

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Application for a liquor licence with a major event authority
APPLICANT:	The Darwin Festival Limited
PREMISES:	Darwin Amphitheatre George Brown Darwin Botanic Gardens Gardens Road, Darwin NT 0800
LEGISLATION:	Part 3 Division 4 of the <i>Liquor Act 2019</i>
Decision of:	Southern Region Manager – Licensing & Compliance
DATE:	24 June 2024

DECISION

- For the reasons set out below and in accordance with section 60(1) of the *Liquor Act 2019* (the Act), I have determined to grant a liquor licence to The Darwin Festival Ltd (the Applicant) with a major event authority for the sale of liquor during the following periods:
 - Wednesday, 07 August 2024 – 16:00 hours to 23:00 hours
 - Thursday, 08 August 2024 – 16:00 hours to 23:00 hours
 - Sunday, 11 August 2024 – 16:00 hours to 23:00 hours
- The licensed premises is the Darwin Amphitheatre at George Brown Darwin Botanic Gardens, Gardens Road, Darwin NT 0800 and delineated by the red line in the page 60 of the supporting documents provided by licensing officer to the Director of the Liquor Licensing (the Director).
- I approve Mr James Gough and Ms Lorraine Phelan as the designated nominees of the Applicant.
- Except as otherwise stated below, the licence is subject to the conditions pursuant to Part 4 of the Act (Conditions on licences and authorities) and Division 12 (Major event authority conditions) of the *Liquor Regulations 2019* (the Regulations) and the following additional conditions:
 - All liquor sold, served or supplied at the event must be in open containers;
 - No more than four (4) containers of liquor may be sold, served or supplied at the event to any one person at a time;
 - A reasonable range of non-alcoholic beverages and low alcoholic content beverages must be available for purchase by patrons during the event;
 - Complimentary potable water must be available to patrons during the event;
 - Snacks must be available for purchase by patrons during the event;
 - No drinking or eating is permitted within an Outdoor Smoking Area (OSA), as per Regulation 15D of the *Tobacco Control Regulations 2002*.
 - Crowd Controllers are to be employed in accordance with the Regulations.

Decision for The Darwin Festival Limited

- h) A reference made under the *Tobacco Control Act 2002* that relates to smoke or smoking of tobacco products is to be read as including vaping or the other use of e-cigarettes as per section 4A of the *Tobacco Control Act 2002*.
5. The granting of the approval is also subject to additional volunteered conditions. They being:
- a) Liquor to be securely stored at all times;
 - b) Last drinks to be called 30 minutes prior to end of liquor service at each bar;
 - c) No liquor to be taken off the premises;
 - d) No liquor to be served in glass containers except for sales of wine via the bottle;
 - e) Sale of spirits by “single shot” only;

BACKGROUND

- 6. The Darwin Festival is an annual major event in the Top End, which has been operating for over 40 years. The Darwin Festival will showcase multiple events in the various premises.
- 7. Darwin Amphitheatre is the three (3) nights of ticketed events where Australian music icons will perform under the stars. The proposed premises will have two (2) bars, an additional VIP bar and multiple food vendors. Patrons attending Darwin Amphitheatre’s major event will be invited to bring camping chairs and picnic rugs in the chilled out and relaxed environmental event.
- 8. On 07 May 2024, pursuant to section 52 of the Act, the Applicant applied to the Director for a liquor licence with a major event authority to permit the sale of liquor to persons attending The Darwin Festival for the premises known as the Darwin Amphitheatre located at George Brown Darwin Botanic Gardens, Gardens Road, Darwin NT 0800.
- 9. Based on its experience as the operator of the previous The Darwin Festivals, the Applicant anticipate that this event will attract 4000 to 5000 people at any time.
- 10. The Darwin Festival is a family friendly event, targeted to all members of the Top End region community, together with artists, musicians and spectators that travel from all over the country and internationally.
- 11. The sale, service, supply and consumption of liquor is ancillary to the event, with light, mid and heavy strength beer available as well as spirits, ready to drink alcohol and wine. Food stalls will also be available.
- 12. The Applicant has provided materials regarding the Applicant’s finances, governance, operations and facilities, the running of the event, the proposed operation of the liquor licence, and the qualifications, experience and character of the proposed joint nominees.

NOTIFICATIONS, PUBLIC NOTICES AND OBJECTIONS

- 13. Amendment to the Act in November 2021 inserted section 57(2A) which provides the Director with a discretion to exempt an applicant from the public notice requirements if the Director is of the opinion that the application discloses no public interest issues.
- 14. The Darwin Festival is an annual major event, which has been running for more than 40 years, with no adverse issues in meeting compliance requirement of the liquor licence and Licensing NT. The event is widely advertised on Radio, NT News, social media, posters in venues around the City, banners and their own website. There is highly unlikely that general public will have any issues in relation to the sale or service of alcohol at the event as the event is a family friendly.

