

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Application for the granting of a liquor licence with a community event authority
APPLICANT:	Darwin Visual Arts Incorporated
LEGISLATION:	Part 3, Division 4 of the <i>Liquor Act 2019</i>
DECISION OF:	Manager Licensing - Liquor, Gambling & Racing
DATE OF DECISION:	27 September 2021

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 liquor licence with a **community event authority** to Darwin Visual Arts Incorporated (the Applicant) for the sale of liquor to patrons at events organised by the licensee on a regular but infrequent basis for consumption on or in the licensed premises.
2. The granting of this approval is for the licensee to serve liquor at their gallery for art exhibition openings, forums for guest artist presentation and other special art events.
3. The premises approved under this licence are situated at 1/8 McMinn Street, Darwin.
4. In accordance with regulation 49 of the *Liquor Regulations 2019* (the Regulations), the days and hours of operation of the community event authority are Friday between the hours of 17:30 and 20:30. There will be no trade on a public holiday.
5. In accordance with regulation 50 of the Regulations, the operational conditions of this special venture authority are:
 - the licensee must give written notice of the event to the Director at least 14 business days before holding the event.
 - a reasonable range of non-alcoholic beverages must be available for purchase by patrons during the hours of operation.
 - complimentary tap water must be available to patrons during the hours of operation.

BACKGROUND

6. Darwin Visual Arts Incorporated (DVA) operates premises at 1/8 McMinn Street, Darwin.

7. It is envisaged DVA will conduct approximately 10 events throughout the year, on a Friday.
8. Events are generally held between Wednesday and Sunday and not on public holidays with no event being held beyond 22:00 hours.
9. Darwin Visual Arts is a community association which began its life through a collective of artists, who wanted a place to make and exhibit their work. It was established in 1983 and throughout its over 30 year history, maintained an active exhibition program exhibiting local, national and international artists.
10. It is an artist-run space committed to the advancement of contemporary art that is relevant to the local, national and international context, and provides a forum for the production and exhibition of art and related practices.
11. The licence is intended to be used for the openings of exhibitions and special events only, there is no intention to operate as an ongoing bar or the like.
12. Previously DVA has held licensed openings and events under special licences through the *Liquor Act 1979* and special event authorities under the current Act.
13. The ongoing nature of the applications for these events resulted in unnecessary administrative work for both the DVA and Licensing NT, as well as the ongoing expense incurred by DVA for each application.
14. It was therefore considered prudent to utilise the new provisions of the Act and have DVA seek a full licence. This removes the administrative burden and expense of the ongoing applications, with a community event authority simply requiring the licensee to notify the Director 14 days before the event, and no approval is required.

CURRENT SITUATION

Publication of the application

15. The application was published in the NT News on 1 September and 4 September 2021 with a copy of the substantive application, public interest and community impact submissions also being published on the Director of Liquor Licensing's website.
16. As delegate of the Director I exercised my powers under section 318 of the Act to abridge the publication period to 14 days.
17. No objections were received in relation to this application.

Consultation

18. Section 56(4) of the Act states within 14 days of accepting an application, the Director must inform the following that an application has been made and accepted:
 - (a) the Chief Executive Officer of the Agency administering the *Public and Environmental Health Act 2011*;
 - (b) the Commissioner of Police;
 - (c) the Chief Executive Officer of the local council.
19. The City of Darwin stated they had no objection to the application.
20. Police and the Department of Health responded with no adverse comments, however Health did provide their standard response relating to the provisions of the *Tobacco Control Act* and *Tobacco Control Regulations*.
21. The DVA has acknowledged their obligations and the requirements in relation to smoking at the premises.
22. The Northern Territory Fire and Rescue Service have also advised they support the application.

Referral to the Liquor Commission

23. On 17 December 2020 the Liquor Commission delegated the determination applications for a community event authority to the Director of Liquor Licensing, with the Director further delegating the determination by instrument.
24. Further, the delegation of the determination of this application is conditional upon there being no objections or contentious matter raised, or where the applicant has not been the subject of disciplinary action under a former licence.
25. This applicant has held special licences under the previous Act, as well as special event authorities under the current Act, there were no objections nor contentious matters and they have not been the subject of disciplinary action for previous events.
26. Accordingly this application may be determined under delegation without referral to the Liquor Commission, or a public hearing.

Disclosure of persons

27. 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.
28. I am satisfied by the materials provided by the applicant in relation to this requirement.

Results of Investigation

29. 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.

ASSESSMENT OF THE MATTER

30. In accordance with section 59 of the Act, I have considered:
- (a) the applicant's affidavit 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 two proposed premises; and
 - (e) the financial stability and general reputation and character of the applicant.

Whether the applicant is a fit and proper person to hold a liquor licence

31. The DVA has held licences for previous events with no adverse outcomes and as an incorporated association, appears compliant under the *Associations Act*.
32. The DVA has provided documents attesting to their financial position, and I am satisfied with what has been provided.
33. There are no matters in the materials provided that would suggest the DVA is not a fit and proper person to hold a liquor licence.
34. The DVA has proposed Ms Lynda McCaffery as the nominee for the licence. Ms McCaffery has previously been the nominee on earlier licences in 2020, although not having undergone specific probity at those times.
35. Ms McCaffery has provided the necessary materials for a consideration as to her fitness to be a nominee, with no adverse matters being raised.

Whether issuing the licence is on the public interest

36. 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.

37. Having considered each of these objectives, and having particular regard to the minimal nature of the events and controls placed on the consumption of liquor, I am satisfied that it is in the public interest to issue the authority to the licensee.

38. The impetus behind this application clearly meets the objective of increasing cultural benefits for the local community area.

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

39. 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.

40. 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.

41. The applicants also bear the onus of satisfying me of the relevant matters, irrespective of whether any objections were received.

42. 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.
43. The DVA has held numerous events over the past few years with no issues arising.
44. 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.
45. 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.
46. I am satisfied the application is in line with the purposes of the Act, particularly in providing a diversity of services for the benefit of the community.
47. 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.
48. Section 85 of the Act requires a term of the licence to be fixed and it is to remain force until it expires or is abandoned, surrendered or otherwise dealt with.
49. The Act is silent as to the nature or format of that term to be fixed.
50. The premises are leased until 30 June 2023. Whilst the lease is executed with reference to a fixed date, and provision is made in Clause 4.2 of the lease for an extension period, none is provided in item 2 of the Schedule, which notes an extension period as "N/A" or not applicable to the lease.
51. Accordingly, I can only approve the period of the licence to be until 30 June 2023.
52. In the circumstance where the licensee's leases are terminated for any means, they would be required to seek a substitution of the licence to other premises before they may recommence trade at the new premises.

REVIEW OF DECISION

53. 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.
54. 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 such an instrument. .

55. 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.
56. Accordingly the affected persons in relation to this decision are the Darwin Visual Arts Incorporated, Police, the Department of Health and the Northern Territory Fire and Rescue Service.



Mark Wood
Manager Licensing - Liquor, Gambling & Racing
Delegate of the Director of Liquor Licensing

27 September 2021