

## Delegate of the Director of Liquor Licensing

### Decision Notice

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<b>MATTER:</b>	Application for the granting of a major event authority
<b>APPLICANT:</b>	Darwin Symphony Orchestra Incorporated
<b>LEGISLATION:</b>	Part 3, Division 4 of the <i>Liquor Act 2019</i>
<b>DECISION OF:</b>	Principal Licensing Officer - Liquor, Gaming & Racing
<b>DATE OF DECISION:</b>	19 May 2022

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#### DECISION

1. For the reasons set out below and in accordance with section 60 of the *Liquor Act 2019* (the Act), as delegate of the Director of Liquor Licensing I have determined to grant the application for a major event authority to the Darwin Symphony Orchestra Incorporated (the Applicant) for the sale of liquor on the days and between the hours of:

Saturday, 25 June 2022      17:00 hours to 21:00 hours

2. The granting of this approval is for the annual Darwin Symphony Orchestra event and is subject to the provisions of Part 4, Division 12 of the *Liquor Regulations 2019* (the Regulations) which include:
  - a) all liquor sold, served or supplied at the event must be in open containers;
  - b) no more than four (4) containers of liquor may be sold, served or supplied at the event to one person at a time;
  - c) a reasonable range of non-alcoholic beverages and low alcoholic content beverages must be available for purchase by patrons during the event;
  - d) complimentary potable water must be available to patrons during the event;
  - e) snacks must be available for purchase by patrons during the event;
  - f) two (2) licensed crowd controllers must be employed for the first 100 patrons attending the event, and one (1) additional licensed crowd controller for each additional 100 patrons attending the event;
  - g) at least 75% of the licensed crowd controllers at the event must wear clothing that identifies their function;
3. The granting of the approval is also subject to the following additional conditions:
  - a diagram of the approved liquor licensed area is attached to the licence and are to be kept and available for inspection at all times at all bars selling liquor ;
  - no alcohol is to be removed from the licensed area by the public;
  - the licensee must comply with any requirement or directions of the Chief Health Officer in relation to COVID-19 or any other public health matter pertaining to the sale of liquor at public gathering;

- No spirits are to be served
- A limit of 4 liquor drinks per person per sale, with all liquor to be opened at the point of sale
- Each bar to have a dedicated person to check age of patrons wishing to purchase liquor

### Five Year Licence Approval

4. The Applicant has sought a five (5) year approval for a liquor licence for this event, the rationale of which is the long-term contract in place between parties for the event to be held here in the Territory, along with the previous good conduct of earlier events.
5. Section 47(1)(o) of the Act defines a major event authority as authorising "...the licensee to sell liquor, for consumption...to patrons attending a single event".
6. The phrase "single event" is not defined in the Act and therefore the natural meaning of the words must apply. The Macquarie Dictionary defines "single" as "alone, solitary". From this a single event can only be the 2022 event, but does not include subsequent years as sought.
7. For completeness, a single event can be held over several days, as is this event as there is a clear nexus between each day, but there is insufficient nexus to accept 2023, 2024, 2025 and 2026 are a single event with 2022.
8. Although the definition of a major event prohibits the granting of a multi-year licence in my opinion, as the Applicant has sought five (5) years' approval of licensed events, I am not prevented from granting five (5) separate major event authorities at this time for each year
9. Accordingly, by this decision in accordance with the application, I approve the issue of five (5) liquor licences with a major event authority for the years 2022, 2023, 2024, 2025 and 2026.
10. Of concern in issuing five licences, providing for future events through until 2026, is the need for a mechanism to intervene or amend the licences in circumstances where the dates may change, there is a material change to the nature or planning of the event, or disciplinary action having been taken against the licensee.
11. The delegation by the Commission was not without qualifications, of particular relevance to this matter, the granting of a licence by a delegate may only be in circumstances where the "...Applicant has not been the subject of disciplinary action for a previous event". In such circumstances the determination of the licence application must go before the Commission.
12. It necessarily follows any subsequent licences granted under this delegation would be rendered void in circumstances where the licensee has been the subject of disciplinary action.
13. Although the dates for the 2023 to 2026 events have not yet been advised, section 60(1)(a) of the Act allows me to issue a licence with or without additional conditions. I therefore impose these additional conditions on each of the five (5) licences for the years 2023 to 2026 inclusive:
  - The licensee is to provide to the Director of Liquor Licensing an Event Management Plan no later than 90 days prior to the commencement of the event confirming the dates, times and fulsome operational plan which must include a statement there is no material change to the previous year's event, or details of any material changes to the previous year's event.
  - In the circumstance where there has been a material change, either as declared by the licensee or in the opinion of the Director, the Director reserves the right to review the

