

# Delegate of the Licensing Commission

## Decision Notice

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**MATTER:** APPLICATION FOR A SPECIAL LICENCE

**REFERENCE:**

**VENUE:** Darwin Waterfront Peninsula Lawns  
Kitchener Drive  
DARWIN NT 0800

**APPLICANT:** NT Thai Association Incorporated

**EVENT:** Thailand Grand Festival

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

**DECISION OF:** Ms Jodi Truman (Deputy Chairperson)

**DATE OF DECISION:** 23 April 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 the NT Thai Association Incorporated for the sale of liquor on Saturday 28 April 2018 between the hours of 1600 hours and 2200 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 “Thailand Grand Festival” occurring at the Darwin Waterfront Peninsula Lawns located at Kitchener Drive, Darwin in the Northern Territory; however the liquor shall only be permitted to be sold and/or consumed in the area known as the “Beer Garden” (“the Premises”).
  - b. The only alcoholic beverage permitted for sale on the Premises is Thai beer;
  - c. 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.

- d. A nominee MUST BE present during all trading hours and must ensure compliance with the conditions.
- e. The Nominee is identified as Mr Shaun Hardy.
- f. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- g. 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.
- h. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the Premises must be licensed as required by that Act.
- i. Crowd controllers are to be employed by the Licensee however the Licensee is granted an exemption from the industry standard to the extent that the Licensee shall only be required to employ one (1) licensed crowd controller for the Premises; however there will only be a maximum of 200 persons permitted into the Premises at any one time.
- j. All liquor must be sold in open containers.
- k. No more than four (4) cans or bottles must be sold to any one person at any one time.
- l. No liquor or other beverages to be sold in glass containers;
- m. 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.
- n. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.
- o. All patrons entering into the Premises are to be issued with a wrist band or stamp on the arm to identify them as 18 years of age or over and therefore eligible to purchase and consume liquor on the Premises. Persons without a wrist band or stamp on the arm shall not be permitted to purchase or consume liquor on the Premises.
- p. 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.
- q. 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.

- r. 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.
- s. All liquor purchased for sale under the authority of this licence MUST be purchased from a licensed retail outlet.
- t. 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.
- u. 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.
- v. 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.
- w. 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*.
- x. Food and drinks are not permitted to be taken into any designated smoking areas.
- y. For the purpose of fire safety, the Licensee or an employee of the Licensee shall ensure there are dry chemical powder extinguisher/s (3A40B:E) to be located at stage performing area/s where there is power being used and at any food stall vendors along with fire blanket/s. Such fire extinguisher/s and fire blanket/s are to be maintained per Australian Standards (AS 1851).
- z. 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”), NT Thai Association Incorporated applied to the Director-General of Licensing on 20 February 2018 for a special licence to permit the sale of liquor to persons attending the event known as the “Thailand Grand Festival” occurring at the Darwin Waterfront Peninsula Lawns located at Kitchener Drive, Darwin in the Northern Territory.

4. The applicant is seeking to sell liquor between the hours of 1600 hours and 2200 hours on Saturday 28 April 2018. It was stated in the Application that it was anticipated by the applicant that there would be 1,500 persons in attendance at any one time, however only 200 persons would be permitted in the “designated beer garden”. The beer garden will be marked by a temporary fence and be approximately 20 metres x 20 metres in size.
5. The applicant further stated that:

“Thailand Grand Festival is a family friendly event to celebrate Thai New Year (Songkran Water Festival) and promote community awareness of Thai traditions and culture through music and dance performances and food”.
6. The applicant seeks only to sell Thai beer during those hours. Further information was sought by me from the applicant as to the varieties of strength options there exist of Thai beer. The applicant has advised that it proposes only to sell and supply “Chang” beer which is in fact a full strength Thai beer. It is apparent that “Chang” is a major sponsor of the event, however it does not have a light or mid strength beer available in Darwin at the present time. The applicant proposes that all beer supplied will be opened at point of sale.
7. Due to the nature of the event, an exemption is also sought by the applicant from providing private security or crowd controllers in accordance with the industry standard. The applicant proposes instead that there be only one (1) crowd controller on site at the beer garden.
8. The applicant has previously been issued special licences for past Songkran Water Festivals in 2016 and 2017. I have been informed by Licensing NT that there were “nil” compliance issues “evident” with respect to the applicant however it was noted that the applicant had held the events in 2016 and 2017 at different premises.

