

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: OCEANVIEW DEVELOPMENTS PTY LTD APPLICATION FOR A LIQUOR LICENCE AND MAJOR EVENT AUTHORITY [2024] NTLiqComm 29

REFERENCE: LC2024/024

APPLICANT: Oceanview Developments Pty Ltd

PREMISES: Darwin River Tavern
185 Darwin River Road
DARWIN RIVER NT 0822

LIQUOR LICENCE: 80304941

PROPOSED EVENT: Eden Festival

DATE/S OF EVENT: 26 to 29 July 2024

NOMINEE: Ms Fiona Agnes McGregor
Mr Paul David Winter

LEGISLATION: Part 3, Division 4 of the *Liquor Act 2019*

DECISION OF: Ms Jodi Truman (Deputy Chairperson)

DATE OF DECISION: 2 July 2024

Decision

1. For the reasons set out below and in accordance with section 48 of the *Liquor Act 2019* (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a major event authority to Oceanview Developments Pty Ltd (the Applicant) in addition to the existing authorities attached to the applicant's current liquor licence 80304941 (**the licence**).
2. The Applicant is authorized to operate a major event authority authorising the sale, supply or service of liquor to patrons of the Eden Festival (**the Festival**) at the Darwin River Tavern, 185 Darwin River Road, Darwin River, NT, 0822 within the area designated in red as attached to the licence (**the premises**).

3. The Applicant is to clearly identify on the licence to the satisfaction of the Director the various areas referred to by the Applicant as:
 - a. Main Festival Arena.
 - b. Function Centre Bar.
 - c. Garden Bar.

No liquor shall be provided under the major event authority in these areas until they have been identified to the satisfaction of the Director.

4. The permitted hours of operation for the major event authority are as follows:
 - a. from 16:00 hours on Friday 26 July 2024 until 02:00 hours on Saturday 27 July 2024.
 - b. from 14:00 hours on Saturday 27 July 2024 until 02:00 hours on Sunday 28 July 2024.
 - c. from 14:00 hours on Sunday 28 July 2024 until 02:00 hours on Monday 29 July 2024.

5. In addition to the major event conditions set out in Part 4 Divisions 1 and 12 of the *Liquor Regulations 2019 (the Regulations)*, the licence shall also be subject to the following additional conditions:
 - a. The boundary of the licensed area of the Festival must be clearly identified and access to the licensed area must be restricted in a manner that allows for effective supervision by the Nominee.
 - b. The Nominee or an RSA certified person appointed by the Nominee as a bar manager must be present during all trading hours, supervise the sale of liquor and ensure compliance with these conditions.
 - c. The Licensee must ensure crowd controllers are located at all entry/exit points, to amongst other things, ensure liquor is not brought into or removed from the licensed area.
 - d. A staggered decline of liquor served must be implemented as follows on each of the days of the major event:
 - i. no more than four (4) alcoholic drinks may be sold to any one (1) person at any one time from 16:00 to 22:00 hours;
 - ii. no more than two (2) alcoholic drinks may be sold to any one (1) person at any one time from 22:00 hours to 23:59 hours.
 - iii. no more than one (1) alcoholic drink may be sold to any one (1) person at any one time from midnight to 04:00 hours.

To the extent that this condition is inconsistent with the Regulations, this condition prevails.

- e. No alcoholic drinks containing more than 1.6 standard drinks may be sold or served.
- f. Liquor or any other beverages must only be sold to patrons in opened metal or plastic containers.
- g. 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.
- h. The licensee must not admit patrons to the Festival unless they have been issued with a branded wristband following production of government issued ID to establish that they are over 18 years of age.
- i. The licensee must remove and exclude from the premises any person under 18 years of age who is in possession of liquor or who attempts to obtain liquor.
- j. The licensee must remove and exclude from the Festival any person who supplies or attempts to supply a person under the age of 18 years with liquor on the premises.
- k. The licensee must make soft drinks and water available from the bar and also from at least one designated “Alcohol Free Zone”.
- l. The licensee must exclude or remove from the premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang)
- m. No liquor may be served in the form of “shots” or “shooters”.
- n. The licensee must clearly display signage to delineate Non-Smoking areas from the Smoking Areas and the holder must comply with smoking requirements contained in the *Tobacco Control Act 2002*. Food and drinks are not permitted to be taken into any designated smoking areas.
- o. No wine or spirits to be sold or supplied in the areas known as the following:
 - i. Main Festival Arena.
 - ii. Function Centre Bar.
 - iii. Garden Bar.

