

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** APPLICATION FOR A SPECIAL LICENCE

**REFERENCE:** LC2019/074

**VENUE:** Darwin Amphitheatre  
George Brown Botanic Gardens,  
21 Geranium Street  
THE GARDENS NT 0820

**APPLICANT:** The Darwin Festival Limited

**EVENT:** 2019 Darwin Festival: Santos Opening Night Concert

**LEGISLATION:** Section 58 of the *Liquor Act 1978*

**DECISION OF:** Ms Amy Corcoran (Commissioner)

**DATE OF DECISION:** 19 June 2019

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### 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 a special licence to The Darwin Festival Limited (**the Applicant**) to sell liquor at the premises known as the Darwin Amphitheatre for the sale of liquor between the hours of:

17:00 to 23:00 hours on Thursday, 8 August 2019.

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: Ms Emily Mann**
  - 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 1995*, 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) alcoholic drinks can 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 2002*.
- 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):**

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.
- Patrons who are 18 years and over must have their identification checked and issued with wristbands upon entry to the premises or at the bar to clearly identify patrons who may purchase and consume alcohol. No patron is to be sold, consume or possess alcohol if they are not wearing the appropriate 18 years and over wristband.
- Liquor or any other beverages must not be sold to patrons in glass containers (this includes wine bottles);

- 15 crowd controllers must be engaged for the event, however, these numbers may be reduced in line with industry standards where patronage decreases.
- 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 5 April 2019 pursuant to section 58 of the Act, The Darwin Festival Limited 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 "2019 Darwin Festival: Santos Opening Night Concert" (**Santos Concert**) on Thursday, 8 August 2019. 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 Santos Concert is an all ages music concert that will be held at the Darwin Amphitheatre. This event marks the commencement of the annual Darwin Festival.
5. The Applicant estimates 2,500 persons will attend this year. It is a free event with attendees encouraged to bring chairs and picnic rugs to the event for an evening of musical entertainment.
6. This year, the Santos Concert will include three live performances from Caiti Baker, Electric Fields and Dan Sultan.
7. Specifically, the Applicant is seeking a special licence for the following hours of trade:
 

17:00 hours to 23:00 hours on Thursday, 8 August 2019.
8. The sale of liquor to patrons at the Santos Concert is proposed via one bar operated by the Applicant. Beer, cider, spirits, wine and soft drinks are proposed to be available for sale. The Applicant indicates beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength. Food will also be offered for sale from 3 food vendors.
9. In relation to security and crowd control arrangements, the Applicant indicates there will be 15 crowd controllers present at the event in accordance with previous years.
10. The application confirms paramedics will be engaged and present at the event.

11. I have been informed by Licensing NT that “nil compliance issues are evident on file for the Darwin Festival 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**), NT Police, (**NT Police**) and NT Fire, Rescue Service (**NTFRS**) and seek their comment. With respect to this application:

13. DOH advised that that it has “*no adverse comment*” and requested “Licensing NT advise the applicant that the entire area of the Darwin Amphitheatre has been designated as a Smoke Free area by the Darwin City Council and designated smoking areas are not permitted within the boundary of the Amphitheatre.”

14. The NTFRS requested the Applicant provide a Traffic Management Plan (TMP), which has since been undertaken by the Applicant. No other issues were raised by NTFRS upon receipt of the TMP.

15. The NT Police advised:

*“This event has the higher risk, being a free, all age’s event, full strength alcohol with such a high crowd density anticipated.*

- *Industry standard security for expected crowd numbers*
- *Staggered decline in drinks per transaction per person towards the conclusion of the event*
- *No BYO or alcohol to exit the event”.*

## 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 that there are no objections from the stakeholders regarding this event.

22. This application has been made on substantially the same terms as previous special licenses issued and I confirm nil compliance issues have been raised in regards to those previous events by either Licensing NT or NT Police.

