

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2019/079

PREMISES: Garden Amphitheatre
George Brown Botanic Gardens
The Gardens NT 0820

APPLICANT: Darwin Symphony Orchestra Inc.

EVENT: Conoco Phillips Symphony: Aussie Rock Legends

LEGISLATION: Section 58 of the *Liquor Act 1978*

PROPOSED DATE: 29 June 2019

DECISION OF: Ms Pauline Reynolds

DATE OF DECISION: 3 June 2019

DECISION

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act 1978* (“the Act”) I have determined to grant the special licence to sell liquor to Darwin Symphony Orchestra Inc. (“The Applicant”) for the sale of liquor between the hours of 1700 hours and 2200 hours on Saturday 29 June 2019.
2. The granting of approval is subject to the following conditions, namely:
 - a. The liquor shall be sold at the event known as “ConocoPhillips Symphony: Aussie Rock Legends” occurring at the Darwin Amphitheatre located at the George Brown Botanic Gardens, 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 Alexander Joseph Ehrlich.
- 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 1995*, at the Premises must be licensed as required by that Act.
- h. Crowd controllers are to be employed as per industry standards as follows:
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 (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 2002*.
- 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”).
- x. 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 any food stall vendors along with a 1.2 x 1.8 metre fire blanket/s. Further that there are dry chemical powder extinguisher/s (3A40B: E) to be located on the stage area, sound desk, media tent and big screen if used. Such fire extinguisher/s and fire blanket/s are to be maintained per Australian Standards (AS 1851).

REASONS

BACKGROUND

3. Pursuant to section 58 of Act, Darwin Symphony Orchestra Inc. (“the Applicant”) applied to the Director-General of Licensing on 28 May 2019 for a special licence to permit the sale of liquor to patrons attending an event known as “ConocoPhillips Symphony: Aussie Rock Legends” occurring at the Darwin Amphitheatre located at the George Brown Botanic Gardens, Darwin in the Northern Territory (“the Premises”).

4. The Applicant advised that a crowd of 2500 to 4000 persons are expected to attend the event. This crowd, as in previous years, is expected to cover a wide range of age groups.
5. The Applicant is seeking to sell liquor between the hours of 1700 hours and 2200 hours on Saturday 29 June 2019. I am advised that the nature and purpose of the event is to entertain the general public of Darwin and to promote the Darwin Symphony Orchestra and its sponsors and that the Darwin Symphony Orchestra plays with a cover band and performs the music of an iconic international music artist.
6. The Applicant proposes that a range of beer; heavy, mid and light strength will be available along with a range of wine and ready to drink ("RTD") drinks. The applicant will impose a limit of 4 drinks per person per purchase. Water and soft drinks will also be available along with food from different vendors. There will be no service of Spirits. Each bar will have a person dedicated to undertaking Proof of Age checks.
7. I have been informed by Licensing NT that this event has been held in the past with entities holding a variation to an existing licence. There has been no recorded negative compliance history for those previous events. I was further advised that the nominee, Mr Alexander Ehrlich, is the nominee of the Darwin Trailer Boat Club and has an excellent knowledge of the requirements of the *Liquor Act 1978* and has been the nominee at this event for the past two years.

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 Police, Fire and Emergency Services (NT Police), Northern Territory Fire and Rescue Service (NTFRS), St Johns Ambulance NT (SJA) and seek their comment.
9. With respect to this application:
 - a. The DOH replied that they have no adverse comment; However, Health asks the Director-General of Licensing to consider patron and community safety & amenity when determining this application. Health provide the comment on the understanding the applicant acknowledges the venue is a smoke free venue.
 - b. The Northern Territory Fire and Rescue Service did not provide a response at the time of this referral.
 - c. Northern Territory Police support the application contingent to:
 - I. Industry standard security for the expected crowd (request applicant to review security numbers).
 - II. Staggered decline in drinks per transaction towards the conclusion of the event.

- d. A response was received from St John Ambulance Australia (NT) Inc. advising that they will be providing first aid coverage for this event and have no concerns for a liquor licence to be issued.

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. However 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) 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. I note the response from NT Police and further note the “support” of the application. This event has a good history and is in my opinion a low risk event. The application has put in place management initiatives and risk strategies to deal with issues that may arise during the event.

16. I am satisfied as a result of the material provided by the applicant that it would conduct itself appropriately under any special licence granted to it. There is nothing to indicate a need for a staggered decline in drinks for this event and such response from NT Police appears to be a general policy rather than a response directed to this matter. I therefore do not impose such a condition.
17. Based on the material before me, I find there is no basis to believe the applicant would not comply with the usual conditions of the special licence as sought. Given the nature of this event and for the reasons outlined above; I am, on balance, satisfied that the objects of the Act have been sufficiently addressed and I have decided to grant the special licence as outlined at the start of this Decision Notice.

NOTICE OF RIGHTS

18. 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.
19. 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.
20. 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.



PAULINE REYNOLDS
HEALTH MEMBER
NORTHERN TERRITORY LIQUOR COMMISSION
3 June 2019