- p. No glass bottles to be provided or permitted in the areas known as the following:
 - i. Function Centre Bar.
 - ii. Garden Bar.
 - q. The area known as the Garden Bar shall close at 11:59pm on 26, 27 and 28 July 2024.
 - r. For the duration of the Festival period **only** the “Amplified Sound” condition contained within the licence will be suspended with the following noise mitigation steps to be put in place:
 - i. The stage and event area shall be located as far back from the Darwin River Road and surrounding houses as possible.
 - ii. Low end frequency music (bass beat) shall be removed or reduced as much as possible.
 - iii. All speakers shall be faced away from all nearby residents and toward the east (otherwise known as ‘the shed’) on the second stage.
 - s. In the three (3) weekends leading up to the Festival, there shall be no amplified music on the premises.
6. The authority will be issued immediately following the publication of this decision notice.

Reasons

Background

- 7. On 28 March 2024, pursuant to section 52 of the Act, the Applicant applied to the Director of Liquor Licensing (**the Director**) for a licence with a major event authority.
- 8. The applicant is seeking the grant of a major event authority to permit the sale of liquor to patrons attending the “Eden Festival” (**the Festival**) to be held at the Darwin River Tavern, 185 Darwin River Road, Darwin River, NT, 0822.
- 9. The application outlined that the Festival is to be held:
 - a. Friday 26 July 2024 between 16:00 hours and 04:00 hours the following day.
 - b. Saturday 27 July 2024 between 14:00 hours and 04:00 hours the following day.
 - c. Sunday 28 July 2024 between 14:00 hours and 04:00 hours the following day.

10. It was noted that the Festival is a three (3) day “camping”, 18 plus ticketed, “Electronic Music Festival” featuring a lineup of 40 to 50 international, Interstate and local artists spanning a diverse range of electronic music. It is a “collaboration” between the applicant and “Osprey Events” who were stated to have been responsible for organizing “over 100 music events across Australia” since 2021.
11. As part of its application, it was stated that a shuttle service was to be provided from Darwin City to the festival running on Friday and Saturday with a return journey set for Monday.
12. The applicant highlighted that during the Festival; Two Two One Mental Health Charity would deliver “free mindfulness workshops” providing attendees the opportunity to achieve a “healthier state of mind” with the workshops including “living mindfully, self-care, making a connection and holistic breath work”. It was noted that a portion of the ticket sales would be donated to Two Two One. It was further noted that one of the aims was “spreading awareness about mental health and disadvantaged children in the NT”.
13. Although the applicant has operated a licence at these premises for many years; this is the first time the Festival will be conducted. The Applicant’s licence currently includes the following authorities:
 - a. Takeaway Authority.
 - b. Special Venture Authority.
 - c. Public Bar Authority.
 - d. Late Night Authority (from midnight until 2am).
14. Although this is the first time the Festival will be conducted, the applicant noted it had previously conducted a festival with Osprey Events in October 2021 known as “SUMMIT” which had “attracted 600 people”. The applicant stated that festival was “successful”. The Commission will return to this aspect later in these reasons.
15. The Commission was informed as part of the referral that the applicant has stated it expects a crowd of approximately 1,600 persons¹. Due to the numbers expected, this event falls within the category of “major event” pursuant to section 47(1)(o)(i) of the Act and requires an appropriate authority, rather than be operated under the current licence. It is important that all licensees understand this requirement.
16. As part of the current licence there is also a condition relating to “Amplified Sound”. The application seeks to have this condition “varied” to allow for the sort of music to be expected to be provided during the Festival. As part of the

¹ See page 2 of 245 of the referral to the Commission

application, the applicant provided a “Noise Attenuation Plan” proposing the following “controls”²:

“To mitigate the noise attenuation DRT will establish the following controls:

1. Positioning of the stage and event area is as far back from the road and surrounding houses as possible.

2. To control the noise and limit sound we will be using a quad setup in the area with only high frequency music as to remove the low end (Base beat) from disrupting nearby residents. We will also be facing the speakers away from all residents and toward the shed (East) on the second stage again to reduce the noise from affecting those nearby.”

