

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR A MAJOR EVENT AUTHORITY

REFERENCE NUMBER: LC2020/031

APPLICANT: The Darwin Festival Limited

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

PROPOSED EVENT: 2020 Darwin Festival – Festival Park

NOMINEES: Lorraine Phelan and James Gough

OBJECTOR: Nil

LEGISLATION: Sections 42, 47 and 60 of the *Liquor Act 2019*

DECISION OF: Ms Amy Corcoran (Community Member)

DATE OF DECISION: 31 July 2020

Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (**the Act**) the Commission has determined to issue a licence to The Darwin Festival Limited (**the Applicant**). The Applicant will be issued with a major event authority attached to the licence authorising the sale, supply or service of liquor to patrons for consumption on or in the area known as “Civic Park” located at the corner of Smith Street and Harry Chan Avenue in Darwin, NT 0800 for the hours of:
 - Thursday, 6 August 2020 from 17:00 hours to 24:00 hours;
 - Friday, 7 August 2020 from 17:00 hours to 02:00 hours;
 - Saturday, 8 August 2020 from 17:00 hours to 02:00 hours;
 - Sunday, 9 August 2020 from 17:00 hours to 24:00 hours;
 - Monday, 10 August 2020 from 17:00 hours to 24:00 hours;
 - Tuesday, 11 August 2020 from 15:30 hours to 24:00 hours;
 - Wednesday, 12 August 2020 from 17:00 hours to 24:00 hours;
 - Thursday, 13 August 2020 from 17:00 hours to 00:30 hours;
 - Friday, 14 August 2020 from 17:00 hours to 02:00 hours;
 - Saturday, 15 August 2020 from 17:00 hours to 02:00 hours;
 - Sunday, 16 August 2020 from 15:30 hours to 24:00 hours.

2. In addition to the major event conditions set out in Division 12 of the Liquor Regulations 2019 (**the Regulations**), the licence shall also be subject to the following specific conditions that:
 - a. The boundary of the licensed area in Civic Park must be clearly identified and access to the licensed area must be restricted in a manner that allows for effective supervision by the Nominee.
 - b. Drinks must not be served to patrons in glass with the exception of wine in bottles (with a maximum one per person per transaction).
3. The licence will be issued immediately following the publication of this decision notice.

Reasons

Background

4. On 10 March 2020 pursuant to section 52 of the Act, the Applicant applied to the Commission for a licence with a major event authority to permit the sale of alcohol to patrons attending the 2020 Darwin Festival at Civic Park, Corner of Smith Street and Harry Chan Avenue, Darwin, where the location will be known as Festival Park (the premises).
5. On 15 March 2020 the Chief Minister advised that the National Cabinet resolved to enact a series of measures effective from midnight that night, enforceable by Federal, State and Territory law in relation to the current COVID-19 outbreak. The Chief Health Officer (CHO) has issued a range of Directions since that time, many of which have been changed or superseded as the health crisis and responses develop. This has had the result of the Applicant changing the original application's dates and times to the following:
 - Thursday, 6 August 2020 from 17:00 hours to 24:00 hours;
 - Friday, 7 August 2020 from 17:00 hours to 02:00 hours;
 - Saturday, 8 August 2020 from 17:00 hours to 02:00 hours;
 - Sunday, 9 August 2020 from 17:00 hours to 24:00 hours;
 - Monday, 10 August 2020 from 17:00 hours to 24:00 hours;
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 - Thursday, 13 August 2020 from 17:00 hours to 00:30 hours;
 - Friday, 14 August 2020 from 17:00 hours to 02:00 hours;
 - Saturday, 15 August 2020 from 17:00 hours to 02:00 hours;
 - Sunday, 16 August 2020 from 15:30 hours to 24:00 hours.

6. The licensed premises under the application is for two areas;
 - a. The public area, where patrons can attend without purchasing a ticket, watch entertainment and dine in the eatery, with liquor trading ceasing by 24:00 hours (**the public area**); and
 - b. The 'Club AWI' area which is a fenced off area which requires patrons to have pre-purchased tickets to attend shows in that area (**the ticketed area**), which will have extended trading hours until 02:00 hours on weekends.
7. The Darwin Festival is a family friendly multi-arts festival that takes place annually in Darwin and surrounds. Due to COVID-19, the Darwin Festival will run differently this year; being shorter in duration as well as primarily be focussed on local artists and musicians.
8. Festival Park this year includes two live performance venues being, the free 'Bamboo Bandstand' in the public area which includes the eatery and the ticketed area. Both stages feature performances nightly.
9. In terms of the application before the Commission, it is noted that the Applicant provided the following documents in accordance with section 53(3) of the Act:
 - a. Application for a new liquor licence or authority
 - b. Supplementary information application for a major event authority
 - c. Site plans
 - d. Public Interest Criteria and Community Impact Assessment
 - e. Alcohol policy
 - f. Risk Management Policy/Principal Risk Assessment
 - g. Emergency Management Plan
 - h. ASIC report
 - i. Financial report
 - j. Responsible Service of Alcohol certificates for nominees
 - k. Food registration
 - l. References
 - m. Affidavit
 - n. Declaration of Associates
 - o. Smoking Management Plan.
10. The Applicant intends to offer a full range of alcoholic beverages including light, mid and full strength alcohol content options with the following conditions:
 - a. All alcohol to be sold in open containers;
 - b. A 'No Doubles' policy is enforced on the sale of all spirits;
 - c. A maximum number of 4 drinks to be purchased by any person at any one time;

