

Delegate of the Liquor Commission

Decision Notice

MATTER:	APPLICATION FOR A SPECIAL LICENCE
REFERENCE:	2018/094
VENUE:	66 Smith Street DARWIN NT 0800
APPLICANT:	The Trader Bar Darwin Pty Ltd
EVENT:	“Why Not Heist”
LEGISLATION:	Section 58 of the <i>Liquor Act</i> .
DECISION OF:	Mr Richard Coates (Chairperson)
DATE OF DECISION:	24 July 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 from 20:00 hours on Friday, 27 July 2018 until 1:30 hours on Saturday, 28 July 2018.
2. The granting of approval is subject to the applicant obtaining a temporary occupation permit in respect of the premises (66 Smith Street, Darwin) and to the following conditions, namely:
 - a. The liquor shall be sold at the event known as the “Why Not Heist” occurring at the ground floor, 66 Smith Street, 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 and patron numbers are not to exceed 350.
- 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) alcoholic drinks 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. 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.
- r. 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.
- s. 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.
- t. The venue must clearly display signage that the whole of the Premises are a Non Smoking area and must comply with smoking requirements contained in the *Tobacco Control Act*.
- u. 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”).
- v. Music must cease at 1:30 hours and the venue cleared of patrons by 2:00 hours.

Reasons

Background

3. On 26 June 2018, pursuant to section 58 of the *Liquor Act* (“the Act”), The Trader Bar Darwin Pty Ltd lodged an application with the Director-General of Licensing (“Director-General”) on 19 February 2018 for a special licence for an event known as “Why Not Heist” proposed to be held on the ground floor of the old Commonwealth Bank at 66 Smith Street, Darwin. The applicant is proposing to use the internal ground floor area and parts of the outside verandah and decking, which will be enclosed with temporary picket style fencing.
4. The applicant is seeking to sell liquor between the hours of 20:00 hours on Friday, 27 July 2018 until 4:00 hours on Saturday, 28 July 2018.
5. The applicant has described the event as a high end “pop up” style nightclub and is expecting 300 to 350 persons to attend via pre sold tickets with any remaining tickets available for purchase on the night at the venue.

6. The applicant has advised that there will be an array of “high end imported and boutique wine, spirits and beer”. It states:

“An emphasis will be placed on sourcing alcoholic and non-alcoholic beverages which offer a depth in taste to match the experience offered by location, libations and music on offer”. The entertainment proposed is to be provided by a number of interstate disco and house artists”.

7. In support of its application the applicant claimed this would be:

“An event that will stimulate and activate the Darwin Central Business District and offer residents an opportunity an (sic) experience akin to the social hub that is Meat Packers District in New York City, shabby chic stylings will adorn the otherwise lifeless building and encourage those attending to wear their Friday best”.

8. The dual nominees will be Andrew Giles and Pippa Ainsworth, the current nominees of the Trader Bar.

9. The applicant has agreed to abide by the following additional conditions to a Special Licence if approved:

- a) Maximum of four (4) drinks per purchase until midnight
- b) Maximum of two (2) drinks per purchase after midnight
- c) No shots given during the course of the event
- d) Lockout policy after 3:00am
- e) Liquor not to be sold in glass containers
- f) Security guards to be employed in accordance with industry practice
- g) All drinks in sealed containers to be opened at time of sale.

Consultation

10. This application was not referred to the Commission until 17 July 2018. Prior to this referral officers at Licensing NT were involved in extensive communications with Mr Andrew Giles on behalf of the applicant to clarify the finer details of the proposal and to enable the applicant an opportunity to respond to comments from stakeholders. As far as I am aware, this is the first time that there has been a proposal for a special licence to operate a “pop up” nightclub. The applicant is no doubt keen to have a decision made in respect of the proposed licence well in advance of the planned date for advertising and organisational purposes. Having regard to the novel nature of this application the applicant would have been well advised to have lodged this application well in advance of the 28 day minimum requirement.

11. On 28 June 2018, as is the usual practice stakeholders, including the Department of Health, Northern Territory Police and Northern Territory Fire and Rescue Service were invited to provide comment on the application.
12. The Department of Health advised via email dated 28 June 2018 that it did not support the application as, in its view, it is based solely on commercial grounds, is not a community themed event and that there are sufficient diverse commercial premises operating in the city centre.
13. The applicant via Mr Andrew Giles, was given an opportunity to respond to those comments and he submitted that the comments should be disregarded because its use of the special licence process was in line with current procedural practices of Licensing NT. Mr Giles also stated that the comments were contrary to the direction promoted by the NT Government and Darwin Council to activate the city centre. In relation to the concerns about community safety, Mr Giles stated that Northern Territory Police were in a better position to assess those risks and that they were supportive of the event.
14. The Northern Territory Police stated that it had no objection to the application. It was noted that Police had met with the applicant and after raising concerns about patrons leaving the premises at the same time as those from the nearby Throb nightclub the applicant had agreed to implement measures to mitigate the risk of disturbances.
15. The Northern Territory Fire and Rescue Service responded on 9 July 2018 indicating that it did not support the application due to a range of fire compliance issues until a temporary occupational permit had been issued. Following its receipt of those comments the applicant advised that it had engaged an independent certifier to commence work on the temporary occupancy permit and requested that the application be considered by the Commission on the basis that the applicant would obtain and comply with the requirements of a temporary occupancy certificate.
16. In the course of communications between the applicants' Mr Giles and Licensing NT officers, he was asked whether the premises would comply with the guidelines requiring CCTV surveillance in licensed premises. The applicant responded:

“The event is not a premises to be established for the continuance of trade rather a pop up event to activate vacant premises. We submit that the guidelines are designed for licensed premises rather than special events. Accordingly the guidelines should have no bearing on this application. We note however that the venue itself has CCTV in place at the entrance and the exterior of the building”.

