

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	LC2018/039
VENUE:	Bicentennial Park Esplanade DARWIN NT 0800
APPLICANT:	United Voice – NT Branch
EVENT:	May Day Celebration
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	4 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 United Voice – NT Branch for the sale of liquor between the hours of 1600 hours and 2100 hours on Monday 7 May 2018.
2. The granting of approval is subject to the following conditions, namely:
 - a. The liquor shall be sold at the event known as the “May Day Celebration” 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 Ms Erina Early.

- e. Persons under the age of 18 years must not be used in the sale or supply of liquor.
- f. The boundary of the venue must be clearly identified and access to the venue must be restricted in a manner that allows for effective supervision by the Nominee.
- g. The licensed area is as per the map supplied with the application; a copy of which MUST be kept with the licence for production upon request in accordance with this licence.
- h. The children's play area is specifically excluded from the licensed area and NO liquor is to be taken into the children's play area or consumed in that area.
- i. Any person involved in Crowd Control, as defined under the *Private Security Act*, at the venue must be licensed as required by that Act.
- j. Crowd controllers are to be employed as per industry standards as follows:
 - i. 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.
- k. All liquor must be sold in open containers.
- l. No more than two (2) cans or bottles must be sold to any one person at any one time.
- m. The licensee must ensure that water, soft drink, low and medium strength beverages 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. 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.
- p. The Licensee must comply with all requirements and guidelines published by the Director General, including guidelines related to the conduct of entertainment.
- q. The Licensee must not do or permit or suffer any act, matter or thing whatsoever within the venue 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 venue 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 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*.
- x. Food and drinks are not permitted to be taken into any designated smoking areas.
- y. The Licensee or an employee of the Licensee shall exclude or remove from licensed venue 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”), United Voice – NT Branch applied to the Director-General of Licensing on 30 April 2018 for a special licence to permit the sale of liquor to persons attending the event known as the “May Day Celebration” occurring at Bicentennial Park, The Esplanade, Darwin in the Northern Territory (“the Premises”). The application was then referred to the Liquor Commission and to me pursuant to my delegation to deal with such special licence applications on 2 May 2018.
4. Before proceeding to deal any further with the reasons for which I have determined this application, I wish to make clear to the Applicant and to ALL Applicants for a special licence that there is a time limitation for these types of application. It is clearly set out in the Act under s.58(2) and is “no later than 28 days before the date or the first date in respect of which the application is made”.

5. The Act is very clear on this issue. I put on record now to the applicant that compliance with these time limitation periods is **essential**. Failure to comply may result in the refusal of the application. This warning should be taken very seriously by the applicant. Assessing such applications takes time and that is the reason why there are time limitation periods put in place. Given there has been a recent change in the legislation and given that the matter has been referred by the Director General to this Commission, I have determined on this occasion **only** to deal with the application despite the failure of the applicant to comply with the time limitation period. That may not occur again in future.
6. The applicant is now on notice that future failures may not be tolerated. This event has been conducted for a number of years now. May Day occurs each and every single year and my understanding is that this applicant seeks to have an event each year on that day. The applicant must therefore prepare for such an event each year and given that arrangements for the event itself must commence months in advance, it is incumbent on the applicant to apply to obtain a special licence to sell and supply liquor as part of that process well within the time limitation period.
7. It should also be kept VERY clear in the applicant's mind that in future, the purchase of alcohol for an event should NEVER occur on the assumption that a licence will be granted. This applicant, like all applicants, needs to comply with the legislation and satisfy the Commission that a licence should be granted in the exercise of the Commission's *discretion*. No licence to any person is guaranteed.
8. The applicant seeks to sell liquor between the hours of 1600 hours and 2100 hours on Monday 7 May 2018. It was stated in the application that the event would consist of a community music concert along with children's entertainment. The applicant estimates 700 people will attend and it is proposed there be an array of beers, wine, spirits, non-alcoholic drinks and water available.
9. I am informed by Licensing NT that the applicant has previously been issued special licences (or their equivalent) "in recent years". Licensing NT has not provided me with any evidence in relation to compliance issues.

Consultation

10. 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 Police, Fire and Emergency Services ("NT Police") and Northern Territory Fire and Rescue Service ("NTFRS") and seek their comment.
11. With respect to this application:
 - a. The DOH had "no adverse comment", but requested that the venue clearly display signage to delineate the Non-Smoking and Smoking areas.

- b. The NT Police “support the application contingent to only low to mid strength alcohol being provided”.
- c. The NTFRS had “no objection” to the application.

Assessment of the Application

12. 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.
13. 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.
14. 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”.
15. 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 venue and associated services for the benefit of the community.”
16. 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.

17. It is my understanding of the material before me that this application is similar to previous applications and approvals. The only issue that appears to have been raised for consideration is the “contingent” support by NT Police concerning low to mid strength alcohol only being served.
18. Upon receiving this information, I requested that the applicant be invited to respond. All of this occurred within an **extremely** short time period. That time period however is as a result of the applicant’s conduct. The response eventually received by the applicant was that they had already purchased alcoholic beverages including heavy beer and spirits. As earlier indicated, no applicant should ever assume a licence will be granted in the terms sought.
19. Be that as it may, the conditions of any licence are not for the stipulation of NT Police. Whether a licence is to be granted and the conditions of any such licence are a matter for this Commission. I have considered very carefully the response provided by NT Police. I note that the special licence issued in 2017 did *not* include a condition restricting the sale of only light or mid strength beer. 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, nor any event related to this applicant.
20. 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 I decline to do so.
21. 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:

22. 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.
23. 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.

24. 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