

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2019/055
PREMISES:	Nightcliff Foreshore Casuarina Drive NIGHTCLIFF NT 0810
APPLICANT:	Nightcliff Arts, Music and Culture Incorporated
EVENT:	Nightcliff Seabreeze Festival
LEGISLATION:	Section 58 of the <i>Liquor Act 1978</i>
DECISION OF:	Ms Amy Corcoran
DATE OF DECISION:	1 May 2019

Decision

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act 1978 (the Act)* I have determined to grant the special licence to sell liquor to the Nightcliff Arts, Music and Culture Incorporated for the sale of liquor on:

Friday, 10 May 2019 from 1730 hours to 2200 hours; and
Saturday, 11 May 2019 from 1400 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 the “Nightcliff Seabreeze Festival” occurring at the Nightcliff Foreshore located on Casuarina Drive, Nightcliff 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.

The Nominee/s are:

- i Ms Kristene Ost;**
 - ii Mr Andrew Arthur;**
 - iii Ms Brynda Wackett; and**
 - iv Celina Padhilla.**
- d. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- e. 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.
- f. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.
- g. 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.
- h. All liquor must be sold in open containers.
- i. No more than four (4) cans or bottles must be sold to any one person at any one time.
- j. 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.
- k. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.
- l. 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.
- m. 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.
- n. 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.

- o. 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.
- p. 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.
- q. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.
- r. 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.
- s. 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.
- t. 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.
- u. The holder of the special licence 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 holder of a special licence or employee of a holder shall exclude or remove from Premises any person who is wearing colours, insignia or emblems of an outlaw motorcycle gang (**Bikie Gang**).

Reasons

Background

3. Pursuant to section 58 of the *Liquor Act* (“the Act”), Nightcliff Arts, Music and Culture Incorporated (**the Applicant**) applied to the Director-General of Licensing on 19 February 2019 for a special licence to permit the sale of liquor to persons attending the event known as the “Nightcliff Seabreeze Festival” occurring at the

Nightcliff Foreshore located on Casuarina Drive, Nightcliff in the Northern Territory. The application was then referred to the Liquor Commission and then to me pursuant to my delegation to deal with such special licence applications.

4. The Nightcliff Seabreeze Festival is an annual family friendly festival that brings together the greater community to celebrate the arts, music, culture, environment along 1.5 kilometres of the Nightcliff foreshore.
5. The Applicant is seeking to sell liquor between 1730 hours and 2200 hours on Friday, 10 May 2019 and 1400 hours and 2230 hours on Saturday, 11 May 2019.
6. It was stated in the application that it was estimated by the Applicant that there would be 6,000 persons in attendance at any one time.
7. A wide selection of food will be available across the festival as well as entertainment in the form of live music, dance and visual art displays.
8. There are four (4) bars proposed by the Applicant to sell liquor and each licensed area will be fenced off with designated entry and exit points and shall be manned by security personnel.
9. At each bar the Applicant proposes that beer and cider will be available on tap from a local business to be sold in reusable plastic cups. The Applicant also proposed there be wine in reusable plastic cups and pre-mixed spirits in cans available for sale.
10. I am informed by Licensing NT that the Applicant has previously been issued special licences (or their equivalent) "since before 2007" and there have been "nil" compliance issues "evident" with respect to the Applicant "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**), St John Ambulance (**SJA**), Northern Territory Fire and Rescue Service (**NTFRS**), and NT Police, Fire and Emergency Services (**NT Police**) and seek their comment.
12. With respect to this application:
 - a. The DOH had no adverse comment however asks the Director-General of Licensing to consider patron and community safety and amenity when determining this application. The Applicant was provided with smoking signage as requested by Department of Health via email on 20 February 2019.
 - b. SJA has confirmed they have been engaged for the event and had no comments or concerns with the application.

- c. NTFRS had “no objections” to the application as long as certain terms were met in regards to:
 - i Fire-Fighting Equipment
 - ii Emergency Planning
 - iii Occupancy Permits
 - iv NTFRS Inspections
- d. The NT Police supported the application contingent to:
 - i “Secure storage of alcohol at all times
 - ii Industry standard security
 - iii Low to Mid strength alcohol
 - iv Maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event
 - v Last drinks to be implemented”.

