

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

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| PREMISES: | DARWIN RED DEVIL CHARTERS |
| APPLICANT: | Mr Peter Fabris |
| PROCEEDINGS: | Hearing into New Liquor Licence Application and to Consider Objections Pursuant to Section 47F(2) of the <i>Liquor Act</i> : (a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or (b) health, education, public safety or social conditions in the community. |
| MEMBERS: | Mr Richard O'Sullivan (Chairman) Mrs Jane Large Mrs Kerri Williams |
| OBJECTORS: | Mr Richard Weiss Mr John Dowell and Ms Cheryl Halliday Ms Susan Colgrave Mr Robbie Standaloft |
| APPEARANCES: | Mr Peter Fabris Mr John Dowell Ms Cheryl Halliday Mr Robbie Standaloft Mr Peter Cookson for the Director of Licensing |
| DATE OF HEARING: | 22 July 2008 |

BACKGROUND

1. Mr Peter Fabris, Proprietor of Darwin Red Devil Charters applied to the Director of Licensing, pursuant to Section 26 of the *Liquor Act* ("the Act") for a Vessel liquor licence to sell liquor from the vessel known as Red Devil, located at Cullen Bay, Darwin City, NT and operating in and around the

Darwin Harbour and adjacent ocean areas as a fishing and harbour cruise vessel. The licence hours sought were from 10:00am until 11:00pm, Sunday to Saturday.

2. As required under the Act, Mr Fabris published two(2) advertisements in the Northern Territory News, the first appearing on 14 March 2008 and the second on 19 March 2008.
3. Advisory letters seeking comment were mailed to
 - a. Darwin City Council;
 - b. Drug & Alcohol Policy Unit (NT Police, Fire & Emergency Services);
 - c. Development Consent Authority;
 - d. Department of Health (Senior Policy Advisor).
4. As a result of the advisory letters no objections were received by the closing date of 19 April 2008. NT Police requested that the Licence clearly stipulate the proposed trading details for the sale of liquor on the vessel, Red Devil. Department of Health requested additional information relating to types of alcohol being available and strategies to minimise alcohol related harm and also made note that the commencement and cessation of alcohol service times were not consistent with the information published in the Public Notices of the Northern Territory News. This matter has been clarified to the Commission's satisfaction; the hours applied for are from 10:00am until 11:00pm for the seven (7) days of the week and within those hours alcohol will not be served until fifteen (15) minutes after departure and will cease fifteen (15) minutes prior to return.
5. On 21 April 2008, the Director of Licensing received written objections from:
 - Mr Richard Weiss, Proprietor of TEK Ventures Pty Ltd;
 - Ms Susan Colgrove, Proprieter of Cullen Bay Marine Ventures;
 - Mr Robbie Standaloft, General Manager of Cullen Bay Marina Management Corporation;
 - Mr John Dowell and Ms Cheryl Halliday, residents of Cullen Bay.
6. All objectors are either residents and/or business proprietors operating out of Cullen Bay Marina area. These objections were only just out of time and under Section 127 of the Act the Commission, in a Decision on Whether Objections Will Proceed to Hearing, determined to allow an extension of time

for objections to 24 April 2008. It also found that the objectors were valid and required a hearing.

7. The decision stated:

Whist it is arguable the grounds of objection are not specific and it is perhaps arguable that portions of the objections are based on incorrect information they do in my opinion fulfill the requirements under the Section 47 (3) of the Act. I am satisfied that when considered as a whole, the basis of the objections could impact upon the amenity, health, public safety or the social conditions of the neighbourhood and in those circumstances the grounds of objections are within those permitted under the Act.

8. The content and substance of the objections relate to:

- increasing the number of intoxicated persons in the Cullen Bay Marina area (“the neighbourhood”);
- an increase in noise due to persons entering or leaving the area whether intoxicated or not;
- lack of parking and possible difficulty in securing taxis for patrons;
- issues of safety with patrons accessing the Jetty to the Ferry Terminal after consuming alcohol;
- over-crowding on the Ferry Terminal itself due to the already existing number of operators using the Terminal; and
- the effect and/or impact of the neighbourhood generally.

The general theme of these objections was similar and the Commission decided to deal with them together.

9. At the Hearing on 22 July 2008, the Commission heard from Mr Robbie Standaloft, whose main concerns included:

- Over-crowding of the Pontoon / jetty, which is a public facility shared by many different user groups. The Pontoon / jetty is in dire need of repair and in Mr Standaloft’s opinion is currently not in a safe enough condition to cope with the already large number of vessels that utilize the area. At times up to seven (7) boats can be tied alongside each other waiting for the Pontoon / jetty to become available to allow their passengers to disembark.

- Boat operators currently operating in and around the Cullen Bay Marina area do not appear to exercise proper control over their intoxicated passengers who are frequently noisy and show a distinct lack of regard to the residents nearby and to other patrons who frequent the popular restaurants and cafes in the area. Mr Standaloft expressed the view that another licensed boat operator would also have no control over the boat's passengers in regard to their alcohol consumption and the resulting noisy and bad behaviour of these intoxicated persons, further adding to the already existing problems in the area.

