

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	2018/027
VENUE:	George Brown Darwin Botanic Gardens Gardens Road DARWIN NT 0800
APPLICANT:	The Trader Bar Darwin Pty Ltd
EVENT:	Why Not Festival
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Ms Jodi Truman (Deputy Chairperson)
DATE OF DECISION:	8 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 Trader Bar Darwin Pty Ltd for the sale of liquor on Saturday 2 June 2018 between the hours of 1200 hours (i.e. noon) and 2359 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 “Why Not Festival” occurring at George Brown Darwin Botanic Gardens, Gardens Road, 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 Nominees are identified as:
 - a. Mr Andrew Henry Hewitt Giles; and

- b. Ms Pippa Jane Ainsworth.
- 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 industry standards as follows:
 - a. 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 liquor or other beverages to be sold in glass containers except for sparkling water.
- k. No more than four (4) cans or bottles must be sold to any one person at any one time.
- l. The licensee must ensure that water, soft drink, 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.
- m. Liquor must not be sold or supplied to an intoxicated person or to a person under the age of 18 years.
- n. 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.
- 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 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*.
- 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 32A(1) of the *Liquor Act* (“the Act”), The Trader Bar Darwin Pty Ltd applied to the Director-General of Licensing on 19 February 2018 for a variation to their liquor licence in order to permit the sale of liquor to persons attending the event known as “Why Not Festival” occurring at George Brown Darwin Botanic Gardens, Gardens Road, Darwin in the Northern Territory (“the Premises”).
4. On 13 April 2018, after receiving advice from Licensing NT, the applicant requested the application be dealt with as an application for a special licence pursuant to section 58(1) of the Act. The application was then referred to the Commission, and then myself pursuant to my delegation, on 26 April 2018.
5. The applicant is seeking to sell liquor between the hours of 1200 hours (i.e. noon) and 2359 hours on Saturday 2 June 2018. It was stated in the Application that it was estimated by the applicant that there would be 2,000 to 4,000 persons in attendance. The applicant states that it is proposed there will be an array of beers, wine and boutique drinks available. There will also be food vendors, coffee, water and other non-alcoholic drinks available.
6. This is the first time that this event has been planned, however the applicant currently holds its own licence for premises known as “The Trader Bar Darwin”

and I have been informed by Licensing NT that “there is no negative compliance history known for this venue”.

Consultation

7. 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 City of Darwin Council (“CDC”) and seek their comment.
8. With respect to this application:
 - a. The DOH had “no adverse comment” and confirmed the applicant acknowledged “the venue is a smoke free venue”.
 - b. The NT Police supported the application and noted the following had been agreed with the applicant:
 - a. “Maximum point of sales for alcohol is 6 bars.
 - b. No glass at the event – except for sparkling water.
 - c. Maximum of 4 drinks per transaction with a staggered decline towards the conclusion of the event”.
 - c. The CDC advised that it “has no issue with this request”.

Assessment of the Application

9. 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.
10. 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.
11. 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”.
12. 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.”

13. 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.
14. It is my understanding of the material before me that although this is the inaugural event, the applicant has no history of compliance issues.
15. As earlier noted, although there is no formal obligation to consult, responses were sought from the relevant stakeholders. Not only was there no adverse comment for the application, there was in fact “support” from NT Police who also thanked the applicant “for working closely with Police in the pre-organising of this event”.
16. I can indicate from my own consideration of the application, that the applicant has put a great deal of thought and effort into this application. It is in fact very impressive. Clear consideration has been given to those matters that should be considered when an application for a special licence is made. In fact the applicant went even further and such effort should be acknowledged.
17. 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:

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.

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