

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**REASONS FOR DECISION**

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**MATTER:** *APPLICATION FOR LIQUOR LICENCE FOR DARWIN WATERFRONT BEACH CLUB BAR [2024] NTLiqComm 32*

**REFERENCE:** LC2024/023

**APPLICANT:** Sea Dragon (NT) Pty Ltd

**PREMISES:** Darwin Waterfront Beach Club Bar  
Wharf One Central Precinct  
19B Kitchener Drive  
DARWIN NT 0800

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

**HEARD BEFORE:** Mr Russell Goldflam (Chairperson)  
Mr Bernard Dwyer (Health Member)  
Ms Katrina Fong Lim (Community Member)

**DATE OF HEARING:** 17 July 2024

**DATE OF DECISION:** 24 July 2024

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**Decision**

1. On 22 July 2024, the Northern Territory Liquor Commission issued the following decision:
  1. In accordance with section 48 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to issue a licence to Sea Dragon (NT) Pty Ltd (**the applicant**).
  2. The licence will be issued with a public bar authority.
  3. The licensed premises is the area bounded in red on the plan of the Wharf One Central Precinct at 19B Kitchener Drive Darwin NT 0800 shown at page 57 of Exhibit One tendered at the hearing of the application (**the licensed premises**).
  4. The conditions of the licence will be those authority conditions set out in Part 4 Divisions 1 and 14 of the *Liquor Regulations 2019* (**the Regulations**).

5. The following additional conditions are fixed:
- a. Subject to this condition, the licensee is authorised to sell, serve and supply liquor at a special event (**special event**):
    - i. The licensee must not hold more than 50 special events in a calendar year.
    - ii. The licensee must, by prior written notice to the Director of Liquor Licensing (**the Director**), seek the Director's consent to hold a special event.
    - iii. The notice must be given at least 14 days before the special event.
    - iv. The licensee must not hold a special event if the Director gives the licensee written notice that the Director refuses to consent to the special event.
    - v. The Director is taken to have consented to a special event if the licensee has notified the Director of the special event in accordance with this condition, and the Director has not within 7 days notified the licensee that the Director refuses to consent to the function.
  - b. The licensee is authorised to sell, serve and supply liquor from:
    - i. Midday to 1900 hours every day except New Year's Eve, New Year's Day and Christmas Day;
    - ii. 1900 hours to 2130 for special events;
    - iii. Midday to 2400 hours on New Year's Eve; and
    - iv. Midnight to 0200 hours on New Year's Day if the licensee gives the Director written notice of the licensee's intention to open during those hours before 3 December of the year preceding the New Year's Day.
  - c. The operation of this licence is subject to compliance by the licensee with the terms and conditions of the Operating Agreement executed on 13 March 2024 as currently in force and as may be varied from time to time between the Darwin Waterfront Corporation (**DWC**) and the licensee, pursuant to which DWC has granted a permit to the licensee to use the premises.

- d. Noise Management:
    - i. The Licensee must comply with the Northern Territory Noise Management Framework Guideline issued by the Northern Territory Environment Protection Authority in September 2018 and as may be varied from time to time.
    - ii. The licensee must establish, maintain and operate in accordance with a noise complaints register and noise complaints management policy.
    - iii. Pre-recorded and live entertainment may be provided and shall be consistent with the concept of the premises. It shall be in the nature of light, background music intended to complement the family nature of the premises.
    - iv. Entertainment must not be of such volume as to cause nuisance to nearby residents.
    - v. No amplification shall be directed towards the residential units.
    - vi. The Director on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such sound attenuation and noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director's view a reasonable requirement in the circumstances then prevailing.
  - e. The licensee must not serve, supply or sell liquor in glass containers except when conducting a special event.
  - f. Other than when a special event is in progress, the licensee must not charge a fee for entry to the premises or for the use of the premises' facilities.
  - g. The licensee must only supply or sell liquor from its container bar on the premises to persons who are wearing a wristband supplied by the licensee identifying the wearer as a Beach Club participant.
6. The licence will be issued immediately following the publication of this decision notice.

2. The Commission stated that it would publish its reasons. It now does so.

## Reasons

### Background

3. A few minutes walk from the Darwin CBD, the Darwin Waterfront Precinct (**the Precinct**) features a distinctive mixture of land and sea uses, including port facilities, the Darwin Convention Centre, a campus of the Charles Darwin University, tourism and hospitality venues, cultural, recreational and sporting attractions, retail outlets, parkland and three up-market residential apartment blocks. In any precinct with such a diverse range of amenities and interests, it is readily foreseeable that on occasion conflicts will arise about proposed developments in the precinct. This decision concerns one such occasion.

### The Application

4. On 14 March 2024, on behalf of the applicant, Mr Darren Lynch (**Mr Lynch**) lodged an application for a liquor licence with a public bar authority for the licensed premises, to operate as “the Darwin Waterfront Beach Club Bar” (**the Beach Club**).
5. The applicant proposes to establish a resort style beach club operating for the general public from midday to 1900 hours daily, and for special events later in the evening, on parkland that surrounds a protected artificial lagoon in the Precinct. The proposed facility, which will be open to the public with no entry fee (except when special events are in progress), is to be equipped with sun lounges, day beds, bean bags, chairs, tables, beach umbrellas and a public bar housed in a portable container. The applicant proposes to operate the Beach Club only in the dry season for 2024, with the option of extending this period in subsequent years.
6. In 2022 and 2023 the applicant operated the Beach Club at this location with a liquor licence and community event authority issued by the Director four days a week during the dry season. However, the Director informed the applicant both in 2022 and then again in 2023 that if it wished to continue this venture it should apply to the Commission for an ongoing liquor licence with an appropriate authority.
7. Mr Lynch and his associates currently hold and operate the following three liquor licences at the Darwin Waterfront Precinct:
  - a. Wharf One Food & Wine
  - b. The Precinct Tavern
  - c. Dock One Bar

In addition, Mr Lynch is the principal of the licensee of a proposed tavern in Zuccoli Plaza.<sup>1</sup> In its decision to issue that licence, the Commission found that Mr Lynch and his business associates have “an impressive record of operating successful licensed venues in the Darwin region”.<sup>2</sup>

8. In support of the application, the applicant stated:<sup>3</sup>

The Beach Club bar, a seasonal activation within the Darwin Waterfront parklands, operated by Sea Dragon, has enjoyed two highly successful years without any breaches, attracting a substantial crowd of over 70,000 attendees. This establishment has emerged as a pivotal hub for community engagement, offering an accessible and inclusive space for individuals who may not have the means to frequent waterfront venues. Feedback from patrons outside the waterfront area has been overwhelmingly positive, lauding the Beach Club for its relaxed atmosphere and familial ambiance, which fosters social gatherings and leisure activities such as sunbathing, family fun days. All with the opportunity to enjoy a variety of beverages and food options in the licenced area.

9. On 13 March 2024 the applicant entered into an Operating Agreement with the DWC pursuant to which the applicant was granted a permit, for a substantial fee, to operate the Darwin Waterfront Beach Club (**the Operating Agreement**). The DWC and the applicant jointly propose that a licence condition be fixed requiring the licensee to comply with the Operating Agreement.
10. The applicant conducted a “local survey”, which, it stated, “received 100% positive feedback from the 25 local community residents and beach club guests who responded.” The applicant did however acknowledge that one of the objectors “had some concerns”.<sup>4</sup>

### Consultation

11. In accordance with s 57 of the Act, notices of the application were published in the NT News on 24 March 2024, posted on the Director’s website, and displayed at the proposed premises.
12. In accordance with s 56(4) of the Act, notification was given to the Department of Health (**DOH**), NT Police and the Northern Territory Fire and Rescue Service (**NTFRS**).

