

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/023
VENUE:	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</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	30 April 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 the special licence to sell liquor to the Nightcliff Arts, Music and Culture Incorporated for the sale of liquor between the hours of 1400 hours and 2230 hours on Saturday 12 May 2018.
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 venue”).
 - 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 Nominees are identified as:
 - i Mr Andrew Arthur; and

- ii Mr Michael Stauder.
- e. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- f. The boundary of the venue must be clearly identified and access to the venue 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 venue 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 person at any one time.
- k. The licensee must ensure that water, soft drink, low and medium strength 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 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. The Licensee must not do or permit or suffer any act, matter or thing whatsoever within the venue 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.
- o. 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.
- p. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.

- q. 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.
- r. 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.
- s. This licence must be located at the venue 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.
- t. The venue 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*.
- u. Food and drinks are not permitted to be taken into any designated smoking areas.
- v. The Licensee or an employee of the Licensee shall exclude or remove from licensed venue 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 applied to the Director-General of Licensing on 19 February 2018 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. That application was deemed incomplete until 16 March 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. Before proceeding to deal any further with the reasons for which I have determined this application, I wish to make clear to the Applicant that it is apparent from the material before me that there have now been several warnings that if the Applicant did not comply with the relevant time limitation periods for a “major event”, namely “no later than three (3) months before the event”, that failure to comply may result in the refusal of the application.
5. These warnings should not be considered by the applicant to be mere words. Such time limitation periods should, and **must**, be complied with. Assessing such applications takes time and that is the reason why there are time limitation periods put in place. Given there has been a recent change in the legislation and given that the matter has been referred to this Commission, I have determined on this

occasion **only** to deal with the application despite the failure of the applicant to comply with the warnings given in 2015, 2016 and 2017.

6. The applicant should however now be on notice that these failures will not continue to be tolerated. This event has been conducted for a number of years now and as correctly identified by the Delegate of the Director General on the last occasion, arrangements for the event itself commence many months in advance. Obtaining a special licence to sell and supply liquor is part of that process and the time limitations imposed must be complied with.
7. The applicant was initially seeking to sell liquor between the hours of 1400 hours and 2230 hours on Friday 11 and Saturday 12 May 2018, however since filing this application, the Applicant has advised that it is no longer seeking to operate a bar on Friday and therefore the application relates solely to being permitted to sell liquor between the hours of 1400 hours and 2230 hours on Saturday 12 May 2018
8. 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. The applicant further stated that:

“The “Nightcliff Seabreeze Festival” is recognised by the community and equally marketed as a family friendly event. The Festival recognises that responsible service of alcohol is key to reducing the incidences of intoxication.

A wide selection of food will be available across the festival...”.

9. There are three (3) bars proposed by the applicant to sell liquor with one proposed within Lot 8694 Town of Nightcliff at an area known as the “Old Historic Seabreeze Hotel Site” and an additional two (2) bars within Lot 9353 Casuarina Drive. The applicant has proposed that each licensed area will be fenced off with designated entry and exit points and shall be manned by security personnel.
10. At each bar the applicant proposes that there be beer and cider 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.
11. I am informed by Licensing NT that the applicant has previously been issued special licences (or their equivalent) “since before 2007”. I have further been informed by Licensing NT that there were “nil” compliance issues “evident” with respect to the applicant “in recent years”.

Consultation

12. 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.

13. With respect to this application:

- a. The DOH requested that the applicant “turn their mind to smoking management for the event”.
- b. The SJA advised there were “no issues for St John Ambulance”.
- c. The NTFRS had “no objections” to the application.
- 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 beer – no full strength
 - iv Maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event
 - v Alcohol volume to be one standard drink or less per serve”.

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. 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”.