- d. A staggered decline in drinks per person per sale commencing one hour prior to last drinks being called;
 - e. Last drinks called 30 minutes prior to any event concluding;
 - f. All drinks must be consumed prior to leaving venue; and
 - g. No liquor to be served in glass, except for sales of wine via the bottle.
11. Liquor is proposed via three (3) bars. Bar one (1) and two (2), will be located in the public area of Festival Park and will both cease to operate at midnight and bar three (3), located within the tickets area which will cease to operate at 02:00 hours the following day on weekends. The Applicant estimates a crowd of 1,500 at anyone time to attend the event subject to CHO Directions.
12. The proposed nominees for the event are Ms Lorraine Phelan and Mr James Gough. Ms Phelan has been involved with several major events in the Northern Territory such as BASSINTHEGRASS and is well qualified to be a nominee. Mr James Gough is a board member of the Applicant.
13. The Applicant has previously been granted special licenses for Darwin Festival events. Licensing NT has not informed the Commission of any compliance issues or concerns.
14. The Applicant submitted that ten (10) crowd controllers would be engaged each evening, being three (3) more than last year.
15. It is noted that the Applicant will be required to comply with any CHO Direction that may apply at the time the event takes place pursuant to section 92 of the Act.

Advertising and Objections

16. The application was advertised in the NT News on Wednesday 12 February 2020 and Saturday 15 February 2020.
17. No objections were received from the public.
18. Pursuant to section 56(4) of the Act, the following stakeholders were notified of the application by the Director:
- a. The Department of Health (**DOH**);
 - b. The Commissioner of Police (**NT Police**); and
 - c. Darwin City Council (**Council**).
19. Although not legally bound to do so, the Commission notes that the Director also forwarded a copy of the application to the Northern Territory Fire and Emergency Services (**NTFRS**) and St John Ambulance (**St John**) for comment.
20. With respect to this application:
- a. DOH made no adverse comment noting the Applicant's obligations to complete a COVID-19 Safety Plan as well as comply with directions of the CHO;

- b. NT Police supported the application contingent to:
 - i. Festival Park Security Schedule be adjusted in line with Licence & Performance Time Conclusions; Industry standard security/crowd controllers for expected crowd numbers to remain at the event until all patrons have left
 - ii. Compliance with noise restrictions;
 - iii. Secure storage of alcohol at all times;
 - iv. Low to mid strength alcohol;
 - v. Maximum four (4) drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event:
 - 1. From 21:00 hours to 24:00 hours no more than two (2) drinks;
 - 2. From 24:00 hours to 02:00 hours no more than one (1) drink.
 - vi. Alcohol volume to be one standard drink or less per serve;
 - vii. Traffic Management Plan (Hostile and Errant Vehicle Mitigation Strategies);
 - viii. Clear define family friendly zones;
 - ix. No glass.
- c. The Council did not provide a comment at the time of the referral to the Commission nor prior to this decision however has granted the Applicant a permit to use Civic Park for this event;
- d. The NTFRS supported the application as long as the Applicant complies with their Special Event requirements. They also confirmed temporary occupancy permits must be obtained for any temporary structures requiring one; and
- e. St John did not provide a comment at the time of the referral to the Commission nor prior to this decision.

Hearing

21. Given that no objections were received and this is an application for a major event for this year only, there appears no reason why this application should be referred to a hearing under section 21 of the Act. Accordingly, I have proceeded pursuant to my delegation to deal with such application.

Assessment of the Application

22. Although no objections were made to this application, section 49 of the Act makes clear that the Commission may only issue a licence or an authority if satisfied that:
- a. The Applicant is a fit and proper person;
 - b. Issuing the licence or authority is in the public interest; and
 - c. The licence or authority will not have a significant adverse impact on the community.