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<sup>1</sup> The Commission’s decision to issue that licence is currently subject to review by the Northern Territory Civil and Administrative Tribunal.

<sup>2</sup> *DCL Hospitality Pty Ltd Application for substitution of a liquor licence and permanent variation of authority and conditions* [2023] NTLiqComm 22, at [79]

<sup>3</sup> Exhibit One, p 14

<sup>4</sup> Exhibit One, p 70

13. DOH supported the application.
14. NT Police advised that they do not object to the application. Police provided data of reported anti-social incidents, disturbances and assaults on weekends at ten locations within the Precinct between 1 July and 15 October in 2022 and the same period in 2023, and made the following comment:<sup>5</sup>

The total number of incidents is low given the timeframe (a little over 3 months). The number of incidents would not create a heightened sense of anti-social behaviour issues within the areas (and between the times) stated.

15. NT Police also made the following comments regarding the application:<sup>6</sup>

- Having spoken to the DWC and reading the application, it is clear that if a licence is granted, DWC will have the authority to provide when the Beach Club can operate. This in effect makes the DWC the controller of what hours and when. This should be the function of the Director Licensing/Liquor Commission.
- If the licence is granted, police request that the licence stipulates the conditions quite clearly. As an example the licence [application] states it can operate... every day except Christmas and Good Friday. The intent is not for this to occur but rather for it to be only during certain months and at whatever times DWC says is OK (including the months of operation and days). This leaves the control of the hours of operation to DWC (as per dot point 1 above) as where the licence itself needs to stipulate the intent and control of hours by Liquor Licensing and not DWC.
- Unaccompanied youth will be able to freely move within the boundaries of the licensed premises if granted. The Act states the Director can designate areas where youth cannot attend, however it appears the Act allows youth to freely move within a licenced premises unaccompanied if a direction is not given. Normally youth would be accompanied at licenced premises, however this site has been used as a public site where young people will frequent the grassed area unaccompanied with friends more often (in my view) than other licenced premises. This exposes youth to liquor far more openly than a regular site.

These issues will be considered later in these reasons.

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<sup>5</sup> Exhibit One, p 89

<sup>6</sup> Exhibit One, p 91

16. NTFRS supported the application on the following conditions:
- Any proposed building works may be required to go through the building approvals process as per *Building Act* (NT).
  - On completion of building works (occupancy permit issued) NTFRS may be required to conduct a fire safety inspection to ensure compliance with *NT Fire and Emergency Act & Regulations* (any requirement for maximum patron numbers can be assessed at this time).
17. The Commission notes that these conditions are inapplicable to the current application, as, firstly, there are no proposed building works, and secondly, the premises will be entirely in the open air, and as such do not comprise “prescribed buildings” subject to inspection by and compliance with directions issued by the Fire and Rescue Service pursuant to the *Fire and Emergency Act 1996* (NT) and the *Fire and Emergency Regulations 1996* (NT).

### **The role of the Darwin Waterfront Corporation**

18. Section 56(4)(c) of the Act provides that the Director must inform the chief executive of the local council “if the application relates to premises within a local government area”. Accordingly, notification to the City of Darwin is usually required for liquor licence applications for premises in the Darwin metropolitan area. However, the Director did not notify the City of Darwin of this application. For the reasons that follow, the Commission considers that the Director was not required to notify the City of Darwin.
19. The Commission accepts the submission of the DWC that the application does not relate to premises within the City of Darwin local government area. The Explanatory Memorandum to the *Darwin Waterfront Corporation Regulations 2009* relevantly states:
- The Regulations declare the area that will form the Darwin Waterfront Precinct. An instrument under the *Local Government Act* will, upon commencement of the Regulations, “sever” this area from the Municipality of Darwin.
20. It follows that the Director was not required to inform the City of Darwin (or for that matter the DWC, because the Precinct is not within a local government area) of the application.
21. The Act defines “local council” as:
- (a) a local government council; or
  - (b) a corporation performing the functions of a local government council

22. The proposed premises are entirely within the area prescribed by the *Darwin Waterfront Corporation Regulations 2009* (NT) as the Darwin Waterfront Precinct. The *Darwin Waterfront Corporation Act 2006* (NT) (**the DWC Act**) establishes the DWC as a corporation and confers on it functions that include the making of By-Laws, the imposition of rates, and the control, management, service delivery, promotion, development and maintenance of the Precinct and its amenities and facilities. In the view of the Commission, these functions are substantially similar to those conferred on a local government council by s 22 of the *Local Government Act 2019* (NT). Accordingly, the Commission finds that for the purposes of the *Liquor Act*, the DWC is a local council.
23. In these circumstances, although the Director was not required to consult with the DWC, in the view of the Commission it was highly desirable for the Director to do so, as the DWC is a key stakeholder in any application for a liquor licence with proposed premises in the Precinct. In this instance, as was entirely appropriate, the Director did consult with the DWC about the application.
24. The DWC not only supports the application, but also, by way of the Operating Agreement, seeks to partially regulate the operation of the licence. As noted above, NT Police have raised a concern that in doing so the DWC may be usurping the functions of the Commission and the Director, in particular with respect to the operating times and periods of the licence.
25. The Commission has given careful consideration to this concern in fixing the conditions it has determined to impose on the licence. The Operating Agreement provides:

Term

Initial term from 29 April 2024 to 6 October 2024 with the option for additional events and functions outside of these dates, upon application to and approval by Darwin Waterfront Corporation.

Additional term of April 2025 to October 2025 optional and to be discussed upon completion of initial term.

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Operating Hours

Monday to Sunday, Noon until 7pm.

26. These Operating Agreement items read in conjunction with the licence conditions the Commission has imposed require the applicant to seek and obtain the consent of both the DWC and the Director to operate the licence for special events after 1900 hours. In addition, the applicant will need to obtain the approval of the DWC to operate outside the dry season.
27. Mr Lynch informed the Commission that the applicant intends to offer to host special events at the Beach Club for cruise ships, and that the principal cruise



ship season is October to April. It is difficult to estimate future demand for such events over the years to come. Half a dozen special events have been held by the applicant at the Beach Club in the last two years.

28. The Commission has determined to cap the number of special events to 50 per calendar year, but not to limit the operation of the licence to a particular season. The Commission considers that this fairly balances the need expressed by the applicant and the DWC to allow for future expansion of the Beach Club to meet emerging demand for its services, with the interests of permanent residents of the Precinct to live without suffering undue offence, annoyance, disturbance or inconvenience.
29. Although, as stated above, the Commission has found that the DWC performs the functions of a local government council, the governance and management of the Precinct is not like the governance and management exercised by the City of Darwin over its municipality. In some respects, the DWC is more akin to the owner of a privately owned tourist resort than a city council. In the view of the Commission, in order to properly perform its statutory functions, the DWC needs to maintain the level of control over the operations of the Beach Club that it has established by entering into the Operating Agreement with the applicant. The Commission considers that this does not usurp the powers or functions of the Commission or the Director, but complements them.