15. On 08 May 2024, the Director has exempted the public notice requirements for the reoccurring major events that have been delegated by the Liquor Commission (the Commission) to the Director.
16. Pursuant to sections 56(4) of the Act, the following stakeholders were notified of the application by the Licensing NT:
 - a) The Department of Health (DOH)
 - b) Northern Territory Police (NT Police)
 - c) City of Darwin (Council)
 - d) Northern Territory Fire and Rescue Service (NTFRS)
 - e) St John Ambulance Australia (NT) Incorporated (St John).
17. With respect to the application:
 - a) NT Police advised that it has no objections.
 - b) NTPRS advised that it has no objections.
 - c) Council advised that it has no objections
 - d) No response was received from DOH and St John.

COMPLIANCE

18. Liquor Compliance has informed that the Applicant, which has been granted major liquor licences for many years for The Darwin Festival, has no adverse compliance matters with respect to the liquor licence conditions.

APPLICATION

19. The Applicant has provided a comprehensive suite of materials and documents in support of the application including all materials prescribed by the Act.
20. The authority sought by the applicant is in pursuance of section 47(1)(o) of the Act.
21. The determination of applications under section 60(1) of the Act has been conditionally delegated by the Commission to the Director of Liquor Licensing. The limitation including the authorities which may be granted under delegation being a reoccurring major event.
22. For completeness, although this is effectively an additional series of events from those previously approved and delegated by the Commission, the Chairperson has confirmed by email dated 24 June 2024 he approves this to also be determined under delegation.
23. The Director further delegated these powers to me by instrument.

DISCLOSURES OF PERSONS

24. Section 54 of the Act requires the applicant to make an affidavit disclosing each person who, if the licence is issued, may:
 - a) be able to influence the applicant; or
 - b) expect a direct or indirect benefit from the applicant.

25. I am satisfied with the materials provided by the Applicant in relation to this requirement.

RESULTS OF INVESTIGATION

26. Section 58 of the Act enables the Director to conduct an investigation into an application as considered appropriate. No materials have been discovered or provided to indicate there are any adverse matters in relation to this application.
27. A fulsome Event Management Plan was provided detailing the exclusive nature of the premises and comprehensive services to be offered.

FINANCIAL STABILITY

28. I am satisfied with the materials provided of the financial stability and business reputation of the Applicant.

FIT AND PROPER PERSON

29. Section 59(3)(g)(i) of the Act requires the decision maker to consider whether the applicant and as the applicant is a body corporate, their nominated licensee, are fit and proper to hold a licence.
30. The Applicant has nominated Mr James Gough and Ms Lorraine Phelan as the joint nominees. The Applicant has provided the sufficient materials to demonstrate they are suitable and meets the requirements in relation to financial stability.
31. Having considered the materials provided I am satisfied the Applicant and Mr James Gough and Ms Lorraine Phelan remains a fit and proper person to hold a licence and act as joint nominees.

PUBLIC INTEREST AND COMMUNITY IMPACT

32. Section 49 of the Act requires the decision maker to be satisfied the applicant is fit and proper, the licence or authority is in the public interest and will not have a significant adverse impact on the community.
33. The first branch of the requirement has already been addressed.
34. It remains to consider whether the application is in the public interest, to do so consideration must be given to the objectives prescribed in section 49(2) of the Act which include:
- a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
 - b) ensuring liquor is to be 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 the practices that encourage irresponsible drinking;
 - j) reducing or limiting increases in anti-social behaviour.
35. In determining whether there would be a "significant adverse impact on the community" section 49(3) of the Act prescribes the decision maker "must consider the following":
- 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.
36. The Act is clear in that the applicant bears the onus of satisfying the decision maker of the relevant matters, irrespective of whether no objections were received as is the case in this matter.
37. In relation to the issue of the community impact and public interest, those matters have previously been published under section 6A of the Liquor Act 1978 and in force immediately before the commencement of the Liquor Act 2019, and are taken to be community impact assessment guidelines issued under section 50 of the Act.
38. Those matters remain as previously published in numerous decisions by the Liquor Commission and I am guided by these decisions.