23. The Commission has had regard to the relevant considerations listed in section 59(3) of the Act as to the suitability of the Applicant to hold this licence.
24. The Applicant has held a liquor licence and successfully ran the Darwin Festival over a number of years. No compliance concerns have been raised regarding these previous events. The Commission is satisfied that the Applicant is a fit and proper to hold the licence and that the premises being Civic Park, is suitable to be once again licensed.
25. This application is similar to applications made by the Applicant previously for the same event in past years albeit smaller in size and duration due to COVID-19.
26. In respect to the NT Police, the Applicant was informed of NT Police's position by email and responded to those matters on 28 July 2020, which has been taken into consideration by me in determining this matter.
27. In regards to the conditions requested by the NT Police, I will go through each of them below:

- a. Festival Park Security Schedule be adjusted in line with Licence & Performance Time Conclusions; Industry standard security/crowd controllers for expected crowd numbers to remain at the event until all patrons have left

The Applicant submitted it would engage ten (10) crowd controllers each night at Festival Park, three (3) more than last year. Although the Commission has previously accepted that the Applicant did not require industry standards for crowd controlling given the nature of the event, regulation 68(2) of the Regulations now requires it to be a condition of all major event authorities to have industry standards for crowd control. This is two (2) for the first one hundred (100) patrons and one (1) every one hundred (100) patrons after that.

The Commission is unable to alter this condition and accordingly, the Applicant must ensure it complies with regulation 68(2) during the event.

- b. Compliance with noise restrictions

This is a requirement under the Act.

- c. Secure storage of alcohol at all time

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.

- d. Low to mid strength alcohol

The Commission acknowledges that the NT Police's request to consider a move to low and mid strength alcohol. There is nothing before the Commission to indicate that the Applicant has not complied with its obligations as to the responsible service of alcohol in the past. Noting, the Applicant is placing staggered reduction in the number of drinks being purchased at one time towards the end of the evening. There are no

breaches or compliance issues alleged. Accordingly, the Commission is satisfied that there is no need to put in place conditions such restrictions on the strength of the alcohol available at the event.

e. 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 has agreed to the requested condition by NT Police and suggested a maximum of 4 drinks per transaction up until 24:00 hours and 2 drinks per transaction after that.

It is noted that the public bars are only open between 17.00 hours to 24:00 hours. The ticketed area is open until 02:00 hours on the weekends and the Applicant submits will have a turnover of patrons, depending on what shows patrons purchase tickets for.

This 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 as they see fit.

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

The Applicant has submitted it offers a range of alcoholic drinks and ensures mid-strength and low-strength beers are available. For the same reasons set out above, given the Applicant's unblemished compliance history and consistently sound management of the event over many years now, there appears no reason for the Commission to impose such condition in this year's licence.

g. Traffic Management Plan (Hostile and Errant Vehicle Mitigation Strategies)

This comment was withdrawn by NT Police by email on 30 July 2020.

h. Clear defined family friendly zones

The Applicant has informed the Commission that the entire public area is considered a family friendly zone. Given the nature of this event, the family friendly nature of it and the food stalls available, a specific condition requiring any designated alcohol free area is necessary in my view. The Applicant is of course welcome to otherwise define such an area as it sees fit.

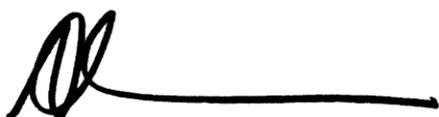
i. No glass

The Applicant has submitted that all drinks will be served in biodegradable cups, however, given the demographic of the audience, has requested to continue serving glass bottles of wine to patrons as previous years. The Applicant has confirmed that the disposal of wine bottles will be heavily monitored by bar staff, security and cleaning staff as the safety of our patrons and the cleanliness of the venue is of the upmost importance to our team.

28. The main drawcard to the event is the cultural and artistic performances. I am satisfied that the supply of alcohol is an ancillary feature of the event's 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.
29. Having regard to the foregoing, the Commission has had regard to the public interest requirements of section 49 of the Act and is satisfied that issuing the licence with a major event authority is in the public interest and will not have a significant adverse impact on the community.
30. As a result, the Commission intends to issue the licence with a major event authority as set out at the commencement of this Decision Notice.

Notice of Rights

31. Section 31 of the Act provides for any decision of the Commission for which a decision notice is required under the Act is reviewable by Northern Territory Civil and Administrative Tribunal (NTCAT) and the following persons.
32. Section 60(3) of the 2019 Act requires the Commission to give a decision notice to the Applicant after making a decision under section 60(1).
33. Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by NTCAT (relevantly) may apply to NTCAT for a review
- a. In all cases - the Director;
 - b. In the case of a decision regarding an application - the applicant; and
 - c. In the case of a submission, complaint or objection that was the subject of a decision - the person who made the submission, complaint or objection.
34. In accordance with the substance of section 31 of the Act any application for review of this decision must be lodged within 28 days of the date of this decision.



AMY CORCORAN
Commissioner
Northern Territory Liquor Commission

Amended 4 August 2020