### **The objectors**

30. Section 61(4)(a) of the Act provides that a person residing in the neighbourhood of the proposed licensed premises is entitled to lodge an objection to an application for a liquor licence.
31. Twenty one objections were received to the application from the following persons, each of whom the Commission finds is a resident of one of the three apartment buildings located within the Darwin Waterfront Precinct, and accordingly an eligible objector:
  - Daniel Bacon
  - Alvaro Elias Barua
  - Kim Yates
  - Marion Leggo
  - Robert Yates
  - Maree Dalla Valle
  - John A Boardman
  - Paul Le Cerf
  - Jennifer Long
  - Peter and Leonie Luecke
  - Anthony Wong and Heidi Wong
  - Lucy V Barua
  - Lucas Jesser
  - Rhonda and Jeff Hargraves
  - Vivienne Le Cerf
  - Erica and Paul Eccleston

- Leonee Dixon
- Diana and John Kirkhope
- Steve Criddle
- Barbara and David Hague
- Bernie and June Kelly<sup>7</sup>

## **The objections**

32. Section 61(2) of the Act limits objections to the following grounds:
- a. That issuing the licence would adversely affect the amenity of the neighbourhood of the proposed licensed premises; or
  - b. That issuing the licence would adversely affect the health, education, public safety or social conditions in the community of the proposed licensed premises.
33. The Commission accepts that the following issues raised by the objectors fall within either or both of the permitted grounds of objection:
- a. The application, if allowed, will substantially reduce the size of the Precinct’s alcohol-free zone.
  - b. The proposed premises will lead to an increase in anti-social behaviour from visitors.
  - c. The additional CCTV and DWC’s roving security patrols will be inadequate to effectively mitigate the increased risk of alcohol-related harm if the proposed licence is issued.
  - d. The proposed premises will occupy an unsuitably large area and will trade for significantly longer periods than the 2022 and 2023 “pop-up” facilities.
  - e. Approval of the application will result in reduced access by other groups to use the area for community events.
  - f. The application, if granted, will make the area unsuitable for use by children.
  - g. During ticketed special events, public access to the parkland around the lagoon will be restricted.
  - h. The issue of the proposed licence will increase the risk of drowning, which the single life guard will be inadequate to mitigate.

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<sup>7</sup> These two objectors subsequently withdrew their objection as they had relocated and were no longer residents of the neighbourhood.

- i. The lagoon is the only truly swimmable beach in Darwin, and families will not feel comfortable when there are unsupervised intoxicated people there.
  - j. More consumption of liquor in the sun will lead to more alcohol-related harm.
  - k. Noise pollution that will disturb and annoy local residents, some of whom live in apartments 20 metres from the proposed premises.
  - l. Light pollution that will disturb and annoy local residents, some of whom live in apartments 20 metres from the proposed premises.
  - m. The boundary of the premises is inadequately fenced with a flimsy rope.
  - n. The beach club furniture damages the lawn, obstructs park users and is unsightly.
  - o. There are inadequate toilet facilities for patrons of the proposed premises.
  - p. The proposed licensee will not comply with a prescribed condition of a licence with a public bar authority, because the licensee will not sell, supply or serve meals.
  - q. Several features of the proposal are inconsistent with the *Darwin Waterfront Corporation Liquor Guidelines for Developers, Licence Applicants and other Stakeholders (the DWC Liquor Guidelines)*<sup>8</sup>
  - r. It is not in the public interest for a single private operator to become the sole beneficiary of an area covering over 50% of the lagoon waterline.
  - s. Darwin as a whole has an alcohol problem, and has an oversupply of alcohol outlets. An additional outlet is not in the public interest.
  - t. The proposed premises are too close to residential buildings, and will monopolise the relatively shady southwest side of the lagoon. If there is to be a licensed beach club, it should be located on the unshaded northeast side of the lagoon, further away from the residential area of the Precinct.
34. The Commission finds that the following additional issues raised by objectors do not fall within either or both of the permitted grounds of objection, and accordingly the Commission disregards them:
- a. There was insufficient consultation in relation to the application.

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<sup>8</sup> The DWC Liquor Guidelines were admitted into evidence at the hearing of the application: Exhibit One, p 200

- b. The response by the licensee and/or the DWC to residents' complaints about the operation of the Beach Club in 2022 and 2023 was inadequate and/or obstructive.
35. None of the objectors attended the hearing of the application. At least two of the objectors had informed the Commission that they had intended to attend, but for different reasons, were prevented from doing so by circumstances beyond their control. Despite the absence of the objectors at the hearing, having regard to the significant number of objectors and the significant number of valid concerns they raised, the Commission conducted the hearing on the assumption that the objectors all maintained their objections. At the hearing the Commission closely questioned the parties in relation to a broad range of issues over a period of some four hours. The fact that no objectors attended the hearing has not led the Commission to attach less weight to the objections, which were supported by the objectors' lengthy, detailed and carefully formulated written submissions.

### **The applicant's response to the objections**

36. Within the time allowed by the Director, the applicant wrote individual letters responding to each of the objectors. In these letters the applicant summarised the specific issues raised by each addressee and provided a response to each of those issues.<sup>9</sup> On the one hand, the applicant is to be commended for taking the considerable time and effort required to respond in detail to each objector. On the other hand, the general tenor of the responses was not to commit to any specific changes to the applicant's plans. Instead, it was along the lines of an acknowledgement of each objector's concerns, an assurance to operate responsibly and a generalised undertaking to review the applicant's plans. In its responses, the applicant also pointed out, where appropriate, when it considered that an objector's concern was misconceived.
37. The Commission is unable to make any finding as to how many of the objectors were placated by the applicant's considered, conciliatory and courteous but not necessarily convincing responses.
38. The Commission considers the objectors' specific concerns later in these reasons.

### **The licensee's record of compliance**

39. The applicant's premises at Wharf One Food & Wine have twice attracted informal written reminders by Licensing NT to comply with the Code of Practice for the Responsible Advertising and Promotion of Liquor.
40. In 2023, Licensing NT investigated a complaint by one of the objectors, alleging that children were running through the licensed area of the Beach Club unsupervised, and that the music was too loud. Licensing NT officers attended the premises on 21 and 22 September 2023 and formed the view

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<sup>9</sup> Exhibit One, pp 268 – 312

that the music level was acceptable. They did not observe any unsupervised children. The Commission infers that the Director refused to accept the complaint.

41. The Director has informed the Commission that Mr Lynch, an NT liquor licensee of some 30 years standing, has never been subject to disciplinary action for failing to comply with the Act or the conditions of any of the numerous liquor licences that he has operated.
42. As mentioned above, the Commission has previously found that Mr Lynch has an impressive record as a licensee. The Commission now reaffirms that finding.