Assessment of the Application

- 13. 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.
- 14. As a result, it has 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.
- 15. The Commission has previously noted however that 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”.
- 16. 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 venue and associated services for the benefit of the community.”

17. 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.

18. It is my understanding of the material before me that this application is similar to previous applications and approvals. As earlier noted, although there is no formal obligation to consult, responses were sought from the relevant stakeholders and none have objected to a special licence being issued. However, various matters were raised by NT Police and I have addressed each separately below:

a. Secure storage of alcohol at all times

The Applicant has advised that there is no proposal for alcohol to be stored overnight and all alcohol will be kept secure during trading hours. I do not see a need to impose such a condition given the matter is one of common sense and usual commercial practice and I decline to do so.

b. Industry standard security

The condition that has previously been imposed upon the Applicant (and is generally a condition of all licenses) is that crowd controllers are to be employed as per industry standards being 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.

The Applicant has confirmed crowd controllers will be employed in accordance with industry standards and therefore that condition will remain in the special licence to be issued.

c. Low to Mid strength alcohol

The Applicant provided the following comments in regards to this request by NT Police on the assumption the request is to limit alcohol to low and mid strength alcohol only rather than merely ensuring the availability of those options:

"In 2017 Seabreeze chose to support local brewers, One Mile Brewery. One Mile is an official festival partner for three years and does not brew low to mid-strength beer as it is a specialised boutique brewer focusing on taste and quality. We provide low-strength options in cans, purchased by the festival from Nightcliff Sports and Social Club.

One Mile Brewery provide a beautiful boutique style set-up rather than Just a beer under the tent set-up, adding to the vibe of the al fresco dining areas. One Mile Brewery taps are set up to incorporate non-alcoholic sodas. Free water is available in all licensed areas and throughout the festival at designated hydration stations.

The Nightcliff Seabreeze Festival has never in all its years had an issue arise from its bars, we feel that supporting a local brewer adds to the community and family vibe we celebrate on the day.

We are proud of our commitment to local business and community, and we are proud of our outstanding record of responsible service of alcohol providing an enjoyable and safe environment for all."

I note that the special licence issued in 2018 did not include a condition restricting the sale of only light or mid strength beer. I have received no evidence of there being any issues reported to the Compliance Officers from Licensing NT including from NT Police as to any issues at the conclusion of that 2018 event.

In these circumstances I find that there is no basis to support a finding that there is a need with respect to this particular special licence for a condition to be considered and/or imposed that provides for only the service of low to mid strength beer and I decline to do so.

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

The Applicant has stated that "(t)his is standard policy" for the festival as "as we are a family friendly festival and we fully support the safe service and consumption of alcohol".

In accordance with last year's special licence, I have determined to include a condition in relation to the maximum number of drinks; however I leave it to the responsibility of the Applicant to stagger the decline. There is no evidence to suggest that the Applicant is not capable of doing this or that there were any issues in this respect last year. I therefore decline to include any specific condition with respect to a staggered decline and leave it to the responsibility of the Applicant to follow their policy in this regard.

- e. Last drinks to be implemented

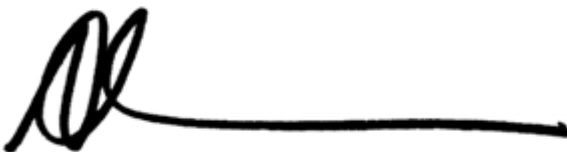
The Applicant advised that "last drinks is set at 10pm. Entertainment finishes at 10.30pm. This allows festival goers 30 minutes to finish their last drink. Security will be present until 11pm to ensure festival goers have left the area."

Again, there was no such condition imposed last year and given there have been no compliance concerns raised in recent years, I will not impose a special condition with respect to last drinks and leave it to the responsibility of the Applicant.

19. In regards to the requirements of NTFRS, the Applicant was provided a copy of NTFRS' email and is required to comply with their lawful directions.
20. 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 outlined at the start of this Decision Notice.

Notice of Rights:

21. 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.
22. 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.
23. 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
Member
Northern Territory Liquor Commission