3. Remoteness of the facility, there are only 6 houses within 3-4 kms of the DRT, of which the residents of these houses either work at DRT or fully support the event:

a. 2 houses at 400m

b. 1 house at 600m

c. 2 houses at 700m

d. 1 house at 1km

4. With point 3 in mind, a noise limiter will be applied set to the closest neighbour. During sound checks event manager will visit the house set at 400m away and confirm with the occupant what level of sound is acceptable to them. If the level is acceptable at the closest house the remaining houses should also be acceptable.

5. Listening to neighbours — if the level of the event exceeds acceptable levels for our neighbours they will undoubtedly call and make us aware. We will be in a position to listen to their concerns and where possible act to reduce the level or change the tone / base.

6. Letter drop to all post boxes (some 10 PO Boxes located at DRT Post Office has been completed, inviting comments and warning of the event. The large majority of PO Box recipients do not live within earshot of the event, we have still notified these residents out of courtesy and ensuring our community is kept notified of events that may affect them — copy of letter is attached.

² See attachment bundle “B” to the referral to the Commission, in particular pages 22 & 23 of 245

7. Local Residents and the Local Indigenous Community — most of the residents within the area will be attending the event, the event is not just for international and interstate tourists, but also locals who will enjoy this unique event.

8. Working with authorities — DRT have been working with Police, St Johns, Litchfield Council, NT Major Events, Hospitality NT, Rural fire Dept and NT Liquor Licensing as a collaboration with local authorities to ensure compliance with noise regulations and address any concerns from residents or authorities to ensure we conduct a compliant event with minimal impact to locals.

And:

To address the issue of one weekend per month there is to be no amplified music on the licensed premise, DRT will ensure no amplified music in the 3-week period prior to the event.”

17. In terms of the liquor to be made available, the application noted³:
- a. “(T)he full range of wine and spirits will be available from the Tavern’s Main Bar/Sports Bar” and that this would be “open to the public during this such Festival”.
 - b. Further the “Garden Bar and Function Centre Bar will be open” however “no wine or spirits will be served within these such areas. Predominantly the alcohol available at these bars will be premix drinks, ciders and beer only”.
18. The application went on to state as follows⁴:
- a. “Main Festival Arena, Function Centre Bar, Garden Bar – no wine or spirits, only service. In the main festival area and garden bar, no wines or spirits will be served. Only standard RTDs along with cider will be served”.
19. In terms of food, the application noted⁵ that food stalls would be available for patrons during the Festival and these would be part of “Markets” to be created as part of the event. It was part of the referral from the Director that⁶ “(t)he applicant advises there will be sufficient food vendors throughout the licensed area as well as free water refill stations”.
20. The Festival will be a ticketed event. The Event Management Plan noted⁷ “(t)ickets will be scanned and bags checked on entrance to the venue at the

³ See page 9 of 245 of the referral to the Commission

⁴ See page 10 of 245 of the referral to the Commission

⁵ See page 19 of 245 of the referral to the Commission

⁶ See page 2 of 245 of the referral to the Commission

⁷ See page 137 of 245 of the referral to the Commission

ticket station. Wristbands will then be checked at the festival entrance throughout the event". It is noted by the Commission that this is an over 18 event.