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 venue 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. It is my understanding of the material before me that this application is similar to previous applications and approvals. Initially there was an additional day sought, however that is no longer the case. As earlier noted, although there is no formal obligation to consult, responses were sought from the relevant stakeholders and four (4) matters were raised. These, in general terms, related to:

- a. Smoking requirements under the *Tobacco Act*.
- b. Secure storage of alcohol at all times
- c. Industry standard security
- d. Low to Mid strength beer – no full strength
- e. Maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event
- f. Alcohol volume to be one standard drink or less per serve”.

20. In relation to the requirements under the *Tobacco Act* as identified by the DOH; the applicant has stated it will comply. These will therefore form part of the conditions of the special licence and I intend to say nothing further about those matters.

21. In relation to the various matters raised by NT Police, a number of those may be addressed in relatively short form:

- a. There is no proposal for alcohol to be stored overnight. There is therefore no requirement for such a condition and I decline to impose such a condition;
- b. 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. There is no proposal by the applicant (as I understand the application) for that to change and therefore that condition will remain in the special licence to be issued.

- c. In terms of a 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 completely doable, a procedure followed last year and will be followed again this year”.

I accept what the applicant has stated in relation to such a condition. 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.

- 22. In relation to the condition sought by NT Police of “Low to Mid strength beer – no full strength”; I note that the applicant has responded as follows:

- a. **“Low to mid-strength beer - no full strength:**

- i This item does create a problem for us.
- ii As with last year (2017), Seabreeze chose to support local brewers, One Mile Brewery, an official festival Partner for the next 3 years does not brew low to mid-strength beer as it is a specialised boutique brewer focussing on taste and quality - we purchase low-strength beer options in cans from Nightcliff Sports Club.
- iii One Mile Brewery provide a beautiful boutique style set-up rather than just a 'grass roots, community festival' style bar set up... and the areas are set up with alfresco dining.
- iv Seabreeze has never, in 13 years of the festival, had an issue arise from our Bars and the way that we run them and the beautiful family vibe that we create.
- v Low alcohol beer is provided in cans by Nightcliff Sports Club and part of the One Mile Brewery taps are set up to incorporate non-alcoholic soda's”.

- 23. I note that the special licence issued in 2017 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 2017 event.

- 24. 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.

25. In relation to the condition sought by NT Police of “Alcohol volume to be one standard drink or less per serve”; I note that the applicant has responded as follows:

a. **“Alcohol volume to be one standard drink or less per serve:**

- i This item does create a problem for us
- ii In 2017 we purchased schooner sized reusable cups in 2017 to align with our 2017 liquor license and our 'eliminating single use plastics from the foreshore initiative
- iii The cups are used for Rehydration Stations (that are non-alcoholic), Juice Stalls, Soda section of OMB Bar and generally for all beverages except wine and canned mid strength beer/spirits.
- iv This requirement would mean that these reusable/more environmentally friendly cups are potentially redundant to us as a schooner size glass is 1.2 standard drinks so the OMB beer poured into them would not align with this item, unless we only filled the cups up to a certain level which would inevitably create displeasure from our purchasing public feeling that we are duping them?
- v In the history of Seabreeze there has never been an issue with the way we run our bars which run for a period between 2pm - 9pm for 2 x Stages and 2pm - 10pm for 1 stage. We have always been very responsible and had trained bar staff on board alongside Volunteers being mentored in bar staffing techniques.
- vi Plenty of food and non-alcoholic drink stalls are provided in and around our 3 main areas where the bars are located.
- vii Movement via walking and bicycle from stage to stage is encouraged throughout this period.
- viii Plenty of participatory, family activities are provided throughout out this period so that the focus is mainly on activity and community engagement on our foreshore.
- ix The festival starts at 9am with no bar activity occurring until 5 hours later at 2pm on only 3 of the 16 main sites along the foreshore”.

26. I note that in relation to the 2017 special licence there was no requirement for volume to be one standard drink or less. As earlier noted, there were no compliance issues from that event. I have also 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 2017 event.

27. 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 the volume of alcohol to be only one standard drink or less.

28. 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:

29. 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.
30. 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.
31. 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.



JODI TRUMAN
Deputy Chairperson
Northern Territory Liquor Commission