### **The referral**

43. On 17 June 2024, pursuant to s 59 of the Act, the Director referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the Applicant that the matter would be listed for a public hearing on 16 July 2024.
44. The Director provided a brief to the Commission that included the following documents (**the brief**):
  - a. Application for liquor licence with public bar authority
  - b. Executive Summary of application
  - c. Affidavit and Declaration of Associates
  - d. Operational Plan
  - e. ASIC company extract for applicant
  - f. Operating Agreement between DWC and Sea Dragon (NT) Pty Ltd  
13 March 2024
  - g. Site plan
  - h. Confirmation of financial stability – letter from applicant’s accountants
  - i. Beachclub Bar – Business Analysis
  - j. Profit & Loss Forecast 2024
  - k. Community Impact Assessment
  - l. Beachclub – Survey results
  - m. Correspondence with stakeholders
  - n. Letters from 21 objectors
  - o. Applicant’s responses to objections
  - p. Letter from the DWC to Commission, 11 March 2024
  - q. Decision notice for 2023 Darwin Beach Club, with community event authority
  - r. Schedule of 23 licensed premises at the Precinct
  - s. Applicant’s record of compliance

### **The hearing**

45. Pursuant to s 23 of the Act the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate.

46. On 16 July 2024 the application proceeded as a public hearing. Mr Lynch appeared on behalf of the applicant, accompanied by his solicitor, Ms Hill. Mr Wood appeared for the Director. Mr Burke (DWC Deputy Chief Executive Officer) and Ms Welsh (DWC Senior Events and Marketing Coordinator) from the DWC were also in attendance. None of the objectors attended the hearing.<sup>10</sup> The Commission thanks them all for their attendance and assistance.
47. The brief, comprising 336 pages, was tendered and admitted into evidence without objection.
48. In addition and also without objection the following documents were admitted into evidence:
  - a. the version of the brief that had been provided to all objectors, with redactions made by the Commission to protect commercial-in-confidence information;
  - b. the applicant's written submissions titled "Summary response to objections"; and
  - c. a toxicology report of an adult person who drowned at the Precinct lagoon in April 2024, showing 0.15% blood alcohol level.
49. The Commission conducted the hearing informally, without administering an oath or affirmation to any witness. This course facilitated an open and free-flowing exchange of information and views between Commission members and Mr Lynch, Ms Hill, Mr Burke, Ms Welsh and Mr Wood.

### **The regulation of liquor in the Darwin Waterfront Precinct**

50. The DWC Liquor Guidelines were issued in June 2015 and have apparently not been updated. Their stated objectives are:<sup>11</sup>
  - To achieve a balance of tourist, recreational, residential and commercial facilities with an overriding requirement to ensure that developments do not contribute to anti-social behaviour in this family friendly environment.
  - To maintain the amenity for residents who may be in close proximity to proposed licensed premises.
  - To encourage specific uses to be proposed in the most appropriate location for that use for example any bar or tavern is not considered appropriate immediately below residential buildings but could be acceptable where the development master plan has a predominantly commercial use.

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<sup>10</sup> The Commission received no application from any of the objectors to postpone the hearing.

<sup>11</sup> Exhibit One, p 203

- To preserve good order and maintain visitor safety.
  - To encourage developer's and potential businesses seeking a liquor licence to use this document as a guide when determining locations suitable for licence applications and licensed premises.
  - To support the Director-General of Licensing in making decisions.
51. The office of Director-General of Licensing was superseded by the office of Director of Liquor Licensing when the Act replaced the *Liquor Act 1978* (**the 1978 Act**) on 1 October 2019.
  52. The 1978 Act included provisions that were in substance continued by 170(1)(f) of the Act, which establishes the Precinct as a "prohibited public area" in which a person must not consume liquor in any public place unless, pursuant to s 200, the owner or occupier of the place gives permission, whether generally to the public or to specific persons, bodies or groups, with or without conditions.
  53. Accordingly, the DWC Liquor Guidelines state that the "the consumption of alcohol within the public domain [of the Precinct] is prohibited".
  54. With the advent of COVID-19 in the Territory in early 2020, the Chief Health Officer prohibited dining and consumption of liquor on premises in restaurants and bars, as part of a suite of measures aimed at enforcing social distancing. Shortly afterwards, in April 2020 the Director, using his emergency powers under the Act, varied liquor licence conditions so as to allow people to purchase liquor with a meal and consume it off the premises, also with the aim of encouraging social distancing. As a consequence, and with the permission of DWC, the practice arose for patrons of DWC licensed venues to purchase a meal and liquor, and consume it on the Precinct's pleasant lawns and parklands.
  55. When the COVID restrictions were lifted in April 2021, the Director and DWC worked creatively together to enable the continuation of this practice, which until then had worked well and become popular, by establishing a scheme under the Act pursuant to which ten licensed venues in the Precinct (including one operated by the applicant) were issued with a catering authority, and patrons were issued with a temporary permit.<sup>12</sup>
  56. The first iteration of the Beach Club in 2022 operated in effect as an extension of this scheme. However, the Beach Club model was rather different in that instead of purchasing their meal and drinks from one of the nearby restaurants or bars and carrying them over the Beach Club area, patrons could now

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<sup>12</sup> Director of Liquor Licensing, *Application for grant of an authority to existing liquor licence* (12 May 2021), accessed at [https://industry.nt.gov.au/\\_data/assets/pdf\\_file/0008/1005686/decision-notice-darwin-waterfront.pdf](https://industry.nt.gov.au/_data/assets/pdf_file/0008/1005686/decision-notice-darwin-waterfront.pdf)

purchase their alcohol from the container bar, and, if they wished, order something to eat from one of the nearby food outlets.

### **Assessment of the application**

57. In accordance with s 59 of the Act, the Commission has 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 and business reputation of the body corporate;
  - d. the general reputation and character of the secretary and executive officers of the body corporate;
  - e. whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;
  - f. the objections to the application made under s 61; and
  - g. the responses provided by the applicant under s 62.
58. In accordance with s 49 of the Act, the Commission has also considered whether issuing the licence is in the public interest, and whether the licence will have a significant adverse impact on the community. It is convenient to deal with most of the issues raised by the objectors in conjunction with consideration of the public interest and community impact requirements.

### **The applicant**

59. The Commission finds that the applicant complies with s 53(1) of the Act, which requires that a body corporate shall not hold a licence unless it is a corporation.
60. The applicant has provided appropriate documentation regarding its corporate structure, operations, activities, financial circumstances and plans.

### **The applicant's associates**

61. Section 54 of the Act requires applicants to depose an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The Commission is satisfied that the applicant has complied with the disclosure requirements of s 54.
62. The Commission does not consider that it is appropriate to consider whether any person other than Mr Lynch is a fit and proper person to be an associate of the applicant.



## The suitability of the applicant's premises

63. The premises comprise an area of partially shaded parkland furnished with beach resort-type furniture supplied and owned by the DWC. The licensee has installed a purpose-designed and equipped container bar that includes an acoustically-shielded coolroom. When the Beach Club is closed for the wet season, as will occur in 2024/25 pursuant to the Operating Agreement, the licensee will uplift and remove the container bar and store it off-site. In accordance with the Operating Agreement, the applicant is required to keep the premises' furniture clean, and in good order, repair and condition.<sup>13</sup>
64. The Commission assesses the premises as suitable for the supply and consumption of liquor in the manner set out in the application.
65. As noted above at paragraph 33(t), the objectors have proposed that the premises be relocated to the northeast side of the lagoon. The applicant and the DWC reject this proposal on the grounds that:
  - a. The northeast side of the lagoon is part of the "Peninsular", an area of the Precinct that is often used to conduct large community events. If the Beach Club were located there, that would disrupt and inconvenience those community events.
  - b. It would be costly and inconvenient to relocate the power supply the applicant has installed to service the container bar.
  - c. If the Beach Club were moved to the northeast side of the lagoon, there would be nowhere suitable to position the container bar, both because of the lack of flat even ground and because of the angle of the sun, which would shine in the eyes of bar staff.
  - d. The objectors have overstated the extent to which the southwest side of the lagoon is used when the Beach Club is not in operation.
66. The Commission accepts the submissions of the applicant in relation to the first three of the four above-listed points, and is satisfied that the proposed location of the premises is, on balance, the most suitable available location.
67. The Commission has given specific consideration to the ground of objection noted at paragraph 33(p) above, namely that the premises are unsuitable for a public bar authority because they would infringe reg 77 of the Regulations, which prescribes as a condition of a public bar authority that "a full meal must be available" at least five days a week during lunchtime and dinnertime, and that "a light meal must be available" on the remaining days of the week at those times.
68. Traditionally, publicans comply with this requirement by maintaining a kitchen and providing a meal service, unlike the applicant, who proposes that patrons

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<sup>13</sup> Exhibit One, p 48

place food orders without having to leave the applicant's premises, using their mobile phone and a QR-code. The applicant proposes an innovative approach to operating a liquor licence with a public bar authority.