21. To alleviate the impact on the local neighbourhood, the Commission was also informed as part of the referral from the Director that⁸ "(a) shuttle service from Darwin City to Eden Festival will be running on Friday and Saturday with all return journey to be set for the Monday".
22. A traffic management plan was also provided along with information from "Core Traffic Control Pty Ltd"⁹ who would be providing assistance to manage traffic to the Festival. In addition, there is also camping provided at the venue and this is strongly encouraged as part of the marketing of the Festival.
23. In terms of the application before the Commission, it is noted that the Applicant provided the following documents:
 - a. Public interest and community impact assessment
 - b. Draft public notice & green sign confirmation
 - c. Site plan
 - d. Company extract
 - e. Food registration certificate
 - f. Liquor licence 80304941Supporting documentation on behalf of the proposed nominee of the event:
 - g. Statutory declaration
 - h. National Criminal History Check
 - i. Photo identification
 - j. RSA and RSA Refresher
24. The proposed nominee for the event is Mr Paul Winter (**Mr Winter**). Mr Winter is known to the Director and the Commission as (most recently) the nominee for the Darwin RSL.
25. The Commission was informed via the Director's referral that a check of the records held at Licensing NT reveals as follows:
 - a. 28 January 2020 - The Commission found the licensee guilty of section 31A(5)(a) of the Liquor Act 1978 (namely failing to scan approved

⁸ See page 2 of 245 of the referral to the Commission

⁹ See page 25 of 245 of the referral to the Commission

identification on 138 occasions). The Commission suspended the condition of the liquor licence relating to takeaway hours for a period of 48 hours commencing at 0900 hours on Friday, 28 February 2020¹⁰.

Advertising and Objections

26. The application was advertised on 11 May 2024 in the NT News and on the Department of Industry, Tourism and Trade website. Green signs were also displayed at the premises.
27. It was submitted before the Commission that the Director was satisfied that the applicant had complied with the requirements of public notice of the application. No objections were received from the public from those publications.
28. Pursuant to section 56(4) of the Act, the following stakeholders were notified of the application by the Director:
 - a. The Department of Health (**DOH**).
 - b. Northern Territory Police (**NT Police**).
 - c. Litchfield Council (**Council**).
29. The Director also forwarded a copy of the application to the Northern Territory Fire and Rescue Services (**NTFRS**) and St Johns Ambulance (**St Johns**) for comment.
30. With respect to this application:
 - a. DOH provided no objection but requested the licence be clear as to the hours.
 - b. NT Police responded, "Nil objection".
 - c. Council responded that it "supported" the event.
 - d. St Johns responded they "will be in attendance, no comments".
 - e. NTFRS responded stating it "support(s) this application" requesting a further condition that:

"Organisers are to adhere to NTFRS Special Event Requirements".

¹⁰ Northern Territory Liquor Commission Disciplinary action pursuant to the Liquor Act (2019/1430), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0008/787517/Decision-Notice-Oceanview-Developments-Pty-Ltd.pdf

It is noted these were attached to the response and were also provided to the Applicant. The Commission considers this is a matter for NTFRS and the Applicant.

31. Whilst not received as an “objection” to the publication via the NT News or on the website, the Commission was informed that there were two (2) relevant contacts made with Licensing NT about this application by nearby residents in response to becoming aware of this application. The Commission was informed as follows:

- a. In October 2021¹¹ following an event held at the premises; a nearby resident (whose name is not relevant for the purpose of these reasons) contacted Licensing NT and made an “informal complaint” about the event on behalf of himself “and others” for the level of the “bass” noise.
- b. That same resident contacted Licensing again on 26 April 2024¹² after receiving a “flyer” about the Festival that he had received in his “PO Box” and inquiring whether the proposal could “be stopped before it does more harm”.

At that time the resident was also encouraged to make contact with the applicant and the response received from the resident was forwarded to the applicant, with Mr Winter stating he would attempt to make contact with the resident.

- c. On 30 April 2024 the resident made contact with Licensing and advised that Mr Winter had contacted him, and they would be meeting to “find a way around the problem, details to be mutually agreed upon” and stating, “I’m sure things will turn out well for me”.

No further communication had been received by Licensing prior to the Director referring the matter to the Commission.

