

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2018/025

VENUE: **Mindil Beach**
Lot 5772 Town of Darwin
DARWIN NT 0800

APPLICANT: Darwin Lions Beer Can Regatta Association Incorporated

EVENT: Darwin Lions Beer Can Regatta

LEGISLATION: Section 58 of the *Liquor Act*

DECISION OF: Ms Amy Corcoran (Commissioner)

DATE OF DECISION: 17 May 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 Lions Beer Can Regatta Association Incorporated (**the Applicant**) for the sale of liquor between the hours of:

Sunday 22 July 2018 from 10:00 hours to 18:00 hours;

2. The granting of approval is subject to the following conditions, namely:
 - a. 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. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.

Nominee/s: MRS SHARON LESLEY JONES
 - b. Persons under the age of 18 years must not be used in the sale or supply of liquor.

- c. 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.
- d. Any person involved in Crowd Control, as defined under *the Private Security Act*, at the premises, must be licensed as required by that Act.
- e. 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.
- f. All liquor must be sold in open containers.
- g. No more than four (4) cans must be sold to any one person at any one time.
- h. 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.
- i. Liquor must not be sold or supplied to a person who is drunk, or to a person under the age of 18 years.
- j. 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.
- k. 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.
- l. 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.
- m. 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.
- n. 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.

- o. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.
- p. 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.
- q. 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.
- r. 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.
- s. 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*.
- t. Food and drinks are not permitted to be taken into any designated smoking areas.
- u. 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):

- Beer and cider are the only alcoholic beverages permitted for sale;
- Provision of licensed crowd controllers with a minimum number as per the submission lodged by the Applicant – being 7. To the extent that this condition is inconsistent with Condition 2(e) above, this condition prevails.
- 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.
- No BYO alcohol prior to 16:00 hours.
- Liquor or any other beverages must not be sold to patrons in glass containers.

Reasons

Background

3. On 21 March 2018 pursuant to section 58 of the Act, Darwin Lions Beer Can Regatta Association Incorporated (**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 an event known as the 'Darwin Lions Beer Can Regatta'. 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 Lions Beer Can Regatta is an iconic annual event which raises money for local charities. This year, the Darwin Lions Beer Can Regatta is being held on Sunday, 22 July 2018 at Mindil Beach, Lot 5772 Town of Darwin. A fence is erected around the site (from car park to the beach) limiting access to the event via 5 entry gates staffed by Lions Club volunteers.
5. The Darwin Lions Beer Can Regatta includes entertainment and competitions for adults and children to enjoy. This includes running events, boat races (where competing boats are predominately constructed out of drinking cans), a sandcastle competition plus thong throwing and kayak events. Additionally, the Mindil Beach Sunset Markets operates throughout the Darwin Lions Beer Can Regatta providing food options and additional entertainment to patrons.
6. The Applicant estimates that 6,000 to 8,000 persons will attend the event throughout the day.
7. Specifically, the Applicant is seeking a special licence for the following hours of trade:

Sunday, 22 July 2018 from 10:00 hours to 18:00 hours.
8. The sale of liquor to patrons at the Darwin Lions Beer Can Regatta is proposed from a marquee bar facility. The Applicant anticipates 40 to 50 people may be present in the bar area at any one time.
9. The liquor proposed for sale comprises of beer in full strength, midstrength and light varieties and cider only.
10. In relation to security and crowd control arrangements, seven (7) private security personnel are proposed by the Applicant to monitor and control patron behaviour within the Darwin Lions Beer Can Regatta event area. In addition, Mindil Beach

Sunset Markets will have security present to regulate market-goers as per their usual security processes for the markets.

11. The Applicant has confirmed that as in previous years, first aid services will be supplied by St John's Ambulance volunteers and water safety patrols will be undertaken by Mindil Beach Surf Lifesaving Club.
12. I have been informed by Licensing NT, that there have been no compliance issues with respect to special licenses issued for the event in recent years.

Consultation

13. 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**), St John's Ambulance (**SJA**) and seek their comment.
14. With respect to this application:

a. The NT Police advised that it "...supports the application contingent to:

- *Secure storage of alcohol at all times – any alcohol that is left overnight needs to be secured away*
- *Industry standard security for crowd numbers – security to ensure no alcohol is entering/exiting the event*
- *RSA for all staff handling alcohol*
- *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 beer – no full strength*
- *No glass*
- *No BYO"*

I will address these requests separately below.