CONSIDERATION CRITERIA

39. Consideration must be made of the applicant's affidavit, the results of any investigation, objections and responses, the suitability of the premises along with the appropriateness of the applicant to be a licensee.
40. With regards to the matters raised in section 49(2) of the Act, I note the following:
- a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised:

I am satisfied the provision of liquor is ancillary to the overall facilities management provision associated with the proposal and is not the significant attractor.

- b) ensuring liquor is to be sold, supplied, served and consumed, on or in licensed premises in a responsible manner:

Having considered all the material, it is unlikely any liquor sold, supplied, served and consumed will be done so in an irresponsible 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:

As the event is a family friendly and ticketed event, it is improbable that public order and safety are likely to be jeopardised by the operation of the licence, also the Applicant has prepared a suitable event management plan including processes to safeguard against harm.

- d) protecting the safety, health and welfare of people who use licensed premises:

The event management plan and policies developed by the Applicant applicable to the premises are considered to adequately protect the safety, health and welfare of people who are likely to use the licensed premises during its hours of operation.

- e) increasing cultural, recreational, employment or tourism benefits for the local community area:

The Darwin Festival is an annual event attracting 4000 to 5000 people at any time, and it is relevant this is a family event therefore many of the overall patrons are not consuming liquor and are there to enjoy the concert, comedy, films and visual arts and other performances. This event clearly promotes culture, recreation, employment or tourism benefits to the wider Darwin region.

- f) promoting compliance with this Act and other relevant laws of the Territory:

There are no materials provided which would suggest the Applicant will not comply with the Act and any other relevant laws.

As a previous years' licensee, the Applicant has demonstrated their ability to comply with the requirements of the Act and I have no concerns this will change in the granting of this licence.

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

I am satisfied the applicant will appropriately manage and supervise service staff.

- h) preventing the giving of credit in sales of liquor to people:

No issues have been raised to suggest there is any concern in relation to this objective.

- i) preventing the practices that encourage irresponsible drinking:

No issues have been raised to suggest there is any concern in relation to this objective.

- j) reducing or limiting increases in anti-social behaviour:

No issues have been raised to suggest there is any concern in relation to this objective.

41. Turning to the matters under section 49(3):

- 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:

There are no materials to suggest there is a significant risk of undue offence, annoyance, disturbance or inconvenience likely to be caused by the granting of this authority. The site is a family friendly and access is ticketed.

b) the geographic area that would be affected:

There are no materials to suggest that geographic area would be affected.

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

As previously indicated, there are no materials to suggest there will be excessive consumption of liquor.

The Darwin Festival is an annual event where the primary activity is to watch the outdoor concert, comedy, films and visual arts and other performances and have a good quality family time rather than attend the event to consume the liquor inappropriately or excessively. There has been no incidents or records related to the excessive or inappropriate consumption of liquor in this event for over 40 years.

d) the people or community who would be affected:

There are no materials provided suggest that there will be significant adverse impact on the community by the granting of this licence.

e) the effect on culture, recreation, employment and tourism:

The event attracts around 4000 to 5000 people at any time and highly likely will boost the local, interstate and international tourists to the wider Darwin region and boosting culture, recreation, employment and tourism in the event dates. This increase in number of the tourists is unlikely to have any adverse impact in the wider Darwin region.

f) the effect on social amenities and public health:

It is unlikely there will be any significant adverse impact on the social amenities and public health by the granting of this licence to the applicant.

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

Targeted customer of this authority is the concert, comedy, films and visual arts enthusiasts and families and accordingly this may likely not to impact on 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:

As the event is the family friendly targeting concert, comedy, films and visual arts enthusiasts, its operation is unlikely to significantly increase the volume of liquor sales in the wider Darwin area.

i) the community impact assessment guidelines issued under section 50:

These have been considered and referred to earlier in this notice.

42. Having regards to the foregoing, I am satisfied that the issuing of the major event authority as sought is in the public interest and will not have an adverse effect on the community.

REVIEW OF DECISION

43. Section 27 of the Act provides for the Applicant or a person who made a submission the subject of the decision, to seek a review of a decision made by the delegate of the Director.
44. The Director delegated the determination of applications made under section 52 of the Act by instrument to the person from time to time holding, acting in or performing the duties of the position listed in the Schedule of that instrument. This decision was made by a person referred to in that schedule.
45. An application for review must be lodged with the Director within 28 days after written notice of the decision is given to the person and must be in the form approved by the Director, stating the grounds for the review and the facts relied on to establish the grounds.
46. Accordingly, the affected persons in relation to this decision are The Darwin Festival Limited, DOH, NT Police and NTFRS.



Mark Wood
Southern Region Manager – Licensing & Compliance
Delegate of the Director of Liquor Licensing
24 June 2024