69. The Commission has come to the view that the applicant's proposed arrangements for the provision of food is compliant with reg 77. If the Minister had intended to require that meals at a public bar be provided, prepared, sold and served by the licensee, the regulation could have been drafted to expressly require this.
70. It does not follow that future applicants for a public bar authority will not be required to provide a meal service. Each application will be considered on its merits. In this particular case, the Commission has taken into account in the applicant's favour the following relevant circumstances:
  - a. there is already a successfully established practice for patrons to purchase food from another Precinct outlet and consume it at the Beach Club;
  - b. the applicant has worked with DWC to establish a QR-code based food-ordering facility using the DWC's wifi network, in collaboration with Precinct food providers;
  - c. the participating food providers are within close proximity to the licensed premises;
  - d. the participating food providers are well-established businesses that it is reasonable to expect will continue to offer a reliable service;
  - e. two of the participating food providers are operated by the applicant or an associate of the applicant; and
  - f. the establishment and maintenance of a commercial kitchen on the premises would be costly, inconvenient and intrusive.

#### **The financial stability, general reputation and character of the body corporate**

71. The Commission assesses the applicant as having a satisfactory business reputation and as being financially stable.

#### **The general reputation and character of the applicant's secretary and executive officers**

72. The Commission assesses the general reputation and character of the applicant's principal executive officer and secretary, Mr Lynch, to be satisfactory.

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

73. The Commission assesses the applicant to be a fit and proper person to hold a licence.

### **Whether the licensee's nominee is a fit and proper person to hold a licence**

74. The applicant has nominated Mr Lynch as the licence nominee. The Commission assesses Mr Lynch, who is a current NT liquor licence nominee, and is well known to the Commission, to be a fit and proper person to hold the licence.

### **Whether issuing the licence is in the public interest**

75. As noted at paragraph 33(s) above, the objectors submit that Darwin as a whole has an alcohol problem and an oversupply of alcohol outlets, and that an additional outlet is not in the public interest. The Commission readily agrees that Darwin (and indeed the Northern Territory as a whole) has an alcohol problem.<sup>14</sup> The Commission also readily agrees that, as the Riley Review found, it is an “acknowledged fact that there are far too many licences in the Northern Territory leading to significantly elevated levels of alcohol related harm contributed to by all categories of licence”.<sup>15</sup> However, it does not necessarily follow that an additional outlet is not in the public interest. To determine that issue, the Commission is required to consider each of the ten public interest objectives set out at s 49(2) of the Act. After doing so, the Commission must determine whether it is satisfied that it is in the public interest to issue the licence. The Commission now turns to consider each of these objectives in turn.

(a) Minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor

76. As noted above at paragraph 33(j), objection has been made on the ground that more consumption of liquor in the sun will lead to more alcohol-related harm. The Commission accepts that more consumption of liquor leads to more alcohol-related harm. It now turns to examine whether there will be more consumption of liquor if the licence is issued.
77. The Precinct has for several years, and in particular since the DWC granted permission for the public to consume liquor in public areas of the Precinct in the circumstances described at paragraph 54 above, been a popular drinking location. However, the Commission accepts the information from NT Police set out at paragraph 14 above that the Precinct has not been an anti-social “hotspot”. It can be anticipated that the issue of this licence may lead to increased consumption of liquor in the Precinct parklands around the lagoon,

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<sup>14</sup> See, for example, *Applications to substitute premises, transfer licence and vary conditions by Coolalinga Tavern* [2024] NTLiqComm 30 at [62]

<sup>15</sup> Riley, Angus, Stedman and Matthews, *Alcohol Policy and Legislation Review Final Report* (2017), p 36

because, unlike the current catering authority/permit scheme, there will be no requirement for patrons to purchase a meal, and no defined limit on how much liquor they will be permitted to purchase. However, the Commission is not persuaded that there is likely to be a significant increase in the quantity of liquor supplied and consumed in the Precinct as a whole: it is likely that much of the Beach Club's trade will replace the trade of existing indoor liquor outlets in the Precinct.

78. Overall, the Commission considers that the issue of this licence is unlikely to either advance or impair achievement of this objective.

(b) Ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner

79. Having regard both to Mr Lynch's substantial experience as the operator of well-run licensed premises, and the DWC's commitment to maintaining the Precinct as a safe, secure and attractive destination for both tourists and locals, the Commission is satisfied that the issue of the licence will advance this objective.

(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

80. The grounds of objection noted above at paragraph 33(c) (insufficient CCTV and security patrols) and 33(m) (inadequate fencing) are relevant to this objective.

81. The DWC engages the services of roving security guards who patrol the public areas of the Precinct, which is also equipped with a CCTV surveillance system. In addition, reg 76 of the Regulations requires the licensee to install, maintain and operate video surveillance equipment in accordance with the *Code of Practice for CCTV system in licensed premises* issued by the Commission in 2023. In considering this issue, the Commission places particular weight on the fact that despite the presence of 23 liquor outlets in the Precinct,<sup>16</sup> NT Police have reported only occasional incidents of alcohol-related harm or disorder over the last two years. The Commission assesses as low the risk that the issue of this licence will jeopardise public order and safety.

82. Several of the objectors have complained that the boundary of the Beach Club is protected only by a flimsy rope. This is an accurate enough description of the boundary, but the Commission accepts the applicant's submission that a boundary rope strung between bollards is appropriate, given the commitment of the applicant and the DWC to maintain free access to the premises to the general public (except when a special event in progress).

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<sup>16</sup> Exhibit One, p 334

(d) Protecting the safety, health and welfare of people who use licensed premises

83. As noted at paragraph 33(h) above, objectors raised the issue of water safety, and several of them asserted that 50% of drownings in Australia are related to alcohol and swimming. That may well be an exaggeration: according to Royal Life Saving Australia, in the 15 years from 2003 to 2018, 18% of male drowning deaths in Australia were found to have had a contributory level of alcohol in their system.<sup>17</sup> Nevertheless, the Commission readily accepts that it is dangerous to mix alcohol with swimming: in April 2024 a female adult drowned in the lagoon after consuming a substantial quantity of liquor (which, according to information provided by the Director, was not supplied by an outlet in the Precinct).
84. However, the Commission does not consider that the establishment of the Beach Club is likely to significantly increase the risk of drowning in the lagoon. The licensed premises open onto an 80 metre stretch of artificial beach that provides access to the protected lagoon. The premises will close to the public each day either before or, in mid-winter, shortly after sunset. The DWC engages life guards who patrol the area.<sup>18</sup> The Commission expects the Beach Club to be a popular venue, which increases the probability that anyone who gets into difficulties while swimming in the vicinity of the premises will be noticed. The Commission accepts the applicant's evidence that over the last two years there have been no reported water safety issues at the Beach Club.<sup>19</sup>

