

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: APPLICATION FOR A SPECIAL LICENCE

REFERENCE: LC2019/076

VENUE: Bicentennial Park: Cenotaph Oval
Corner of Herbert Street and The Esplanade
DARWIN NT 0800

APPLICANT: The Darwin Festival Limited

EVENT: 2019 Darwin Festival – Spiegel tent Site

LEGISLATION: Section 58 of the *Liquor Act 1978*

DECISION OF: Ms Amy Corcoran (Commissioner)

DATE OF DECISION: 19 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 a special licence to sell liquor to The Darwin Festival Limited (**the Applicant**) for the sale of liquor between the hours of:

Thursday, 8 August 2019 from 1630 hours to 2200 hours;
Friday, 9 August 2019 from 1630 hours to 2359 hours;
Saturday, 10 August 2019 from 1630 hours to 2359 hours;
Sunday, 11 August 2019 from 1630 hours to 2230 hours;
Tuesday, 13 August 2019 from 1630 hours to 2230 hours;
Wednesday, 14 August 2019 from 1630 hours to 2230 hours;
Thursday, 15 August 2019 from 1500 hours to 2200 hours;
Friday, 16 August 2019 from 1630 hours to 2359 hours;
Saturday, 17 August 2019 from 1630 hours to 2359 hours;
Sunday, 18 August 2019 from 1630 hours to 2230 hours;
Tuesday, 20 August 2019 from 1630 hours to 2230 hours;
Wednesday, 21 August 2019 from 1630 hours to 2230 hours;
Thursday, 22 August 2019 from 1630 hours to 2230 hours;
Friday, 23 August 2019 from 1630 hours to 2359 hours;
Saturday, 24 August 2019 from 1630 hours to 2359 hours;
Sunday, 25 August 2019 from 1630 hours to 2230 hours.

2. The granting of approval is subject to the following conditions, namely:
- a. The liquor shall be sold at the event known as “2019 Darwin Festival – Spiegeltent Site” situated in Bicentennial Park: Cenotaph Oval corner of Herbert Street and The Esplanade, Darwin in the Northern Territory;
 - b. The sale of liquor must be supervised by one or more persons nominated by the holder of the special licence (**the Nominee**), who each must 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 these conditions.
 - d. The nominee is identified as;

Nominee: EMILY MANN

Persons under the age of 18 years must not be used in the sale or supply of liquor.

- e. 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.
- f. 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.
- g. Crowd Controllers are to be employed as per industry standards as follows:
 - Two licensed crowd controllers for the first 100 hundred patrons and one additional crowd controller for each 100 hundred patrons thereafter.
- h. All liquor must be sold in open containers.
- i. No more than four (4) alcoholic drinks or one (1) bottle of wine must be sold to any one person at any one time.
- j. The holder of the special licence must ensure that water, soft drinks, 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.
- k. Liquor must not be sold or supplied to a person who is drunk, or to a person under the age of 18 years.
- l. The holder of the special licence 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.

- m. The holder of the special licence must comply with all requirements and guidelines published by the Liquor Commission or Director-General, including guidelines related to the conduct of entertainment.
- n. Where the holder of the special licence is operating from enclosed premises, the holder must prominently display on the 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 and Rescue Service from time to time.
- o. The holder of the special licence 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 holder of the special licence must comply with the requirements of the Liquor Commission or Director-General as specified in this condition, and with the instructions of 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 identity card or other authorisation.
- q. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.
- r. The holder of the special licence must make a record of all liquor obtained for sale under this special licence that identifies the source of the liquor and the type and quantity of each type of liquor so obtained.
- s. The holder of the special licence 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 special 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 identity card or other authorisation.
- u. The holder of the special licence must clearly display signage to delineate Non-Smoking areas from the Smoking Areas and the holder 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 holder of a special licence or employee of a holder shall exclude or remove from the premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang).

Commission's instructions in accordance with condition (n):

To the extent that these instructions are inconsistent with the conditions above, these instructions will prevail.

- No provision of alcoholic drinks that:
 1. Are designed to be consumed quickly and which are commonly referred to as a 'shot or shooters'; or
 2. Are a cocktail containing more than a 30ml nip of spirit or liquor.
- 5 crowd controllers must be engaged on Sundays, Tuesdays to Thursdays and 6 crowd controllers on Fridays and Saturdays, however, these numbers may be reduced in line with industry standards where patronage is decreased.
- Crowd control arrangements shall comprise of static and roaming crowd controller to diligently monitor and enforce all licensing requirements and regulations pertaining to the sale of alcohol;
- At least 75% of crowd controllers employed must wear clothing that is readily identifiable. For example, high-viz vests with 'Crowd Controller', 'Security' or 'Safe Staff' or similar stated.