licence and repeal, rescind, revoke, amend or vary the licence or licences as they consider appropriate.

- The Liquor Commission delegated the determination of this matter by instrument dated 17 December 2020 to the Director of Liquor Licensing. That instrument included the qualification a licence for this event may only be issued under delegation in circumstances where the licensee has not been the subject of disciplinary action under a former licence. In such circumstances this licence and any subsequent licences for future events issued by a delegate for this licensee are void. The licensee will be required to lodge a fresh application to be determined by the Liquor Commission for future events.

## BACKGROUND

14. The Darwin Symphony Orchestra has held annual events at the Darwin Amphitheatre with each event featuring a different theme of music.
15. The applicant has been granted licence with a major event authority in the past, materially under the same terms and conditions that this approval has been granted.
16. I take note of previous Liquor Commission decision notices dated 27 June 2018 and 3 June 2019 where the Liquor Commission granted a liquor licence and where I approved a licence in 2021, where this most recent application is materially the same as previous applications.

## CURRENT SITUATION

17. The event attracts an estimated 3,500 - 4,000 patrons which by effect of section 47(1)(o) of the Act requires a major event authority.
18. Noting the extensive history of this event, there has been no recorded negative compliance issues with respect of previous events, as well as no adverse comments from Police arising from its conduct.

### Publication of the application

19. The application was published in the NT News on Saturday 2 April 2022 with signage being placed at the proposed location. The application was also published on the Director of Liquor Licensing application website.
20. No objections were received in relation to the application.

### Consultation

21. For completeness however and although again, there has not been any particular opposition to previous events by stakeholders, notification of the 2022 event was sent to the Commissioner of Police, the Chief Executive Officer of the Department of Health, the City of Darwin and NT Fire & Rescue Service.
22. As with previous year's events, no stakeholder responded against the conduct of the 2022 event. The event traditionally enjoying the conditional support of stakeholders.

### Licensees' record of compliance

23. As written previously there are no adverse compliance matters noted in relation to any of the

previous events.

### **Referral to the Liquor Commission**

24. On 17 December 2020 the Liquor Commission delegated the determination applications for a major event authority *inter alia* for this Applicant, in the absence of objections or contentious matters, where the Applicant has not been subject to disciplinary action to the Director.
25. That power has subsequently been further delegated to me by the Director.
26. As no objection, contentious matter or disciplinary action is evident, with reference to the instrument of 17 December 2020 this matter may be determined by me as delegate of the Director without referral to the Liquor Commission.

### **ASSESSMENT OF MATTER**

27. In accordance with section 59 of the Act, I have considered:
  - (a) the applicant's affidavits required by section 54;
  - (b) the results of an investigation into the applications conducted by Licensing NT personnel;
  - (c) in the absence of objections, the responses of the stakeholders to which notification was provided;
  - (d) the suitability of the area; and
  - (e) the financial stability and general reputation and character of the applicants and their nominees, noting the proposed nominee is an existing nominee at the Darwin Trailer Boat Club and has been the previous nominee at this event in the past.
28. In accordance with section 49 of the Act, I have also considered whether issuing the authority to the Applicant is in the public interest, and whether the granting of the authority will have a significant adverse impact on the community.
29. Accompanying the application is a comprehensive risk assessment plan, traffic management plan and other materials evidencing the appropriateness of the granting of this matter.
30. I am satisfied on the basis of the conduct of the previous licences, and the material presented in this application, that approval of this matter is appropriate in the circumstances.