10. Mr John Dowell and Ms Cheryl Halliday, who reside directly opposite the Pontoon / jetty area, raised the following concerns:

- Residents in Cullen Bay are already affected by a large number of commercial vessels operating from the Pontoon / jetty area and the noise and constant disruption to the residents peace and quiet by intoxicated passengers at all hours of the day and night. This is compounded by the congestion of a considerable number of boats waiting to disembark their intoxicated passengers at the over-crowded Pontoon / jetty.
- The complainants maintain that one (1) licensed boat operator is not maintaining any effective control over his passengers consumption of alcohol or the noisy and disruptive behaviour of his intoxicated passengers.

11. Mr Peter Fabris, the applicant, addressed these issues as follows:

- He stated that under the Act, the responsibility lies with the Licensee to ensure that no alcohol is served to any intoxicated person. Mr Fabris advised he has seven (7) years experience in employment working in service of alcohol and maintains that being licensed would allow him more control over the consumption of alcohol by his passengers as opposed to unlicensed boat operators having little or no control over how much alcohol passengers bring on board and consume.
- Passengers on the Red Devil would not be served alcohol until fifteen (15) minutes after departure from the pick-up area and service of alcohol would cease fifteen (15) minutes before disembarking passengers in the Pontoon / jetty area.
- Issues of crowding and safety regulation with the Cullen Bay Pontoon / jetty use are not specific to the issues required to be considered in the liquor licence application.

CONSIDERATION OF THE ISSUES

12. In relation to the alleged overcrowding and overuse of the unsafe Pontoon/ jetty area, the Commission has no power over Red Devil Charters regarding the use of this area, as this responsibility lies with another authority or authorities. Therefore the Commission's decision cannot be based to any significant degree on the use or not of the Cullen Bay Pontoon / jetty area.
13. Having regard to the noisy behaviour of some intoxicated passengers, both embarking and disembarking in the area, it appears from Objectors' submissions, that one or two operators who currently hold liquor licences do not attempt to, or cannot maintain, adequate control over the service of alcohol to intoxicated passengers. From submissions made, it seems that these operators do not exercise sufficient passenger control or take responsibility for the impact on the welfare and amenity of residents and business people in the Cullen Bay Pontoon / jetty area. This matter of investigating the operations of licensed tour or fishing operators based at Cullen Bay would be better raised as a complaint directly to the Director of Licensing and this was advised by the Commission during Hearing.
14. The Commission notes that the applicant, Mr Peter Fabris, submitted that he has some twenty five (25) years experience in commercial fishing boat operations and seven (7) years experience serving alcohol. The vessel, Red Devil will carry a total of twelve (12) passengers and Mr Fabris asserts that as a Licensee he would have effective control over the amount of alcohol consumed at all times by these passengers and will fully comply with the Act in this regard. He advised the Commission that he has carried out research over a period of three (3) years before embarking on his business venture to set up a fishing charter and dinner cruise operation in the Darwin Harbour region. He submits that he will not serve alcohol until fifteen (15) minutes after his vessel has departed from the Pontoon / jetty area from any fishing tour or harbour cruise. This is within the 10:00am to 11:00pm licence period applied for and further, he will cease selling alcohol fifteen (15) minutes prior to returning to the disembarkation point.
15. The operation of Red Devil will require a skipper (Mr Fabris) and one deck hand at all times. Mr Fabris advises he has completed a Responsible Service of Alcohol course to ensure he is competent to properly supervise the sale and consumption of alcohol on his vessel.
16. Immediately following the Hearing the Objectors delivered an additional written submission. They advised they would withdraw their objections relating to the application if Mr Fabris would pick-up and disembark his passengers at the Stokes Hill Wharf Area, effectively removing operations from the Cullen Bay area, thereby removing any potential noise problem and associated bad behaviour from intoxicated passengers. It is not the intention

of the Commission to grant a licence applying conditions in relation to the specific pick-up or drop off point for Darwin Red Devil Charters. The Commission proffers that it has no power or control to prohibit any boat operator from a particular pickup or drop off point.

17. The Commission understands and has some sympathy for the concerns expressed by objectors. However, many of the issues raised are outside the responsibility of the Commission and need to be raised with and addressed by appropriate authorities. The Commission's task is to weigh up the effect of any new liquor licence on the public (and the public interest) against the business requirements of a responsible operator and set out appropriate and prudent conditions of any licence that may be granted.

DECISION

18. The Commission approved:

- (i) The sale and supply of alcohol aboard the vessel Red Devil for consumption by the passengers on board the vessel from 10:00am until 11:00pm Sunday to Saturday.
- (ii) That the sale and supply of alcohol aboard the vessel, Red Devil will commence no sooner than fifteen (15) minutes after departure from the passenger pick-up point and cease no less than fifteen (15) minutes before arrival at the passenger drop off point.
- (iii) At all times of operation the vessel must have a person who has completed a Responsible Service of Alcohol course supervising the sale and consumption of alcohol.

Richard O'Sullivan
CHAIRMAN

19 August 2008