

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2018/089

VENUE: Civic Park
Corner of Smith Street and Harry Chan Avenue
DARWIN NT 0800

APPLICANT: The Darwin Festival Limited

EVENT: 2018 Darwin Festival – Festival Park

LEGISLATION: Section 58 of the *Liquor Act*

DECISION OF: Ms Amy Corcoran (Commissioner)

DATE OF DECISION: 26 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 a special licence to sell liquor to The Darwin Festival Limited (**the Applicant**) for the sale of liquor between the hours of:

Friday, 10 August 2018 from 1700 hours to 2359 hours;
Saturday, 11 August 2018 from 1700 hours to 2359 hours;
Sunday, 12 August 2018 from 1700 hours to 2230 hours;
Tuesday, 14 August 2018 from 1700 hours to 2230 hours;
Wednesday, 15 August 2018 from 1700 hours to 2230 hours;
Thursday, 16 August 2018 from 1700 hours to 2230 hours;
Friday, 17 August 2018 from 1700 hours to 2359 hours;
Saturday, 18 August 2018 from 1700 hours to 2359 hours;
Sunday, 19 August 2018 from 1700 hours to 2230 hours;
Tuesday, 21 August 2018 from 1700 hours to 2230 hours;

Wednesday, 22 August 2018 from 1700 hours to 2230 hours;

Thursday, 23 August 2018 from 1700 hours to 2230 hours

Friday, 24 August 2018 from 1700 hours to 2359 hours;

Saturday, 25 August 2018 from 1700 hours to 2359 hours;

Sunday, 26 August 2018 from 1700 hours to 2230 hours.

2. The granting of approval is subject to the following conditions, namely:

- a. The liquor shall be sold at the event known as “2018 Darwin Festival – Festival Park” situated in Civic Park, Corner of Smith Street and Harry Chan Avenue, Darwin in the Northern Territory;
- b. The sale of liquor must be supervised by one or more persons nominated by the holder of the special licence (the Nominee/s), who each must 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 these conditions.
- d. The nominee/s are identified as

Nominee/s: EMILY MANN

JOSHUA DOLMAN

SANDY LAY

NAOMI BAYLY-JONES

- 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:
 - Two licensed crowd controllers for the first 100 hundred patrons and one additional crowd controller for each 100 hundred patrons thereafter.
- i. All liquor must be sold in open containers.

- j. No more than four (4) alcoholic drinks must be sold to any one person at any one time.
- k. The holder of the special licence must ensure that water, soft drinks, low alcohol beverages 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 a person who is drunk, or to a person under the age of 18 years.
- m. 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.
- n. The holder of the special licence must comply with all requirements and guidelines published by the Liquor Commission or Director-General, including guidelines related to the conduct of entertainment.
- o. Where the holder of the special licence is operating from enclosed premises, the holder must prominently display on the 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 and Rescue Service from time to time.
- p. 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.
- q. The holder of the special licence must comply with the requirements of the Liquor Commission or Director-General as specified in this condition, and with the instructions of 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 identity card or other authorisation.
- r. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.
- s. The holder of the special licence must make a record of all liquor obtained for sale under this special licence that identifies the source of the liquor and the type and quantity of each type of liquor so obtained.
- t. 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.

- u. This special 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 identity card or other authorisation.
- v. The holder of the special licence 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*.
- w. Food and drinks are not permitted to be taken into any designated smoking areas.
- x. The holder of a special licence or employee of a holder shall exclude or remove from the premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang).

Commission’s instructions in accordance with condition (n):

To the extent that these instructions are inconsistent with the conditions above, these instructions will prevail.

- No provision of alcoholic drinks that:
 1. are designed to be consumed quickly and which are commonly referred to as a ‘shot or shooters’; or
 2. are a cocktail containing more than a 30ml nip of spirit or liquor.
- 7 crowd controllers must be engaged each night, however, these numbers may be reduced in line with industry standards where patronage is decreased.
- Crowd control arrangements shall comprise of static and roaming crowd controller to diligently monitor and enforce all licensing requirements and regulations pertaining to the sale of alcohol;
- At least 75% of crowd controllers employed must wear clothing that is readily identifiable. For example, high-viz vests with ‘Crowd Controller’, ‘Security’ or ‘Safe Staff’ or similar stated.