(e) Increasing cultural, recreational, employment or tourism benefits for the local community area

85. The Commission finds that this objective will be advanced by issuing the licence. The Beach Club has had two years of successful operation, attracting an estimated 70,000 patrons. The Commission attaches little weight to the positive feedback to the "local survey" referred to at paragraph 10 above. At the hearing the Commission established that the survey was not of local residents, as the label might suggest, but of patrons of the Beach Club. Nevertheless, the Commission is comfortably satisfied that the Beach Club has proven itself to be a popular additional attraction to bring visitors to the Precinct. Of particular note is the clear commitment to maintain the premises as a public amenity, accessible without charge to all.
86. The Commission has considered the objection noted at paragraph 33(r) above that it is not in the public interest for a single private operator to become the sole beneficiary of an area covering over 50% of the lagoon waterline. Firstly,

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<sup>17</sup> Royal Life Saving Australia, *492 men have drowned whilst drunk. Don't let your mates drink and drown*, accessed at <https://tinyurl.com/3mxz5tde>

<sup>18</sup> Exhibit One, p 58

<sup>19</sup> Exhibit One, p 58

the Commission observes that the applicant will be only one of the beneficiaries of the Beach Club, along with Beach Club patrons (including both those who consume liquor at the premises and those who simply use the facilities) and, by way of the fee payable under the Operating Agreement, the DWC.

87. Secondly, this ground of objection appears to invite a finding that other liquor outlets in the Precinct will suffer a detriment if the licence is issued. The Commission agrees that the re-opening of the Beach Club is likely to result in some loss of trade to the Precinct venues that currently operate with a catering authority. However, notably, none of the proprietors of those venues or indeed any person other than a local resident, has objected to the application. The Commission has received no evidence capable of supporting a finding that other businesses in the Precinct will suffer a significant detriment. Indeed, it is foreseeable that the opening of the Beach Club will draw more visitors to the Precinct, to the overall benefit of all the Precinct's commercial operators.

(f) Promoting compliance with this Act and other relevant laws of the Territory

88. The Commission is satisfied that the operation of this licence, supported by the DWC in accordance with the Operating Agreement, is likely to advance this objective.

(g) Ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business

89. The Commission considers that this objective will be advanced by the issue of this licence to this well-credentialed applicant.

(h) Preventing the giving of credit in sales of liquor to people

90. The Commission has no concerns about the applicant's capacity and commitment to advance this objective.

(i) Preventing practices that encourage irresponsible drinking

91. The Commission has regard to the largely trouble-free record of the Beach Club over the last two years, the requirement that only patrons who have been provided with wristbands be supplied with alcohol from the container bar, and the applicant's established practice of requiring patrons without a wristband who are consuming liquor on the premises to leave the premises.<sup>20</sup> The applicant states that staff will all hold relevant RSA accreditation, and that management will ensure that patron behaviour is monitored at all times.<sup>21</sup>

92. The Commission, however, notes that another licensed venue in the Precinct operated by Mr Lynch has been warned on two occasions in 2024 for

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<sup>20</sup> Exhibit One, p 58

<sup>21</sup> Exhibit One, p 73

breaching the *Code of Practice for the responsible advertising and promotion of liquor* issued by the Commission in 2020.

93. The Commission considers that the very features of the Beach Club that make it so appealing for many could well induce irresponsible drinking. It is readily foreseeable that reclining on a sun lounge drinking cocktails by the lagoon on a perfect Darwin dry season afternoon is a recipe – for some patrons – for over-indulgence. By the same token, the Commission also considers that the relaxed, casual al fresco “vibe” of the venue is, unlike a crowded indoor bar, likely to induce patrons to feel good and behave well.
94. The Commission considers that issuing the licence will lead to a moderate risk of irresponsible drinking, and that the measures proposed by the applicant to manage this risk are appropriate.
- (j) Reducing or limiting increases in anti-social behaviour
95. Finally, the Commission considers this objective, which, as noted at paragraph 33(b) above, was also raised by the objectors. The Commission’s remarks above regarding the good record of the applicant and the Beach Club are relevant to consideration of this objective. The applicant has a considerable interest in preventing anti-social behaviour at the Beach Club, because (among other reasons) such behaviour is bad for business.
96. In addition, the Commission gives considerable weight to the role of the DWC, which, as the Commission has observed, is somewhat akin to the owner of a private tourism resort. The DWC has a strong interest in maintaining and promoting the brand, the image and the reputation of the Precinct. One of its statutory functions is “to preserve good order in the Precinct”. Through the Operating Agreement, the DWC Act and the *Darwin Waterfront Corporation By-Laws 2010* (NT), the DWC has considerable powers to support the performance of its functions. For example, By-Law 27 confers on an authorised DWC officer the power to remove a person who contravenes the By-Laws from a public place within the Precinct. By-Law 70 provides, among other things, that a person must not behave in a disorderly, indecent or offensive way in a public place within the Precinct, and must not contravene a direction given by an authorised DWC officer.
97. The Commission considers that issuing the licence will lead to a moderate risk of anti-social behaviour, but that the interests, powers and arrangements of the applicant and the DWC are such that it is likely that this risk will be effectively managed. The Commission is satisfied that this objective will be advanced if the licence is issued.
98. Having considered and weighed each of these objectives, the Commission is satisfied that on balance it is in the public interest to issue the licence.

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

99. In contrast to the relatively wide-angle lens used to administer the public interest test, the community impact test is applied with a lens that uses a narrower focus, for a more close-up view.
100. To determine whether it is satisfied that the issue of the licence will not have a significant adverse impact on the community, the Commission must consider each of the ten matters listed at s 49(3) of the Act. It is convenient to commence with the two last-listed matters, which can be shortly disposed of.
- (i) The community impact assessment guidelines issued under section 50
101. The Commission considers that no such guidelines are currently in force.
- (j) Any other matter prescribed by regulation
102. There are no such “other” matters prescribed by regulation.
- (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
103. Understandably, given that the objectors are all persons who reside in the vicinity of the proposed licensed premises, several of the grounds of objection, namely those identified at paragraphs 33(d), 33(k), 33(l) and 33(n) above, relate to this matter.
104. The objectors complain that the proposed premises will be unsuitably large, and will trade for significantly longer periods than the 2022 and 2023 Beach Club did. The proposed premises will occupy parkland with a beach and lagoon frontage of 80 metres, about half of the total length of the lagoon beach. At least one objector complained that the size of the bar will be increased when the licence is granted.<sup>22</sup> The Commission does not agree: the applicant’s clear evidence is that bar facilities will be limited to the existing container bar. Another objector complained that the current application is for premises three times as large as the 2022 and 2023 Beach Club premises.<sup>23</sup> The Commission does not accept that claim. It accepts the information Mr Lynch provided at the hearing that the size of the proposed premises is the same as the size of the Beach Club in 2023.
105. The Commission has explained at paragraphs 65 and 66 above its reasons for accepting that the site the applicant proposes for the premises is appropriate. Although some of the objectors apparently made complaints or

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<sup>22</sup> Exhibit One, p 233

<sup>23</sup> Exhibit One, p 145



tried to make complaints about the operation of the Beach Club in 2022 and 2023, the Commission received no clear evidence of the details or dates any such complaints. In particular, the Commission has not received evidence that complaints were made that residents had suffered disturbance as a result of the size of the Beach Club premises.