Referral to the Commission

32. On 18 June 2024, the Director referred the application to the Commission.
33. On 28 October 2019, the Commission delegated authority to determine an application for a liquor licence with a major event authority to a single member of the Commission. Given no formal objections have been received, I consider that it would not be worthwhile to conduct a public hearing.
34. Accordingly, I have dealt with the matter on the papers pursuant to s 21(3) of the Act and pursuant to my delegation to deal with such an application as a single member.

¹¹ See p.221 of the referral to the Commission

¹² See p.215-216 of the referral to the Commission

Assessment of the Application

35. Section 49(1) of the Act provides that the Commission may only issue a licence or an authority under section 48 of the Act if satisfied that:
 - a. The Applicant is a fit and proper person.
 - b. Issuing the licence or authority is in the public interest; and
 - c. The licence or authority will not have a significant adverse impact on the community.
36. In accordance with s 59(3) of the Act, I have considered:
 - a. the applicant's affidavit required by s 54.
 - b. the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises.
 - c. the financial stability, general reputation and character of the applicant, and the general reputation and character of the applicant's executive officers; and
 - d. whether the applicant and the nominee are fit and proper persons to hold a licence.
37. As noted previously, the Applicant has held a liquor licence over the premises for a number of years. There is one (1) occasion where the Applicant has breached the Act and although serious (and I sat as the legal member and Chair of that matter and can recall the seriousness) I do not consider that prevents the Commission from being satisfied that the Applicant is a fit and proper to hold the licence and that the Premises, is suitable for the major event.
38. I have noted the previous event and whilst I note the Applicant described that event to have been "successful", it is clear it did cause concern to at least one (1) nearby resident who made an informal complaint on behalf of himself and "others".
39. Likewise, however it is noted that the Applicant appears to have addressed those issues directly with the relevant neighbour. Following referral of the matter, the Commission requested that Licensing discover what had happened since April 2024 in relation to the resident's concerns.
40. The Commission received an email from Mr Wood that onforwarded an email from Mr Winter dated 27 June 2024 that stated he had spoken to the nearby resident "personally" and had agreed arrangements to the resident's satisfaction for the weekend of the Festival. That email is exhibit 2 (the referral being exhibit 1) to this matter should it become an issue at a later date.

41. The Commission has relied upon that email in coming to its decision on this application.
42. This Festival has been heavily promoted as one where patrons can:
- “Be surrounded by the natural wildlife of the NT whilst spending your time dancing with us at our beautiful stages, relaxing at your campsite, exploring our markets, cooling off in the swimming pool or wandering the wilderness just beyond the grounds where you can truly immerse yourself in the genuine beauty that the NT has to offer.”
43. It is one where it has the support of the relevant Council and no compliance concerns have been raised by the Director or NT Police.
44. There is however one significant matter of concern to the Commission and that is the **extremely** confusing representation of the relevant hours of the Festival. The Commission notes the following:
- a. The referral from the Director noted the hours sought were until 4.00am on each day of the Festival¹³.
 - b. The completed application referred to 4.00am on Monday 30 July¹⁴.
 - c. The Noise Attenuation Plan referred to 4.00am (into am of 29 July)¹⁵.
 - d. The Event Management Plan referred to 4.00am on Monday 30 July¹⁶ and then stated that “music will be played throughout the festival between 4pm – 2am on Friday and 2pm – 2am on Saturday and Sunday”¹⁷.
 - e. The Community Impact Assessment stated in relation to the issue of “undue offence, annoyance, disturbance or inconvenience” that “We will conduct a letter drop to reduce the initial impact and turn off music at 2am. Locals in the immediate area are aware of this”¹⁸.
 - f. The Draft Public Notice of Application referred to 4am on each of the days including Monday 30 July¹⁹.
 - g. The copy of the letter sent to “Dear Neighbour” referred to “Timings will range from 11am until 2am daily”²⁰.