Reasons

Background

3. On 5 April 2019 pursuant to section 58 of the Act, The Darwin Festival Limited lodged an application with the Director-General for the grant of a special licence to permit the sale of liquor to patrons attending the '2019 Darwin Festival: Spiegeltent Site' on performance nights over the period of 8 to 25 August 2019. The application was then referred to the Liquor Commission and to me pursuant to my delegation to deal with such special licence application.
4. 2019 Darwin Festival: Spiegeltent Site is a public site for ticket holders and other members of the public to relax prior to and following performances being held in the Spiegeltent during the Darwin Festival.
5. The Darwin Festival is a multi-arts festival that takes place across 18 days and 17 nights in Darwin and surrounds. The Spiegeltent will host 22 performances of "Blanc de Blanc Encore", a cabaret-circus show performed inside the tent.

6. The Applicant estimates 500 – 1,200 persons will attend the Spiegeltent Site on each performance night. Minors are permitted at the event.
7. Specifically, the Applicant is seeking a special licence for the following hours of trade:
 - Thursday, 8 August 2019 from 1630 hours to 2200 hours;
 - Friday, 9 August 2019 from 1630 hours to 2359 hours;
 - Saturday, 10 August 2019 from 1630 hours to 2359 hours;
 - Sunday, 11 August 2019 from 1630 hours to 2230 hours;
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 - Friday, 23 August 2019 from 1630 hours to 2359 hours;
 - Saturday, 24 August 2019 from 1630 hours to 2359 hours;
 - Sunday, 25 August 2019 from 1630 hours to 2230 hours.
8. The sale of liquor to patrons at the Spiegeltent Site is proposed via two bars. Beer, wine, spirits and cider is proposed to be available for sale as well as water and soft drinks. Additionally, the Applicant indicates beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength.
9. In relation to security and crowd control arrangements, the Applicant indicated there will be 5 crowd controllers engaged for performances being held on Sundays, Tuesdays to Thursdays and 6 crowd controllers on Friday and Saturday nights.
10. The site is unfenced, with the exception of the back of house area behind the tent, bar and food service area, however, the liquor licence area is clearly marked with signage demarcating the entry and exit of a licensed area. Access to the Spiegeltent itself is controlled by front of house staff that check patrons tickets.
11. The Applicant has previously been granted special licenses for Darwin Festival events including for a Spiegeltent site. Licensing NT has informed me that “nil compliance issues are evident” in regards to those special licenses issued in previous years.

Consultation

12. 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**), NT Police, (**NT Police**) and NT Fire, Rescue Service (**NTFRS**) and seek their comment.

13. With respect to this application:

- a. DOH advised it had not adverse comment. However, Health asks the Director-General of Licensing to consider patron and community safety and amenity when determining the application. Further DOH advised that commencing on 1 July 2019 there is a requirement for a 10 metre smoke free area to be identified at the entrance/exits and boundary areas of Community Events and Community Facilities. The Operator of the event is required to display a sign and maintain the smoke free area. As requested by DOH, the Applicant was provided with smoking signage.
- b. NTFRS have no objection subject to temporary occupancy permits are obtained for any temporary structures on the site.
- c. The NT Police advised that it *“supports the application contingent to Industry standard security for crowd numbers.”*
- d. SJA did not provide any comment on the application at time of referral to the Commission.

14. I will address these comments below.

Assessment of the Application

15. As noted above, this is an application for a special licence under section 58 of the Act within Part VI of the Act. There are no specific criteria prescribed by 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.
16. 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 under section 6 of the Act.
17. However, pursuant to section 3(3) of the Act, the Commission when “exercising a power or performing a function under (the Act) 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”.
18. 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.”

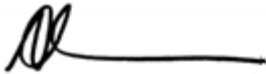
19. As a delegate of the Commission, I am also bound to have regard to the objects of the Act when determining this application.
20. The main drawcard to the Spiegeltent Site is the cabaret-circus performance itself, with the supply of alcohol being a very ancillary feature. Each year, the Applicant provides through the Darwin Festival program an important cultural entertainment offering to both Darwin locals and visitors alike. The Applicant has a track record of being able to well manage these types of events with no compliance concerns raised by Licensing NT or NT Police from previous years.
21. I note NTFRS’ position above and confirm that the Applicant will need to follow that directive. I also confirm in relation to DOH’s comments that the Applicant will need to comply with the *Tobacco Control Act 2002* as a condition of its special licence.
22. In respect to the NT Police request for crowd controllers at industry standards, this matter was raised by them last year and after discussions between the parties, the NT Police were satisfied with the Applicant engaging 5 crowd controllers on Sundays, Tuesdays to Thursdays and 6 crowd controllers on Friday and Saturday nights. These are the same numbers to be engaged this year by the Applicant and I note that industry standards for security have not been imposed at this event previously.
23. Given no compliance concerns have been raised by either Licensing NT or NT Police in respect to last year’s event, I am satisfied that the numbers of crowd controllers will be sufficient to effectively monitor and control patrons at the Spiegeltent Site. I also confirm that the Applicant can reduce the crowd controller numbers in accordance with industry standards should it be appropriate.
24. 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 set out at the start of this Decision Notice.

Notice of Rights:

25. 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.

26. 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.
27. 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.



AMY CORCORAN
Commissioner
Northern Territory Liquor Commission