Reasons

Background

3. On 31 May 2018 pursuant to section 58 of the Act, The Darwin Festival Limited (**the Applicant**) lodged an application with the Director-General for the grant of a special licence to permit the sale of liquor to patrons attending “Festival Park”

which is one of the venues for the 2018 Darwin Festival which runs for the period of 9 to 26 August 2018. The application was then referred to the Liquor Commission and to me pursuant to my delegation to deal with such special licence applications.

4. The Darwin Festival is a family friendly multi-arts festival that takes place across 18 days and 17 nights in Darwin and surrounds. Festival Park is an all-ages outdoor public site featuring an eatery with seven different vendors retailing food and the 'Coopers Garden Bar' operated by the Applicant that retails alcohol and soft drinks. There are tables and chairs catering for up to 400 people as well as grassed areas for people to sit.
5. Festival Park includes two live performance venues being, the free 'Bamboo Bandstand' in the eatery area and the ticketed 'Lighthouse' with a 500 seat capacity. Both stages feature two or more performances nightly.
6. The Applicant estimates 1,000 persons will attend Festival Park each night.
7. Specifically, the Applicant is seeking a special licence for the following hours of trade:
 - Friday, 10 August 2018 from 1700 hours to 2359 hours;
 - Saturday, 11 August 2018 from 1700 hours to 2359 hours;
 - Sunday, 12 August 2018 from 1700 hours to 2230 hours;
 - Tuesday, 14 August 2018 from 1700 hours to 2230 hours;
 - Wednesday, 15 August 2018 from 1700 hours to 2230 hours;
 - Thursday, 16 August 2018 from 1700 hours to 2230 hours;
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 - Wednesday, 22 August 2018 from 1700 hours to 2230 hours;
 - Thursday, 23 August 2018 from 1700 hours to 2230 hours
 - Friday, 24 August 2018 from 1700 hours to 2359 hours;
 - Saturday, 25 August 2018 from 1700 hours to 2359 hours;
 - Sunday, 26 August 2018 from 1700 hours to 2230 hours.
8. The sale of liquor to patrons at the Festival Park is proposed via two bars being, the 'Coopers Garden Bar' and a small bar inside the 'Lighthouse'. Beer, wine, cocktails, spirits and cider is proposed to be available for sale as well as water and

soft drinks. Additionally, the Applicant indicates beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength.

9. In relation to security and crowd control arrangements, the Applicant indicated there will be 7 crowd controllers engaged each night.
10. The Applicant has previously been granted special licenses for Darwin Festival events. Licensing NT has informed me that “nil compliance issues are evident on file for the Darwin Festival in recent years”.

Consultation

11. 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**), NT Police, Fire and Emergency Services (**NT Police**) and NT Fire, Rescue Service (**NTFRS**) and seek their comment. With respect to this application:
 12. DOH indicated that it has no adverse comment. However, it asked the Director-General of Licensing to consider patron and community safety and amenity when determining the application.
 13. NTFRS had no objection to the application on the proviso when the structures are erect a certifier sign off on the structure and a first safety inspection with all the requirements met.
 14. NT Police support the application contingent to:
 - *Industry standard security for expected crowd numbers*
 - *Secure storage of alcohol at all times*
 - *Maximum 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event.*
 - *Alcohol volume to be one standard drink or less per serve*
 - *Low to mid strength alcohol only*
15. I will address these comments below.

Assessment of the Application

16. As noted above, this is an application for a special licence under section 58 of the Act within Part VI of the Act. There are no specific criteria prescribed by 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.
17. 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 under section 6 of the Act.

18. However, pursuant to section 3(3) of the Act, the Commission when “exercising a power or performing a function under (the Act) 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”.

19. 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.”

20. As a delegate of the Commission, I am also bound to have regard to the objects of the Act when determining this application.

21. I note NTFRS’ position above and confirm that the Applicant will need to follow that directive.

22. In respect to the NT Police, the Applicant was informed of NT Police’s position by email on 7 June 2018. And responded to those matters by email 8 June 2017. All of which has been taken into consideration by me in determining this matter.