- b. The NTFRS had no objection to the application.
- c. SJA were contacted to provide a comment yet did not do so by the requested date. Of some relevance to this application is SJA's response to last year's application where they confirmed no objection to the event stating it is "*always a very well run event, all requests for assistance are exposure related issues not alcohol.*"

- d. The DOH advised that they have no adverse comment to the application but requested that the Applicant be provided smoking signage.

Assessment of the Application

15. 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.
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 under section 6 of the Act.
17. 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”.
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 a delegate of the Commission, I am also bound to have regard to the objects of the Act when determining this application.
20. The Applicant was provided an opportunity to respond to the NT Police matters which is set out below:

“The Darwin Lions Beer Can Regatta would like to request that the conditions of its Special Liquor Licence remain the same as last year (and previous years),

which includes the ability to sell full strength beer and that the nominees, but not all volunteers working at the bar, are required to hold an RSA. All other conditions recommended by the Police are acceptable to us and are in line with our usual operations.

The reason for this request is that the Darwin Lions Beer Can Regatta has operated for over 40 years with no record of alcohol related incidents. The event is well controlled and incorporated with the Mindil Beach markets so that there is a large range of entertainment, food and beverages available. All bar staff are volunteers who are likely to only ever serve alcohol on this one day in the year, it is therefore difficult to find sufficient volunteers that hold an RSA to run the bar at the event. Also all funds raised from the event are donated to charity, and it is considered that the restriction of the sale of full strength beer is likely to have a considerable impact on the amount of money the event can raise and put back into the community.”

21. In respect to the various conditions requested by NT Police, I'll address them each separately below:

a. *Secure storage of alcohol 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 licensing condition.

b. *Industry standard security for crowd numbers – security to ensure no alcohol is entering/exiting the event*

When assessing this application it is clear that the Applicant has strategies and initiatives in place to mitigate risk and to uphold public order and safety including first aid officers and water patrols by Mindil Beach Surf Lifesaving Club.

Last year, 7 crowd controllers were required to be engaged to supervise the event under the Special Licence issues. This year, the Applicant has confirmed 7 crowd controller will be engaged again which is in addition to security provided by Mindil Beach Sunset Markets for their usual operations.

The Beer Can Regatta, as it has in previous years, is a family orientated event where the sale of alcohol is very much an ancillary aspect of the event rather than the main drawcard. There has also been no compliance or patron safety concerns raised with me from recent year's event by either Licensing NT or NT Police.

Accordingly, I am satisfied that the engagement of a minimum of 7 crowd controllers will be sufficient for this event rather than imposing the industry standard.

c. NT Police have requested that all staff handling alcohol have a Responsible Service of Alcohol (**RSA**) certificate.

I note that the standard condition of a special licence requires that the sale of liquor must be supervised by one or more persons that hold a RSA certificate. Such condition was imposed on the Applicant last year.

Given there were no compliance issues or patron safety concerns raised from last year's event, I do not see the need to require all staff handling alcohol to have an RSA certificate and the supervision of all bar staff by an RSA certified person in accordance with the standard condition will again be sufficient at this year's event.

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

The Applicant has accepted that no more than 4 drinks be sold in one transaction and this condition was imposed last year. However, staggering the number of drinks per transaction towards the conclusion of the event was not imposed as a condition last year.

Again, as I have received no adverse reports regarding the running of the event last year from either Licencing NT or NT Police, I am not minded to change the status quo. The event appears to be well run and has not required such staggering condition to be imposed previously.

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

This condition has not been imposed in the past. The Applicant has confirmed that only beer and cider will be sold with light and mid-strength beers readily available, as well as numerous non-alcoholic options including water. There is also plenty of food offerings available from the many market stalls.

Given there have been no adverse matters reported to me as a delegate of the Commission regarding the management and compliance of previous events, I see no reason to impose such a condition for this year's event and I decline to do so.

- f. *Low to mid strength beer – no full strength*

This condition was also not imposed in last year's special licence and accordingly, for the reasons set out in (e) above, I do not intend to impose such a condition this year.

- g. *No glass* – the Applicant has confirmed no glass containers will be used at this event.

- h. *No BYO*

The Applicant has stated in its application that there is no BYO alcohol however, due to market-goers BYO did occur at the usual commencement time of the Sunday markets being from 4pm. There is a general exemption on the weekends for alcohol consumption at Mindil


Beach from 12pm to 1030pm. This matter has not been dealt with previously in special licences previous issued.

I intend to specify in the special licence that BYO alcohol is not permitted prior to 1600 hours to both assist the Applicant to enforce this condition on their patrons but also to avoid any confusion over what market-goers would consider usual for a Sunday market.

22. 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:

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.
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.



AMY CORCORAN
Commissioner
Northern Territory Liquor Commission
21 May 2018