### **Consultation**

9. 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”), NT Police, Fire and Emergency Services (“NT Police”) and St John Ambulance (“SJA”) and seek their comment.
10. With respect to this application:
  - a. The DOH had “no adverse comment” however requested that the applicant be reminded of their obligations in relation to smoking.
  - b. The NTFRS had “no objections” to the application “on the following condition”:

- Dry chemical powder extinguisher/s (3A40B:E) to be located at stage performing area/s where there is power being used and at any food stall vendors along with fire blanket/s. Organisers to ensure any fire extinguisher/s and fire blanket/s are being maintained six monthly as per Australian Standards (AS 1851)".

c. The NT Police supported the application contingent to:

- "Secure storage of alcohol at all times – any alcohol that is left overnight needs to be secured away
- Industry standard security for crowd numbers – security to ensure no alcohol is entering/exiting the event
- RSA for all staff handling alcohol
- Maximum of 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event
- Alcohol volume to be one standard drink or less per serve
- Low to Mid strength beer
- No glass
- No BYO
- Commercial bottled water to be readily available for low-cost purchase
- Local Waterfront amenity conditions".

d. The SJA did not provide a response and were advised that if one was not received then it would be assumed they had no comment to provide.

## Assessment of the Application

11. 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.
12. 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.
13. 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”.

14. 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.”

15. 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.

16. It is my understanding of the material before me that this application is similar to previous applications and approvals, it is merely the premises that is different. 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. Fire safety concerns.
- c. Type of alcohol to be supplied and the conditions upon which it is supplied as identified in the response by NT Police.
- d. Security (or crowd controller) numbers.

17. In relation to the requirements under the *Tobacco Act* as identified by the DOH and the fire safety conditions sought by NTFRS; 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.

18. 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 the sale of liquor must be supervised by the Licensee (Nominee) who shall hold a Responsible Service of Alcohol ("RSA") certificate, or equivalent qualification approved by the Director-General. The nominee **MUST BE** present during all trading hours and must ensure compliance with the conditions and persons under the age of 18 years must not be used in the sale or supply of liquor.

I have no basis whatsoever to find that conditions such as those that are generally included in any licence should be different for this particular applicant such that there should be a requirement that there be "RSA for all staff handling alcohol". I therefore decline to impose such a condition.

- c. It is proposed by the applicant that there be no glass and there will be water available and these will be part of the conditions.
- d. There is no proposal for there to be BYO.
- e. The Darwin Waterfront Corporation has already addressed its requirements as to the "Local Waterfront amenity conditions". I do not intend to say anything further on those issues.

19. In relation to security (or crowd controller) numbers, it is noted that the applicant seeks an exemption from providing private security or crowd controllers in accordance with the industry standard. The applicant proposes instead that there be only one (1) crowd controller on site at the beer garden. I note the beer garden is to be a fenced area approximately 20m x 20m within the festival site and that there will only be 200 persons permitted into that area at any one time. I also note that there will be five (5) private security personnel provided by the Darwin Waterfront Corporation who will also be "roaming" the entire festival event.

20. I also note the description of the Thailand Grand Festival as a "family friendly event to celebrate Thai New Year (Songkran Water Festival) and promote community awareness of Thai traditions and culture through music and dance performances and food". Although Thai beer is sought to be supplied, it is apparent that this is an event where the supply of liquor is an ancillary feature of the festival.

21. Again the 2017 and 2016 event occurred without issue. However on the other hand it is clear that the special licence that was issued in 2017 required compliance with the industry standard. Given however the following circumstances:

- a. The fact that there will be additional “Waterfront” security personnel roaming the event,
- b. The already described “family friendly” nature of the festival, and
- c. The size of the beer garden area with a maximum number of 200 persons to be within that location at any one time;

I have determined that an exemption may be granted to the applicant in the terms sought and I will grant this exemption as part of the conditions of the special licence.

22. 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.
23. 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.
24. I have not been provided with any relevant matters that the NT Police may 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. In these circumstances I find that there is no basis to support such a condition and I decline to do so. I will however impose a condition of a maximum of four (4) drinks per transaction.
25. In relation to the volume of alcohol being one standard drink or less and only low to mid strength beer, I note that the applicant is only seeking to sell beer. However the applicant does seek the supply of **only** full strength beer given that it shall only be selling “Chang” beer which only has a full strength product available in Darwin at the present time.
26. I note that the special licence issued in 2017 permitted the sale of “beer, wine and cider”. There was no requirement for volume to be one standard drink or less. There was also no condition of only being low to mid strength beer. As earlier noted, there will 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 only the service of low to mid strength

beer and/or a condition that the volume of alcohol be only one standard drink or less.

28. Although I would generally require that the condition for the supply of liquor include low and mid strength varieties to be made available, given the particular circumstances of this application where the beer that is proposed to be supplied is a Thai beer consistent with promoting Thai products, I am willing on this occasion (and this should not be seen as a precedent for other applications, but merely on this application alone) to decline to impose within the conditions that there be a requirement to also supply light and mid strength beers. On this occasion alone the applicant shall be permitted to supply only full strength beer, being its nominated Thai beer for the reasons identified.
29. 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:**

30. 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.
31. 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.
32. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the applicant and the person who made "a submission" during the process that resulted in the decision being made. With respect to this application that is DOH, NTFRS and NT Police.



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