

# Delegate of the Liquor Commission

## Decision Notice

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<b>MATTER:</b>	<b>APPLICATION FOR A SPECIAL LICENCE</b>
<b>REFERENCE:</b>	LC2018/030
<b>VENUE:</b>	<b>Bicentennial Park</b> Esplanade DARWIN NT 0800
<b>APPLICANT:</b>	Thomas Chin Pty Ltd
<b>EVENT:</b>	Graze Function
<b>LEGISLATION:</b>	Section 58 of the <i>Liquor Act</i> .
<b>DECISION OF:</b>	Ms Jodi Truman (Deputy Chairperson)
<b>DATE OF DECISION:</b>	2 May 2018

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### 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 Thomas Chin Pty Ltd for the sale of liquor on Saturday 19 May 2018 between the hours of 1500 hours and 2000 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 "Graze Function" occurring at Bicentennial Park, The Esplanade, Darwin 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.
  - d. The Nominee is identified as Mr Darryl James Thomas.

- e. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- f. 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.
- g. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.
- h. Crowd controllers are to be employed as per industry standards as follows:
  - a. 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 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.
- 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 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.
- 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. 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.
- q. 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.

- r. This 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 identify card or other authorisation.
- s. 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*.
- t. Food and drinks are not permitted to be taken into any designated smoking areas.
- u. The Licensee or an employee of the Licensee shall exclude or remove from licensed premises any person who is wearing colours, insignia or emblems of an outlaw motorcycle gang (“Bikie Gang”).

## **Reasons**

### **Background**

3. Pursuant to section 32A(1) of the *Liquor Act* (“the Act”), Thomas Chin Pty Ltd applied to the Director-General of Licensing on 9 March 2018 for a variation to a liquor licence pertaining to Liquor Downunder NT in order to permit the sale of liquor to persons attending the event known as “Graze Function”.
4. On 9 April 2018, after receiving advice from Licensing NT, the applicant subsequently lodged an application for a special licence pursuant to section 58(1) of the Act. The applicant is now seeking a special licence in its own name to permit the sale of liquor to persons attending the event known as the “Graze Function” occurring at Bicentennial Park, The Esplanade, Darwin in the Northern Territory (“the Premises”).
5. The applicant is seeking to sell liquor between the hours of 1500 hours and 2000 hours on Saturday 19 May 2018. It was stated in the Application that it was estimated by the applicant that there would be 750 persons in attendance. The applicant states that it is proposed there will be an array of beers, wine and boutique drinks available. There will also be four (4) food vendors, coffee, water and other non-alcoholic drinks available.
6. The applicant has previously held this event in 2016 and 2017, although at a different venue. I have been informed by Licensing NT that these occurred “without incident or compliance issues”.

## Consultation

7. 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”), City of Darwin Council (“CDC”), Northern Territory Fire and Rescue Service (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.
8. With respect to this application:
  - a. The DOH requested that the applicant turn their mind to smoking management. When contact was made with the applicant about this issue, the applicant advised that this would be a “smoke free” event.
  - b. The NTFRS had “no objections” to the application.
  - c. The NT Police supported the application contingent to:
    - a. “Industry standard security for expected crowd numbers – security to ensure that no alcohol enters or exits the event.
    - b. Secure storage of alcohol at all times
    - c. Alcohol volume to be one standard drink or less per serve
    - d. Maximum of 4 drinks per transaction with a staggered decline towards the conclusion of the event”.
  - d. The CDC advised that it “has no issue with this request”.

## Assessment of the Application

9. 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.
10. 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.

11. 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”.

12. 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.”

13. 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.

14. It is my understanding of the material before me that this application is similar to previous applications and approvals; it is merely the location of the event that is different.

15. As earlier noted, although there is no formal obligation to consult, responses were sought from the relevant stakeholders and four (4) matters were raised by NT Police relating to the following:

- a. Industry standard security for expected crowd numbers;
- b. Secure storage of alcohol at all times;
- c. Alcohol volume to be one standard drink or less per serve; and
- d. Maximum of 4 drinks per transaction with a staggered decline towards the conclusion of the event.

16. Following receipt of this referral, I requested that the applicant be advised of the response from NT Police and asked whether it wished to be heard on the matters raised. In relation to each of the issues the applicant has responded in relation to the following issues as follows:
  - a. Industry standard security for expected crowd numbers – the applicant has appointed a security company and will comply with the industry standard;
  - b. Secure storage of alcohol at all times – there will be a lockable cold room; and
  - c. Maximum of 4 drinks per transaction with a staggered decline towards the conclusion of the event – “OK”.
17. In relation to security/crowd controllers; there is no application for an exemption from the industry standard. It is clear the applicant understands its obligations. Such a condition was included in the licences issued in 2016 and 2017 and will be included again in this year’s special licence.
18. In relation to storage; there is no evidence before me to suggest that the applicant is not well aware of its obligations for secure storage or has previously failed to comply with that obligation. The applicant has also referred to a lockable cold room being in place. It is clear the applicant understands its obligations. This was not a condition of last year’s licence and there were no issues. I therefore do not consider it necessary to include such a condition within the special licence and I decline to impose such a condition;
19. In relation to the maximum number of drinks to be served and a decline towards the conclusion of the event, I note that having seen a number of these special licence applications that this appears to be a general response provided by NT Police with respect these types of applications. I note that this Commission has hypothesised recently that this may be a general policy stance taken by police. There may be reasons for such a stance, but unfortunately they have not been articulated and certainly have not been identified with respect to the circumstances of this particular application.
20. As previously noted; there is no requirement under the Act for advertising of special licence applications, or provision for formal objections. I must however consider the objects of the Act and to do so, I rely upon the evidence and information placed before me.
21. Although the applicant has responded “OK” with respect to this suggestion from NT Police that does not mean it is a condition that I MUST impose. I note that for the previous licences there was a condition imposed of a maximum of four (4) drinks per transaction and I consider this appropriate. I therefore impose such a condition in this year’s special licence.

22. I have not however been provided with any relevant matters that the NT Police have to support a particular condition being imposed in this special licence for the decline in the service of the number of maximum drinks towards the conclusion of the event. I also note that this event is for a period of five (5) hours and is clearly an event with a heavy social focus including education on food and wine matching. In these circumstances I find that there is no basis to support such a condition and I decline to do so.
23. Should the applicant determine however that it will impose a decline in the service of drinks for periods beyond that set out within the terms of this special licence; then that is a matter entirely for the applicant. The conditions of the special licence do not prevent the applicant from doing so. However I decline to include it as a specific condition of this special licence.
24. In relation to the volume of alcohol being one standard drink or less; the applicant has indicated quite appropriately in my opinion that due to the nature of this event being a “food and wine” event it would be a “logistical nightmare” to be required to comply with such a condition. The applicant has quite rightly stated:

“Because bottles of wine have different numbers of standard drinks we would have to calculate how many Millilitres for each wine and pour accordingly, i.e. a wine that has 7.2 standard drinks would have to be poured at 104.16ml, a 7.8 standard drink wine would have to be poured at 96.15ml”.
25. Again, I have not been provided with any relevant matters that the NT Police have to support such a condition being imposed in this special licence. I also note that the special licences issued in 2016 and 2017 did not include a requirement for volume to be one standard drink or less. In addition, there were no compliance issues from either of those events and 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 either event.
26. In these circumstances I have determined 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 that the volume of alcohol be only one standard drink or less.
27. 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:**

28. 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.
29. 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.
30. 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.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

**JODI TRUMAN**  
Deputy Chairperson  
Northern Territory Liquor Commission