and WOSF Pty Ltd;
 - j. event management plan;
 - k. risk management plan;
 - l. smoking management plan;

- m. emergency response plan;
- n. insurance certificate of currency; and
- o. correspondence between Licensing NT, the applicant and stakeholders.

Consultation

13. Pursuant to s 57(2) of the Act, the Director exempted the applicant from the usual public notice requirements for applications of this nature. The applicant sought this exemption less than 28 days before the event was scheduled to commence, which in effect forced the Director's hand. Had the request for an exemption been declined, that would necessarily have resulted in the application being refused. Applicants who seek to be exempt from public notice requirements should make such requests in a timely fashion, and the Commission strongly discourages applicants from leaving matters to the last minute and relying on the good graces of the Director to get around the provisions of the Act.
14. In accordance with s 56 of the Act, notification was given to the Department of Health, NT Police and the McDonnell Regional Council. The Director also notified the Northern Territory Fire and Rescue Service. None of the agencies that responded raised any objections to the application.
15. Pursuant to s 314(1)(a) of the Act, in order to ascertain and clarify various aspects of the application, including the rather fundamental issue referred to at paragraph 10 above, and as a matter of fairness to the parties, on 18 April 2023 I convened a meeting with: Mr Martel, of the applicant's solicitors; Ms Donald, the licence nominee; and Ms Garde, on behalf of the Director. I thank each of them for their attendance at short notice and their assistance.

The licensee's record of compliance

16. The Director informed the Commission that neither the applicant nor WOSF Pty Ltd has a record of non-compliance with the Act.

ASSESSMENT OF THE APPLICATION

17. In accordance with s 59 of the Act, I have considered:
- a. the applicant's affidavit required by s 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.

18. In accordance with s 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

19. The applicant has provided copious, detailed and impressively presented documentation regarding the planning, management and operation of the event.

The applicant's associates

20. 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 s 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

21. The premises are in a picturesque bush setting close to but separate from the applicant's resort facilities, and less than an hour by road from Alice Springs.

22. The applicant proposes that under its agreement with WOSF Pty Ltd a pop-up bar will be set up in the campground where WOS activities will take place. In addition, the applicant's existing bar will trade during WOS.

23. 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

24. 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

25. 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. The applicant and the licence nominee have previously been assessed as fit and proper persons to hold a liquor licence. I assess both the applicant and the nominee to be a fit and proper person to operate their existing licence with a major event authority.

Public notice and consultation

26. I am satisfied that consultation was undertaken in accordance with s 56 of the Act, and that the Director exempted the applicant from compliance with public notice requirements pursuant to s 57 of the Act.

Whether issuing the licence is in the public interest

27. To determine whether the issue of the license is in the public interest, I am required to consider how the issue of the licence would advance the following objectives set out in s 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.

28. Having considered each of these objectives, and having particular regard to the impressively detailed planning for the event undertaken by the applicant, the agreement that has been entered into between the applicant and WOSF Pty Ltd, and the satisfactory record of both the applicant and WOSF Pty Ltd in successfully conducting this event in previous years, 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

29. 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 s 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 s 50;
- (j) any other matter prescribed by regulation.

30. I note there are no such “other” matters prescribed by regulation.

31. Having considered each of these matters, and having particular regard to the brief duration of the event, the nature of the event and its remote location, I am satisfied that the issue of the licence will not have a significant adverse impact on the community.

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

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

Conditions

33. In fixing the conditions set out at paragraph 3 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 public interest and community impact assessment; and
- e. the conditions prescribed in the Regulations.

The objects of the Act

34. Finally, s 3(4) of the Act provides that in performing its function to decide whether to issue the authority, the Commission must have regard to the primary and secondary purposes of the Act.

35. Throughout my consideration of this application, I have steadily borne the purposes in s 3 of the Act in mind. I consider that the issue of the authority with the conditions imposed is consistent with the purposes of the Act.

36. For these reasons, I determined that the application should be granted, and that an authority be issued on the conditions set out at the commencement of these reasons.

NOTICE OF RIGHTS

37. Section 31(1) read with s 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* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

38. In accordance with s 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
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
19 April 2023