23. In regards to NT Police comments, the Applicant provided the following response:

*“Darwin Festival met with NT Police Events Planning unit representatives yesterday.*

*We note that NTPOL support the application contingent on the following, and we have provided our responses below, noting that these inquiries have not been made regarding the SONC in prior years.*

*· Industry standard security for expected crowd numbers*

*In each of our licence applications for the SONC in recent years (2015, 2016 and 2018), we have itemised the number of guards and their site locations that we would employ under a special liquor licence should it be granted. (Note we did not apply for a liquor licence for this event in 2017 as it was held at a licenced site, Little Mindil).*

*The event has attracted an average of 2,000 pax annually for the past four years. Given it is a free, family, all-ages event, it is difficult to anticipate the number of attendees.*

*A snapshot of the number of guards employed over the past four years:*

<i>Average of 2,000 pax annually</i>	
<i>2015</i>	<i>14 event guards 1 overnight asset guard</i>
<i>2016</i>	<i>15 event guards 1 overnight asset guard</i>
<i>2017</i>	<i>Licence not sought</i>
<i>2018</i>	<i>15 event guards 1 overnight asset guard</i>
<i>2019</i>	<i>15 event guards 1 overnight asset guard</i>

*We understand that the industry standard is 2 x licensed controllers for the first 100 patrons and 1 additional crowd controller for each 100 patrons thereafter. This would require a minimum presence of 21 guards at a family-friendly event for 2,000 people.*

*Darwin Festival has an unblemished special liquor licence record and undertakes sound event management planning, engaging the full support of emergency services in the delivery of the event. We are seeking dispensation in line with the Commissioner's 2018 Decision Notice comments regarding flexible security requirements at the Spiegelent and Festival Park sites to deploy a maximum of 15 event guards for an estimated 2,000 attendees at the 2019 SONC based on our exemplary licence record and event management to date, as well as the short duration of the event.*

*· Staggered decline in drinks per transaction towards the conclusion of the event*

*Darwin Festival holds a maximum 4 drinks per person policy. We are able to implement a staggered decline in the number of drinks served that fits with the NT Police's recommendations at the SONC site. For example, 4 drinks may be purchased up until 8.30pm, with 2 drinks to be purchased up until last drinks at 9.30pm, one hour prior to licence expiration. The concert will finish at approximately 9.30pm and the venue will be cleared by 10pm.*

*· NO BYO or alcohol to exit the event*

*As outlined in Appendix A of our submission, the SONC site will be monitored by Darwin Festival's contracted authorised and reputable security firm, RMI Security, who will provide asset protection, site guard and crowd control. All patrons will be subject to a bag check at the point of entrance to the venue. Alcohol and other articles deemed prohibited such as sharp objects or projectiles will be confiscated. There will be clear signage in place at the entrance alerting patrons of the conditions of entry subject to a bag check. Patrons exiting the venue will be prevented from leaving the site carrying alcohol in cups or bottles.*

*Darwin Festival is a professionally coordinated multi-day event focused on the delivery of a major international arts and culture festival. The primary purpose of Darwin Festival is to deliver entertainment, with a secondary component being the provision of family friendly public eateries where food and beverages are served. As noted in the 2017 Decision Notice, the sale of alcohol is "an ancillary feature that is not relied upon as a significant attractor of patrons to the program of events on offer at the Darwin Festival."*

24. The Applicant has confirmed a staggered decline for drinks will be imposed and there will be no BYO with bags checked upon entry. I will not include a specific condition in the special licence with respect to the staggered decline of drinks and leave it to the Applicant to undertake it as part of its alcohol service policy.
25. The only NT Police request which the Applicant has not accepted is industry standard for crowd control with the Applicant indicating 15 crowd controllers will be engaged for the event. The Applicant has advised that the event has attracted an average of 2,000 people in the past and the main target audience is families.

26. Given this event is family orientated, the sale of alcohol is an ancillary aspect of the event rather than the main drawcard, along with the fact that no compliance concerns have been raised by NT Police or Licensing NT with regards to previous events with similar crowd controllers and crowd numbers, I will not impose industry standards for crowd control this year.
27. Although the trading hours requested in the application extend to 2300 hours, the Applicant has advised by subsequent email that the event will be finished by around 2130 hours and patrons cleared by 2200 hours. This again reflects the family nature of the event.
28. As this is an all ages event, it is important to minimise the risk of underage drinking. Accordingly, a condition will be imposed so that identifications will need to be checked and wristbands issued upon entry to the event or at the bar to clearly identify those patrons over the age of 18 years. No patron is to be sold, consume or possess alcohol if they are not wearing the appropriate wristband.
29. Further, to reduce risk to patrons and noting industry standard crowd control has not been required for this event, I will impose a “no glass” condition under the special licence. All wine will need to be sold by the ‘glass’ and in plastic cups.
30. 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:**

31. 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.
32. 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.
33. 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