

# Delegate of the Liquor Commission

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR A SPECIAL LICENCE</b>
<b>REFERENCE:</b>	<b>LC2018/076</b>
<b>PREMISES:</b>	<b>Darwin Amphitheatre</b> George Brown Botanic Gardens DARWIN NT 0800
<b>APPLICANT:</b>	Darwin Symphony Orchestra Inc.
<b>EVENT:</b>	“ConocoPhillips Symphony: Bowie: A Tribute”
<b>LEGISLATION:</b>	Section 58 of the <i>Liquor Act</i> .
<b>DECISION OF:</b>	Ms Jodi Truman (Deputy Chairperson)
<b>DATE OF DECISION:</b>	27 June 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 Darwin Symphony Orchestra Inc. (“the applicant”) for the sale of liquor between the hours of 1700 hours and 2230 hours on Saturday 30 June 2018.
2. The granting of approval is subject to the following conditions, namely:
  - a. The liquor shall be sold at the event known as “ConocoPhillips Symphony: Bowie: A Tribute” occurring at the Darwin Amphitheatre located at the George Brown Botanic 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 Mr Alexander Joseph Ehrlich.

- 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. 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.
- o. 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.
- p. 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.
- q. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.

- r. 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.
- s. 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.
- 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 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”).
- x. For the purpose of fire safety, the Licensee or an employee of the Licensee 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**

3. Pursuant to section 58 of the *Liquor Act* (“the Act”), Darwin Symphony Orchestra Inc. (“the applicant”) applied to the Director-General of Licensing on 16 May 2018 for a special licence to permit the sale of liquor to patrons attending an event known as “ConocoPhillips Symphony: Bowie: A Tribute” occurring at the Darwin Amphitheatre located at the George Brown Botanic Gardens, Darwin in the Northern Territory (“the Premises”).
4. Despite the fact that the application was lodged on 16 May 2018, it was not until 26 June 2018 – **some four (4) days prior** to the event – that the application was referred to the Commission and to me in accordance with my delegation to deal with applications of this nature. This is simply not good enough and makes dealing with these applications by the Commission extremely difficult. It also places applicants in the invidious position of not knowing whether their application will be

granted only days prior to their proposed event. This delayed referral needs to change.

5. The applicant advised that a crowd of 6,000 persons are expected to attend the event. This crowd, as in previous years, is expected to cover a wide range of age groups.
6. The applicant is seeking to sell liquor between the hours of 1700 hours and 2230 hours on Saturday 30 June 2018. It was stated in the application that the nature and purpose of the event is to entertain the general public of Darwin and to promote the Darwin Symphony Orchestra and its sponsors. I am advised that the Darwin Symphony Orchestra plays with a cover band and performs the music of an iconic international music artist. On this occasion that artist is David Bowie.
7. The applicant proposes that a range of beer, heavy, mid and light strength will be available along with a range of wine and ready to drink (“RTD”) drinks. The applicant will impose a limit of 4 drinks per person per purchase. Water and soft drinks will also be available along with food from different vendors.
8. I have been informed by Licensing NT that this event has been held in the past with entities holding a variation to an existing licence. There has been no recorded negative compliance history for those previous events. I was further advised that the nominee, Mr Alexander Ehrlich, is the nominee of the Darwin Trailer Boat Club and has an excellent knowledge of the requirements of the *Liquor Act* and has been the nominee at this event for the past two years.

### **Consultation**

9. 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. Given the location of this venue I was advised that the City of Darwin was also consulted.
10. With respect to this application:
  - a. The DOH replied that they have no adverse comment; and
  - b. The City of Darwin did not provide any response.
11. The NT Police replied saying they “support this application contingent to a condition being imposed that there is a staggered decline in drinks towards the conclusion of the event”. A copy of the police response was forwarded to the applicant who replied that “(t)he event is very family based” indicating that the event “doesn’t go for long enough to require a general wind down period”. Further that the nominee had managed the bars “for the past 2 years and not had incidents to raise concern”.

12. The NTFRS replied stating they have “no objection provided the following conditions are met and passed on to the event organisers:
- a. All food vendors have an in service and tagged 3A30BE dry Chemical extinguishers.
  - b. All food vendors that have deep fryers must have a fire Blanket no less than 1.2 x 1.8m as well as a Extinguisher.
  - c. 3A30BE Dry Chemical extinguishers should be located on the Stage Area, Sound Desk, Media Tent and Big Screen if used.

The NTFRS Officers will inspect prior to the function on the Friday”.

13. A copy of this response was also provided to the applicant however at the time this matter was referred to me, it appears no response had been provided by the applicant.

### **Assessment of the Application**

14. 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.
15. 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.
16. 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”.
17. 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.”

18. 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.
19. 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.
20. 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.
21. 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.
22. 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:**

23. 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.
24. 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.

25. 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 read 'Jodi Truman', with a long horizontal flourish extending to the right.

**JODI TRUMAN**  
Deputy Chairperson  
Northern Territory Liquor Commission