¹³ See p.1 of the referral to the Commission

¹⁴ See p.8 of the referral to the Commission

¹⁵ See p.22 of the referral to the Commission

¹⁶ See p.135 of the referral to the Commission

¹⁷ See p.137 of the referral to the Commission

¹⁸ See p.168 of the referral to the Commission

¹⁹ See p.174 of the referral to the Commission

²⁰ See p.180 of the referral to the Commission

- h. Given the promotion of the Festival, the Commission considered the website for the Festival at www.edenfestivalnt.com on 1 July 2024. Under the tickets tab it states the Festival is from “Fri 26th Jul 2024, 4:00pm – Mon 29th Jul 2024, 12:00am ACST”.
 - i. There is then an “Event details” item that can be clicked and it also states that the Festival is from “Fri 26th Jul 2024, 4:00pm – Mon 29th Jul 2024, 12:00am ACST”.
 - j. When this was discovered by the Commission a request was made to Licensing NT to clarify this matter. The response received on 1 July 2024 was that Mr Winter had stated “... each day has always been until 4am the next day” and “... it is as per the application, it won’t be closing at midnight, it is 4am”.
- 45. The Commission notes that it was following receipt of a “flyer” about the event that the “nearby resident” made contact with Licensing NT. It is apparent from that communication that noise was a real issue for that nearby resident and whilst there is not a continued objection as alternative arrangements have been made for that resident, it is apparent that neighbours in this usually quiet area have been told that the event will have timings ranging “from 11am until 2am daily”.
- 46. With respect to Mr Winter’s response about the dates and times, most unfortunately there is in fact variation as to the timing as outlined in the paragraphs above.
- 47. In light of the correspondence that has been delivered to the nearby residents who are the ones who will be the most likely to be impacted by this event, and in light of the fact that this is the very first time this event will be held in a location that is normally very quiet, the Commission is not satisfied that issuing the licence with a major event authority until 4:00am is in the public interest and is not satisfied that a licence until 4:00am will not have a significant adverse impact on the community.
- 48. The Commission considers it inappropriate to issue a major event authority for an event where the Community Impact Statements makes clear that to address noise; organisers will “turn off music at 2am” and commensurate with that undertaking nearby residents have been informed that Festival “(t)imings will range from 11am until 2am daily”.
- 49. There is no evidence provided to the Commission to satisfy the Commission that it is in the public interest to issue a major event authority until 4:00am that enables the service and supply of liquor for another two (2) hours after the music stops. That is not a purpose “ancillary” to the music festival. It is two (2) hours for just drinking.
- 50. When consideration is given to section 49(2) of the Act, allowing a further two (2) hours after the music:
 - a. does not advance the objective of consuming “in a responsible manner”.

- b. does not advance the objective of “increasing cultural, recreational ... or tourism benefits for the local community area”.
 - c. does not advance the objective of “preventing practices that encourage irresponsible drinking”.
51. Further, when consideration is given to section 49(3) of the Act, allowing a further two (2) hours after the music stops is likely to have a significant adverse impact on the community when considering the likely increased risk of undue offence, annoyance or disturbance of having patrons drink liquor for such an additional period with no other entertainment provided. Further, having no entertainment would mean that the consumption of liquor would no longer be ancillary to the event but in fact all that was occurring at the event and therefore would likely lead to a risk of harm from the excessive or inappropriate consumption of liquor.
52. The Commission does however consider that a major event authority to enable the Festival to occur is in the public interest and that pursuant to section 49(4) of the Act a way of mitigating the significant adverse impact on the community and address the public interest issues identified would be to issue a major event authority that has the time for the sale and service of liquor end at 2:00am.
53. As such, having regard to the primary and secondary purposes of the Act pursuant to section 3(4), I consider that the issue of the licence with such an authority with the conditions imposed is consistent with the purposes of the Act and accordingly as the Commission I have determined to issue the licence with a major event authority as set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

54. Section 60(3) of the Act requires the Commission to give a decision notice to an applicant after making a decision under s 60(1).
55. Section 31(1) provides that any decision of the Commission for which a decision notice is required is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**).
56. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the applicant.



JODI TRUMAN
DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
2 July 2024