106. The usual hours of trading will be the same as in previous years (midday to 1900 hours during the dry season), although these trading hours will be extended to 2130 hours for special events. The trading season itself may also be extended in future years. The Commission has not received evidence that complaints were made that residents had suffered disturbance specifically as a result of the hours of operation of the Beach Club premises in 2022 and 2023.
107. Section 49(4) of the Act provides that the Commission may mitigate a possible adverse impact on the community by fixing conditions that limit, among other things, the days and times when liquor may be served. The Commission has accordingly imposed a licence condition that the licensee must seek and obtain the consent of the Director to conduct a special event after 1900 hours. In addition, the Operating Agreement requires the licensee to obtain the consent of the DWC for a special event. Furthermore, although the Commission has allowed for the future development of the Beach Club by conditionally authorising up to 50 special events in a calendar year, Mr Lynch informed the Commission at the hearing that only half a dozen such events have been held in the last two years. These were low-key events, and none of them attracted complaints.
108. The Commission considers that the measures described above are appropriate to mitigate the possible adverse impact of undue disturbance to residents of the neighbourhood arising from increased operating times.
109. The objectors have also complained about noise emanating from the premises. Section 93 of the Act prohibits licensees from causing or permitting their employees or patrons to cause undue and unreasonable noise that affects the amenity of the neighbourhood. The Commission considers that in the circumstances of this matter more is required to mitigate the possible adverse impact on the neighbourhood of noise pollution. Accordingly, the Commission has imposed a detailed and prescriptive noise management condition on the licensee. Among other things, it requires the licensee to establish a noise complaints management policy and to maintain a noise complaints register. The Commission has imposed these measures to address the evidence of some objectors that previously they have been ignored or fobbed off when they tried to make a complaint.
110. The Commission expects the licensee to publish its complaints management policy on its website, and to prominently display the means by which complainants can contact the licensee to make a noise complaint.
111. The Commission has also imposed a condition that the licensee comply with the Northern Territory Noise Management Framework Guideline issued by the

Northern Territory Environment Protection Authority (**the Noise Management Framework**).<sup>24</sup> The Commission has had particular regard to the “Agent of change principle”, the application of which in the Noise Management Framework includes this statement:<sup>25</sup>

where changed conditions are introduced into an environment, (for example through a new use, or changed operating conditions), the reasonable expectations of the existing land users should be respected.

112. The Commission considers that in the circumstances of this application, the agent of change principle cuts both ways. On the one hand, the Commission considers that persons who purchased apartments in the Precinct must have been aware that their neighbourhood would not be a quiet suburban street, but a busy tourism, entertainment, commercial and industrial enclave. On the other hand, the Commission assumes that some persons who purchased apartments in the Precinct were aware of and relied on the 2015 DWC Liquor Guidelines, which, it may be recalled, stated that “consumption of alcohol within the public domain is prohibited”. Indeed, as noted at paragraph 33(q) above, objection has been made on the basis that several features of the application are inconsistent with the DWC Liquor Guidelines.
113. The DWC Liquor Guidelines contain detailed noise mitigation measures. Obviously, however, at least some aspects of these guidelines have been superseded, and it is unclear to the Commission which parts remain current. The Commission recommends that the DWC review the DWC Liquor Guidelines and publish the results of the review to Precinct residents, licensees, the Director and other stakeholders.
114. Finally, in relation to the issue of noise pollution, the Commission has regard to the fact that the licensee is by no means the only source of noise in the vicinity of the objectors’ residences: there are numerous eateries and bars along the promenade at the foot of two of the three apartment blocks. Furthermore, if this application were refused, it is apparent that the pre-existing arrangements would continue whereby patrons would purchase a meal and liquor from one of the existing licensed outlets operating with a catering authority in the Precinct, and consume their purchases on the DWC’s beach furniture in the lagoon parklands. The Commission is of the view that the resulting noise would be similar in type and intensity to the noise emanating from patrons of the Beach Club.
115. The Commission considers that the noise management conditions measures it has fixed in conjunction with the noise management provisions of the DWC Liquor Guidelines are appropriate to mitigate the possible adverse impact of

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<sup>24</sup> Accessed at [https://ntepa.nt.gov.au/\\_data/assets/pdf\\_file/0004/566356/noise\\_management\\_framework\\_guideline.pdf](https://ntepa.nt.gov.au/_data/assets/pdf_file/0004/566356/noise_management_framework_guideline.pdf)

<sup>25</sup> The Noise Management Framework, section 3.4.5

undue disturbance to residents of the neighbourhood arising from noise pollution caused by the operation of the licence.

116. A similar issue is the disturbance and annoyance caused by light spill, particularly onto the balconies of lower floor apartment residents. The objectors complained about the strings of “festoon lights” at the Beach Club, which were sometimes left on after the bar had closed. The Commission accepts that these lights are annoying to the affected residents, but after hearing from Mr Burke, it has come to the view that they are not owned or controlled by the licensee, but by the DWC. The DWC may choose to keep these lights on during the night for various reasons, including to deter passers by from engaging in anti-social or unlawful activity.

117. The Commission assesses the concern of objectors regarding the beach club furniture from a similar perspective. The furniture is owned and supplied by the DWC, and the DWC can keep the furniture on the parkland for the use of the public irrespective of whether the applicant is granted a liquor licence.

(b) The geographic area that would be affected

118. The only geographic area that will be significantly affected by the issue of the licence is the Precinct. In the view of the Commission, the Precinct is as a whole unlikely to suffer a significant adverse impact as a result of the issue of the licence in question. That is in part because there are already some 23 other liquor licences in operation in the Precinct.

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

119. The Commission has considered at paragraphs 91 to 94 above the risk that the issue of the licence will encourage irresponsible drinking, and has also stated, at paragraph 76 above, that it is unpersuaded that the issue of the licence is likely to result in a significant increase in the consumption of alcohol.

120. The Commission assesses the Precinct as having a comparatively high level of surveillance and monitoring to deter, detect and respond to incidents of alcohol-related harm. In considering this matter, the Commission again refers to the police data indicating that the Precinct, despite being the location of numerous liquor outlets, is not an area with a high level of alcohol-related disturbances.

121. Accordingly, the Commission considers that the issue of this licence is unlikely to significantly increase the risk of harm from excessive or inappropriate consumption of liquor.

(d) The people or community who would be affected

122. In its consideration of this particularly important issue, the Commission has had regard to the number of objectors, the manner in which the objections were made, the response of the licensee and the DWC, the number of

residential apartments in the precinct and the number of residential apartments that are used as permanent or long-term residences.

123. The Commission accepts information provided by Ms Welsh at the hearing that there are 236 households in the Precinct, the “vast majority” of which are not owner-occupied, but short-term rentals. The Commission infers that the objectors comprise about 10% of these householders, but a substantially higher proportion of the permanent or long-term Precinct residents. The Commission also finds the Precinct apartment-dwellers were informed about the application both by DWC, which conducted a letterbox-drop and posted notices in the lifts, and by some of the leading objectors, who sent copies of their objection by email to other residents, and encouraged them to follow suit. The Commission commends both the DWC and the objectors who informed other residents about the application for taking these initiatives. Although the Commission has found that the public notification provisions of the Act were complied with, every step that is taken to alert the community in general and affected persons in particular to a contentious application such as this one is to be encouraged.

124. Ultimately, the Commission is of the view that a significant portion of the long-term and permanent residents of the Precinct have objected to the application, and that a significant portion of these residents have not objected to it. In the absence of reliable survey data reporting the views of the residents about the application, the Commission is unable to make findings as to how widespread opposition to the application is in the Precinct’s residential population.

