

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/048
PREMISES:	Deckchair Cinema Jervois Road Darwin Waterfront DARWIN NT 0800
APPLICANT:	The Darwin Festival Limited
EVENT:	2018 Darwin Festival Program Launch
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	17 May 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 Darwin Festival Limited” for the sale of liquor on Wednesday 20 June 2018 between the hours of 1730 hours to 2130 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 “2018 Darwin Festival Program Launch” occurring at the Deckchair Cinema, Jervois Road, Darwin Waterfront, 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 identified is Ms Emily Mann.

- 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 the submission lodged by the applicant of a minimum of two (2) crowd controllers in attendance throughout the licensed trading hours.
- i. All liquor must be sold in open containers.
- j. No more than four (4) cans or bottles or one (1) wine bottle must be sold to any one (1) person at any one time.
- k. The licensee must ensure that water, soft drink 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. Where the Licensee is operating from enclosed premises, the Licensee must prominently display on the licensed 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 Service from time to time.
- o. 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.
- p. 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.
- q. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.

- r. 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.
- s. 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.
- t. 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.
- u. The Premises 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*.
- v. Food and drinks are not permitted to be taken into any designated smoking areas.
- w. 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 58 of the *Liquor Act* (“the Act”), “The Darwin Festival Limited” (“the applicant”) applied to the Director-General of Licensing on 20 April 2018 for a special licence to permit the sale of liquor to patrons attending an event known as the “2018 Darwin Festival Program Launch” occurring at the Deckchair Cinema located on Jervis Road at the Darwin Waterfront (“the Premises”). The application was referred to the Commission, and then to me pursuant to my delegation, on 11 May 2018.
4. The applicant is seeking to sell liquor between the hours of 1730 hours to 2130 hours on Wednesday 20 June 2018. The Darwin Festival Program Launch is an annual event intended to celebrate the upcoming year’s program of shows and activities that form part of the Darwin Festival. The Darwin Festival is self-described as “... an 18 day celebration of music, theatre, visual art, dance, cabaret and more in the beautiful tropical city of Darwin” and is held each during August.
5. The event itself is an “invitation only” event intended to inform attendees of the 2018 Darwin Festival program and provide an opportunity to socialise with some of the key festival participants.
6. The applicant is known to Licensing NT and has received a number of special licenses for the purpose of the festival launch each year. I am informed that “nil

compliance issues are evident on file for the Darwin Festival Program Launch in recent years”.

7. The applicant seeks to sell “beer, wine, sparkling wine”. The applicant also proposes that it only be required to employ two (2) crowd controllers for the event. The applicant has estimated that there will be approximately 450 persons in attendance at the event.

Consultation

8. 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”), Northern Territory Fire and Rescue Service (“NTFRS”) and NT Police, Fire and Emergency Services (“NT Police”) and seek their comment.
9. With respect to this application:
 - a. The DOH had “no adverse comment” and provided signage to delineate the Non-Smoking from Smoking areas.
 - b. The NTFRS had “no objection” to the application.
 - c. The NT Police initially inquired about the proposed number of crowd controllers for the event. Further information was sought from the applicant as to the estimated number of attendees and the proposed number of crowd controllers. When this was confirmed to be as estimate of 450 persons and a request for only two (2) crowd controllers, the police advised that they had “no objections”.

Assessment of the Application

10. 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.
11. 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.
12. 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”.

13. 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.”

14. 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.

15. Taking into account the matters that I am required to consider with respect to such an application and in particular that this is an invitation only event, held at a permanent venue with its own secure fence and that there have been no previous compliance issues, 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:

16. 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.

17. 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.

18. 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

21 May 2018