

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Darwin Red Devil Charters t/as Red Devil Charters
Applicant:	Peter Fabris
Nominee:	Unknown
Licence Number:	New Licence Application
Objectors:	Richard Weisse John Dowell and Cheryl Halliday Susan Colgrave Robbie Sandalot
Legislation:	Sections 44F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Merran Short
Date of Decision:	5 June 2008

Summary of Decision

Hold a Hearing in respect of the objections received from:

1. Richard Weisse
2. John Dowell and Cheryl Halliday
3. Susan Colgrave
4. Robbie Sandalot

Background

- 1) Mr Peter Farbis on behalf of Darwin Red Devil Charters has made an application for a Vessel Liquor Licence to sell liquor from the vessel known as Red Devil t/as Darwin Red Devil Charters located at Cullen Bay Marina, Darwin City NT ("the Application"). The Application was advertised in the Northern Territory News on 14 and 19 March 2008 pursuant to Section 32A of the *Liquor Act* ("the Act"). The advertisements gave notice that Mr Peter Fabris ("Mr Fabris") had applied for a Vessel Liquor Licence ("the Licence") to sell liquor on a vessel known as Red Devil trading as Darwin Red Devil Charters. –
- 2) The advertisement was as follows:

I, Peter Fabris, Hereby Give Notice that I have applied to the Northern Territory Licensing Commission for a Vessel Liquor Licence to sell liquor from the vessel known as Red Devil t/as Darwin Red Devil Charters located at Cullen Bay, Darwin City NT 0800.

Proposed Trading Details for the sale of liquor are as follows:

- *The business proposed to be conducted on the vessel will be in the nature of fishing charters and harbour cruises.*

- *Liquor may be sold for consumption on the vessel between the hours of Sunday to Saturday from 10:00 hours to 23:00 hours.*
- *Liquor shall only be sold or supplied to persons for whom a passenger ticket has been issued in respect of a specific cruise;*
- *The sale or supply of alcohol shall not commence prior to thirty (30) minutes before the publicly advertised commencement time of the cruise for which the ticket has been issued.*
- *The sale or supply of liquor shall cease no later than ten (10) minutes prior to the expected time of the vessel berthing at Stokes Hill Wharf.*
- *No person who is in any way involved in the operation of the vessel shall consume alcohol at any time when the licence is being operated.*

Darwin Red Devil Charters is a Darwin based charter operation servicing the needs of chartered clients. Its clients will include both residents and visitors to the Northern Territory. The vessel will also cater for charter clients.

This is the first notice of application. The notice will be published again on 19th March 2008.

The objection period is deemed to commence from 19th March 2008.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the grant of the licence may or will adversely affect:

- (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.*

Only those persons, organisations or groups described in Section 47F(3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.

For further information regarding this application contact the Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, Licensing and Regulation, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 14th Day of March 2008

- 3) Pursuant to Section 47F(4)(d) of the Act an objection must be lodged within thirty (30) days after the publication of the last notice – namely 21 April 2008. The objections the subjects of this decision are dated 21, 22, 21, and 21 April 2008 respectively and were received either on 22 or 23 April and are therefore (allowing for the weekend) just outside the time allowed by the Act.
- 4) The Commission has the power to abridge time pursuant to Section 127 of the Act:

“127 Commission may extend or abridge time

 - (1) Where this Act provides that an act or thing may or is required to be done –*
 - (a) within a specified time; or*
 - (b) not before the expiration of a specified time,*

the Commission may, in its discretion, extend or abridge that time.

(2) The Commission may extend time under subsection (1) notwithstanding that the time prescribed by this Act for the doing of an act or thing has expired.”

- 5) In circumstances where the objections are only just out of time and no issue is taken, correctly in my view, by the Applicant, and there is no apparent prejudice to the Applicant, I exercise the discretion given to the Commission under Section 127 of the Act and extend time for objections to 24 April 2008.
- 6) The content and substance of the objections relate inter alia to:
- increasing the number of possibly intoxicated persons in the Cullen Bay Mariana 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,
- 7) The question then is whether the objections are valid objection pursuant to Section 47 F of the Act?

Section 47F of the Act provides -

47F. Person may object to certain applications

- (1) Subject to this section, a person, organisation or group may make an objection to the following applications:*
- (a) an application for the grant of a licence, as notified under section 27;*
 - (b) an application for a variation of the conditions of a licence, as notified under section 32A;*
 - (c) an application for the substitution of other premises for the premises specified in a licence, as notified under section 46A;*
 - (d) an application for approval to make a material alteration to licensed premises, as notified under section 119.*
- (2) The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –*
- (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.*
- (3) Only the following persons, organisations or groups may make an objection under subsection (1):*
- (a) a person residing or working in the neighbourhood where the premises the subject of the application are or will be located;*

- (b) a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located;*
- (c) a member or employee of the Police Force acting in that capacity;*
- (d) a member or employee of the Fire and Rescue Service within the meaning of the Fire and Emergency Act acting in that capacity;*
- (e) an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;*
- (f) a community-based organisation or group (for example, a local action group or a charity).*

Objections

- 8) In circumstances where the general themes of the objections are similar in nature I intend to deal with them together.
- 9) According to the addresses on each of the letters received from the objectors they either all live or work within the neighbourhood where the proposed premises will operate (bearing in mind the vessel will be away from the neighbourhood when the consumption of alcohol is taking place) nonetheless the possible impact of the licensed premises upon the neighbourhood cannot be denied. Accordingly I find that each of the objectors are valid objectors within the Section 47 F (3) of the Act.

Applicants Response to Objections

- 10) The Applicant has had an opportunity to respond to the objections. The response of the Applicant is that he has researched this venture fully and that he can control or deal with the issues raised by the objectors, or that the objections raised are not valid or are based on a misconceived or incorrect premise. In any event they are not issues to be decided in this forum but rather at hearing. Further, the Applicant has agreed to decrease the hours of the licence in response to one of the objections raised.

Determination

- 10) Whilst 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 fulfil 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.
- 11) I find that the objections are valid and require a hearing.

Merran Short
Legal Member

12 June 2008