#### ***Whether issuing the licence is on the public interest***

31. Section 49(2) of the Act requires me to determine whether issuing the authority is in the public interest and how it will advance the following objectives:
  - (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
  - (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
  - (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
  - (d) protecting the safety, health and welfare of people who use licensed premises;

(e) increasing cultural, recreational, employment or tourism benefits for the local community area;

(f) promoting compliance with this Act and other relevant laws of the Territory;

(g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;

(h) preventing the giving of credit in sales of liquor to people;

(i) preventing practices that encourage irresponsible drinking;

(j) reducing or limiting increases in anti-social behaviour.

32. Having considered each of these objectives, and having particular regard to the stringent controls placed on the consumption of liquor and the conduct of previous events, I am satisfied that it is in the public interest to issue the authority.

33. I also note and adopt the previous considerations of the former Director-General of Licensing and the Liquor Commission in relation to their approval of this event.

34. In the absence of material changes to the application, I consider it inappropriate to revisit or dissent from the previous considerations.

***Whether the issue of the authority will have a significant adverse impact on the community***

35. Section 49(3) of the Act prescribes the matters which must be considered when determining whether the issuing of the authority would have a significant adverse impact on the community.

36. These include:

(a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;

(b) the geographic area that would be affected;

(c) the risk of harm from the excessive or inappropriate consumption of liquor;

(d) the people or community who would be affected;

(e) the effect on culture, recreation, employment and tourism;

(f) the effect on social amenities and public health;

(g) the ratio of existing liquor licences and authorities in the community to the population of the community;

(h) the effect of the volume of liquor sales on the community;

(i) the community impact assessment guidelines issued under section 50;

(j) any other matter prescribed by regulation.

37. The applicants also bear the onus of satisfying me of the relevant matters, irrespective of whether any objections were received.
38. Again, noting and adopting the previous conduct of the event, I am satisfied the conditions placed on the approval, along with the conditions prescribed by the Regulations will ensure liquor is consumed in an appropriate manner, the risk of harm is minimal and there is no apparent significant adverse impact on the community.
39. In considering this application I am obliged to consider the purposes prescribed in the Act, primary being, to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale and consumption of liquor.
40. Secondary purposes include, a protection of the community amenity and wellbeing, regulation of the sale of liquor in a way that contributes to the responsible development of the industry and associated businesses, and of particular relevance, facilitating a diversity of associated services for the benefit of the community and stimulating the tourism and hospitality industries.
41. I am satisfied the applications are in line with the purposes of the Act, particularly in providing a diversity of services and stimulation to the tourism and hospitality industries. As a result of the matters outlined above, I am on balance, satisfied that the approval of this application is appropriate, in the public interest and will not have a significant adverse impact on the community.

## REVIEW OF DECISION

42. Section 26 of the Act requires a delegate of the Director to as soon as practicable after making a decision, to give a written notice of the decision to an affected person, being a licensee, applicant or person who made a submission, complaint or objection, the subject of the decision.
43. Section 11 of the Act provides for the Director to delegate powers and functions under this Act by instrument, to a person from time to time holding, acting in or performing the duties of the position specified in that instrument. This decision was made by a person referred to in that instrument. .
44. Section 27 of the Act provides that an affected person for a delegate decision may apply to the Director for a review of the decision. This application for review must be made within 28 days after written notice of the delegate decision is given to the affected person, or within any additional time that the Director allows.
45. Accordingly the affected persons in relation to this decision are the Darwin Symphony Orchestra Incorporated, NT Police, the Department of Health and the City of Darwin Council.



**Jeff Verinder**  
Principal Licensing Officer - Liquor, Gaming & Racing  
Delegate of the Director of Liquor Licensing

19 May 2022