23. In regards to the conditions requested by the NT Police, I will go through each of them below:

a. *Industry standard security for crowd numbers*

The Applicant confirms it will engage 7 crowd controllers each night at Festival Park, the same number as last year. There have been no changes to the expected patron numbers at Festival Park or any substantial changes to the event’s format from that of last year.

Given the successful history of this event which has occurred without complying with the “industry standard” for a number of years now, I do not consider there is a need with respect to this particular special licence

for a condition to be considered and/or imposed that provides for the industry standard in relation to the number of crowd controllers and I decline to do so.

b. *Secure storage of alcohol at all times*

The Applicant has advised that alcohol will be stored securely at all times.

I am satisfied that the Applicant is fully aware of its obligations and the risks of storing alcohol and safeguarding it against theft and do not believe it necessary to make it an additional special condition.

c. *Maximum 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event*

A condition of 4 drinks per transaction was imposed last year, however, a staggered decline was not.

The Applicant agreed to the requested condition by NT Police and suggested a maximum of 4 drinks per transaction up until 10.00pm and 2 drinks per transaction after that.

Although the parties are encouraged to attempt to resolve matters in dispute in these types of applications, the Commission is not bound by what is discussed.

I accept what the Applicant has stated in relation to such staggering drinks. I also understand the event has been well run and managed with no evidence of compliance issues or patron safety concerns in the past. I have therefore determined to include the 4 drinks per transaction condition in accordance with previous years' special licenses; however I will leave it to the responsibility of the Applicant to stagger drinks and I decline to include any specific condition to that effect.

d. *Alcohol volume to be one standard drink or less per serve*

I note that the special licenses issued for this event in 2016 and 2017 did not include a condition restricting the sale of alcohol in serves of one standard drink or less.

The Applicant provided feedback to this request that it *"offers a range of alcoholic drinks and ensures mid-strength and low-strength beers are available. We do not offer shots or doubles."*

In it's email response, the Applicant also quoted the comments of the Delegate of the Director-General who assessed last year's special licence application as follows:

"When considering NT Police request "...drinks are served as one standard drink..." it seems unnecessary to enforce such a restriction as the applicant has already undertaken to offer liquor for sale in a range of

alcohol content varieties, such as low-strength and mid-strength alcohol, as opposed to purely offering full-strength liquor and serves greater than one standard drink.

The applicant has not been restricted to sell standard drinks serves only in prior years where compliance matters and adverse reports are not apparent. Additionally encouraging is the availability of food alongside non-alcoholic beverages at the Darwin Festival abovementioned locations.”

I confirm there have been no compliance concerns reported from last year’s event and there have been no substantial changes to the special licence application or the event format which would raise concerns regarding the continued sound management of the event.

I therefore concur with the above comments of the Delegate of the Director-General above and in these circumstances, I find there is no basis to support the finding that there is a need to impose such a condition this year and I decline to do so.

e. *Low to mid strength beer only*

This condition was also not imposed under last year’s special licence. The Applicant responded to this request stating that they wish to continue to provide beer in a variety of strengths and it had an “unblemished special liquor licence record”. From information provided to me, the Darwin Festival events have been well managed and executed in the past, as incidents and compliance matters are not apparent.

I find there is no basis to support the finding that there is a need to impose such a condition this year and I decline to do so.

24. The main drawcard to the Festival Park is the performances; both free and ticketed events. I am satisfied that the supply of alcohol is an ancillary feature of the Festival Park offerings which also compliments the numerous food stalls. Each year, the Applicant provides through the Darwin Festival program an important cultural entertainment offering to both Darwin locals and visitors alike. The Applicant has a track record of being able to well manage these types of events with no compliance concerns raised by Licensing NT or NT Police.

25. It is as a result of the matters outlined above that I am, on balance, satisfied that the objects of the Act have been sufficiently addressed and for the reasons outlined I have decided to grant the special licence as set out at the start of this Decision Notice.

Notice of Rights:

26. 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.

27. 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.
28. 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, consisting of a stylized initial 'A' followed by a long horizontal line.

AMY CORCORAN
Commissioner
Northern Territory Liquor Commission
26 July 2018