(e) The effect on culture, recreation, employment and tourism

125. In relation to this matter the Commission relies on and repeats its observations and findings at paragraph 85 above.

(f) The effect on social amenities and public health

126. In its consideration of this matter, the Commission has had particular regard to the grounds of objection summarised at paragraphs 33(a), 33(e), 33(f), 33(g), 33(h), 33(i) and 33(o) above.

127. The Commission does not accept that the application, if allowed, will substantially reduce the size of the Precinct’s alcohol-free zone. As previously discussed, the Precinct’s alcohol-free zone was substantially reduced in 2020. The issue of the licence will not result in it being further reduced.

128. The objectors have complained that the issue of the licence will result in reduced access by other groups to use the area for community events. The Commission is not persuaded that there is substance in this ground. There are other extensive parkland, grassed areas, beaches and safe swimming areas within the Precinct, and the Commission received no specific evidence of community events that will be displaced by the issue of the licence.

129. It is asserted by the objectors that the grant of the licence will make the area unsuitable for use by children. NT Police, despite not being an objector, also raised this issue, as noted at paragraph 15 above. Considerable time was allowed at the hearing for the parties to make submissions about this important issue. Mr Lynch and Burke submitted that the Beach Club will be a family-friendly venue, and that young people under the age of 18 should be welcome to use the facilities (but not, of course, to consume liquor) without supervision. On the other hand, Mr Wood submitted that it would be appropriate for the Director to issue a notice pursuant to s 298 of the Act declaring the premises to be an area prohibited to any child not accompanied by a supervising adult.
130. It is not the function of the Commission to issue such a notice: that is a decision for the Director. However, it would be the Commission's task to review the Director's decision if it were challenged.<sup>26</sup> In these circumstances, the Commission considers that to avoid being seen to prejudge the matter, it should not now express a view as to whether or not a s 298 notice should be issued.
131. The Commission does not consider that granting the application would necessarily make the area unsuitable for use by children. However, the Commission accepts that the issue of the licence is likely to result in rather more children being exposed to intoxicated patrons in a public area, which is, in the view of the Commission, undesirable and potentially harmful. That said, whether or not the licence is issued, children who visit the Precinct will on occasion be exposed to intoxicated persons in a public area.
132. The Commission accepts the objection that during special events, public access to the parkland around the lagoon will be restricted. Over the last two years there have been half a dozen such events, but it is reasonably foreseeable that this number will increase in future years. However, the permitted special events are restricted to the period between 1900 hours and 2130 hours, which in the view of the Commission significantly limits the adverse impact these special events could have on public access to the parkland.
133. The Commission has considered the issue of water safety and the elevated risk of drowning at paragraphs 83 and 84 above. A related issue raised by objectors is that families will feel uncomfortable when there are unsupervised intoxicated people at the only truly swimmable beach in Darwin. The Commission accepts that this may constitute an adverse impact for a small number of families.
134. Finally, objectors assert that the toilet facilities will be inadequate for patrons of the proposed premises. The Commission has not been provided with detailed information about how many toilets are in the new toilet block, or how many patrons those facilities will service. The Commission, however, does have confidence in the capacity and willingness of the licensee and the DWC between them to make appropriate provision for the toileting needs of patrons.

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<sup>26</sup> Section 29, *Liquor Commission Act 2018* (NT)

135. In summary, in the Commission's view the issue of the licence is unlikely to have a significant adverse impact on social amenities and public health.

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

136. As has been mentioned above, there are numerous licensed premises in the Precinct. However, as has also been stated, the Commission is not persuaded that this additional licence will lead to a significant increase in the consumption of alcohol. In a nutshell, people in the Precinct already have so many options to drink that it is doubtful that one more licence will make much difference.

(h) The effect of the volume of liquor sales on the community

137. The Commission repeats its observations in the foregoing paragraph.

138. Having considered all of the matters set out in s 49(3) and all of the grounds of objection relevant to community impact, the Commission must then determine whether it is satisfied that on balance, the issue of the licence will not have a significant adverse impact on the community. In order to do so, the Commission has turned its mind to three further things: the meaning of "significant adverse impact", the meaning of "the community" and the causal link between the issue of the licence and any adverse impact.

139. For reasons the Commission has given in previous decisions, it considers that "significant adverse impact" means an adverse impact that is important or of consequence but not necessarily substantial.<sup>27</sup>

140. Having regard to the purpose, text and context of s 49(3), the Commission's view is that "the community" is the community of the Darwin Waterfront Precinct, which includes not only the persons who reside in the Precinct on a permanent or long-term basis, but also persons who are staying in short-term accommodation within the Precinct, and the business proprietors and employees who work within the Precinct. This view is informed by the fact that the Precinct is predominantly a commercial, tourism and hospitality area, rather than predominantly a residential area.

141. The Commission does not equate the impact of issuing the licence with the impact of the establishment of the proposed premises as a public place equipped with beach furniture where people are permitted to consume liquor. To a significant extent, the impact that has aggrieved and continues to aggrieve the objectors is a consequence of actions previously taken by the DWC (to permit the consumption of liquor in public areas of the Precinct, and

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<sup>27</sup> See, for example, Northern Territory Liquor Commission, *Application for substitution of premises and application for variation of conditions of licence* (LC2019/038 and LC2020/007, 3 July 2020) at [103]

to install beach furniture and festoon lighting in the lagoon parklands) and the Director (to issue catering authority licences).

142. The Commission finds that the use of the premises to consume liquor has had a significant adverse impact on the residents of at least 20 and probably more than 20 Precinct households. The Commission finds that the issue of the licence will continue and probably somewhat increase this adverse impact. The Commission is, however, not satisfied that the issue of the licence will in itself have a significant additional adverse impact on the adversely affected residents.
143. On the other hand, the Commission is satisfied that the issue of the licence will not have a significant adverse impact on the Precinct community as a whole. If the Commission is in error in its construction of “the community”, and “the community”, properly considered, is synonymous with “the public” (as in “the general community”), the Commission is satisfied that the issue of the licence will not have a significant adverse impact on the (general) community.
144. The Commission reminds itself that the onus is on the applicant: s 50(3) states that the “mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.
145. Having considered all of these matters, the Commission is satisfied, in accordance with s 49 of the Act, that:
  - a. the applicant is a fit and proper person; and
  - b. issuing the licence or authority is in the public interest; and
  - c. issuing the licence will not have a significant adverse impact on the community.

### **The objects of the Act**

146. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act. The Commission considers that the issue of the licence and authorities with the conditions imposed is consistent with the purposes of the Act.
147. For these reasons, the Commission determined that the application should be granted, and that a licence and authority be issued on the conditions set out at the commencement of this these reasons for decision.

### **Extension of time**

148. Section 60(2)(c) of the Act provides that the Commission must make a decision whether to issue the licence and authority within 28 days of the expiry of the period allowed for the applicant respond to the objections. In this case, that period expired on 6 May 2024. However, the Commission was unable to

make a decision within 28 days of that date because the Director did not refer the application to the Commission until 17 June 2024. The Commission scheduled the application for hearing at the first reasonably available opportunity, and issued its decision within seven days of the hearing. In these circumstances, the Commission has determined to exercise its discretion to extend the time allowed to make its decision until the date of the decision notice, 22 July 2024.



Russell Goldflam

CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
24 July 2024

On behalf of Commissioners Goldflam, Dwyer and Fong Lim