17. On 19 July 2018, the Director-General received an unsolicited letter from Mr Tim Palmer, the Director and Licensee of Throb Nightclub complaining about the applicant's proposal to trade until 4:00am. Although some of his concerns were misdirected in relation to the perceived failure of the Director-General to enforce minimum notice requirements and notify other licensees of the application, Mr Palmer stated "stakeholders in the neighbourhood will mistakenly believe any noise and alcohol related problems are emanating from Throb and this poses an unacceptable risk to the business. Throb has worked directly with neighbours, in particular Darwin City Hotel, to find harmonious sound level for both our patrons and the hotel guests. This we worked on for a month to achieve the correct levels". Mr Palmer believed that a more appropriate licence for the proposed event was a closing time on 22:00 hours.
18. The applicant was given an opportunity to respond to those comments and submitted that the Commission should totally disregard the comments as having been "made from a competition and lack any factual basis". The applicant once again stressed that Police were in support of its application and that it would be using the same security firm as was used by Throb, which had already engaged in extensive planning in consultation with Police to "determine the distribution points for patrons on the night of the event".
19. As the applicant has relied on a policy direction of Government and the Darwin Council to encourage more entertainment options to revitalise Darwin CBD, I requested the Director-General ascertain the views of the Darwin City Council on this application. On 20 July 2018, I was advised that "while Council has no objection to the event, it does not support alcohol trading hours beyond 2:00am".
20. Details of the Council's views were provided to the applicant who responded:

"It is the Applicant's understanding that the City of Darwin does not support alcohol trading hours beyond 2am for all venues located within the Darwin CDB and the comment not confined to the Application itself. Nevertheless, the Applicant's submits that trading hours are irrelevant where a strict risk assessment management policy and responsible service of alcohol strategies are implemented. As mentioned previously, Northern Territory Police have supported the event which is a key indication that those responsible for ensuring public safety consider there is to be no heightened risk or impact on public safety posed by the proposed trading hours".

Assessment of the Application

21. 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.

22. 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.
23. 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”.
24. 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.”
25. 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.
26. As I have indicated previously this is the first time an applicant has sought a Special Licence to operate what it and others have referred to as a pop up nightclub. This comes at a time when the Commission has been directed to focus more clearly on addressing the harmful consequences of the Territory’s entrenched drinking culture. However the addition of alternative entertainment venues where alcohol is available does not necessarily exacerbate our current societal malaise. Experience has shown in cities such as Melbourne and Adelaide that the rise of inner city bars that offer diverse entertainment, quality wines and cocktails as well as innovative dining options has encouraged a more responsible drinking culture.

27. The applicant has a good compliance history with Licensing NT and has demonstrated it can successfully operate its licensed Trader Bar and also one off major events such as the Why Not Festival at the Botanical Gardens earlier this year.
28. It is significant that the applicant has received support from Northern Territory Police for the proposed event.
29. I can understand the frustrations of existing licensees such as Mr Tim Palmer of Throb who are required to maintain a significant ongoing investment in property, fittings and staff to operate their businesses whilst the applicant is proposing to take advantage of what is probably one of the better trading opportunities of the year by holding this one off event. However the applicant, through the efforts of Mr Giles, appears to have expended significant energy and resources in bringing the proposal together. When Throb was first established it provided a new concept in entertainment in Darwin and was a welcome alternative to the existing licensed venues. It has made its own contribution to enlivening the city and promoting a more responsible drinking culture. The applicant's proposal is not without risk, but if successful it may also play a part in improving the quality of the city's nightlife. Mr Giles' earnest belief in the benefit of the proposed event could perhaps be tempered by a less brittle response to those who have expressed misgivings over the merit of the project.
30. I note that Darwin City Council has expressed support, albeit limited to closure at 2:00am. I therefore accept that the application is in accordance with Council's policy of encouraging alternative entertainment options to revitalise the city centre.
31. On balance I am persuaded that the applicant should be given an opportunity to hold this one off event in a vacant city office space. I am not convinced however that the applicant should be permitted to trade until 4:00 hours. I remain concerned that this would cause additional noise and inconvenience to neighbouring residents over and above what they already experience. In the absence of a comprehensive CCTV system of surveillance I have concerns there is an unacceptable risk for the safety of patrons attending "very" late night venues. Video surveillance has been an extremely valuable tool in crowd control in licensed premises and has become a vital source of evidence in prosecutions for alcohol fuelled violence. On the material before me I am also not convinced that the premises will have appropriate furniture and other fittings to ensure the continued comfort of patrons over such a long period. I have therefore determined that the licence should only extend until 1:30 hours. For those reasons and those outlined above I have determined to grant the special licence on the conditions contained in paragraphs 1 and 2 of this Decision Notice.

Notice of Rights:

32. 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.
33. 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.
34. 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 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
Chairperson
Northern Territory Liquor Commission